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Equalities
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Via email: equalities.humanrights@parliament.scot

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Thank you for your letter of 16 November in which you asked about the potential human rights and equality implications of the EU Referendum result. You had also written separately to the Lord Advocate. The Minister for UK Negotiations on Scotland's Place in Europe has responded to that letter and I am copying my own reply to him for information.

It is clear that the result of the EU Referendum has important potential consequences for human rights and equality in Scotland. EU law and the EU Charter of Fundamental Rights help to ensure an EU-wide minimum standard of protection within the sphere in which EU law applies. These safeguards, and the level playing field they create, are important benefits of EU membership. Consideration of the full implications for all aspects of Scots law is a key element of the Scottish Government's work on the options for Scotland's future relationship with the EU and the rest of the UK following the EU Referendum.

Where human rights and equality are concerned, the inevitable uncertainty created by the absence of detailed UK Government proposals for Brexit is further compounded by the continuing threat to the Human Rights Act 1998 posed by plans for a "British Bill of Rights".

As you know, the Prime Minister does appear to have ruled out any imminent UK withdrawal from the European Convention on Human Rights. Insofar as it goes, that development (which occurred at the end of June) is clearly to be welcomed. It remains to be explored whether the UK Government might now be prepared to go further, and to give a cast-iron commitment to ensuring that the UK remains a full and active State party to the Convention on a permanent, long-term basis. Such a commitment would clearly provide a certain amount of reassurance in some of the areas of concern highlighted to the Committee by expert witnesses.



We should nonetheless be clear that, whilst there is significant overlap between aspects of the Convention and elements of EU law (including the Charter of Fundamental Rights), their reach and practical effect are not identical. We can therefore be explicit in saying that one is not a substitute for the other. The Scottish Government's position is that both need to be retained as fundamental features of the law of Scotland.

In response to your specific question about the potential for new human rights legislation in the Scottish Parliament, I am happy to re-iterate that human rights are a devolved matter. I note that the Committee takes the same view. The Human Rights Act 1998 itself is of course separately protected from modification by this Parliament under schedule 4 of the Scotland Act.

As a matter of general principle, we can be clear that neither the Scottish Government nor the Parliament would wish to rule out the exercise of legislative powers where their use might protect or secure Scotland's legitimate interests.

Your letter also highlighted the very real uncertainty and worry which I know individual non-UK EU citizens resident in Scotland are continuing to experience. The First Minister has been explicit on the matter and has impressed upon the UK Government that individuals resident in Scotland (and for that matter elsewhere in the UK) must not be treated as "bargaining chips". She has stated that she is appalled that the UK Government has not guaranteed the residency status of fellow EU nationals who have made Scotland their home. Everyone whose future status has been called into question by the referendum result has the right to be dealt with fairly and humanely and to know precisely how their interests will be affected. Further delay in clarifying the matter is fundamentally unacceptable.

On the specific topic of EU Structural Funds, I can assure the Committee that I share the concerns which have been expressed. As you know, EU Structural Funds currently benefit third and voluntary sector organisations as well as local authorities and Scottish Government agencies. None of these organisations will have access to Structural Funds after the UK leaves the EU.

The Scottish Government will negotiate with the UK Government to ensure that future financial support for the range of economic and social development initiatives currently supported by structural funds continues to be allocated on a fair and equitable basis across the UK. Further, we are committed to working closely with local authorities, the enterprise and skills agencies, digital partners and the third sector to shape future measures to help grow the economy and support individuals and communities.

Finally, in terms of our overall approach to the EU referendum result, I can reassure the Committee that the Scottish Government is exploring all possible options to ensure Scotland's continuing relationship with the EU, and is doing so with our human rights and equality commitments very much in mind. We will seek to use whatever influence we have to protect Scotland's interests and to shape the UK position, including in relation to the matters of significant concern which have been highlighted in the evidence taken by the Committee.



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