

A ‘no deal’ Brexit and Human Rights in Scotland

The Human Rights Consortium Scotland is very concerned that leaving the European Union (EU) without a deal in place will mean going backwards on the realisation of human rights in Scotland. We need more time to secure our human rights before the major constitutional change of leaving the EU.

Many new arrangements and agreements have yet to be made across a whole number of policy and law areas which risk significant gaps if we crash out of the EU. Furthermore, ‘no deal’ - and therefore, no transition period - means that there will be far too little time for organisations and communities to have a say in Brexit decision-making. ‘No deal’ means that decisions will be made without proper engagement with those whom will most directly feel the consequences of Brexit indecision.

We call on the Scottish Government, UK Government, MEPs and MPs to do all that they can to prevent a ‘no deal’ Brexit.

Scottish civil society does not want regression on rights

Civil society in Scotland share profound concerns about the potential loss of human rights protections as a result of Brexit. Over 170 organisations support the Scotland Declaration on Human Rights¹ that calls on law and policy makers to take all possible steps to protect our rights. The Declaration states that four principles must apply in all decisions that affects our human rights: no going back; progression; transparency; and participation.

The EU Withdrawal Act, which brings across EU law into UK law in the event of Brexit, specifically does not include retention of the EU Charter of Fundamental Rights. This is a significant regression in the legal framework that protects our human rights, one that will only be accelerated if we leave with no agreement in place.

‘No deal’ will negatively impact on our international human rights

The UK has ratified seven UN conventions on human rights as well as the European Convention of Human Rights - we highlight below some of the key articles of these conventions that we believe are at risk of regression in the event of a ‘no deal’ Brexit:

- **Right to highest attainable standard of health**

It is likely that a ‘no deal’ Brexit would lead to shortages in some medicines and medical supplies in the short to medium term, particularly medicines which are only relied upon by a

¹ See www.humanrightsdeclaration.scot

relatively small number of people. Pharmaceutical companies only have approx. two weeks stock of medicine to then distribute to pharmacies and hospitals.² Extensive preparations have been made to minimise the impact on people's health including NHS stockpiling³ - however, the considerable risk of medicine shortages in the event of 'no deal' remains.⁴

- **Right to private and family life**

Under new UK Government rules, EU citizens who have made their life here will now have to apply for 'settled status' to be allowed to remain. However, under a 'no deal' scenario, the time restrictions will be tighter, there is no appeal procedure and there will be tighter family reunion restrictions. In addition, some complex reciprocal arrangements around aspects such as social security coordination need more time to be agreed. The Joint Committee on Human Rights stated: 'Removing their [EU Citizens'] rights with no equivalent legislative protection in place raises significant human rights concerns. These provisions could leave individuals and families in a situation of precarity as to their futures, including housing, social security and property rights.'⁵

- **Right to food**

30% of our food comes from the EU with a further 11% via deals negotiated by the EU with other countries, and much of our food chain relies on 'frictionless trade with the EU'⁶. There is plentiful evidence that a 'no deal' Brexit will lead to new border controls, delays, higher prices, labour shortages and failed deliveries that will mean less food availability and quality for people living in Scotland. In a situation where nearly one in ten people in Scotland are food insecure⁷, this 'no deal' impact upon food supplies is very concerning.

- **Right to life and to protect people from threat to life**

EU law provides a range of legal instruments that protect women who are the victims of crime who move across borders, such as European Protection Orders (EPOs) which guarantee that 'crime victims who are granted protection from their aggressors in one EU member state will be able to get similar protection if they move to another'. 'No deal' does not allow the time to ensure that there are effective arrangements 'ready to go' for after the UK leaves the EU.

- **Right to education**

The UK Government has yet to agree any new arrangement as to the UK's future participation in Erasmus +, the scheme which enables young people to take part in learning

² Martin Sawyer, Executive Director, Healthcare Distribution Association to Committee for Exiting the EU, June 2019: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/exiting-the-european-union-committee/the-progress-of-the-uks-negotiations-on-eu-withdrawal/oral/103169.pdf>

³ See: <https://www.mygov.scot/brexit-healthcare/>

⁴ See for example: Scottish Government, <https://news.gov.scot/news/update-on-medicine-supplies>, March 2019; https://www.youngacademyofscotland.org.uk/wp-content/uploads/Brexit_Impact_Report_HW.pdf

⁵ Joint Committee on Human Rights, <https://publications.parliament.uk/pa/jt201719/jtselect/jtrights/569/56902.htm>

⁶ British Retail Consortium, <https://brc.org.uk/news/2018/there-will-be-food-supply-issues-in-the-event-of-a-cliff-edge-brexit>

⁷ Scottish Health Survey, 2017: <https://www2.gov.scot/Resource/0054/00540654.pdf>

exchanges across the EU. Erasmus + is essential for young people's education but also for training teachers in European languages.

- **Right to live independently and be included in community**

Both of these rights are severely at risk because of the knock-on effect of fewer EU citizens working in Scotland. The health and social care sector in Scotland currently employs 12,000 EU nationals, which accounts for 3% of total employment in this sector⁸. Brexit uncertainty is already affecting recruitment of EU nationals across the board -if this continues, in a sector already hindered by recruitment gaps, disabled people and those with longer term health conditions and older people, will not have the social care that they need. Uncertainty and problematic residency requirements for EU citizens (as noted above), together with lack of sufficient time for effective recruitment planning, mean that these rights are particularly impacted by 'no deal'.

We need more certainty and discussion about replacement EU funding

EU funding has been essential for the development of innovative services and research that have brought significant positive impact for human rights⁹. The UK Government has promised that there will be a replacement UK Shared Prosperity Fund but there has been no consultation on what this fund should look like. It is essential that this replacement funding has an explicit, strategic focus on equality and human rights, and that civil society are involved in shaping it but there has been little engagement to date. A 'no deal' Brexit will only serve to heighten the uncertainty over this future funding.

'No deal' means a lack of engagement and scrutiny

Furthermore, there are several major pieces of primary legislation such as the Trade Bill and Environmental Bill and a whole host of secondary pieces of legislation which would be made better by wide civil society consultation and proper scrutiny. Without sufficient time for this, policy makers risk being cavalier with consideration of the impacts of Brexit on realisation of people's human rights.

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⁸ The ALLIANCE, EU Withdrawal (Evaluation Of Effects On Health And Social Care Sectors) Bill – briefing, <https://www.alliance-scotland.org.uk/blog/resources/eu-withdrawal-evaluation-of-effects-on-health-and-social-care-sectors-bill-briefing/>

⁹ For more detail, see Equally Ours, UK SPF: <https://www.equallyours.org.uk/wp-content/uploads/2018/10/EDF-SPF-briefing-Final-October-2018.pdf> And Equality & Human Rights Commission, The future of funding for equality and human rights in Britain: <https://www.equalityhumanrights.com/en/publication-download/future-funding-equality-and-human-rights-britain>