



The Scottish Parliament
Pàrlamaid na h-Alba

Equalities and Human Rights Committee

Christina McKelvie MSP
Convener

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Via email only

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Dear Lord Advocate,

Departure of the UK from the European Union - implications for equalities and human rights

On 3 November the Equalities and Human Rights Committee took evidence from the Scottish Human Rights Commission, the Equality and Human Rights Commission, and a number of academics specialising in human rights and equalities, to gain an insight into the range of issues which might be pertinent as we move closer to the UK leaving the European Union (EU). Issues were raised with us around the continuing importance of judgements from the European Court of Justice (ECJ) to the progression of equalities and human rights in Scotland, and the extent to which legislative consent motions may be required as a consequence of the UK Government requiring to legislate on devolved matters, or, amending the Scotland Act.

We heard evidence that many of the decisions made by the ECJ have been influential in expanding and improving our equality legislation. Also highlighted to us was the potential loss of European legislation on equality matters, for example, an imminent European accessibility act which would require accessibility to e.g. ATMs, ticket machines and public phones¹. Professor Muriel Robison and other witnesses raised questions with us about the status of decisions made by the European Court

¹ Equality and Human Rights Committee (EHRC), *Official Report*, [3 November 2016](#), cols 5-6.

of Justice pre-Brexit and whether these will continue to be relevant post-Brexit. She explained when British courts reinterpret laws, one of the principles they take into account is the intention of the Scottish Parliament (or UK Parliament as the case may be) when enacting that law. If, in the court's view the intention of the Parliament was to legislate to implement EU law, then EU law could still be relevant to that courts interpretation of the law, even after the UK's withdrawal from the EU.

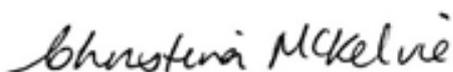
During our evidence session, there was a discussion about the need for legislative consent motions in the wake of the recent English High Court judgement issued in relation to the mechanism by which the UK Government triggers the Article 50 process. Early views were expressed on the need for a legislative consent motion from the Scottish Parliament². Witnesses considered that because EU law is woven into the Scotland Act 1998, a legislative consent motion would be required to be passed by the Scottish Parliament as the triggering of Article 50 to leave the EU would necessitate a change to the Scotland Act. Also highlighted was the need for a legislative consent motion for a "Great Repeal Bill" alongside the potential pitfalls which might arise depending on the type of powers provided to Ministers of the Crown in such a bill, e.g. so called Henry VIII powers, which might enable ministers to amend or repeal of primary legislation without seeking the approval of either the UK or Scottish Parliaments³.

The Committee would welcome your views, as Lord Advocate, on the importance of judgments from the European Court of Justice for the development of equalities and human rights in Scotland, and also any preliminary thoughts you may have on the treatment of decisions of the Scottish courts post-Brexit and whether they can apply EU Law/ECJ rulings if they believe it to be materially relevant.

Also of interest to the Committee is the your assessment of the circumstances which might give rise to the need for legislative consent motions to be approved by the Scottish Parliament and the anticipated workload this may generate for the Scottish Parliament in dealing with these.

A response to this letter by 30 November would be of great assistance with allowing the Committee to plan its next steps on this topic.

Yours sincerely,



Christina McKelvie MSP
Convener
Equalities and Human Rights Committee

² EHRiC, *Official Report*, [3 November 2016](#), col 18.

³ EHRiC, *Official Report*, [3 November 2016](#), col 30.