

**ANNEX TO THE PIGNEY RESPONDENTS' WRITTEN CASE:
FUNDAMENTAL AND NON-REPLICABLE EU CITIZENSHIP RIGHTS**

INTRODUCTION

1. This annex:
 - a. illustrates certain EU law rights properly characterised as fundamental rights;
 - b. explains the non-replicability of EU rights in domestic law; and
 - c. addresses the simplified taxonomy of EU rights identified by the Divisional Court at §§57-61 of its judgment.

FUNDAMENTAL EU LAW RIGHTS

2. Article 20 TFEU (**V13/137**) establishes citizenship for “[e]very person holding the nationality of a Member State”. Article 20(2) TFEU states that “Citizens of the Union shall enjoy the rights and be subject to the duties provided for in the Treaties.” The preambles to Directive 2004/38/EC (“**the Citizens’ Directive**”, **V14/150**) describe citizenship as the “fundamental status”¹ of nationals of member states. The following are examples of core rights of EU citizens enjoyed by virtue of that status:
 - a. A wide range of human rights under the EU Charter of Fundamental Rights (“**the Charter**”, **V14/149**), for example, the “right to be forgotten” and associated privacy rights under Articles 7 and 8, which have effect on the domestic plane. The Charter (which has the same status as the Treaties²) contains rights not enjoyed under ECHR law,³ or not afforded, under the ECHR, the same remedial protection in domestic law as under the Charter;⁴

¹ This is also reflected in the settled case law of the CJEU, e.g. *Grzelczyk*, C-184/99, EU:C:2001:458 (**V11/99**), §31, and *Ruiz Zambrano*, C-34/09, EU:C:2011:124 (**V11/104**), §41 and the case-law cited.

² Article 6(1) TEU (**V14/151**).

³ In addition to specific data protection rights under Article 8, see: Article 1 (human dignity); Article 11(2) (the importance of media pluralism); Article 13 (freedom of the arts and sciences); Article 15 (freedom to choose an occupation and engage in work); Article 16 (freedom to conduct a business); Article 18; Article 21 (prohibition of discrimination which applies as a free-standing right compared to Article 14 ECHR (cf. Protocol 12 of the ECHR which the UK has not ratified); and Article 24 (rights of the child).

⁴ For example: (1) domestic legislation which conflicts with a fundamental right can be disapplied by domestic courts (see: *Benkharbouche v Embassy of the Republic of Sudan* [2015] EWCA Civ 33); (2) claiming damages for a breach of EU rights can be easier than claiming compensation for a breach of the Human Rights Act; and (3) certain rights can be enforced against private individuals (even when not exercising state functions), including of fundamental rights (see C-144/04 *Mangold*, and C-555/07 *Kucukdeveci*)

- b. Rights to move and reside freely, with family members, within the territory of the member states without a visa (Articles 20(1)(a), 21, and 45 TFEU (**V13/137**), Article 3(2) TEU (**V14/151**), Article 45(1) of the Charter (**V14/149**) and the Citizens' Directive (**V14/150**));⁵
- c. The right to study,⁶ seek employment, work, exercise the right of establishment or provide services in any Member State,⁷ including the right not to be subject to discriminatory taxation;
- d. The right to vote or stand as a candidate in local and European elections in the host state (Articles 20(1)(b) and 22 TFEU and Article 39(1) of the Charter);⁸
- e. The right to diplomatic and consular protection from the authorities of any Member State in third countries (Articles 20(1)(c) and 23 TFEU (**V13/137**) and Article 46 of the Charter (**V14/149**));
- f. Rights to non-discrimination (Articles 17, 18 and 45 TFEU (**V13/137**)) which apply horizontally;⁹
- g. The right to petition the European Parliament, to apply to the European Ombudsman, and to address the institutions and advisory bodies of the Union in any of the Treaty languages and to obtain a reply in the same language (Articles 20(1)(d) and 24 TFEU (**V13/137**));
- h. The right to equal pay under Article 157 TFEU which applies horizontally: *C-43/75 Defrenne v Sabena* [1976] ECR 455 (**V32/444**); and
- i. The right to receive non-discriminatory healthcare that is free at the point of use, paid for by the NHS, using the European Health Insurance Card (see, e.g., Directive 2011/24/EU on the application of patients' rights in cross-border healthcare, and associated EU legislation).¹⁰

⁵ See Graham Pigney WS (Appx 21) § 5 and 7 and Robert Pigney WS (Appx 22); §s 4 and 6 Cartwright WS (Appx 24§ 4).

⁶ See Chowdhury WS (Appx 25) § 4 McFerran WS (Appx 26) § 11.

⁷ See Graham Pigney WS (Appx 21) § 6

⁸ Robert Pigney WS (Appx 22), § 5

⁹ See Graham Pigney WS (Appx 21) § 6

¹⁰ See Formaggia WS (Appx 23), § 8; Chowdhury WS (Appx 22), § 6

NON-REPLICABILITY OF EU LAW RIGHTS

Overview

3. Even where the content of an EU right is in principle capable of being replicated on a 'look alike' basis in domestic law by Parliament, it would not be the same as a right protected by EU law, in particular because it would lack the same source, protections and enforceability that it possesses as an EU right.
4. Moreover, for a large number of rights Parliament could not (even if it so wished) replicate the content of the right. This includes:
 - a. EU rights with geographical scope limited to the Member States;
 - b. EU rights which cannot be provided without the co-operation of other Member States and EU institutions;¹¹ and
 - c. EU rights enjoyed by UK citizens whilst in the UK, but which are provided by and enforceable against other Member States.

Diminished procedural protection for 'mirror' rights

Loss of right to a remedy in the Court of Justice

5. The Divisional Court in § 59 recognises that even where the UK re-enacted EU law rights there would be 'some differences', and refers to Article 267 TFEU (**V13/137**) - the right to seek and obtain a reference to the Court of Justice (CJEU). While in lower courts the court has a discretion whether to make a reference, in courts of final instance, unless the matter is *acte clair*, a reference is obligatory. The loss of this remedy is far from trivial.
6. For example, Article 102 TFEU (**V33/450**) prohibits abusive practices by dominant undertakings that may affect trade between member states. Section 18 of the Competition Act 1998 (**V32/434**) enacts mirror domestic competition law, prohibiting abuse of dominance "if it may affect trade within the United Kingdom." Section 60 of the Competition Act requires

¹¹ The Lord Advocate from § 44 – 49 of his Written Case provides examples of how withdrawal from the EU will 'cass, annul or disable' the body of non-replicable legislation. He refers, in particular, to legislation which requires co-operation with other Member States; decision-making by EU institutions; funding from EU funds; and membership with other EU agencies. This Annex explores the impacts of these effects on certain EU rights.

that, so far as possible, questions arising in relation to competition within the UK are dealt with consistently with the treatment of corresponding questions arising in EU law in relation to competition in the EU. Where domestic law adopts, for purely internal situations, the same approach as EU law, an Article 267 (V13/137) reference can be made.¹² Accordingly, notwithstanding that section 18 does not implement EU law, a domestic court may currently make a reference to the CJEU to clarify the correct application of EU (and therefore domestic) competition law. On leaving the EU, the right to make such a reference will be lost and a litigant may be placed at a significant disadvantage: if a matter of competition law is unclear and there is no previous ruling on the issue from the Court of Justice, a litigant will no longer have the ability to have the matter clarified by a reference to the Court of Justice. This may include questions that have a decisive bearing on the outcome of litigation, in relation to liability (e.g. the scope of the concept of ‘abuse’), or quantum.

7. The same applies to other EU law rights, e.g. the Working Time Directive, discussed by the Divisional Court at §58.¹³ Recent clarifications provided by the CJEU in relation to that right include that a worker is entitled, on retirement, to an allowance in lieu of paid annual leave not taken because he was prevented from working by sickness¹⁴ and that, where there is no fixed place of work, travel time should be included in the concept of working time.¹⁵ Although Parliament could choose to maintain in force provisions transposing those rights into domestic law, again participants to litigation will be unable to have the scope of the rights clarified and would be dependent on the happenstance of whether the Court of Justice had previously ruled on the matter. To that extent, the EU right is not capable of domestic replication.

Loss of rights to challenge the legality of legislation

8. The different basis for legislation at EU and UK level creates different rights to challenge legislation. A domestic statute cannot be challenged on the basis of the procedure by which it was enacted.¹⁶ By contrast, EU legislation can be annulled if it is *ultra vires* the Treaties or fails

¹² Case C-542/14 *SIA ‘VM Remonts’* EU:C:2016:578 §17

¹³ Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time

¹⁴ Case C-341/15 *Hans Maschek v Magistratsdirektion der Stadt Wien* EU:C:2016:576

¹⁵ Case C-266/14 *Federación de Servicios Privados del sindicato Comisiones obreras v Tyco Integrated Security* EU:C:2015:578

¹⁶ *Edinburgh and Dalkeith Railway Co. v. Wauchope* (1842) 8 Cl. & F. 710 ; 1 Bell 252, 278-279 and *Pickin v British Railways Board* [1974] AC 765 (V32/438)

to adhere to the proper constitutional process.¹⁷ EU legislation can be subject to judicial review before the EU courts and annulled if (for example) it infringes the principle of proportionality¹⁸ or equality,¹⁹ reveals a manifest error of assessment,²⁰ or if the legislature fail to give reasons for the legislation.²¹ Legal and natural persons who are directly or individually concerned can challenge legislation directly under Article 263 TEU (**V33/452**) based on a lack of vires, or on a reference under Article 267 (**V13/137**).²² Success in such a challenge renders the law invalid for the entire European Union. The advantages of this for a claimant who, say, does business in multiple Member States is obvious. Many such legal challenges have been initiated in the UK courts.

9. Between them, Articles 263 and 267 provide a range of remedies that are currently open to UK citizens and companies, and which will be lost upon leaving the EU.

Loss of directly effective and enforceable rights

10. Rights contained in EU legal instruments, including the Treaties, the Charter of Fundamental Rights in the EU, Regulations and Directives²³, which are sufficiently clear, precise and unconditional, have direct effect and may be directly enforced by individuals in national courts. Such rights can be enforced:
 - a. as directly applicable rights where there is no requirement for such rights to be implemented domestically (such as certain rights set out in the treaties; Charter of Fundamental Rights; general principles of EU law and in EU Regulations);
 - b. by requiring inconsistent national legislation to be read down or dis-applied to the extent of the incompatibility; or
 - c. to give effect to complete EU rights where domestic implementation of an EU right has failed adequately to transpose it.

¹⁷ As happened in Case C-263/14 *Parliament v Council* EU:C:2016:435

¹⁸ Article 5(1) Treaty on the European Union; Joined Cases C-293/12 and C-594/12 *Digital Rights Ireland Ltd* EU:C:2014:238 (**V32/448**) at §46 and Case C-310/04 *Spain v Council* EU:C:2006:521 at §97

¹⁹ Case C-313/04 *Franz Egenberger* EU:C:2006:454; [2006] ECR I-6331, § 33

²⁰ Case C-427/12 *Commission v Council and Parliament*, EU:C:2014:170

²¹ Case 24/62 *Germany v Commission* [1963] ECR 63

²² Case C-376/98 *Germany v Parliament and Council* EU:C:2000:544 (**V32/446**).

²³ In general Directive rights only have vertical direct effect (which can be relied on against only against the state or emanations of the state). There are exceptions.

11. Some directly effective rights can be enforced against state entities (vertical enforcement) and against private parties (horizontal enforcement). For example, the right to equal treatment on grounds of nationality (Article 45 TFEU, **V13/137**);²⁴ to recover damages for breaches of competition law (Article 101 and 102 TFEU, **V33/150**)²⁵ and the right to equal pay between men and women (Article 157 TFEU, **V13/137**)²⁶ are all capable of horizontal enforcement.
12. The ability of direct effect (in combination with the principle of supremacy) to compensate for legislative failure (either where the UK legislature has legislated contrary to EU rights or general principles or has failed to implement EU rights) is incapable of being replicated by the UK legislature alone upon leaving the EU. There can be no entrenchment of ‘supreme’ directly effective rights in UK law, so it will be impossible for Parliament to reproduce the same level of protection for EU rights in a purely domestic situation upon leaving the EU.

Loss of protection of three-tiered rights

13. Certain domestic implementing legislation implements EU legislation which is itself implementing other measures. Examples include:
 - a. Domestic implementation of an EU Regulation imposing sanctions, where those sanctions are in turn the implementation by the EU of a UN Security Council Resolution; and
 - b. The UK’s Environmental Information Regulations 2004/3391, which implement Directive 2003/4/EC on public access to environmental information, which in turn implements the 1998 Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters.
14. As to sanctions, in joined cases C-402/05 P and C-415/05 P *Kadi* EU:C:2008:461 the subject of an EU sanction who at the relevant time had no ability to challenge his listing at the UN²⁷ had the option to challenge his listing before the General Court of the EU by bringing an action to annul the EU Regulation under Article 263 TFEU, as well as by challenging domestic legislation

²⁴ Case C-281/98 *Roman Angonese v Cassa di Risparmio di Bolzano SpA* EU:C:2000:296.

²⁵ Joined Cases C-295/04 to C-298/04 *Manfredi* EU:C:2006:461 [60]-[61].

²⁶ C-43/75 – *Defrenne v SABENA* EU:C:1976:56 (**V32/444**).

²⁷ Though one has now been introduced through the UN Ombudsperson.

imposing penalties.²⁸ The constitutional protections of the challenge at EU level will be lost and cannot be replicated on leaving the EU.

15. As to environmental protection, under the Aarhus Convention, at the international level, there is a compliance committee which can examine compliance issues, reach findings and make recommendations. Members of the public may make communications to the compliance committee concerning a signatory's compliance with the Convention, but (unlike judgments of the CJEU), the Committee's decisions are not binding in national law. At the EU level, the Directive contains provisions, in particular, protecting access to environmental information and environmental justice, which Member States are required to implement. Again, that binding protection for Aarhus Convention rights will be lost on leaving the EU.

EU rights limited in scope to the single market will be lost

16. The scope of EU rights is in many cases limited in scope to the EU internal market (i.e. Member States). Upon leaving the EU, the applicability of those rights is lost. It becomes impossible to replicate, outside the EU, the right as it existed prior to withdrawal in subsequent legislation.
17. For example, as set out above Article 102 TFEU (**V33/450**) prohibits abuse of a dominant position within the internal market (or in a substantial part of it) in so far as it may affect trade between Member States. One category of such an abuse is set out at Article 102(c): applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage:
18. Currently, a German undertaking dominant in the supply of widgets would *prima facie* be abusing its dominant position in a manner affecting trade between Member States if it were to wholesale its product to Belgian customers at price X, and to UK customers at price X+10%, without any objective justification for the discrepancy. The UK customer currently may protect itself from that behaviour by enforcing Article 102 TFEU in the UK courts, seeking damages. Upon the UK leaving the EU the same conduct by the dominant German supplier will no longer be unlawful because the discriminatory conduct would not *affect trade between Member*

²⁸ An example of this last approach is *R. (on the application of OJSC Rosneft Oil Co) v HM Treasury* [2014] EWHC 4002 (Admin) (refusal of interim relief) and [2015] EWHC 248 (Admin) (referral of challenge to Court of Justice).

States. Article 102 does not preclude dominant EU companies from selling their products at inflated prices to customers in non-EU states. The dominant German company could sell its widgets to UK customers at any price, and the UK customer would no longer have any right to object to such discriminatory pricing either in a UK court, or a German Court, since the UK would no longer be a Member State and there would be no *prima facie* breach of Article 102 TFEU. An important protection against abusive conduct, which is currently directly enforceable by UK companies in UK courts, would be lost.

Rights provided in combination with EU institutions and Member States will be lost

19. The Divisional Court's discussion in relation to category (iii) (non-replicable rights) focused to rights flowing from membership of the 'EU Club', such as the right to stand and to vote for membership of the EU Parliament. However, the category of rights currently enjoyed under EU law, and which cannot be replicated by Parliament upon withdrawal from the EU, even on a 'look-alike' basis, goes beyond mere 'rules of the club'. This category includes, in particular, EU law rights that depend on actions by the EU Institutions or other Member States.
20. Supervision by the Commission to ensure that Member States are implementing EU rights is an integral aspect of many areas of EU law. It is not confined to the general duty to oversee the application of Union law set out in Article 17(1) TEU (**V13/137**), nor to the right of seeking to persuade the Commission to take regulatory action (Divisional Court judgment at §61). The supervisory role of the Commission is enmeshed into many areas of regulatory law. Examples of this include:
 - a. Article 108(3) TFEU (**V33/451**) which requires the Commission to be notified in advance of any Member State granting State Aid in order that the Commission can ensure that the aid is compatible with the internal market. These provisions protect businesses from the anti-competitive advantage recipients of State Aid receive;
 - b. The requirement under the Technical Standards Directive (**V33/455**) to notify the Commission of technical regulations so as to ensure that they do not go beyond the fair requirements of EU law;

- c. Articles 7 and 16 of the Telecoms Framework Directive,²⁹ which preclude a national telecoms regulator from imposing regulatory obligations on communication service providers with significant market power before notifying the draft measure to the Commission and other national regulation authorities, and complying with a one-month standstill period to enable the Commission to ensure the measure is compatible with EU law (Article 7(3)). This ensures that providers are not subject to disproportionate regulatory burdens; and
 - d. Derogation from the E-Commerce Directive³⁰ which prevents Member States from restricting the freedom of providers of information society services (like websites) established in one Member State to provide their services via the internet to customers in other Member States. Member States may derogate from these provisions but only after having notified the Commission, which can take steps if the derogation is incompatible with EU law.
21. Each of these measures creates procedural constraints on the authorities of Member States to restrict the exercise of fundamental freedoms of providers of goods or services, or otherwise interfere with the functioning of the internal market. They provide enforceable rights to service providers, which can be relied on in national courts. None of these measures can be replicated by Parliament following withdrawal from the EU.
22. Moreover, there is a wide range of substantive rights which depend on the co-operation of more than one Member State and are so are not replicable by Parliament acting unilaterally when the UK has left the EU, but which are very different in nature from rights flowing from membership of the EU club (such as the right to stand for Parliament).
23. For example, Regulation (EC) No 883/2004 on the coordination of social security systems aims to ensure that people who exercise their freedom of movement rights have their social security rights protected, including sickness benefits, unemployment benefits and old-age benefits.³¹ Among its basic principles are (i) that individuals pay premiums in one country, (ii)

²⁹ Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive)

³⁰ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ("**Directive on electronic commerce**")

³¹ See Robert Pigney WS (Appx 22),§7

that previous periods of insurance, work or residence in other countries will be taken into account in the calculation of their benefits in another country in respect of certain state benefits, and (iii) that if they are entitled to a cash benefit in a country, they can collect this benefit even if they do not live in that country. These arrangements only work on the basis that one Member State's institution will reimburse that of another which has paid benefits on its behalf (Articles 35, 41, 65(8))³², and that the institutions will co-operate under Article 76.

24. Another example is the Dublin III Regulation (**V33/454**)³³ determining which state is responsible for the processing of applications for asylum seekers. This too requires co-operation and co-ordination between Member States in order to fulfil the aims of the regulation: see for example the co-operation requirements in relation to ensuring family reunification and the best interests of children in Article 6 (Guarantees for Minors).
25. The Mutual Recognition of Qualifications Directive³⁴ sets out rules for mobility of professionals between member states. There is a system of general and, where training systems are harmonized, automatic recognition of qualifications granted by other Member States. Again co-operation is a necessary component of securing these right and collaboration and mutual assistance are provided for in Article 56.
26. Under the Medicinal Products Regulation,³⁵ the European Medicines Agency can grant marketing authorisation to certain products valid across the Union. The UK cannot reproduce such authorisation alone.³⁶ The regime requires co-operation between the Agency and Member States in developing pharmacovigilance systems to achieve high standards of public health protection (Article 28).

³² Reimbursement arrangements are set out in detail by Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems

³³ Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)

³⁴ Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications

³⁵ Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency

³⁶ See other examples of EU agencies in § 47 of the Lord Advocate's Written Case

27. The co-operation required in order to secure rights is also not limited to co-operation between the public authorities of Member States. The Roaming Regulation³⁷ secures lower charges for mobile phone customers in one Member State when they use their mobile phones in another Member State. It does so by placing obligations on wholesale and retail service providers, thereby restricting their freedom to contract. Pursuant to Article 3, wholesalers are required to meet requests for access and are restricted as to the charges they can levy. The regulation cannot limit the wholesale prices that providers outside the Union can charge. The benefit of this regulation is enjoyed by any UK resident taking their phone to another Member State (or by any EU resident visiting the UK), and is one which cannot be reproduced by the UK Parliament acting unilaterally.

Category ii ‘Free movement’ rights which benefit UK nationals even when they remain in the UK

28. Category (ii) of the Divisional Court’s taxonomy refers to rights enjoyed by British citizens and companies in relation to their activities in other Member States. The discussion recognises that it is generally³⁸ unlawful for the UK to place impediments in the exercise of those rights.³⁹ However it goes further than that: many such free movement rights enforceable against other Member States are enjoyed by UK resident persons and companies whilst in the UK, and indeed are enforceable against the UK. For example:

- a. The Brussels Regulation *aka* the Judgments Regulation (**V33/453**)⁴⁰ – the general rule for jurisdiction under the Regulation is that people domiciled in a Member State may only be sued there. This is an important protection against suit in a foreign country. Leaving the EU would have the knock-on consequence of withdrawing the UK from the Lugano Convention 2007 to which the EU is the signatory, meaning that UK citizens would no longer have this protection and could be sued in another EU Member State if its internal jurisdictional rules permitted that.

³⁷ Regulation (EU) No 531/2012 of the European Parliament and of the Council of 13 June 2012 on roaming on public mobile communications networks within the Union (recast).

³⁸ Subject to permitted derogations.

³⁹ The UK Parliament cannot, for example, legislate, and the Government cannot act, to frustrate the exercise of these rights by stopping UK citizens either enjoying or accessing their rights across the EU by, say, stopping UK citizens leaving the country, or criminalising the exercise of certain EU rights/benefits (as such the distinction the DC Decision made between “category (ii)” and “category (iii)” rights falls away).

⁴⁰ Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

- b. Quantitative restrictions on trade – a Member State, pursuant to Articles 34-36 TFEU (**V33/449**), cannot impose quantitative restrictions (or measures of equivalent effect) on the free movement of goods. This means that France cannot impose a quota on how many widgets may be exported from France to the UK. If it were to do so, and in the process cause loss to a UK company, the company would have a right to claim damages against the French authorities. Moreover, if a public authority in the UK were to impose controls on the use of a product having the effect of limiting the importation of products from another EU member state, that may also be challenged under Article 34 TFEU. Upon leaving the EU, the same British company would have no such right or remedy.
 - c. ‘*Surinder Singh*’ rights – these provide rights to workers who have married or formed a civil partnership with a non-EU citizen whilst working in another Member State and then return to the UK. It is an aspect of free movement law which was originally enjoyed in the other Member State – it was the Citizens’ Directive (**V14/150**) which gave the UK national the right to live with their spouse/partner whilst living overseas. However that right continues to be enjoyed domestically on return to the UK.
29. It follows from this that UK citizens and residents benefit from EU rights whilst in the UK, which are enforceable both against other Member States and UK authorities, just as other EU nationals can enforce free movement rights against the UK or against their own member states.⁴¹

CONCLUSION

30. There is an array of EU rights which not only would not be preserved following withdrawal from the EU, but which could not be unilaterally replicated in UK law, even if Parliament wished to do so.

⁴¹ C-397/98 *Metallgesellschaft Ltd v Inland Revenue Commissioners* EU:C:2001:134; R. (*on the application of Ordanduu GmbH*) v *Phonepayplus Ltd* [2015] EWHC 50 (Admin)