

David Isaac, Chairman of the Equality and Human Rights Commission, warns that Brexit may weaken human rights in the UK

Meeting with the UK Section of the Association of European Journalists

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By Hugh Sandeman

The Equality and Human Rights Commission is working on a rear-guard action to change two features of the Brexit withdrawal bill that it believes could reduce the protection of the rights that people currently enjoy in the UK. David Isaac, Chairman of the Commission, explained in a talk to the AEJ UK section the basis for his concern – backed by a number of NGOs working on human rights in the UK – that plans for incorporating European into English (and Scottish and Northern Ireland) law did not live up to the government's promise that Brexit would leave our rights unchanged.

The Equality and Human Rights Commission is an independent public body established by law to safeguard's people's rights. After the referendum, Mr Isaac said, the Commission had set five objectives for human rights policy as Brexit unfolded. The first two, the basis for the Commission's lobbying on the Brexit bill, are that parliament should continue to have a central role in protecting equality and human rights law in the UK, and that nobody should lose any legal protection of their rights as the UK leaves the European Union. The other objectives he listed are that the UK should continue to be a global leader in human rights, that funding should still be available in support of work on equality and rights, and that the UK remains an open and fair place to live and work.

The role of parliament matters because the Brexit withdrawal bill (now in the House of Lords) is designed to copy most of European law from the UK's 45-year membership of the European Union, and paste it with one keystroke into English law. Numerous loose ends will then be tidied up, as the government explains, using secondary legislation. In that way the UK will be able to amend or repeal current EU laws on a range of areas such as social and environmental policy and migration.

Under the Brexit bill as it now stands, there is one major exception to this cut and paste exercise: it excludes the European Charter of Fundamental Rights. The Charter goes further in certain ways in defining individual rights than the European Convention on Human Rights, incorporating numerous such rights from different member states. The Charter is interpreted by the European Court of Justice, hence the government's opposition in principle to bringing it into English, Scottish and Northern Ireland law.

It is this exclusion of the Charter, Mr Isaac emphasised, that makes the wholesale delegation of powers to government ministers through secondary legislation a threat to human rights. The government has tried to prove that nothing will be missing when the Charter is dropped, by listing all the rights in the Charter and claiming that all of them are already covered by English law. Not so, says the Commission. Children's rights including prohibition of child labour, LGBTI rights, rights associated with data protection, the rights of people with disabilities, and rights to healthcare and media freedom, are examples of areas that will not be explicitly covered by the Brexit bill as they are today within the European Union.

The Equality and Human Rights Commission is asking for an amendment to the Brexit bill that would oblige the government to provide advance warning of any diminution of rights that could arise from an item of secondary legislation, giving parliament, not ministers, the power to decide. It is pushing further by suggesting that case law from the European Court of Justice be taken into account in jurisdictions in the UK after Brexit, an approach that is ruled out by the Brexit bill as it stands.

If the Charter is excluded from the Brexit withdrawal law, Mr Isaac said, the Commission would look at the resulting gaps in rights and try to plug them with new legislation. He sounded mildly encouraged that the government is now asking for examples of the gaps that would open up if the Brexit bill is unchanged.

He seemed less optimistic about the UK's potential to take an international lead in human rights after Brexit. The European Union insists on human rights provisions, for example, the prohibition of modern slavery, in trade agreements. It takes concerted international pressure to change practices like slavery in the supply chains of companies, while the UK will be negotiating new trade agreements on its own.

Away from Westminster, the Equality and Human Rights Commission has other work to do. Mr Isaac mentioned a forthcoming piece of research based on public polling that will demonstrate suspicion and even antagonism to the concept of human rights among a substantial sector of the British population. It will also suggest that the European Union's contribution to protecting human rights – in cases such as the Hillsborough enquiry, or the rights to accommodation of Grenfell Tower residents - is not clearly understood. It is, he concluded, "really hard to talk about these issues in simple terms".