



Public Law Project

European Union (Withdrawal) Bill

Briefing for House of Commons Second Reading

by the Public Law Project

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The Public Law Project's (PLP) mission is to improve public decision making and facilitate access to justice.

The impact of the EU (Withdrawal) Bill on the shape of public law in the UK and upon our constitution will be unprecedented. In this briefing, we consider three challenges that the Bill poses for Parliamentarians:

- a) It creates unprecedented and unjustifiably broad powers for Ministers. It empowers Ministers to 'take back control', rather than Parliament.
- b) It is far from clear about crucial constitutional questions, including the scope and impact of EU law transposed into our domestic law. This lack of legal certainty undermines the Rule of Law.
- c) Parliamentarians should not rely on Courts to plaster over any legislative gaps or constitutional cracks. The limits of the ordinary public law and the barriers individuals face in pursuing judicial review are such that scrutiny of the Bill by Parliament must ensure that the Bill is fit for purpose.

Introduction

The Public Law Project (PLP) is an independent national legal charity. PLP's mission is to improve public decision-making and facilitate access to justice. We work through a combination of research and policy work; training, conferences and second-tier support; and legal casework including public interest litigation.¹ Our strategic objectives include promoting and safeguarding the Rule of Law; ensuring fair systems for public decision making; and improving access to justice. PLP takes no position on the UK's decision to leave the European Union. Our work around the EU (Withdrawal) Bill is intended to ensure that Brexit is a democratic success and Parliamentary sovereignty is strengthened; to minimise the availability of broad delegated legislative powers and ensure they are used appropriately; and to secure the retention of fundamental rights protections.

In this Briefing we first set out our three key concerns as they relate to the EU (Withdrawal) Bill and then explore the issues in further detail in the pages that follow.

For more information about these issues or to discuss the public law issues arising from the Bill, please contact PLP's Legal Director, Alison Pickup, on a.pickup@publiclawproject.org.uk.

¹ PLP is recognised as having particular expertise in public law: in 2013 it was awarded the Special Rule of Law award by Halsbury's Laws and in 2015 it received the Legal Aid Lawyer of the Year 'Outstanding Achievement' Award for its work on the legal aid reforms. For more information about PLP's work please see our recently published 5 year Impact Report http://www.publiclawproject.org.uk/data/resources/255/PLP-5-year-Review_Impact_Report_1012_2016_view1.pdf

Three Key Concerns

- 1. Ministers, rather than Parliament, are ‘taking back control’.** The Bill confers unjustifiably broad powers on Ministers to amend both primary and secondary legislation, with minimal oversight from Parliament.² The Bill allows Ministers to make “any provision that could be made by an Act of Parliament”³ that they consider “appropriate”⁴ to ensure a smooth Brexit, with little oversight. The White Paper recognised the need to balance the importance of Parliamentary scrutiny with giving Ministers the flexibility needed to act swiftly to ensure a smooth Brexit.⁵ However, the Bill in its present form strikes the wrong balance. The powers are so broadly drafted that they allow Ministers to set up entire public bodies or even introduce criminal offences with sentences of up to two years, their scope is uncertain and their purpose ill-defined.⁶

- 2. The Bill is unclear on important issues arising from preserving and converting EU law into domestic law.** The Bill attempts to take a freeze-frame of EU law as it applies on Brexit day. However, the Bill does not adequately address several difficulties with converting large swathes of EU law into domestic law. What status will retained EU law have? Will it be possible to challenge retained EU law? What role will the Court of Justice of the European Union (‘CJEU’) play going forward? What happens to EU law fundamental rights that are not part of the ECHR? The final version of the Bill must provide absolute clarity on these issues to ensure legal certainty and uphold the Rule of Law.

- 3. Parliament should not rely on judges to fix the problems with the Bill.** When Ministers act unlawfully or legislation is unclear it leads to litigation. Unless Parliament introduces proper safeguards on powers delegated to Ministers and provides clarity on how retained EU law will operate, aspects of

² Schedule 7, Part 1 makes provision for the nature of scrutiny of regulations.

³ Clause 7(4)

⁴ Clause 7(1)

⁵ Department for Exiting the European Union, [Legislating for the United Kingdom's withdrawal from the European Union](#) Cm 9446, 30.03.2017, paragraph 2.30 (‘the White Paper’).

⁶ Clause 7(6)(c) excludes the creation of “relevant criminal offences” defined in cl. 14(1) as offences “for which an [adult] is capable of being sentenced to imprisonment for a term of more than 2 years”: p. 10, lines 44-48.

the Bill, as well as decisions and/or delegated legislation made under it, will be questioned in the courts. It is unwise to rely on courts to remedy the deficiencies in the Bill. Litigation is expensive, lengthy, difficult to bring, and may be ineffective.

These headline concerns are explored in more detail in the following pages.

(1) Ministers are usurping Parliament's sovereignty

(a) The breadth and scope of the delegated powers in the Bill is unprecedented and unnecessary for the purpose of enabling a smooth transition

1. In the White Paper,⁷ the Government emphasised that the Bill was not intended to be “a vehicle for policy changes” but that the powers were required to “give the Government the necessary power to correct or remove the laws that would otherwise not function properly once we have left the EU.”⁸ The White Paper further recognised the importance of limiting the powers, stating that the Government will “ensure that the power will not be available where Government wishes to make a policy change which is not designed to deal with deficiencies in preserved EU derived law arising out of our exit from the EU.”⁹ In introducing the White Paper to Parliament, the Secretary of State said that it “almost goes without saying” that “no change should be made to rights through delegated legislation”.¹⁰
2. However, the Bill in its present form gives Ministers extensive powers to amend primary and secondary legislation with little Parliamentary oversight,¹¹ including in such a way as to remove or change existing rights or obligations. This is contrary to the assurance given by the Secretary of State.
3. The breadth and potency of these powers is unprecedented. The Bill gives Ministers the power to amend:
 - a. EU legislation, including EU Regulations which have effect equivalent to an Act of Parliament;
 - b. “EU-derived domestic legislation”. These are EU laws, particularly Directives that have been implemented by way of secondary legislation under the European Communities Act 1972 (ECA).¹² These include

⁷ See n5* above.

⁸ See forward to the White Paper by Rt Hon David Davis MP, Secretary of State for Exiting the European Union; see also paragraphs 3.10 and 3.17 of the White Paper and paragraph 14 of the Explanatory Notes.

⁹ Paragraph 3.17.

¹⁰ HC Hansard 30 March 2017 Col 431.

¹¹ Clauses 7 and 8.

¹² Clause 2.

provisions which would likely have been made by an Act of Parliament but for the ECA as they contain key environmental and workers' rights protections;¹³

- c. Acts of Parliament, including the Bill itself;
 - d. Potentially all legislation, if Ministers interpret their powers expansively.¹⁴
4. Despite the statements of intent in the White Paper, the present draft of the Bill provides **few restrictions on Ministers using these powers to implement wide-ranging policy changes.**
 5. The Bill gives Ministers the power to “make any provision that could be made by an Act of Parliament” to “prevent, remedy or mitigate” any failure of retained EU law to operate “effectively”, or any other “deficiency” in retained EU law, arising from the withdrawal of the United Kingdom from the EU. **Nowhere in the Bill are the terms “prevent, remedy or mitigate” defined.** The power is given to the Minister to use whenever s/he considers it “appropriate”¹⁵ or to make amendments to provisions that are “no longer appropriate”.¹⁶ This language appears to give a broad discretion to Ministers.
 6. Similarly, **the terms “effectively” and “deficiency” could be interpreted broadly and are not defined.** The Explanatory Notes to the Bill clarify that the “law is not deficient merely because a Minister considers that EU law was flawed prior to exit” (paragraph 110). This could be an important restriction on the scope of the powers but it is not contained in the text of the draft Bill.
 7. Parliament needs to clarify what constitutes a permissible technical change as opposed to an impermissible policy change and ensure that the provisions in the Bill are drafted sufficiently narrowly to limit the power being conferred in the manner which the Government has said is intended.

¹³ Examples include Working Time Regulations 1998 and Air Quality Standards Regulations 2010

¹⁴ See Explanatory Notes at paragraph 115, which provide that the powers “could be used to amend law which is not retained EU law where that is an appropriate way of dealing with a deficiency in retained EU law.”

¹⁵ Clause 7(1)

¹⁶ E.g. Clause 7(2)(c) and (d).

8. The examples given in the Explanatory Notes¹⁷ give real cause for concern as to the nature of the changes which Government envisages being able to make under these powers. Some examples are uncontroversial, such as removing or amending references to “EU law” or “member states other than the United Kingdom”.
9. However, the Government fails to recognise that there are policy choices inherent in other examples which it gives, some of which would involve significant policy choices. For example, the Explanatory Notes state that when previously the UK would have been required to seek an opinion from the European Commission, Ministers would be able to “either replace the reference to the Commission with a UK body or remove this requirement completely”. This is **not merely a technical change: it is a policy decision as to the extent of oversight** to which decision makers will be subject after Brexit.
10. Strikingly, the Explanatory Notes suggest that issues arising out of “reciprocal arrangements” could be a basis for finding retained EU law deficient and that the powers could therefore be used to **remove the rights of EU citizens** in the UK.¹⁸ The explanation advanced is that because other EU states will no longer have any obligations to UK citizens, an obligation on the UK to respect EU citizens’ rights would be a “deficiency” in retained EU law. This is an extraordinarily broad interpretation of the concept of “deficiency”. If correct, it signifies that the powers in the Bill would allow Ministers through delegated legislation to make very significant changes to retained EU law not only in connection with the rights of EU citizens but more generally. Many other EU law obligations could be described as “reciprocal” in this sense and therefore changed through delegated legislation if the powers in the Bill are not circumscribed.
11. Ministers are also given powers to introduce laws to prevent or remedy any breach of the UK’s international obligations arising from withdrawal from the

¹⁷ See text box between paragraphs 25 and 26.

¹⁸ A [blog piece by Paul Daly](#), University Senior Lecturer in Public Law at the University of Cambridge, highlights some of the concerns raised by this passage in the Explanatory Notes.

EU.¹⁹ This would give broad powers to Ministers to give effect to international law acts in domestic law. Importantly, this power could be used to make new international trade agreements binding in domestic law without Parliamentary oversight. The agreements could include important provisions regarding workers' rights or even privatisation of the NHS.

(b) The Bill puts the decision about when (and therefore what) EU law is transferred into domestic law in the hands of Ministers

12. In the White Paper, the Government described the purpose of the Bill as being to repeal the ECA “on the day we leave the EU”²⁰ and to ensure that “the same rules and laws will apply after we leave the EU as they did before”.²¹ However, **the Bill gives Ministers the power to define “exit day”** by way of regulations,²² and even allows for regulations defining “exit day” to define it differently for different purposes.²³ There is nothing in the Bill which will ensure that “exit day” is indeed the day that the UK leaves the EU.

13. **The definition of “exit day” has important consequences for the rules and laws which will become part of domestic law** after Brexit. For example, the law which is retained by clauses 2, 3, and 4 is that which applies “immediately before exit day”. Some rights and liabilities are only to form part of retained EU law if they have been “recognised” before exit day²⁴ or in a case commenced before exit day.²⁵ The meaning and effect of retained EU law is to be decided in accordance with principles set out in case law having effect before exit day.²⁶

14. Perhaps most significantly, the definition of “exit day” also determines the duration of the powers given to Ministers to make regulations under the Bill.²⁷ Although on the face of the Bill these powers are limited to two years after “exit day”, because they are able to define “exit day”, **Ministers could extend the**

¹⁹ Clause 8

²⁰ Paragraph 1.11.

²¹ Paragraph 1.12. See also paragraphs 2.9, 2.14, 3.1, all of which describe a process of incorporating EU law as it stands on the day that “we leave the EU”.

²² Clause 14(2)

²³ Schedule 7, paragraph 13

²⁴ See for example clause 4(2)(b); Schedule 1 paragraph 2.

²⁵ Schedule 8, Part 4, paragraph 26.

²⁶ Clause 6(7) definitions of “retained domestic case law” and “retained EU case law”

²⁷ Clause 7(7)

time period in which they would be able to exercise these powers by several years.

15. The Bill should make it explicit: “exit day” means the day that the UK leaves the EU.

(c) The Bill will not enable proper Parliamentary scrutiny of Ministers’ exercise of the broad powers conferred

16. In her foreword to the White Paper, the Prime Minister said that “The same rules and laws will apply on the day after exit as on the day before. It will then be for democratically elected representatives in the UK to decide on any changes to that law, after full scrutiny and proper debate.”²⁸

17. Despite these assurances, under the Bill, Ministers will be able to exercise the broad powers described above with limited Parliamentary oversight. The Bill provides for many of these powers to be exercised by “negative resolution”.²⁹ This means that the powers are enacted and take effect unless one of the Houses of Parliament takes steps to pass a motion to repeal it. Given the extent to which statutory instruments are likely to be used to ensure a smooth Brexit, with the government estimating between 800 and 1000 statutory instruments being needed,³⁰ it is particularly important that Parliament is able to adequately scrutinise important changes as they are made. Under the current provisions, Ministers could (for example) repeal workers’ and environmental rights, abolish the data protection regime, introduce new forms of taxation, and extend the period a person could be detained without charge, all by negative resolution.

18. In certain circumstances, the Bill requires powers to be enacted using an “affirmative resolution” procedure.³¹ Here, a law only takes effect if approved by both Houses of Parliament. Although the statutory instruments must be voted upon in both Houses, there is rarely time for significant debate. Amendments

²⁸ Emphasis added.

²⁹ Schedule 7, paragraphs 1(3), 2(4), 5(3), 6(3) (3), 9, 10.

³⁰ White Paper at §3.19.

³¹ See Sch 7, Part 1, paragraphs 1(1)(2), 2(2)(3); Part 2, paragraphs 4, 5(1)(2), 6(2)(2), 7(1)(2), 8 and 10.

are not an option and draft regulations have to be voted on as a package. It is very rare that instruments proposed by affirmative resolution are rejected. Yet the Bill allows Ministers to establish new public authorities, expand the powers or functions of a public authority, or create new criminal offences³² by regulations subject to approval under the affirmative resolution procedure.³³

19. Even where the affirmative resolution procedure is required, the Bill allows Ministers to bypass the procedure in "urgent" cases.³⁴ In such circumstances, approval is not needed but legislation can only take effect for a month, unless Parliament subsequently approves it. That month does not include any Parliamentary recess or prorogation longer than four days,³⁵ so could last for significantly longer than a calendar month.

20. The potency of the powers that could be exercised in "urgent" cases is hard to overstate. Ministers could deprive people of their liberty and Parliament would not be able to do anything about it. A person could be imprisoned or extradited pursuant to an urgent measure. Particularly worryingly, acts done while the provisions were in force would retain the force of law, even if Parliament later struck down the law.³⁶

21. Ministers have asked for broad powers with little oversight before. Parliament did not permit Ministers to usurp their sovereignty then and they should not permit it now. The Legislative and Regulatory Reform Act 2006 was amended in Parliament after significant controversy. Compared to the present Bill, it provides for greater restrictions on the powers which might be exercised by negative resolution and makes provision for a parliamentary Committee to consider which parliamentary process might be appropriate of any specific Order made pursuant to that Act. Both the House of Lords Constitution Committee and the Delegated Powers Committee have indicated that a similar triage model might be appropriate for the EU (Withdrawal) Bill.

³² With sentences of up to two years' imprisonment: see n6* above.

³³ Sch 7, Part 1, paragraph 1(1) and (2)

³⁴ Sch 7, Part 1, paragraph 3; Part 2, paragraph 11.

³⁵ Sch 7, Part, paragraph 3(5); Part 2, paragraph 11(5).

³⁶ Sch 7, Part, paragraph 3(6); Part 2, paragraph 11(6).

(2) There must be greater legal certainty to uphold the Rule of Law

22. The scale of the task of converting vast amounts of EU law into domestic law is unprecedented. Unfortunately, the lack of clarity in the Bill in its present form will create significant legal uncertainty and undermine the Rule of Law.

a) What status will retained EU law have?

23. The purpose of the Bill is said to be to “provide a functioning statute book on the day the UK leaves the EU” while, as a general rule, providing that “the same rules and laws will apply” after exit day as before.³⁷ However the Bill does not simply convert EU law into domestic law but places limitations on the scope of EU law that is converted and on its effect. In doing so, the Bill raises questions and creates ambiguity. Parliament should seek clarity and explanation from the Government in order to ensure that the scope of retained EU law is clear.

24. By way of example, under existing EU law, Directives which have not been fully or correctly implemented, can sometimes confer rights which can be relied on directly in domestic courts.³⁸ However, under the Bill, these rights will only be retained in EU law if they have been “recognised” by a UK or EU court before exit day.³⁹ It is unclear what is meant by “recognised”. For example, would a passing reference in a judgment to part of a Directive be sufficient for it to be “recognised”? If a small part of the Directive is mentioned, has the entire Directive been “recognised”?

25. Under the principle of supremacy, EU law “trumps” domestic law and where there is a conflict, domestic law must be disapplied in order to give effect to EU law.⁴⁰ The Bill is explicit that after exit day, retained EU law will not be supreme if it conflicts with a new “enactment”.⁴¹ However, the Bill provides that modifications to pre-Brexit “enactments” might still be subject to the supremacy principle. Whether the supremacy principle continues to apply depends on whether that is consistent with the “intention” of the modification. This leaves

³⁷ Explanatory Notes, paragraph 10.

³⁸ See paragraph 92 of the Explanatory Notes.

³⁹ Clause 4(2)(b)

⁴⁰ See Paragraph 53 of the Explanatory Notes.

⁴¹ Clause 5(1)

considerable uncertainty and Ministers should be asked to clarify, including by giving examples of when a modification would or would not be consistent with the principle of supremacy.

26. The Bill is also unclear as to whether retained EU law should be treated as primary or secondary legislation, and whether it should be treated differently depending on the circumstances. For example, “retained direct EU legislation” is to be treated as primary legislation for the purposes of the Human Rights Act 1998 (HRA).⁴² That means that the courts cannot strike down or disapply such laws on the grounds of incompatibility with the HRA, but only make a declaration of incompatibility. However, the Bill is silent on whether “retained direct EU legislation” should be treated as primary or secondary legislation for other purposes. This may have implications for the remedies available to challenge such provisions on grounds other than incompatibility with the HRA.

b) Will it be possible to challenge retained EU law?

27. For EU secondary legislation to be valid, it must have a legal basis and be within the competence of the EU. However, sometimes the EU overreaches and directives and regulations are made that are invalid. The Bill provides for all binding EU secondary legislation to be converted into domestic law. Post-exit day, if one of these instruments is found to be invalid following a challenge in the CJEU, it cannot be right that invalid EU law would still be binding in the UK.

28. However, the ability to bring a challenge to the validity of retained EU law is limited in the Bill to cases in which either (a) the CJEU has found the legislation invalid *before* exit day or (b) the challenge is “of a kind described, or provided for, in regulations made by a Minister of the Crown”.

29. The Delegated Powers Memorandum⁴³ states that the purpose of this provision is to “ensure that instruments which are converted on exit can be still be

⁴² Schedule 8, paragraph 19(1)

⁴³ [Memorandum concerning the Delegated Powers in the Bill for the Delegated Powers and Regulatory Reform Committee](#), 13.07.2017

challenged post exit on the grounds that they are invalid.” The justification for the power is said to be the lack of any existing jurisdiction in domestic courts to declare EU law invalid. It is clearly important that domestic courts should be able to consider validity challenges to retained EU law for the reasons set out above but this jurisdiction should be conferred on domestic courts in the Bill. This is too important to be left to the discretion of Ministers.

c) What happens to EU law fundamental rights that are not part of the ECHR?

30. The Government has said that one of the three fundamental principles underlying the Bill is that, by converting EU law into UK law, the Bill will ensure that individuals’ “rights and obligations will not be subject to sudden change”.⁴⁴ In the White Paper, the Government stated that “The Government’s intention is that the removal of the Charter from UK law will not affect the substantive rights that individuals already benefit from in the UK.”⁴⁵ The Secretary of State gave an assurance in Parliament that the intention was to ensure that all relevant substantive rights in the Charter would form part of domestic law after Brexit.⁴⁶

31. The Bill provides that the Charter of Fundamental Rights will not form part of domestic law after exit day⁴⁷ but seeks to preserve fundamental rights and principles which exist irrespective of the Charter.⁴⁸ Many of the rights in the Charter are also protected in the European Convention on Human Rights (‘ECHR’) and therefore (for the most part⁴⁹) already part of domestic law through the HRA. Some other fundamental rights protected by the Charter are protected by the common law or by existing statutory provisions.

32. It is welcome that there are provisions in the Bill that prevent Ministers from using their new powers to amend, repeal, or revoke the HRA or any subordinate

⁴⁴ See, for example, comments of David Davis in the House of Commons debate on the White Paper, *Legislating for UK Withdrawal from the EU*, HC Hansard 30 March 2017, Vol 624, col 427

⁴⁵ Paragraph 2.25; see also HC Hansard 30 March 2017 col 429: “The fact that the charter will fall away will not mean that the protection of rights in the UK will suffer as a result.”

⁴⁶ HC Hansard 30 March 2017, Vol 624, col 432

⁴⁷ Clause 5(4)

⁴⁸ Clause 5(5)

⁴⁹ The HRA does not incorporate all of the rights protected by the ECHR. In particular, the right to an effective remedy for breach of Convention rights in Article 13, ECHR is not incorporated.

legislation made under it.⁵⁰ However, there are fundamental rights protected by EU law which are not protected to the same extent by the ECHR or by existing domestic law. For example, the High Court (in *David Davis and others'* challenge to provisions in the Data Retention and Investigatory Powers Act 2014) held that Article 8 of the EU Charter, which concerns data protection, "clearly goes further, is more specific, and has no counterpart in the ECHR".⁵¹

33. Another example is the right to an effective remedy in Article 47 of the Charter. The right to an effective remedy is protected by Article 13 ECHR but that right is not incorporated by the HRA.

34. It is unclear what the status of these rights will be after exit day. Fundamental rights are also general principles of EU law which will form part of retained EU law (to the extent recognised before exit day) but the general principles will not be able to be relied on to enforce individual rights.⁵² The Government has given assurances that no substantive rights will be lost and it needs to demonstrate that all of the substantive rights protected by the Charter will be protected to the same extent by domestic law, including the HRA, after exit day.

(3) Parliament should not assume that the courts will be able to fix problems

35. Ensuring that legislation provides legal certainty, which is central to upholding the Rule of Law, is primarily the responsibility of Parliament. It is difficult for courts to police Ministers exercising delegated powers unlawfully.

36. It can take years to bring a legal case, and while proceedings are ongoing the decision or policy under challenge may cause harm. If Ministers use the Bill's broad powers unlawfully, for example by extraditing a person or rolling back key rights protections, the harm caused might be impossible to remedy.

⁵⁰ Clause 7(6)(e)

⁵¹ *David Davis and others -v- Secretary of State for the Home Department* [2015] EWHC 2092 (Admin), paragraph 80.

⁵² Schedule 1, paragraph 3.

37. Judicial review cannot undo the harm done by unlawful decisions or legislation during the period. While the cuts to prisoners' legal aid, which came into force in December 2013, were found to be unlawful by the Court of Appeal⁵³ earlier this year, The Howard League reports that in the intervening period, violence and self-injury in prisons have risen to record levels, with almost 300 having committed suicide.⁵⁴ Similarly, the Supreme Court's recent judgment that the employment tribunal fees introduced in 2013 were unlawful⁵⁵ cannot rectify the harm that was done to those who could not afford to access justice in the meantime.
38. Litigation is also hugely expensive. Claimants face not only funding their own representation and court fees but risk being ordered to pay their opponent's costs if their claim is unsuccessful. With restrictions on legal aid it will be difficult for claimants of modest means to bring a challenge. This means that Ministers may be able to act unlawfully with impunity if there are not claimants with the resources to bring a challenge. Poor and disadvantaged groups will be less able to access the courts than business and commercial interests.
39. If Parliament does not make appropriate amendments to the Bill, it risks "leaving judges stranded on the front line of a fierce political battle".⁵⁶ The outgoing President of the Supreme Court, Lord Neuberger, recently highlighted the risks of judges being politicised if the Bill is not clarified. He commented that if "[the Government] doesn't express clearly what the judges should do about decisions of the European Court of Justice after Brexit, or indeed any other topic after Brexit, then the judges will simply have to do their best." It would be "unfair", he said, "to blame judges for making the law when Parliament has failed to do so".⁵⁷

⁵³ *R (Howard League for Penal Reform and The Prisoners' Advice Service) -v- The Lord Chancellor* [2017] EWCA Civ 244

⁵⁴ See The Howard League's analysis of impact of prison legal aid cuts here: <http://howardleague.org/legal-work/legal-aid-cuts-for-prisoners/>

⁵⁵ *R (on the application of UNISON) v Lord Chancellor* [2017] UKSC 51

⁵⁶ See article by Raphael Hogarth, Institute for Government, 10/08/17 available here:

<https://www.instituteforgovernment.org.uk/brexit-ecj-european-court-justice-lord-neuberger>

⁵⁷ See comments of Lord Neuberger, from 08/08/2017, reported by BBC News Online here: <http://www.bbc.co.uk/news/uk-40855526>