

The Society continues its successful series of seminars on the key issues arising from the Brexit process. This report considers the outcomes from our second event which focused on human rights and their protection post Brexit.

The Law Society of Scotland in terms of its strategy for 2015-2020, *Leading Legal Excellence*, seeks to influence a fairer and more just society by being an international centre in thought leadership.

The second event, held on 23 February 2017 at Glasgow Caledonian University and live streamed on Facebook, and was chaired by the Society's Director of Law Reform, Michael Clancy. The theme for this event was human rights and its protections post Brexit. Our three speakers, Professor Nicole Busby, Professor of Labour Law and Head of School, University of Strathclyde, Anthony Speaight QC, Barrister at 4 Pump Court Temple, London and a member of the Bill of Rights Commission and Dr Peter Geoghegan, Writer and lecturer in journalism at the University of the West of Scotland provided delegates with informed and insightful presentations. This report will consider some of the themes that arose during the presentations, Q&A session and subsequent roundtable discussions.

General Background

In recent years, human rights has come to occupy a position of fundamental importance within EU law. The Treaty on the European Union states that the EU is "founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights... [which] are common to the member states in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail."

Equalities

Professor Busby focused primarily on the issues arising from the above mentioned quote and highlighted the breadth of legal provision in relation to these values. She emphasised that equality and protection of human rights are now primary goals of the EU.

She noted the extent of the Charter of Fundamental Rights of the European Union (CFR) which sets out the full range of civil, political, economic and social rights of EU citizens and of all persons resident in the EU. She acknowledged that the CFR's scope is broader and its provisions update the rights of the European Convention on Human Rights (ECHR) according to changing social and economic circumstances.

She concluded that providing that the Equality Act 2010 remains on the statute book post-Brexit, the current levels of protection will be maintained. According to Professor Busby, perhaps the greatest risk in maintaining levels of protection arises if the UK Parliament dilutes rights where there is no longer any EU underpinning. As equality law is almost exclusively a reserved matter, there may be limited opportunities for the Scottish Parliament to influence this area of law.

The EU Charter of Fundamental Rights

Anthony Speaight QC provided a thoughtful consideration of the evolution of the CFR. He noted that the original Treaty of Rome was essentially economic and the development of fundamental rights did not come until later. He emphasised the breadth of rights contained in the CFR which are not

addressed elsewhere, for example in the ECHR. These rights apply to areas as diverse as medicine and biology (Art 3 (2)), to the freedom to conduct a business (Art 16).

He highlighted specific examples of where the application of the CFR has been considered by the courts and noted instances of how dynamic the CFR has been.

His concluding remarks looked to international examples of states or provinces having their own charters and believed that there would be no reason why Scotland, Wales and Northern Ireland should not each adopt its own Charter of Rights applicable to devolved laws and functions.

Human Rights and the Celtic Fringe after Brexit

An impassioned overview was provided by Dr Peter Geoghegan on the potential challenges that may arise for devolved administrations during the Brexit negotiations. He provided us with a fresh perspective on the potential implications for Northern Ireland. He also highlighted that an election will be held in Northern Ireland this month. He believed that the Good Friday Agreement was predicated on a political and legalistic pluralism, one could choose to be British, Irish or both, within a framework that imposes a specific obligation on the UK Government to 'complete incorporation' of the ECHR into Northern Irish law.

His conclusion was that as a state we are very successful but arguably, as a nation, we are not and the UK Government failure to recognise this diversity could have profound implications on politics and human rights.

The next Brexit seminar will be held on 18 May 2017 at the Law Society of Scotland's offices in Edinburgh and will focus on the themes of employment and workers' rights.