27 November 2012

Dear Mary

I am writing in response to your letter of 17 October 2012 regarding the Equality and Human Rights Commission (EHRC). You ask what assessment the Scottish Government has made of the impact of the UK Government's reform of the EHRC on areas within the Scottish Government's remit and what our response has been.

The Scottish Government has worked productively with the EHRC in Scotland since it came into existence in October 2007 and values its expertise, its ambition, its commitment to partnership and its achievement as a regulator and national human rights institution.

As you are aware the EHRC is a reserved body and as such decisions relating to its governance, regulation, funding and strategic approach are matters for the UK Government. However we do of course have a keen interest in how the EHRC operates in Scotland and since its inception the Scottish Government has sought to ensure a strong and distinct Commission presence here.

With regard to the reform of the EHRC the Scottish Government has been concerned from the outset about the proposed changes to the core functions and operational responsibilities of the Commission. Scottish Ministers wrote to the UK Government in July 2011, expressing concern about the proposed changes which we did not believe would be helpful to an effective operation in Scotland or to the advance of equality. We shared the view of stakeholders that the approach being taken to the reform of the EHRC appeared to be driven by the experience in England which was not necessarily mirrored in Scotland. We made clear that the Commission in Scotland was a national entity not a regional outlet that needed to have the structure and resource to maintain a strong visible and effective presence.

On those matters which the UK Government had already decided to act – the establishment of a new advice service to replace the helpline and the removal of the provision of strategic grants from the EHRC – we made clear the importance of engagement to ensure that account was taken of Scotland and its needs. The contract for the new advice service had as part of the specification for tender a requirement to be able to operate in the Scottish context. We expect it therefore to be able to service Scotland appropriately.

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As you will know, the outcome of the consultation on the reform of the EHRC was considerably delayed and the resulting proposals were only made public in May 2012. In response, Scottish Ministers wrote in June 2012 and then again in July 2012 expressing concern about the propositions and seeking further engagement and discussion as appropriate.

Alongside the legal changes, funding to the EHRC has been reduced considerably and I understand that the Commission is being subject to a zero based review which may mean further reductions in the period ahead. The cuts to the EHRC's budget will inevitably necessitate a reprioritisation in the Commission's work. The Scottish Government has been clear with the UK Government that for effective operation and delivery the Commission needs to be appropriately focused and resourced for its work in Scotland.

While pleased that the UK Government has decided to retain a Scotland Committee, Scottish Commissioner and a distinct presence in Scotland, we are of course concerned about the impact of the funding pressures on staffing and the operation of the Commission in Scotland. My officials have regular contact with the EHRC and I understand from a recent update at the beginning of October that staffing in Scotland has fallen from 26 in 2009, to 17.5 presently and is predicted to fall again to between 10 and 13 by the end of the year.

Undoubtedly, this has been a challenging time for the Commission in Scotland particularly as there has been great uncertainty about the nature of the changes to its role and operation. There still remains uncertainty about the impact of the changes on its work in Scotland and consequently on the advancement of equality more generally. The EHRC is an independent body and it is ultimately for it to decide how it deploys its resources. However, I am keen to ensure that we understand, more fully, the implications for Scotland and I have requested a meeting with Kaliani Lyle, the Scotland Commissioner to discuss this.

I appreciate that the Equal Opportunities Committee has a shared interest and concern in the future operation of the Commission in Scotland. Although I know you appreciate the limits on what the Scottish Government can do in relation to these reserved matters I would be happy to provide more information as details become clearer to me in the course of the coming period. In the meantime the Committee may wish to speak directly with the UK Government or the EHRC at a UK level. My officials would be happy to provide you with relevant contacts if you wish to pursue. If you or the Committee need to speak to a Scottish Government official about the EHRC, please contact Yvonne Strachan on 0131 244 5197 or yvonne.strachan@scotland.gsi.gov.uk

ALEX NEIL

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