

House of Lords EU Justice Sub-Committee: Rights after Brexit Inquiry
Submission from Human Rights Consortium Scotland and the Scottish
Council of Voluntary Organisations (SCVO)

Human Rights Consortium Scotland is Scotland's civil society network to promote and protect human rights in Scotland.

SCVO is the membership organisation for Scotland's charities, voluntary organisations and social enterprises.

There is overwhelming concern across Scottish civil society about the potentially negative impact of Brexit on human rights. The Scotland Declaration on Human Rights¹ is supported by more than 170 civil society organisations. This Declaration states that signatories 'share profound concerns about the potential loss of equality and rights protections as a consequence of the UK leaving the European Union and about the persistent negative rhetoric around the protection and promotion of rights in the UK'. Signatories 'call on law and policy makers to take all possible steps to protect our rights and to make Scotland a world leader in both rights protection and implementation.'

The Declaration further states that four key principles must apply in all decisions around human rights:

- No going back
- Progression
- Transparency
- Participation

Leaving out the Charter of Fundamental Rights from retained EU law in the EU Withdrawal Act was a regrettable regression on human rights. The Legal Continuity (Scotland) Bill then went on to include the Charter, as well as provisions to enable Scotland to more easily keep up with progressions in EU law and a right to action on the Charter. However, due to subsequent changes to the EU Withdrawal Act, the Supreme Court found this Continuity Bill to be outwith the competence of the Scottish Parliament. We remain very hopeful that the Scottish Government will find alternative ways to keep the Charter as it relates to devolved-retained EU law and we await detail from them on how this can happen.

¹ See text and signatories at www.humanrightsdeclaration.scot

We are also very concerned that the UK Government's approach to policies around ending freedom of movement could impact upon the realisation of rights.

EU/EEA citizens have the right to an adequate standard of living as well as a right to private and family life, and to non-discrimination - these are all at risk due to being forced into the hostile immigration system. Already, we regularly hear reports of EU citizens being denied tenancies or jobs due to concerns about their immigration status. We highlight four particular aspects of the proposed new EU Settlement Scheme that could lead to a breach of human rights:

- Stringent paperwork requirements -the most vulnerable EU citizens may well have significant gaps in their paperwork due to issues such as domestic violence, trafficking, insecure employment
- Unnecessarily tight deadline – if the Withdrawal Agreement is passed, there is a deadline of June 2021 for all EU citizens living here to apply for settled status. If we leave with 'no deal', the deadline is even tighter – end of December 2020. There should be no such unnecessary cliff-edge to people's right to remain in their homes, jobs and communities.
- Lack of right to appeal – the Home Office regularly gets decisions wrong. It is unfair to have a new immigration status that does not recognise this and build into the system an opportunity for review.
- Over-reliance on digital – the Scheme only allows paper applications in exceptional cases. Centres where identification documents can be checked include none in Scotland outwith the central belt. Proof of settled status will then only be available online - hard-copy evidence of immigration status is important for preventing discrimination in areas like home rentals and employment.

In addition, the impact of fewer EU/EEA citizens living in Scotland will affect the realisation of human rights in many ways, for example the right to independent living for disabled people, the right to participate, the right to highest possible level of physical and mental health, and the right to an adequate standard of living.

We strongly welcome the Scottish Government's positive direction of travel around human rights frameworks. The First Minister's Advisory Group on Human Rights Leadership published strong recommendations on incorporating UN human rights treaties into Scots law including economic and social rights, with an emphasis on this being implemented well so that people's rights are realised with everyday accountability and justiciability. Whilst the details of what this new legislative framework would look like are still to be worked out, we strongly welcome the emphasis on progressing human rights and showing leadership in human rights. We welcome the Scottish Government's commitment to incorporate the principles of the UNCRC into Scots law and their serious consideration of how best to incorporate the right to food.

In the context of the continued UK Government policy position that they will consider re-examining the Human Rights Act after Brexit, there is clear divergence between the Scottish and UK Governments on their positioning towards human rights.

However there has also been a possible weakening of the Scottish Parliament legislative consent process around the EU Withdrawal Act and Trade Act. We are therefore concerned that the **UK Government must not re-examine any aspect of our domestic human rights framework without the full participation and consultation with devolved governments and indeed, with civil society from across the UK.**

Furthermore, we remain concerned that some of the impact on rights after Brexit is as yet unknown and is to be found in the detail of secondary legislation, UK common frameworks and trade deals. Scrutiny of this detail and participation of civil society in developments around these is crucial, and yet currently very difficult due to a lack of transparency and invitation. We welcome the Committee's comments on how future Brexit decision-making can be opened up and made more transparent, to ensure that human rights are fully considered and protected.

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