



Department  
for Exiting the  
European Union

Rt Hon David Davis MP  
Secretary of State for Exiting the European Union  
9 Downing Street  
SW1A 2AG

+44 (0)20 7276 1234  
[psdaviddavis@dex.eu.gov.uk](mailto:psdaviddavis@dex.eu.gov.uk)  
[www.gov.uk](http://www.gov.uk)

The Rt Hon Dominic Grieve QC MP  
House of Commons  
London  
SW1A 0AA

11<sup>th</sup> September 2017



**EUROPEAN UNION (WITHDRAWAL) BILL**

During our debate on the European Union (Withdrawal) Bill, you raised a query concerning the approach the Bill takes towards the general principles of EU law. I undertook to place a letter in the library on this point, but I am also writing to you directly to address the specific concern you raised.

The Bill is an essential step towards honouring the will of the people of the United Kingdom to exit the EU and restore sovereignty and control over our own laws. The Bill aims for maximum certainty and continuity as we deliver the referendum result. I hope you understand that the primary purpose of the Repeal Bill is to provide a functioning statute book on the day we leave the EU. It is in no one's interests for there to be a cliff edge when we leave the EU, and so the laws which apply immediately before exit day will so far as possible continue to apply in the same way after we leave.

In this way, we intend to give effect to our withdrawal in a way which provides a secure statutory basis from which our courts are able to interpret the law consistently and upon which our sovereign Parliament can build as it makes further legislation.

The UK has a longstanding tradition of ensuring our rights and liberties are protected domestically and of fulfilling our international human rights obligations. The decision to leave the European Union and the measures set out in the Bill will not change this.

Existing sources of rights and domestic rights of action will continue to operate in UK law undisturbed by this Bill. This includes rights such as the right to equal treatment and non-discrimination. Likewise, notwithstanding our exit from the EU, individuals will continue to be able to challenge secondary legislation and administrative action under our domestic law by way of well-established grounds of judicial review.

So, for example, where the Government or a Minister acts in a way which is beyond the powers Parliament has provided for, the courts can review that decision and may make a quashing order. Where a challenge is made to primary legislation under the Human Rights Act 1998, the courts can make a declaration of incompatibility with the relevant right under the European Convention on Human Rights. It is then for Parliament to exercise its sovereign power to decide whether and how to legislate in response to that finding.

However, as we leave the EU, and cease to be bound by our obligations as a member state, it is inevitable that some cross-cutting elements of the EU's legal framework will not be kept.

For example, the Charter of Fundamental Rights, which only applies to member states when acting within the scope of EU law, will not be kept. The Bill will also remove the existing ability to bring a claim based on incompatibility with the general principles of EU law, and it will remove the ability for courts to strike down administrative action or legislation (including primary legislation) on those grounds. The Bill deals with these changes in a consistent way. This avoids the need for Parliament to consider these aspects of EU law each and every time it makes further legislation.

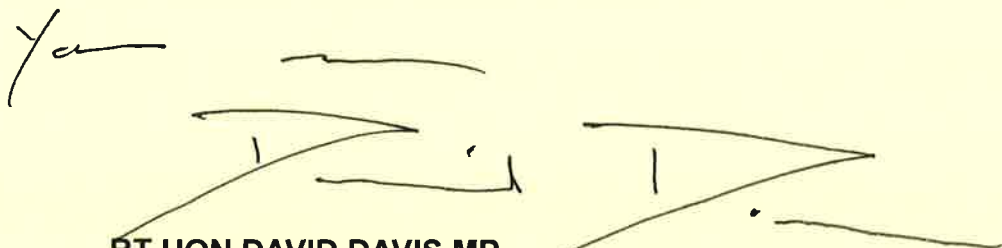
This outcome and the approach the Bill takes is a natural consequence of the decision to leave the EU. Some of the general principles (such as subsidiarity) only make sense in the context of our EU membership and so would be irrelevant once we have left the EU. Others (such as the protection of legitimate expectations) already exist elsewhere in the UK's legal system and will continue to do so.

The Bill is retaining the general principles of EU law, as they have been recognised by the CJEU before exit day, for interpretative purposes. Furthermore, the Bill will retain CJEU case law from before we exit. To go further however, and retain in our domestic law after exit rights of action based on the general principles, would risk creating considerable uncertainty for businesses and individuals about their rights and obligations if it resulted in pre-exit primary legislation being struck down.

The ability for our courts and tribunals to disapply primary legislation is - except in the context of EU law - alien to our legal system. Removing the ability of courts and tribunals to disapply primary legislation on the grounds of incompatibility with the general principles is therefore consistent with the way in which domestic law operates and an appropriate step in disentangling UK law from EU law and restoring sovereignty and control to Parliament.

I hope this has clarified the position set out in the Bill and the reasons why we consider these to be appropriate. I look forward to continuing to work with you as the Bill moves through its parliamentary passage.

I will deposit a copy of this letter in the libraries of both Houses of Parliament.

A handwritten signature in black ink, appearing to read 'David Davis', written over a horizontal line.

**RT HON DAVID DAVIS MP**  
**SECRETARY OF STATE FOR EXITING THE EUROPEAN UNION**