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Brexit: Protecting human rights in Scotland in a changing relationship with Europe

Human rights protecting fairness, justice and dignity stand to be eroded in the United Kingdom's changing relationship with Europe. The Commission wants to see the laws and institutions that protect our human rights strengthened not weakened and change to be progressive not regressive - enhancing human rights protections for all.

This means the full and on-going retention of human rights and broader social protections needs to be given detailed consideration in negotiations with Europe, and that Scotland must give serious consideration to what it can do within devolved competency to strengthen the protection of rights in the future.

Diminished legal protections

Unfortunately it appears likely that the UK and Scotland leaving the EU will mean that the Charter of Fundamental Rights will no longer directly apply to the UK or to Scotland. That means a reduction in ever evolving human rights protections and remedies in areas within the scope of current EU law such as privacy, data protection and a fair hearing. Furthermore, without the Charter there is a loss of potential for the fuller protection of social rights, or principles, contained in the Charter such as workers' rights, access to social security and healthcare.

Beyond the Charter Brexit also means the loss of a substantial backstop of protections provided for in EU law against regression to our national laws in areas such as anti-discrimination, environmental protections and consumer rights and the wider social protections provided for by the EU. Even where current standards are replicated in domestic law they remain vulnerable to future repeal or regression and will not necessarily keep pace with progressive development at a EU level.

Alongside this the other fundamental pillar of human rights protection in our law, the European Convention on Human Rights (ECHR), incorporated through the Human Rights Act and enshrined in the Scotland Act is also at peril. Whilst the current Prime Minister has recently stated that she does not intend to withdraw from the ECHR as she has no parliamentary majority to do so it has been her past position to do so. EU membership, and the application of the Charter, at a minimum, acted as a deterrent to withdrawal from the ECHR.

Progression not regression

The Commission therefore urges the UK and Scottish Governments to seek the maximum retention of human rights and other social protections as part of whatever on-going relationship is negotiated between the EU and the UK.

Beyond this the door must also be kept open for Scotland to explore means of retaining all human rights and social protections derived from the EU law within its own jurisdiction and benefit from the developing standards and protections that EU law can bring.

Embedding international standards in Scotland

In parallel to exploring all options for the retention of valued protections it is timely for Scotland to consider what enhanced human rights protections it can provide for people in Scotland within current or evolving devolved competence.

In December 2015 the First Minister recognised that making international treaties (such as the Convention on the Rights of the Child, Convention on the Rights of Persons with Disabilities, International Convention on Economic, Social and Cultural Rights- all ratified by the UK), enforceable in domestic law are an “important part of the debate in ensuring people’s rights are at the heart of everything government does.”

In May 2016 she further stated “We will work with civic Scotland to establish a set of social and economic rights for all of Scotland’s citizens. By valuing and strengthening human rights, we can empower citizens and encourage better government.”

This recognises that even now, within current devolved competency, more can be done to strengthen the legal protection of rights.

By establishing the enforceability of international treaty standards Scotland would meet its international obligations so far as possible within devolved competence- responding positively to repeated calls from the UN treaty body recommendations to the UK to incorporate international treaties into domestic law to give effective remedies to victims of violations.

It would also provide for a more comprehensive constitutional framework for the protection of rights, beyond the limited ECHR rights which are civil and political in nature. By enshrining economic, social and cultural rights such as the right to an adequate standard of living, the right housing, health, social security Scotland would have a more complete and robust framework for assessing legislative measures aimed at addressing poverty and inequality.

Such an approach would allow for a mainstreaming of all rights into not only law but also wider policy and decision making processes. Finally, and significantly, it would provide direct access to justice for individuals when the standards are not met.

Implementation of rights in practice

Progressing human rights is about more than what is written and protected in law however. It must also mean better implementation in policy and practice affecting the outcomes for peoples everyday lives. And it must mean that people understand, support and are able to claim and stand up for their rights and the rights of others. Scotland's National Action Plan for Human Rights (SNAP) seeks to progress this through a collaborative approach to making human rights a reality in homes, hospitals, care homes, workplaces and beyond.

As we move into 2017, the Commission calls for all of us to deepen our commitment and understanding of both why and how we must ensure rights are strengthened not weakened.

This statement will be updated during 2017.

Further information

Commission published paper on human rights implications of EU referendum

<http://www.scottishhumanrights.com/news/commission-publishes-paper-on-human-rights-implications-of-eu-referendum/#sthash.VGzu5bHt.dpuf>

Evidence of Chair, Judith Robertson to Scottish Parliament on Brexit

<http://www.scottishhumanrights.com/news/chair-gives-evidence-to-scottish-parliament-on-brexit-and-human-rights/>

Universal Periodic Review Executive Summary and the full report submitted by the Commission

<http://www.scottishhumanrights.com/news/this-human-rights-day-new-report-to-united-nations-shows-scottish-parliament-and-scottish-government-must-go-further-on-human-rights/#sthash.INt0afGs.dpuf>

Scottish Government Brexit threat to human rights statement

<http://news.scotland.gov.uk/News/Brexit-threat-to-human-rights-29a8.aspx>

First Minister Nicola Sturgeon, speech, Edinburgh, 25 July 2016

<http://news.scotland.gov.uk/Speeches-Briefings/Scotland-in-EU-2772.aspx>

First Minister, Nicola Sturgeon speech, 9 December 2015

<http://news.gov.scot/speeches-and-briefings/snap-human-rights-innovation-forum>

Scotland's National Action Plan for Human Rights

<http://www.snaprights.info/>