



EUROPEAN MOVEMENT IN SCOTLAND: HOLYROOD 2021 ELECTIONS

DEMOCRACY AND HUMAN RIGHTS

Manifesto commitments recommended by EMiS

- Recognise EU is an international, democratic and human rights beacon, which Scotland, whatever its constitutional status, should seek to rejoin.
- Insist on continued membership of European Convention on Human Rights
- Within devolved powers, ensure the Scottish Parliament legislates to stay as closely aligned to EU human rights law as possible.

Background

The European Union (EU) is founded on “the indivisible, universal values of human dignity, freedom, equality and solidarity”, the principles of democracy and the rule of law (Preamble to the Treaty of the European Union). Cognisance is given to the work of the Council of Europe and the European Court of Human Rights in defining and interpreting human rights.

The EU has been a major contributor to the peace enjoyed by Europe over the last seventy-five years.

Whilst it is a requirement for membership of the EU that a country should be a democracy, some have claimed that the EU itself is not democratic. In fact, as a supra-national body over a group of democratic states, the EU is highly democratic. The European Parliament is elected on a proportional basis and is representative of the opinions and voting intentions of its voters in every EU country. The Council of Ministers represents member states, with each state voting on a basis proportionate to its size. The ministers are members of and represent democratically elected governments, and are answerable to their home parliaments. For the European Commission, effectively the “civil service” of the EU, Commissioners are put forward by their own government but must be approved by the Parliament. The Commission cannot approve any legislation; it must be passed by the Parliament and Council.

The Consolidated Treaties forming the European Union (effectively its constitution) are linked to the European Court of Human Rights and the European Court of Justice and provide overarching protection to the citizens of member states.

Prior to Brexit, EU law performed a similar function to a constitutional guarantee (also in respect of devolution). EU equality law, much of which concerned employment, was binding on the UK Parliament and could be used to disapply legislation which failed to meet the standards of EU law. There is now no obstacle to Parliament repealing or undermining the fundamental right to equality largely contained in the Equality Act 2010.

Much EU law, however, was included in UK legislation through secondary legislation, such as the regulations for agency workers, working time, TUPE (transfer of undertakings) and health and safety. All of this secondary legislation can be amended or repealed by statutory instrument and can avoid parliamentary scrutiny and a vote. This is far less democratic than the situation when Scotland and the UK were members of the EU. Large bodies of rights, formerly guaranteed by the EU, such as family leave rights, including maternity, paternity, adoption, shared parental and parental leave and pay can be removed by the UK government at will.

The powers pursuant to the Withdrawal Act to translate or change EU law will apply in devolved areas. This is an additional reason why the approval of the Scottish Parliament would normally be sought as a result of the Sewel Convention. However, controversially, as a result of “Henry VIII” powers, the secondary legislation used to amend the Act would not normally fall within the Sewel Convention, thereby circumventing approval by the Scottish Parliament. There is also the potential difficulty that amending EU law will not fully recognise the distinctiveness of Scots law and, as has happened previously, Westminster legislation could create unintentional difficulties in Scots law.

Under the European Union Withdrawal Act 2018, certain elements and rights under EU law were not retained on exit day, in particular the Charter of Fundamental Rights removed by Section 5 of the EU Withdrawal Act.

Some of the rights are lost as they derived from membership of the EU (i.e. Articles 39–45), which covered such rights as EU citizenship and the freedom to live and work in the EU; these rights have been completely lost by Scots.

The security of Scots has also been reduced by the loss of Police and Criminal Justice co-operation and Civil Judicial co-operation. The loss of the European Arrest warrant will make the job of the Scottish Police, a devolved responsibility, much harder.

The human and security rights of Scots have, therefore, been weakened. The devolution settlement was predicated on the existence of a supranational legislature (the EU). Its loss will therefore affect the devolved competence of the Scottish Government, which has indicated that it will seek to ensure that the choices made by the Scottish Parliament are respected by looking at how best to safeguard EU human rights and other values.

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