

European and External Relations Committee

3rd Meeting, 2016 (Session 4), Thursday 4 February 2016

Supplementary written evidence from Legal Services Agency/Campaign for Housing and Social Welfare Law

Gaps in human rights' protection in Scotland

Human rights' **protection** can be defined as the entrenchment of human rights' principles, providing overarching rights as opposed to simply rights that exist either under common law or statute. Viewed thus, it is proposed that consideration be given to the following enhancements of existing human rights' protection in Scotland.

The proposal is simply to make up the deficiencies of the Human Rights' Act by drawing in areas of general human rights concern which, currently, do not have the same status as those rights drawn in by the Human Rights' Act.

The proposed enhancements are, however, largely drawn from the Charter of Fundamental Rights of the European Union. The proposals would, accordingly, have the effect that rather than simply applied to the interpretation of rights derived from the EU, they would become available in the consideration of all areas of law in Scotland.

The gaps and the means whereby they may be remedied are as follows:

- a) Article 14 of the European Convention prohibits discrimination in regard to the rights and freedoms set out in the rest of the European Convention.

The UK has not ratified Protocol 12, which extends the prohibition against discrimination more widely. Either Protocol 12 should be adopted or, alternatively, a freestanding, non discrimination provision such as Article 21 of the EU Charter should be adopted.

- b) Rights of the Child

The Human Rights' Act makes no direct reference to the rights of the child: Article 12 of the EU Charter does however. This generally provides that a child's views must be taken into consideration and that, in all actions relating to children, the child's best interests must be a primary consideration.

A more ambitious solution might be to incorporate the UN Convention on the Rights of the Child.

- c) The Human Rights' Act makes no direct reference to a right to social security, although some protections can be, and have been, inferred.

Article 34 of the EU Charter recognises entitlement to social security benefits in relation to certain contingencies, as well as a very general right to social and housing assistance "so as to ensure a decent existence for all".

- d) The Human Rights' Act makes no direct reference to environmental protection, although certain rights can be inferred. Article 37 of the EU Charter specifically provides that a high level of environmental protection and the improvement of the quality of the environment must be integrated into policies....and ensured in accordance with the principle of sustainable development.

General Comments

There are other issues of concern which, among other points, are also addressed by the Charter, some of which, of course, relate to reserved matters. Thought should, however, be given to drawing in the right to asylum (Article 18 of the Charter), the broader Solidarity rights of the EU Charter, for instance.

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