

Civil Society Brexit Project

Paper to the Scottish Parliament Committee on Equalities and Human Rights

Departure of the UK from the European Union - implications for equalities and human rights

November 2017

Introducing the Civil Society Brexit Project

The Civil Society Brexit Project is a collaboration between the [Scottish Universities Legal Network on Europe](#) (SULNE) and the [Human Rights Consortium Scotland](#), funded by the Legal Education Foundation. Over the next two years, the Project will provide independent information, advice and support to civil society organisations in Scotland around Brexit. We will do so through events, meetings, briefings and other resources and tailored advice. All of these activities will provide clarity and confidence for civil society as they consider the impact of Brexit so that they can effectively advocate for those they work with throughout the Brexit process and beyond.

The Project so far

The Project began in September 2017. We have held various discussion meetings, and four regional events titled 'Brexit means what?' providing information and gathering the concerns of organisations around Brexit. These events included both larger national organisations but also smaller service-focused organisations who do not have extensive policy capacity.

The next steps for the Project will be facilitating collaboration between organisations around the EU Withdrawal Bill. We are developing the Scotland Declaration on Human Rights – a statement which organisations will be invited to support to show their concern that rights are not diminished but progressed in Scotland, particularly in the context of Brexit. This Scotland Declaration will be launched in February 2018. We will also produce a series of accessible briefings to be regularly updated throughout the Brexit process, and will hold further events on specific issues such as EU nationals' rights, and rural communities.

Summary of key concerns

This paper is a summary of key concerns about the EU Withdrawal Bill raised by Scottish civil society organisations. Whilst there may be other civil society concerns not mentioned below, we hope that this is a useful contribution to the Committee's consideration of the human rights implications of leaving the European Union.

- **The EU Withdrawal Bill must secure legal rights, not reduce them**

The Scottish civil society organisations that the Project has spoken to overwhelmingly want to keep the legal rights that we have, and continue to progress the protection and implementation of rights.

Many organisations are concerned that in the Bill's current form, **it does not retain the Charter of Fundamental Rights and that we therefore stand to lose certain rights** such as wider data protection rights, a right to asylum, a right to education and an overarching right to non-discrimination. Whilst the Charter only applies in relation to EU law and so we might not see the immediate impact,

nonetheless its removal may reduce legal rights in the longer term. Charter principles held in other legislation are not necessarily enforceable in domestic courts. Any regression on legal rights – such as the removal of Charter rights - is seen by many as retrograde and disappointing.

Alongside this specific concern about the Charter rights, organisations are also concerned that the proposed considerable **increase in Government powers to use secondary legislation could lead to a lessening of rights protections**. For example, organisations are concerned that the Equality Act 2010 could be included in the definition of 'retained EU law' that can be amended by secondary legislation. Legal rights that have been hard-won, are greatly valued and improve people's lives could be changed without proper scrutiny or participation.

Organisations are particularly concerned because this lack of rights in the Bill comes in the context of the UK Government's expressed intention to repeal the Human Rights Act and the general negative rhetoric that surrounds human rights by some politicians and media. There is concern that, without rights and equality protections being written into the Bill itself, there will be very little that can be done – whether by MPs or civil society - to prevent any rights reductions once the EU Withdrawal Bill is passed. **Inclusion of rights protections in the Bill would greatly reassure Scottish civil society and lock-in rights to post-Brexit Britain.**

In addition, organisations **want Scotland not to fall behind the rest of Europe in rights and equality**. Their concern is that this Bill does not offer any reassurance or mechanism for ensuring that this will not happen. The mechanisms we set up now to ensure rights are continually progressed will benefit generations to come.

- **Lack of participation in legislative process**

Many smaller and less-resourced organisations find the EU Withdrawal Bill and the whole Brexit process complex, confusing and so fast that it is difficult for them to get the information and clarity that they need in order to advocate for their beneficiaries' needs and rights. They are further concerned that considerable use of secondary legislation to prepare UK law for exit day will make their participation in the legislative process and their ability to plan for any consequences, extremely difficult. They simply do not have the resources to monitor the vast swathes of secondary legislation that will affect those that they work with and for.

This raises significant human rights implications because organisations and those that they represent will **not be able to access their right to participate in decisions that will affect them**. In addition, the legislation that is produced may not sufficiently consider human rights implications because participation has not been part of that legislative process.

Disabled people's organisations also spoke about the **lack of accessible information for disabled people about Brexit**, particularly for example, those with learning disabilities. The Government should do more to provide information in different formats so that everyone can be informed and engaged in the Brexit process.

- **Support and a long lead-in time before any changes to EU citizens' rights**

Many Scottish civil society organisations employ EU citizens, have EU citizens as volunteers or provide services and support to EU citizens. Organisations told the Project about **the uncertainty that is**

already negatively impacting the everyday lives of EU citizens in Scotland. They report increased deportations of EU citizens with little access to legal advice, individuals being asked to prove their right to work and individuals being turned down for jobs or private house rental because of the uncertainty about their residence status.

Many organisations are very concerned about the future **impact of any new freedom of movement restrictions upon particularly vulnerable EU citizens** in Scotland such as those with mental health problems and those without family support. They are also concerned about the particular impact upon those who are more likely to have complex employment histories, such as women.

EU citizens need information and advocacy support if their rights are to be fully protected, and there needs to be sufficient time for them to get this information and support before any changes to their legal status take effect. Without lead-in time and support, the rights of EU citizens such as the right to a private family life, the right to health and the right to a basic standard of living will be seriously jeopardised. This has particular implications for the transition period outlined in the EU Withdrawal Bill and is a particular area where the Scottish government could help.

In addition, organisations also spoke about **the potential negative impact of there being fewer EU citizens in Scotland on their organisations**. This will significantly affect many organisations as employers particularly in the health and social care sector, and will affect the services that they can provide. In particular they highlighted that if the only EU citizens in Scotland are those less likely to volunteer e.g. those with already-established careers, this will also negatively impact the work of organisations. We highlight that many organisations support a devolved approach to immigration law to recognise the particular context and needs of Scotland's communities, civil society and businesses.

- **Clarity about European Court of Justice rulings**

Some organisations expressed **concern about the lack of clarity for courts** around consideration given to European Court of Justice rulings. There is concern that such a lack of clarity from the Government places too much power in the hands of the courts and can make life-changing decisions too uncertain, particularly in cases that affect very vulnerable people such as immigration cases.

The Civil Society Brexit Project is happy to provide more detail on the issues raised in this paper or on detailed legal Brexit issues drawing on SULNE's expertise, or contribute to discussion about civil society's concerns and influence in Brexit. Please contact:

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