



The Scottish Parliament
Pàrlamaid na h-Alba

Equalities and Human Rights Committee

Christina McKelvie MSP
Convener

Michael Russell MSP

Minister for UK Negotiations
on Scotland's Place in Europe
The Scottish Government

Via email only

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Dear Minister,

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

The Equalities and Human Rights Committee has continued to keep a [watching brief](#) on the implications for equalities and human rights in Scotland as a result of Brexit.

We noted on 19 September 2017, you [wrote](#) to the Finance and Constitution Committee attaching a working summary of powers returning from the EU that intersect with the devolution settlement in Scotland. There are 111 powers listed. At number 46 is *Equal Treatment Legislation*.

Our most recent evidence session was held on [30 November 2017](#) where we heard from Lynn Welsh, Head of Legal in Scotland, Equality and Human Rights Commission and David Cabrelli, Senior Lecturer in Commercial Law, University of Edinburgh.

During this session there was discussion around what is meant by '46, *Equal Treatment Legislation*'. Lynn Welsh explained to us her view of what this might include—

“Scottish legislation currently contains some equality legislation. The equal opportunities opt-out relates to discrimination but not all equality law relates to

discrimination. For example, there are provisions in housing legislation that allow tenants to ask for reasonable adjustments and there are provisions on taxis having to take guide dogs that do not relate to discrimination but were brought in separately in Scottish legislation. There are also separate specific duties. There are currently pieces of equality law in Scottish legislation that would certainly come under equal treatment legislation.”

She also noted there were—

“...other pieces of EU legislation on rights to accessibility for disabled people in transport and other areas that do not relate to discrimination and that would be introduced through Scottish legislation and action, because transport is devolved. It would be the responsibility of the Scottish Parliament to ensure that those obligations were met. Equal treatment legislation would cover all those equality areas in the broadest sense that do not directly relate to discrimination legislation that can be found in the Equality Act 2010.

David Cabrelli considered—

“Under item 46, the Scottish Government is saying that, when that comes back to Westminster, it should then be devolved to the Scottish Parliament. The argument for that would be that some elements of equal opportunities law have been devolved to the Scottish Parliament. However, the powers that the Scottish Parliament has in that respect are very limited.”

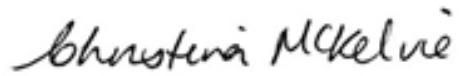
In addition, we received a [written submission](#) from Nigel Patrick Head of Defence & International Policy (Scotland) on 5 December 2017, in lieu of oral evidence, which advised—

“EU equal treatment legislation intersects with devolved competence in Scotland. To the extent that EU law in this area creates a common UK approach, we now need to consider the precise form in which this provision is maintained. The Government Equalities Office has indicated that it is happy to discuss these matters in further detail with the Scottish Government. In the meantime, the EU (Withdrawal) Bill will, however, ensure that existing EU derived domestic legislation and relevant direct EU legislation continues to have effect in domestic law.”

We would like to ascertain from the Scottish Government what it understands ‘46, *Equal Treatment Legislation*’ to mean. In addition, we would find it beneficial to our further considerations to understand what the Scottish Government hopes to achieve from the repatriation of that power.

A response would be appreciated by 22 February, so that it may be considered at our next evidence session on this topic.

Yours sincerely,

A handwritten signature in black ink that reads "Christina McKelvie". The signature is written in a cursive style with a small flourish at the end.

Christina McKelvie MSP
Convener
Equalities and Human Rights Committee

cc. Angela Constance, Cabinet Secretary for Communities, Social Security and Equalities