

Senedd Equality and Social Justice Committee

Inquiry into Equality and Human Rights in Wales

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The Committee is inquiring into:

- Progress against the 40 recommendations in the ‘Strengthening and Advancing Equality and Human Rights in Wales’ research report.
- The work of the Legislative Options Working Group.
- Progress on the commitment to incorporate the United Nations Convention for the Elimination of all forms of Discrimination against Women and the UN Convention on the Rights of Disabled People into Welsh law.

1. I was Principal Investigator on the Strengthening and Advancing Equality and Human Rights (SAEHR) research, and I am currently secretary to the Senedd Cross Party Group on Human Rights and a joint coordinator of the Wales Civil Society Human Rights Stakeholder Group.
2. This submission is informed by my experience on the Welsh Government coordinated Human Rights Advisory Group (HRAG) and independent Legislative Options Working Group (LOWG), my engagement with Welsh Government officials working on human rights and equality, and my involvement with civil society in Wales.

The SAEHR recommendations

3. The SAEHR research took evidence from a broad range of stakeholders, including people with lived experience of equality and human rights, as well as participants from civil society, the Welsh commissioners and the public sector. The 40 recommendations are firmly grounded in findings from this fieldwork, as well as a comprehensive literature review.
4. The volume of recommendations is consistent with evidence from the literature review on the need to adopt a wide range of measures to progress equality and human rights.¹
5. The coverage of the recommendations means I am unable to comment on progress in all areas. In tis submission I focus on how the recommendations have

¹ This was clearly evidenced by the research: see Chapter 6, and in particular paragraphs 6.18 *et seq* on mainstreaming, and paragraph 6.22 on a Human Rights Approach ‘across all sectors’.

been received, and incorporation of international human rights into Welsh Law and other aspects of a Human Rights Approach in Wales.

How the 40 recommendations have been received

6. The majority of recommendations are directed at the Welsh Government, some are aimed at others with an important role to protect and/or promote equality and human rights in Wales.²

Welsh Government

7. The Welsh Government published its response to the 40 recommendations in May 2022.³ The response adopts a 'phased and thematic' approach to reflect the breadth of the SAEHR recommendations. It identifies five action areas:

- A. Preparatory Legislative Work.
- B. Guidance.
- C. Review of the Public Sector Equality Duty.
- D. Incorporation of Human Rights into Impact Assessment.
- E. Raising Awareness.

8. The Welsh Government set up a Human Rights Advisory Group (HRAG) to monitor progress on each of the five action areas. HRAG is currently chaired by the Cabinet Secretary, Culture, Social Justice and Chief Whip. Members include civil society organisations, the Welsh commissioners, the Equality and Human Rights Commission (EHRC) and academics. HRAG receives updates from Welsh Government officials on progress under thematic areas.

9. **To assist with monitoring progress and to enhance transparency and accountability it would be helpful if HRAG meeting notes were published in accessible format in the public domain as soon as possible post-meeting.**

Public authorities

10. SAEHR recommendations 2-4 engage public authorities in Wales. It is reasonable to suggest that the public sector in Wales will look to the EHRC and/or the Welsh Government for guidance on meeting those recommendations (see below).

11. Some local authorities in Wales have already taken steps to progress human rights at local level. Examples include: the City and County of Swansea declaration of a Human Rights City, the City of Cardiff award of UNICEF Child Friendly City status, and Abertawe Bro-Morgannwg Health Board adoption of Child Rights Approach to health services. However, across the public sector in

² Table 2 in the SAEHR report indicates the organisations to which the recommendations are directed.

³ [Strengthening and advancing equality and human rights in Wales research report: Welsh Government response | GOV.WALES](#)

Wales, it is unclear how individual authorities have responded to or acted upon the recommendations. **A comprehensive review of how the priority accorded to human rights in local well-being plans would provide an indication of how relevant recommendations are being implemented by public authorities.**⁴

The Equality and Human Rights Commission

12. Recommendations 14, 15 and 21 are directed at the EHRC. They contemplate new or revised Wales-specific guidance on: the Public Sector Equality Duty, a Human Rights Approach, and Impact Assessment. The EHRC 2023 report 'Is Wales Fairer' refers to work ongoing by the Welsh Government in these areas.⁵

The Welsh commissioners

13. The SAEHR recommended (recommendation 32) that the EHRC and the Welsh Commissioners examine opportunities for intelligence sharing and joint action to hold the Welsh Government to account in relation to equality and human rights. These are operational matters on which I cannot comment.

The Public Services Ombuds, regulators and inspectorates, the Law Commission and Law Council for Wales

14. Recommendations 31, 33 and 39 cover complaints, human rights as an aspect of regulation/inspection, and promoting awareness of human rights.

15. The Welsh Government response acknowledges that recommendations 26, 30 and 39 relate to the work of the Commission on Justice (CoJ) in Wales, and states that these will be addressed in a publication setting out progress against the recommendations of the CoJ. The Welsh Government published an update on progress in February 2024.⁶ It is not within my field of expertise to comment on how the report addresses specific CoJ recommendations.

Progress on incorporation

16. It is worth recalling the key aspects of recommendations 1 and 25, these are:

- The Welsh Government should introduce primary legislation to give effect to international human rights in Welsh law through a Human Rights (Wales) Act.

⁴ Not least because the link between human rights and well-being underpins recommendation 3: which seeks to promote a 'stronger vision to advance equality and well-being' by integrating human rights standards into policy decision-making.

⁵ [Is Wales Fairer Equality and Human Rights Monitor- English- accessible PDF.pdf \(equalityhumanrights.com\)](#)

⁶ [Part 1: improving justice outcomes in Wales under the current constitutional settlement \[HTML\] | GOV.WALES](#)

- Making international human rights part of Welsh law so that they are binding on Welsh Ministers and public authorities in the exercise of devolved functions.
- Making incorporated rights enforceable by a court or tribunal.
- Establishing an independent taskforce to examine options and bring forward detailed proposals for incorporation of human rights.
- This work to be completed so that legislation can be enacted before dissolution of the current Senedd.
- Meanwhile, the Welsh Government should continue to examine options for incorporation of international human rights through sectoral legislation, but this should not serve to undermine or postpone work on wider incorporation.

17. These recommendations reflect the 'clear support' for incorporation from research participants; itself reflective of historical support for ongoing incorporation of human rights in Welsh Law (in particular, the Convention on the Rights of Disabled People (UNCRDP), and the Convention on the Elimination of Discrimination Against Women (CEDAW)).

18. The Welsh Government accepts recommendations 1 and 25 in principle and established the LOWG chaired by Charles Whitmore to examine options for legislation.

19. A number of factors have slowed progress by the LOWG. Key amongst these has been ongoing turbulence on human rights at UK level and the possibility of challenge by the UK government. Linked to this are developments in Scotland where the UK government intervened successfully in the Supreme court to challenge the lawfulness of Scottish legislation to incorporate the UN Convention on the Rights of the Child.

20. In my view, the context for legislation to incorporate human rights in Scotland differs from Wales. In particular, SAEHR recommendation 1 limits the application of incorporated rights to the exercise of devolved functions: making the threat of challenge by the UK government far less likely. Notwithstanding, LOWG members take the view that competence issues need to be fully considered to guard against the possibility of divergent views on the limitations of the current reserved model of devolution.

21. Another consideration for LOWG has been an unexpected focus on how incorporated rights might impact on specific areas of Welsh Government policy. In particular, LOWG has been asked to consider whether the objectives of legislative incorporation might be achieved through policy focussed on implementation.

22. The reasons for incorporation are comprehensively addressed in the SAEHR and remain extant.⁷ It should also be recalled that incorporation should not be viewed as a complete solution for deficits in human rights. In the SAEHR we make the point on a number of occasions that measures to implement human rights, including our recommendations, should be viewed ‘holistically’ and not as a series of stand-alone measures.⁸ **I am concerned that a natural desire to take immediate steps to implement human rights in Wales will force an artificial binary choice between policy and legislation as frameworks to underpin progress.**
23. I remain confident that the Welsh Government is committed to incorporation. This commitment was recently restated by the Cabinet Secretary, Culture and Social Justice, in response to a question raised in a letter from Sioned Williams MS in her capacity as Chair of the Senedd Cross Party Group on Human Rights.⁹ However, **it would be very welcome if the commitment to pursue legislative incorporation of human rights were to be restated as a priority by the Welsh Government.**
24. An ongoing challenge is the resource available to LOWG to complete its work, and perhaps more significantly, to complete its work expeditiously. Civil society LOWG members are volunteers who have full-time employment responsibilities. **LOWG is supported by enthusiastic, professional and increasingly well-informed officials. However, the majority of LOWG’s work is carried out by civil society volunteers. While this is essential to maintain LOWG’s independence, it is vital that the group is properly resourced to achieve its objectives.**
25. Despite challenges, LOWG has made significant progress. In particular, to develop and pilot an ‘assessment template’ to be applied to individual international human rights under consideration for incorporation by Wales-only legislation to determine whether incorporation may be achieved through the exercise of devolved legislative competence.
26. In my view, even with the facility of a template LOWG will not complete its work in time for legislation to be brought forward during the current Senedd. However, with sufficient resources LOWG could complete its work within a relatively short period of time. **Civil society members of LOWG take the view that the Welsh Government could significantly advance this work by providing funding to draw in external expertise to complete the template in relation to CEDAW, the UNCRDP and ICESCR.**

⁷ See Chapter 5, in particular paragraphs 5.5 and 5.6.

⁸ See, for example, paragraph 12.2, and references in Fn 1 above.

⁹ Letter, Chair CPGHR to Cabinet Secretary dated 8th July 2024, response from Cabinet Secretary dated 24th July 2024.

27. **It is also the view of civil society members of LOWG that the Welsh Government should set out a timescale for delivery of LOWG's report and recommendations on incorporation, and for subsequent actions by the Welsh Government (e.g. publication of a Green Paper).**

Other areas

28. Two key areas to strengthen policy frameworks to progress human rights in Wales are: a Human Rights Approach (HRA), and Impact Assessment (IA).

29. I have had some engagement with officials working on a HRA and IA and have observed progress on key aspects of developing a HRA, in particular: on a statement of commitment to human rights for use by all public authorities in Wales (recommendation 2); and, on principles to underpin a HRA (the essence of recommendations 2-4).

30. I am also aware that work is underway to embed human rights as an aspect of Strategic Integrated Impact Assessment (SIIA).

31. A key contribution to work in these areas has been the commitment and the increasing expertise of officials, as well as a willingness to work with HRAG and civil society. **In my view, it is vital that the Welsh Government continues to support officials to develop capacity (expertise), and to work in an open and constructive manner with civil society to implement a HRA and SIIA which embeds human rights.**