



The Scottish Parliament
Pàrlamaid na h-Alba

EUROPEAN AND EXTERNAL RELATIONS COMMITTEE

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Dear Vice President,

I am writing to thank you on behalf of the Scottish Parliament's European and External Relations Committee for your recent letter responding to questions raised by the Committee in relation to the Scottish Government's proposals for an independent Scotland's membership of the European Union.

The Committee is aware of the European Commission's position in relation to the situation when "part of the territory of a Member State ceases to be a part of that state", which you rightly emphasise, has been reiterated on a number of occasions. However, in the course of the Committee's inquiry, points have been raised about the significance of acquired rights of EU citizens and the need to use the 18 month period between any vote for independence and the date of independence to ensure that these rights are not lost on the date of independence. The Committee would therefore like to ask for your views on the points raised in evidence to the Committee in relation to EU citizenship.

Evidence heard by the Committee has raised concerns about the position of EU citizens in relation to the eventuality of Scotland becoming an independent state but not being a member state of the European Union at that point. In particular, witnesses giving evidence to the Committee have highlighted the limitations of a classic public international law approach which – in their view – only considers states and international organisations to be the subject and object of international rights and obligations, without giving consideration to the ways in which EU law requires the perspective of the individual EU citizens to be taken into account.

Professor Sir David Edward, KCMG, QC, FRSE – a former Judge of the European Court of Justice – explained to the Committee that he approached the issue from a different perspective than one “in terms of the rights of states and whether there will be a continuator state, a successor state, a separate state or a new state.” He stated:

“I start from the position—which is clear in the major judgment of the European Court of Justice way back in 1963—that the treaties create rights for individuals, which, as the Court put it, ‘is ... intended to confer upon them rights which become part of their legal heritage.’ In my view, all the discussion about the rights of states entirely ignores the fact that people here and people who are dealing with us have what are called acquired rights. My view is that the institutions of the EU and the member states, including the United Kingdom, have an obligation, if there is a vote for independence, to ensure that those acquired rights are not abridged or terminated. That imposes an obligation to negotiate before there is any question of separation—before we get to the stage at which there is a new state.”

In evidence to the Committee, Aidan O’Neill QC argued that there would be “Not just an obligation of good faith but a commonsense requirement to try to resolve the instability of having 5 million people who are EU citizens but whose state has no status within the EU” in the period between any vote for independence and the day of independence. He explained:

“On the classic public international law analysis, if Scotland, as an independent entity, were to leave the EU, the citizenship of everyone in Scotland qua European citizen would remain—unless and until their former British nationality were withdrawn from them, when they might then be said to lose their European citizenship rights. However, there would potentially be an unstable situation in which a new independent state would be outside the European Union and have none of the responsibilities of membership but all the people in the new state would be citizens of the EU and have all the rights implicit in the European Union.”

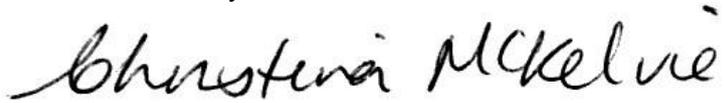
The Committee considers that the issue of citizenship is important because there are 160,000 EU citizens resident in Scotland and the number of Scots living in other EU countries, including the rest of the UK, is likely to be in excess of that number. This raises a very significant practical issue in terms of what will happen to those people if Scotland should be outside of the EU. It also raises a very important issue for those people in terms of their rights and the potential for the situation to undermine some of the core principles of the EU as set out in the Treaties.

The Committee has heard evidence referring to Article 20 of the Treaty on the Functioning of the European Union, and recognises that it confers EU citizenship on anyone who is a national of an EU Member State, with EU citizenship being additional to – and not replacing - national citizenship. It has also heard that the withdrawal by a Member State of national citizenship may be within the scope of EU law and therefore subject to the ruling of the Court of Justice of the EU as the ultimate guardian of the legal rights of EU citizens. Aidan O’Neill QC argued that as any loss of British citizenship would be “an active decision by the rest of the UK at such time as the rest of the UK is an

independent entity” and because it “would have implications for the European citizenship of the remaining British citizens in Scotland, it would fall within the ambit of EU law and would potentially be justiciable before the Court of Justice of the European Union.”

I look forward to receiving your response on the points raised above.

Yours sincerely,

A handwritten signature in black ink that reads "Christina McKelvie". The signature is written in a cursive, flowing style.

Christina McKelvie
Convener
European and External Relations Committee