



The Scottish Parliament
Pàrlamaid na h-Alba

Equalities and Human Rights Committee

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T3.40

Cabinet Secretary for
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Via email only

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Dear Cabinet Secretary,

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). A number of points were raised during the session where we consider further clarification from the Scottish Government would be helpful.

One central issue relates to a combination of factors which have the potential to significantly impact on the human rights landscape. On leaving the EU, the EU Charter of Fundamental Rights (the Charter) will cease to apply and there will be no ability to seek the opinion of the European Court of Justice. These factors, coupled with the prospect of the UK Government repealing the Human Rights Act 1998 and legislating for a British Bill of Rights (conceivably increasing the vulnerability of the European Convention on Human Rights), gives rise to a significant level of uncertainty around how human rights will be protected in the future. With the level of unknowns it remains uncertain whether this will result in a diminution of human rights protections or provide an opportunity for the advancement of human rights.

Having said this, human rights are not a reserved matter, so there might be some potential to legislate for human rights in Scotland. The Committee is therefore interested to learn what consideration the Scottish Government has given to the options to address the potential loss of protections provided by the Charter. Also, what measures are available to compensate for the lack of recourse to the European Court of Justice (ECJ), and to address the concern that people might start to relitigate on UK court decisions based on ECJ rulings. Furthermore, it would be helpful to know whether the Scottish Government has considered legislating for human rights in Scotland and what this might entail.

A further matter which poses additional equality and human rights questions is the treatment of EU citizens who seek to remain in Scotland post Brexit.

The Committee was advised by Dr Tobias Lock, EU citizens currently have a right to come here to live, work and study under EU free movement laws. There appeared to be a lack of clarity however, as to what will happen to EU nationals who wish to remain in Scotland but have not been resident in the UK for 5 years prior to the date of exit from the EU and therefore cannot apply for permanent residency under the citizenship directive. Closely associated with this were questions around a right to be treated equally and not be discriminated against on the grounds of nationality¹. At a Committee evidence session on 6 October, a witness from COSLA told us there were concerns about how community cohesion would be impacted, as EU nationals were voicing concerns about their rights to live and work in Scotland.² An indication of the Scottish Government's views on this issue, particularly Brexit and community cohesion, would be most welcome.

Another area of concern raised was the support provided through EU structural funds to the third and voluntary sector across Scotland, which will presumably cease to be available to them on the UK leaving the EU. This, it was stated, would have a very significant impact on third and voluntary sector organisations and the work they do across Scotland.

As you will be aware many people with protected characteristics, or from marginalised groups, benefit from the work of third or voluntary organisations which offer practical assistance to access their rights, for example, disabled people accessing the job market. With the impending departure from the EU, such organisations will no longer be able to access European funding streams and, as such, this could threaten advocacy services for people's rights.

We acknowledge the UK Government has given assurances, in certain circumstances, to guarantee European funding up to 2020, but we have some concerns around what will happen thereafter. We would find it helpful to know what steps the Scottish Government intends to take to ensure that the loss of European funding beyond 2020 will not negatively impact on the various third and voluntary sector organisations which provide valuable support to vulnerable people in accessing their rights.

¹ Equalities and Human Rights Committee (EHRC), *Official Report*, [3 November 2016](#), cols 21-22.

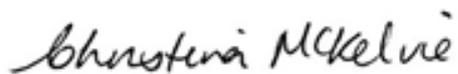
² EHRC, *Official Report*, [6 October 2016](#), Col 14.

Also, it would be helpful to know if the Scottish Government is undertaking any equalities and human rights audit on the potential impact of withdrawing from the EU. There is a concern the impact of the negative debate surrounding Brexit, and the continuing level of uncertainty around Brexit options, could setback equality and human rights progress more generally.

We appreciate it is still early days in terms of the Brexit negotiations, but any information the Scottish Government can share with the Committee on these important issues would help us to move the debate forward on equalities and human rights.

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,

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

Christina McKelvie MSP
Convener
Equalities and Human Rights Committee

cc. Michael Russell, Minister for UK Negotiations on Scotland's Place in Europe