



Joint Committee on Human Rights

Oral evidence: [What are the human rights implications of Brexit?](#) HC 695

Wednesday 23 November 2016

Ordered by the House of Commons to be published on 23 November 2016.

[Watch the meeting](#)

Members present: Ms Harriet Harman (The Chair); Fiona Bruce; Ms Karen Buck; Baroness Hamwee; Baroness Lawrence of Clarendon; Jeremy Lefroy; Amanda Solloway; Lord Trimble; Lord Woolf.

Witness

[I](#): Rt Hon Sir Oliver Heald MP, Minister for Human Rights, Ministry of Justice.

Examination of witness

Sir Oliver Heald MP

- Q9 **The Chair:** Thank you very much indeed, Oliver, for giving evidence to the Committee. We have a number of hot topics that involve your department and the Joint Committee on Human Rights, so we are very grateful to you for coming to speak. I do not want to shoot the messenger but I shall start by registering the Committee's concern that the new Secretary of State has not seen fit to come before us and answer our questions. There are a number of new Secretaries of State and 12 departmental Committees have already heard from their new Secretary of State. We are very disappointed that she thinks she can simply tell us that she does not have anything to say. Perhaps you could pass a message back to her that we think she should be welcoming the accountability around having the opportunity to answer our questions and that if she does not have anything to say, we will be the judge of that after we have asked her questions. Really, it is not for her to decide that she does not have anything to say. If we have questions to ask of her, it is the right thing for her to come before us. She might feel she is not far enough advanced in her agenda on issues of Brexit and human rights or the British Bill of Rights, but she could come and explain that to us rather



than saying, "Wait until I have something to say to you". You do not need to reply to that.

Sir Oliver Heald MP: I am delighted to have the opportunity. The Secretary of State asked me if I would come and speak to the Committee and of course I am happy to do so. I know that you have written to her and she will be replying in due course. I do not think that she is avoiding appearing in front of Select Committees because she has given evidence to the Justice Select Committee, but on this occasion I believe her thought was that I might be able to help you.

Q10 **Fiona Bruce:** Good afternoon, Minister. Our first question is a broad one. What do the Government believe are the most significant human rights issues that will arise—I would say as and when, although some would say if and when—Britain exits the EU?

Sir Oliver Heald MP: The first thing to say is that we are at the stage where we have not yet started negotiations. There is a long-standing tradition in our country of domestically protecting our human rights and liberties. We have always fulfilled and upheld our international obligations and so as we enter into the negotiations, that is the sort of approach that we as a country will continue to take. But at the moment we are obviously not into the negotiations. We are doing a very thorough job in the departments—certainly in our department—of looking at the issues and liaising with DExEU, but at the moment I am not in a position to say what the major points will be.

Fiona Bruce: Why is that if you are discussing them with other departments?

Sir Oliver Heald MP: The point is simply that at this stage we have not entered into the negotiations. We have a body of protection in terms of our international obligations and domestic laws, and then of course EU law. But as we move into the negotiations we will have a better idea of what the outcome will be and, at that stage, what arrangements will be necessary.

Fiona Bruce: You must have some idea of the most significant issues that you are likely to encounter.

Sir Oliver Heald MP: In terms of human rights?

Fiona Bruce: Yes.

Sir Oliver Heald MP: Of course the whole body of European legislation will be discussed in the negotiations and no doubt issues will arise, but at the moment we do not know what they are because we have not entered into the negotiations. We are preparing our negotiating position.

The Chair: I share what I sense is Fiona's confusion here. It is not about the negotiations, it is about what your Government believe are important by way of the rights that are currently guaranteed by virtue of our membership of the European Union. The question of those human rights



is not going to be what you can negotiate with other EU countries; the question is which of those rights currently guaranteed by the EU you regard as important enough to find a way of implementing into UK law.

Sir Oliver Heald MP: I do not think I agree with that. If you look at the overall body of law we are talking about, you have national, domestic laws that protect rights along with some European laws which have acquired rights within them, and then of course you have the ECHR with its own architecture. All of those have rights within them. In the course of the negotiations about Brexit, various European laws will no doubt be discussed and our negotiating position—which I cannot reveal today—will inform part of what we are asking for. But what remains of the rights set out in the body of European law will be determined by the negotiations. Of course, that does not mean that as a country we are not able to pass laws of our own if we need to.

The Chair: Do the Government not have a view about whether those rights are important for our citizens and therefore if they are no longer enforceable through our membership of the European Union, whether they should be repatriated? It is not what the German or French Government think should be the rights of the UK people, it is about what the UK Government think. I therefore cannot understand the concept of negotiating on them. I can understand it with a trade deal because you are buying and selling goods and services which are obviously subjects for negotiation. I can also understand it with the movement of labour because it is an issue for discussion and negotiation, but as far as the rights of UK citizens are concerned, how can there be a negotiation? How can it be for other countries to decide what you as a Government feel is important for our citizens after they are no longer under the architecture of rights set out in the charter, in directives or in regulations?

Sir Oliver Heald MP: I do not accept that characterisation of the issue. Our protected rights under the ECHR are there and will remain the same going forward. In terms of rights based on EU law, obviously we will be entering into a discussion with our partners about those laws, and in so far as rights have been created by any of those laws, we will reach a determination at the end of the negotiation that shows what rights there are. If it is then necessary to add laws to the domestic law where the other rights reside, we will be able to do that. But I do not think there is any gap.

The Chair: Fiona, ask another question. I am struggling here.

Sir Oliver Heald MP: I do not know if we are at cross purposes. Clearly, there is a Charter of Fundamental Rights, but those rights are not extra rights, they are rights which are in EU law.

Fiona Bruce: Obviously, there are some rights that cannot be replicated in UK law, such as the right to vote in European elections. But other than those rights, are there any that the Government intend to remove; that is, rights which UK citizens currently possess under EU law?



Sir Oliver Heald MP: I am afraid that one of the problems with this is that I am not in a position to set out our unilateral position in advance and I do not intend to do so. Clearly, it is important that British citizens should have the rights that are needed and in so far as negotiations reveal that an area would require domestic legislation, obviously that is something the Government would have to consider. But at this stage, when we have not even started the negotiations, I think that to say that there will be gaps is wrong.

Fiona Bruce: Let us see if further questions can elicit further information.

The Chair: Amanda is going to have a crack at this.

Q11 **Amanda Solloway:** I am just asking this out of ignorance. What implications does the great repeal Bill have? I may have missed something on that because I thought that it would take everything and give us a starting point and we would then look at our own legislation around it. Perhaps I am confused.

Sir Oliver Heald MP: Of course, it has not been published, but one can guess from the title that it is going to involve the repeal of the 1972 Act, which is a pipeline that allows law based in the EU to come into our law. If the 1972 Act is to be repealed, clearly it will not be until the end of the negotiations and at the point of Brexit that the actual repeal occurs. However, it will give both Houses of Parliament an opportunity to look at what mechanisms are needed for the repeal and what needs to happen in relation to that.

Lord Woolf: Minister, forgive me, I have to go through to the Chamber to try to persuade one of your colleagues that he should agree to an amendment, so I am going to be away for a time.

Sir Oliver Heald MP: Thank you for your apology. I had best not say that I hope it goes well.

Amanda Solloway: I was going to ask a follow-on from that. I know it is not carved in stone, from what you are saying, but do you have any indication, therefore, of what priority would you be looking at in terms of human rights?

Sir Oliver Heald MP: Of course, at the end of the two-year period, once Article 50 has been triggered, then the treaties fall away, unless there is an extension. The purpose of the great repeal Bill will be to ensure that we have repealed the European Communities Act 1972, so that at the point of Brexit, not only the treaties will fall away but so will that Act of Parliament. But of course, there will need to be measures within the Bill to ensure that that does not lead to a gap in our law, which we would not want to see. Therefore, I suspect there will be mechanisms within the Bill to deal with that and perhaps the technical detail of how particular legislation needs to be changed as well.

Q12 **Jeremy Lefroy:** The Prime Minister said in announcing the great repeal



HOUSE OF COMMONS

Bill that it would pass all European law into domestic law, after which it could then be dealt with by the UK Parliament. Is it your understanding that the European Charter of Fundamental Rights would be part of the body of European law that would be passed into UK law by the great repeal Bill?

Sir Oliver Heald MP: No, that is not my understanding. It is true that in European law, there are various duties which give rise to rights. Every time you create a duty, the correlative of it is that a right is created. What the charter does is consolidate that, so you have all the various rights in one place. Clearly, there will be a need in the negotiations to discuss exactly how we are going to go forward with the various laws in the EU. There may be some we do not continue with—there probably will be, will there not, as we are having a Brexit? At that stage there may be issues about particular rights which need to be considered and, if we want to continue with those rights, we will need to consider how we reframe them for the future. But the point about the great repeal Bill is that it will allow us to get rid of the 1972 Act at the point of Brexit. It will probably mean that we import European law into our system, in the sense that all those duties and so on are part of our law, but it may also contain provisions about amending laws and so on to fit the new conditions. We will have to see the exact detail of it, but I do not think we are looking to stay in the Charter of Fundamental Rights.

Jeremy Lefroy: But that is a different point from whether it will be part of the body that would be transferred over. What is your current understanding of the status of the European Charter of Fundamental Rights? The UK did have an opt-out, but it seems to be unclear, certainly to some of us, where it stands now in relation to the UK.

Sir Oliver Heald MP: As far as the charter is concerned, it does not create any new rights, it expresses rights from European law. As far as Britain's position is concerned, a statement was made at the time of the charter that it would not create any justiciable rights for individuals here in the UK as of itself, although of course there are opportunities, as this Committee has I think examined previously, to use the European law which is in the charter to ground arguments in court.

The Chair: Obviously, if we are not in the EU, we do not accept the jurisdiction of the European Court of Justice. So there are no negotiations around that—

Sir Oliver Heald MP: As I say, as far as I am aware, that is the approach, yes: to not be in the charter.

The Chair: You mean you could contemplate, as part of the negotiations, that we could still accept the jurisdiction of the European Court of Justice. Is that what you are suggesting?

Sir Oliver Heald MP: That is not what I am suggesting, no.

The Chair: So basically, we are not in the European Court of Justice when we are not in the EU?



Sir Oliver Heald MP: No.

The Chair: That must be right, okay. So you are not negotiating about that.

Sir Oliver Heald MP: No.

The Chair: Okay, so that is out. So, then, are the rights of people who might otherwise have enforced them through the European charter, directives or regulations in the European Court of Justice—whether it is data protection, enhanced rights against discrimination and so on—automatically going to be passported into that same level of protection in UK law, enforceable in UK courts? I think we are all asking that question, are we not?

Sir Oliver Heald MP: I do not think you should be. The European Court, of course, does cases that are between nations—member states—and cases which are at the instigation of the Commission. It does cases of various sorts, and it receives references, but in terms of the rights which we are talking about, the Charter of Fundamental Rights is not directly justiciable in our country, unless it can be used within a legal argument. I am not on the same page as you on that, but I would say that it is quite right that there are European laws which set out rights and duties within them which are imported into our law, either through regulations or directives, and which British citizens can rely on. Obviously, in the negotiations about what our future holds post-Brexit, those laws will be discussed. Nothing will change until Brexit, but at that point it may be necessary to look at whether we need further domestic laws to reflect areas which are repatriating.

Q13 **Baroness Lawrence of Clarendon:** Laws coming from the EU have taken many years to get to this point. Do you see the same happening once we leave the EU, with our laws in this country?

Sir Oliver Heald MP: What, with laws coming here from the EU?

Baroness Lawrence of Clarendon: It has taken quite a few years because each year something happens. I am just trying to understand something that you said about that. Looking at our laws here, we are more or less discounting what was in Europe. The question I am asking is: do you see it taking the same amount of time? Laws are developed over a period of time in Europe—do you see the same thing happening here when we leave?

Sir Oliver Heald MP: Certainly here in Parliament we have always been very keen to see what innovations there are in other countries. We see committees going on visits to see these things, as do Ministers. We gain a lot from looking at what other countries do. That is as true of the law as it is of other areas, and it is true of the development of law, so I am sure we will continue to look at what other countries do. If we see a good idea, then a committee like this or another committee will propose it, the Government will look at it and maybe we will do it.



Q14 Lord Trimble: I have a number of process issues to raise. I come first to the Miller case, which I want to put in the alternative. First, I will go with the alternative that the Government's appeal succeeds. If that happens, how will the Government ensure that Parliament is still involved—and involved immediately, not waiting until next March, when Article 50 is triggered?

Sir Oliver Heald MP: This is about parliamentary debate and discussion. As you will know, the Government have committed to a series of debates about Brexit. I may be wrong, but there may be one this afternoon in the House of Commons—there have certainly been a number. There are also Statements, and it has been announced by the powers that be—not me, of course—that this process will continue. That seems to be the approach: that there is going to be a series of debates and discussions in the House as the process unfolds.

Lord Trimble: You might not have caught up with it yet, but yesterday afternoon there was a debate in our House on this issue which reflected a general unanimity about the need for the substantial and significant involvement of Parliament. No one who spoke in the debate had a clear idea of what is going to happen. You have just said that there will be debates, but we need to go a bit further than just a general debate.

Sir Oliver Heald MP: Of course, the process of the great repeal Bill that we are expecting will be an enormous undertaking in terms of discussion on the Floor of the House. It will be about the process.

Lord Trimble: Let us take the alternative, which is if you are not successful in the appeal. I understand that the Government are thinking of introducing a Bill before triggering Article 50. Can you tell us anything about the scope of that Bill?

Sir Oliver Heald MP: I do not actually have any information on it at all. I am sorry but I do not know the answer.

Lord Trimble: The Government have said they will bring forward a Bill.

Sir Oliver Heald MP: I can certainly ask within government whether there is any further information that I could give the Committee and write to you, but I am certainly not aware personally of the detail of any proposed Bill. In fact, I think the Government's view at the moment is that they are going through the appeal and are looking to win. Obviously if there is a need for a contingency plan, that would be made, but I am not aware of a current proposed or draft Bill or anything of that sort.

Lord Trimble: Can we move on to the great repeal Bill to which the Government are committed?

Sir Oliver Heald MP: It will be in the hands of DExEU rather than the MoJ.

Lord Trimble: Can you tell us anything about the process around the development of that Bill? We know that the Government's intention is to



use it to take all existing EU legislation, directives and regulations and convert them into British law so that there can be more detailed scrutiny of them in the years to come. It is going to be quite a significant Bill—the fact that the word “great” is used in relation to it indicates that. Do you not think it would be appropriate, with a Bill of this nature and given that there is plenty of time since you have nearly two years for the Bill to come forward, for it to be considered in draft and for there to be pre-legislative scrutiny?

Sir Oliver Heald MP: Clearly, it is an important measure and the Government will come forward with their proposals, but I am not in a position to tell you today what the procedure will be. However, Lord Trimble, I will be happy to pass your remarks on to the relevant authorities so that those who are deciding these matters are aware of your views. I am sure that, given your seniority and knowledge of constitutional matters, they will be very much taken into account.

Lord Trimble: I hear a whisper that there are likely to be some 4,000 discrete pieces of legislation that will have to be considered in this context. Again, having some sort of structure for dealing with all of that and having some way of communicating to us how it is going to be structured would be a very useful thing. You may wish to ponder on that as well.

Sir Oliver Heald MP: I will certainly pass on your thoughts. There is no question but that it is not called the “great” repeal Bill for nothing.

Lord Trimble: Finally, perhaps I may put down a marker on one point. Obviously a way will have to be found for dealing with those 4,000 bits of legislation. It may be spread over a number of years, but there will be a huge volume of stuff going through. There is a concern that the Government might be tempted by the wholesale use of Henry VIII powers. If that is the case, it will give rise to very considerable concern.

Sir Oliver Heald MP: I think that what is appropriate is the issue, is it not? Over the years we have had some important debates about Henry VIII clauses and using orders to change primary legislation, but I think the general view is that there are cases where Henry VIII clauses can be useful and that it is a question of framing their use in a careful and appropriate way. Recently various lawyers have spoken out about this, including the Bingham Centre, which has suggested that there is a need for a particular approach. I am not drafting the Bill, but I will certainly pass on your comments.

Lord Trimble: You realise that there are concerns about this and perhaps I may suggest that it will be much easier to allay those concerns if you move quickly into a frank and structured dialogue with Parliament to talk these things through before the Bill is brought forward. We always find at our end of this place that the more discussion there is between Ministers and Members of our Chamber beforehand, the easier it is to get legislation through. Especially given that we have quite a lot of time in hand, can I suggest that the sooner you get engaged in a serious



discussion with both Houses of Parliament, the better?

Sir Oliver Heald MP: I think that that is very helpful and, as I say, I will pass it on.

Q15 **The Chair:** May I ask about the rights of EU nationals currently living in this country? Many EU nationals have not sought to become British citizens because they have the right to be here, and obviously many of them have been living here for decades. They too have their human rights under the European convention, such as the right to family life. Is it right that they and their rights should be the subject of negotiation? Is that the right way to deal with people's human rights; that is, to use them as part of a negotiation in respect of the free movement of UK nationals to other parts of the EU?

Sir Oliver Heald MP: Of course, we have not started the negotiations at this point but you will be aware that the Prime Minister has been very clear that she sees this as a priority. She said on Monday that she wants an "early agreement" on the status of UK nationals in Europe and EU nationals here so that, as she said in her speech to the CBI, "you and they can plan with certainty". This is an area where an early agreement would be most welcome. It is one of those issues where we have UK citizens living in the EU and we would like to feel that their position is settled, and equally, as you say and I accept, for EU nationals here. To have that agreed would be very welcome, so obviously that is what the Government's position is. But not to agree both sides of the issue and to agree unilateral positions is not helpful.

The Chair: But is it not the case that whatever is decided in these negotiations – on which you are not going to show your hand, which we get – the people who are living here have human rights which are justiciable? Is it really going to make sense to have potentially thousands of people who have been living here for decades, if the negotiated agreement does not give them their rights, ending up litigating over their rights in the UK courts?

Sir Oliver Heald MP: That is a pessimistic view. I would have thought, given the interests of countries in the EU and their citizens and the interests of our citizens being the same, that it would be very easy to reach agreement. I do not think that there is any question here. Of course, while the negotiations continue until the point of Brexit everybody's rights will remain the same. I do not think that it is right to be pessimistic and think that we will end up with lots of court cases. If it came to that point the Government would have to consider exactly what the agreements were. I think that it will all be sorted out relatively quickly.

The Chair: Do you accept that whatever the Government negotiate, people have a backstop for their rights in our courts and therefore the Government do not have a free hand in the negotiations? People have their rights and they are entitled to enforce them in the courts. To some extent the negotiations on this issue are therefore neither here nor there



because people have accumulated rights and they are entitled to enforce them. Nothing that is negotiated between our Government and the EU is going to change, which means that there could be many cases—potentially there could be many thousands.

Sir Oliver Heald MP: The aim is to reach an agreement speedily so there is no question about it. It is right that there should be continuing rights within the EU until the point of Brexit. We are in the ECHR, as are all our partner countries, so I do not think that any of us would want to do anything other than reach an agreement and to do so quickly, as the Prime Minister has said.

Q16 **Baroness Hamwee:** Have the Government made an assessment of the numbers of people who will be affected—EU citizens living here and British citizens living elsewhere in the EU?

Sir Oliver Heald MP: Well, no, because we do not expect there to be legal proceedings of the sort that have been outlined. Obviously, the approximate number of EU citizens who live here and the number of British citizens who live overseas are well known, but no, we do not expect legal proceedings to arise. We expect this to be a matter of speedy agreement.

Baroness Hamwee: You have probably answered my subsidiary question, which is whether you have made any assessment of the numbers who may have the protection, for example, of Article 8, on family rights, which, as the Chairman said, could be a matter for the courts.

Sir Oliver Heald MP: We all have the protection of Article 8. Everybody who lives in the UK does. That is also true of all the countries of the EU: everybody has Article 8 protection. But of course, it is important to reach an agreement so that people do not worry or have the concern of not knowing exactly where they are placed. This applies to individuals and to businesses, which is why the Prime Minister was saying this to the CBI. One thing I should have made clear, of course, and this is true of Baroness Hamwee's question, is that our department has its role, which is well known, but DExEU, the department that is preparing our negotiating position and that will be involved in the direct negotiations that will occur, is working on this issue and very much trying to get to the point where an agreement can be reached. I would be more than happy to ask it to write to the Committee with its latest thoughts on the matter.

Baroness Hamwee: I well understand that, but I am sure the MoJ has a concern because of its responsibility for the courts, or at any rate its involvement with them.

Sir Oliver Heald MP: I was not suggesting otherwise, but we are always supposed to make sure that the Committee is aware of exactly who is doing what. That was the point there.

Q17 **Baroness Lawrence of Clarendon:** The Government have promised to bring forward a British Bill of Rights in two consecutive Queen's



Speeches. Yet its consultation is still promised “in due course”. What is the reason for the delay?

Sir Oliver Heald MP: First, of course, it is a process that goes back a long way really. If you think about the years of opposition, it was then that the Conservatives came forward with this idea of having a British Bill of Rights—in fact I think it was in 2006, when I was shadow Secretary of State for Constitutional Affairs, a position that no longer exists, in government or otherwise. Why has there been a delay? In the early part of this Parliament, following our manifesto, which gave us a mandate to reform and modernise the human rights framework, a lot of work was done. I pay tribute to the officials in the unit who have been working on this, who have done a tremendous amount of work. Coming in as the new Minister of State for Justice dealing with this area, I had to think, “Well, what is the implication of Brexit?” Constitutionally, it is a seismic shift, and although we do have a paper that has been worked up to quite a high level, I wondered whether it was right just to proceed without giving the consequences of Brexit great thought. So I have asked officials to look at the full implications of Brexit for the Bill of Rights proposals in some detail for us, so that I can then study them. That is what is happening at the moment, but it is our intention to bring forward proposals, as we have said.

The Chair: Do you have any timescale on that?

Sir Oliver Heald MP: I am afraid it is “in due course”, Harriet. I know no one likes to hear that, but that is the case, because I have got to see what the work uncovers and then look into it in detail.

The Chair: So basically, Brexit has meant that further deliberation has to happen ahead of the already-delayed consultation paper. It is not poised and ready.

Sir Oliver Heald MP: It was poised and not quite ready to go, and it is now being given further thought because of Brexit. I think the Committee would accept, on the line of the questions so far, that Brexit is a major constitutional change and it is right to look at the whole picture in this context of the British Bill of Rights. I certainly think it will be quite difficult just to proceed as though nothing had happened.

The Chair: So are you looking to consider whether or not to put rights which are currently in the charter and in EU directives and regulations into the British Bill of Rights? Is that one of the issues that you are considering—what rights are not enforceable any longer because we are no longer within the ECJ, and whether the British Bill of Rights is the home for those?

Sir Oliver Heald MP: What I am doing is getting officials to do me some work on what the implications are of Brexit. I am not at the moment considering doing what you just outlined, no, but I do want to look at the whole picture, because this is a big, constitutional change and it does affect the rights architecture, if you like, of the UK.



Baroness Lawrence of Clarendon: Following up on that, we went on a visit to Scotland. Human rights are UK-wide. There is also Ireland. How do you envisage this, looking at the UK as a whole, if Britain has its own, Scotland has its own and Ireland has its own? How do you envisage bringing all of that together? At the end of the day, we want to be a United Kingdom, and not one where we are separated.

Sir Oliver Heald MP: It was always the plan, when we produced our proposals, to consult very widely, particularly with the devolved Administrations. That was the plan, but I have not got to that point because I looked at it and thought, "Well, yes, we have got some well-worked-up proposals that are not far off, but this is a huge change. Is it really right just to plough on?" I took the decision that I was not going to do that, but was going to find out what the implications of Brexit were, have a look at the overall picture and just see where that took us. Now, as far as Brexit is concerned, you will know that we are consulting with the devolved Administrations. When we get to the right point on this, we will have full consultation, but at the moment, as I say, we are having to do this work of seeing what the implications of Brexit are, because it is a big change.

Q18 **Ms Karen Buck:** Can I just ask this? The great repeal Act will be based on the state of law as it is at the point of enactment, but obviously the body of rights law in Europe—regulations and case law—continues to evolve. What are the means by which we will ensure that we are maintaining at least parity, if not progress, in respect of Europe? You said earlier that it is a question of seeing good practice abroad, and if we like a bauble on the tree, we will get it—

Sir Oliver Heald MP: We are not up to the point of Brexit, Karen. Up to that point, we will be a member of the EU and we will take part in all the discussions about rights and laws, as we have done. After that, obviously, we are on our own and have got to decide what we do.

Ms Karen Buck: So it is just going to be a question of if we like the look of where that body of law progresses, we might seek to incorporate—

Sir Oliver Heald MP: After Brexit?

Ms Karen Buck: This is after Brexit, yes.

Sir Oliver Heald MP: I am not going to say anything about our negotiating position. It may be in particular areas that there are regulatory arrangements and so on where we will want to look at some sort of process to satisfy both sides as to the way forward. But I am not aware at the moment of any area where we will be continuing with European arrangements.

Ms Karen Buck: Indeed. As you are probably aware, the Committee is carrying out an inquiry into human rights and business, and obviously there is going to be a risk—a lot of people will look at this as being a risk—that in order to ensure a competitive advantage in trade negotiations, we may perhaps not want to keep in step with European



law in that regard. How can you reassure us that we will want to make sure that other pressures post-Brexit, particularly around things like trade and workers' rights, are not going to lead us into a relative falling behind in respect of our workers' legal rights?

Sir Oliver Heald MP: I suppose really, Karen, that for 1,000 years we have led the world in human rights. It was Winston Churchill who suggested that we have the Council of Europe and the ECHR. So we have a good track record of setting the pace, having good human rights and liberties locally—domestically, in our own country—and fulfilling our international obligations. I cannot remember the exact figure but we have signed more than 10,000 treaties with various obligations and have been a country that has set the pace when it comes to human rights rather than dragging our feet. The protections are in the nature of the UK and its people and our Parliament.

The Chair: So when we enter these bilateral trade deals, when we are no longer part of deals by virtue of our membership of the EU, you do not see any prospect of us negotiating trade deals which afford a lower level of human rights protection than that which currently obtains within the EU trade deals to which we are a party by virtue of being a member of the EU.

Sir Oliver Heald MP: I would find it most unlikely. In fact, in his letter to you, Liam Fox I think addressed this and talked about the fact that Britain has this strong history, pointing out that we were there with a national action plan for the implementation of the UN guiding principles on business and human rights—I think we were the first. Over the years, we have had the transparency in supply chains provisions in the Modern Slavery Act, and we do really press on human rights issues. As far as the future is concerned, he made the point that we would want to continue to express our values. I would not have thought there was any risk of that not happening. Of course, there are different ways of dealing with the issue of sustainability clauses, and it may be that the wording would not be exactly the same as the European ones, but I would still think that we would want to express our values and ensure that human rights are right at the centre of our thinking.

The Chair: As the Minister responsible for human rights, and bearing in mind we are in the EU at the moment and therefore, by virtue of that membership, are party to these trade deals that have human rights clauses, what do you think of the effectiveness of those clauses in protecting people from businesses breaching their human rights, and of the effectiveness of their enforcement? If we are going into a new world of bilateral negotiations, presumably you go with some view about what the current situation is. What is your assessment of the efficacy of these clauses and people's ability to enforce their rights within these clauses?

Sir Oliver Heald MP: I am a strong voice for human rights, I hope, within government and would certainly always act as such, whenever given the opportunity. In terms of the specific responsibilities, there are other departments which are perhaps more firmly in charge of this,



particularly Liam Fox's department, DfIT. But my personal view of it is that the EU has been a very large grouping making agreements with other countries, and the size of the EU means almost inevitably that it has teeth compared with other countries. As you will know, the Americans do take a different approach: their sustainability clauses include trade sanctions as the final resort. So there are different models. It will not be up to me to choose which one, but I will be saying to anyone who asks, on occasions when I get the chance, that it is important that human rights are at the centre of our thinking and very important in terms of chain of supply and so on as well.

The Chair: It sounds from that answer that you think that the teeth with which human rights will be enforced will be smaller when we are outside of the EU, because we do not have that big—

Sir Oliver Heald MP: It may mean that one would want to just review what the approach is, but it is not my decision. I think that it is well understood in DfIT what the various options are. In fact, Liam Fox, in his letter, which I felt explained it all and his views pretty clearly, says that they would look at a range of options to allow British businesses and international partners to continue to benefit from existing trade preferences via interim adoption of EU deals. How we deal with human rights within these arrangements will be a key issue. He says I think at another point that he is looking at the options. So there are options, as I outlined. The EU approach is that of a big organisation, with lots of countries involved, and about not using sanctions, while a country like America, which is also big, does use them. He will want to look at what is the best approach, but I think the key point for this Committee would be that human rights is a key priority.

Baroness Lawrence of Clarendon: You have just said that you are the Minister for Human Rights. So would you not see your position as advocating to other Ministers the importance of human rights, and that they should encompass everything rather than saying we will look at things happening around and all the rest of it? I would have thought that, as an advocate for human rights, you would be championing them.

Sir Oliver Heald MP: Yes, I agree with that.

Q19 **Jeremy Lefroy:** I will just ask about British citizens and family members living in other EU states, because the Immigration Law Practitioners' Association has told us there is much more certainty for those living in other EU states than there is for other EEA nationals and their family members in the UK. Could you just give us your assessment of the rights of UK citizens in other EU countries post-Brexit? Obviously, I understand it is subject to negotiation, but what about the implicit existing rights in the treaties and their access to justice under the law there?

Sir Oliver Heald MP: Yes, of course. As far as our citizens in the EU are concerned, at the moment they have the benefits of the ECHR, as we do here, and they also have the benefits of the Charter of Fundamental Rights and its application. Going forward, it is likely that the position will



remain unchanged for British citizens in the EU, but we want to just make sure that that is the case and secure the deal. But the fact that it would be so easy for our European partners to agree to that seems to me to be a good indicator that we would get an agreement. That is basically the strength of that. As for here, of course, we are negotiating with the EU about all this European law that is the basis of the Charter of Fundamental Rights. We will want to see what the outcome is for us, but it is more uncertain because we are negotiating about our future and we would need to see what is and is not agreeable and then make decisions.

Jeremy Lefroy: So you would say the best way to address concerns over residents' rights is to reach agreement as soon as possible.

Sir Oliver Heald MP: Yes, absolutely right, and that is what the Prime Minister was saying in a recent speech at the CBI.

Jeremy Lefroy: Where do you see the position as regards people who are self-employed? Do you see that as being more complex? That is, British citizens who are self-employed in EU countries and vice versa.

Sir Oliver Heald MP: I must say that is not something I have a very clear picture of myself, so I should go through that point with officials in more detail and write to the Committee about it. I would be very happy to do that.

Q20 **The Chair:** The Prime Minister said at the 2016 Conservative Party conference that "existing workers' legal rights will continue to be guaranteed in law—and they will be guaranteed as long as I am Prime Minister". That presumably includes legal rights, whatever their source, whether they are derived from the Charter of Fundamental Rights, from directives or from regulations.

Sir Oliver Heald MP: Of course, workers' rights are there and obviously have to be respected.

The Chair: It certainly sounds from that that she is talking about passporting those into existing workers' legal rights. She does not say, "Some, not others". She said that "existing workers' legal rights will continue to be guaranteed in law". Presumably that means those guaranteed in the charter, and in directives and regulations—the existing ones.

Sir Oliver Heald MP: I think that there is already plenty of protection in all sorts of ways for the rights of workers that form part of their contract of employment.

The Chair: What she did not say is that she is going to negotiate on some of these if they derive from the charter regulations or directives. She has said that they will be guaranteed in law.

Sir Oliver Heald MP: If you are a person in work and you have a contract, you have rights that the trade union movement has been keen



to uphold for a century or more. They cannot be taken away from someone. They are contractual rights. Workers' rights are workers' rights.

The Chair: But this is not about existing workers. Do you mean that it is about existing workers rather than their existing rights?

Sir Oliver Heald MP: Nobody is going to lose any of the rights they have.

The Chair: So you are saying that she is guaranteeing them only for those people who are working and already have those rights. It is not a guarantee of the rights, it is a guarantee for those workers who have them.

Sir Oliver Heald MP: I am not aware of any suggestion that workers' rights are going to be affected. Certainly under our law you cannot take rights away from workers.

Q21 **Jeremy Lefroy:** There has often been a bit of confusion, dare I say perhaps even among Members of Parliament, between the European Convention on Human Rights and the European Union and the rights associated within that. Perhaps I am wrong, but an assumption is also made by quite a number of people that the European Convention on Human Rights is entirely linked into the European Union and therefore if we are coming out of one we are coming out of the other. Do you think that the Government need to do more to make it absolutely clear that the two are very distinct? The ECHR comes out, as you rightly said, of a commitment made in effect by Sir Winston Churchill and others after the Second World War and has nothing to do with the European Union. Otherwise, there may be in some quarters a degree of confusion or disappointment that we will still have cases going to the European Court of Human Rights long after we have come out of the European Union.

Sir Oliver Heald MP: Perhaps I may finish on the point made by the Chair and then come on to that issue. The other point I should have made is that the great repeal Bill will deal with the issue of bringing workers' rights which are set out in European law into our law. That is the purpose and function of having the Bill, so I do not think that there is any problem for the future—assuming that the Bill has the support of both Houses. In terms of the ECHR, it has been a long-standing problem that people have talked about the "European court" and have not really made the distinction between the court in Strasbourg, the European Court of Human Rights, and the Court of Justice of the European Union in Luxembourg. That is a problem. People talk about "Europe" as a generic term and are critical of it.

The European Court of Human Rights and the convention that underpins it are a very important part of our human rights protection, but there have been concerns about the way in which it has worked since the Human Rights Act was passed in 1998. I mentioned earlier that by 2006, when the Conservatives launched a policy for a British Bill of Rights—I was part of that launch—we pointed to a range of issues that had arisen



with the ECHR and the way it had been implemented in Britain. Over the period of the past 10 years we have made considerable progress on some of those. The three issues where I think we have made some progress are that in 2006 we were very concerned that the European Court of Human Rights could not dismiss trivial and hopeless cases and had a huge backlog of cases that was building up. It was really rather inefficient in that way. There was not adequate subsidiarity and sometimes issues were being looked at which should have been dealt with at the domestic level. There were other issues, such as the margin of appreciation perhaps not being adequate. So that was one package of measures about how the ECHR was working and its relationship with us.

There was a concern about the difficulty in deporting people to other countries because of how Article 8 operated. There was also a concern, which really came from a case in 2004, that the courts were just slavishly following ECHR judgments and not trying to develop an English jurisprudence around the ECHR. When the 1998 Act was going through I remember making a speech, along with many other people, about the problem that we could end up with a sort of very flat European jurisprudence. Over the period since 2006 we have seen real progress such as the Brighton Declaration which Kenneth Clarke secured, which has helped a lot on those administrative problems. Section 19 of the Immigration Act 2014 deals with the point about Article 8 and how it operates. Then more recently we have seen the courts taking a different approach and having much more of a dialogue with the ECHR. The case of *Horncastle* in 2009 was seen as something of a watershed in that regard. Although the process which started in 2006 of talking about a British Bill of rights has not resulted in a draft Bill yet—I apologise that we are not bringing one forward immediately, as we said we would—we will do so. But I do not look at the process as not having achieved quite a lot. Over the recent period there have been some great moves forward, but there is still more to do.

Jeremy Lefroy: That is very helpful and I thank you for your detailed reply. The other part of my question was whether the Government should be doing more to distinguish between the process of Brexit and the inevitable issues around human rights arising from the EU Charter of Fundamental Rights, along with the quite separate review, which I am glad to note you are taking a detailed look at, of the charter and whether it is helpful to have the two going along at the same time, or whether they should be dealt with sequentially.

Sir Oliver Heald MP: That is very helpful. The other point on the public's understanding of human rights and the EU – the two different systems under the ECHR and the EU – is that this is a key responsibility of the Equality and Human Rights Commission and its devolved counterparts. We hope that the commission might take quite a lead on trying to inform the public of the two different systems. That is certainly a good point.

The Chair: Thank you very much indeed, Sir Oliver. Clearly, a great deal of work is under way and we look forward to seeing it unfold.