

HR 25

Ymchwiliad i hawliau dynol yng Nghymru

Inquiry into Human Rights in Wales

Ymateb gan: Stonewall Cymru

Response from: Stonewall Cymru

## **Background**

Stonewall Cymru is Wales's leading lesbian, gay, bi and trans (LGBT) equality charity. We were founded in 2003, and we work with businesses, public bodies, schools, the Welsh Government, the National Assembly for Wales and a wide range of partners in communities across Wales to work towards our vision of a world where lesbian, gay, bi and trans people are accepted without exception.

## **Overview**

1. Stonewall Cymru welcomes the opportunity to respond to this important consultation by the Equality, Local Government and Communities Committee on human rights in Wales.
2. We believe that the current human rights framework has been central to the progression of LGBT equality across the UK. Many are fortunate enough to have never had to worry about their rights being denied or abused. But for LGBT people who have wanted to start a family, to be recognised as who they are, to serve in the military or to access services the human rights framework has offered valuable protection.

## **The impact of the UK's withdrawal from European Union on human rights protection in Wales**

3. While existing UK equalities legislation surpasses EU requirements, it has in several areas been influenced, improved and strengthened by EU law – whether through the EU's Charter of Fundamental Rights, anti-discrimination directives or the Court of Justice of the European Union (CJEU) case law.
4. There is significant uncertainty as to how withdrawal from the EU might impact existing human rights legislation and further, how the UK Government intends to maintain and continue to strengthen legal protections to ensure full equality for LGBT people. What is clear is that as the UK will no longer be bound by EU law, human rights law would be the sole responsibility of the UK Parliament and devolved administrations.
5. As we note in paragraph 3, UK legislation, including the Equality Act 2010, often already exceeds the minimum standards set by the EU. However, in exiting the EU we lose the guarantee that EU law provides that protections and rights could never be reduced below that minimum floor in future. This presents a potential risk to the rights of LGBT people and others.
6. While the UK will continue to have a strong equality and human rights framework through the Human Rights Act and Equality Act, the EU Charter of Fundamental Rights will no longer apply, which includes specific provisions for civil, political, economic, social and cultural rights. It is therefore vital that we maintain and continue to strengthen legal protections at both a devolved and UK level.
7. Human rights are a key element of Wales's devolution framework. The Government of Wales Act (2006) stipulates that the Assembly cannot legislate in ways which are incompatible with the European Convention on Human Rights, and Welsh Ministers cannot act incompatibly with

these rights. Stonewall Cymru believes that the ECHR should continue to play this role in our devolution framework following the UK's withdrawal from the EU.

8. We welcome the commitment outlined in the joint paper by Welsh Government and Plaid Cymru, *Securing Wales' Future*, that '*[o]ur guiding principle is that leaving the EU should in no way reduce our focus on promoting equalities and challenging discrimination wherever it exists*'. It is crucial that Welsh Government continues to demonstrate this commitment through its policy initiatives and its role in the negotiations on Wales's future relationship with the EU.
9. We recognise that the process of withdrawal from the EU is likely to be long and complex. However, this should not come at the expense of progressing equality for LGBT people in Wales. We believe it is important that the additional resource required for negotiating Wales' future relationship with the EU should not prevent the Welsh Government from continuing to pursue action to improve LGBT equality in Wales.
10. Stonewall Cymru has remained neutral with regard to the UK's future relationship with the EU, but we recognise that the result of the EU referendum has led to a period of uncertainty and has highlighted worrying divisions within our diverse communities. We are particularly concerned by evidence that there has been a marked increase in reported incidents of hate crime and the effect this has on confidence and perceptions of safety among vulnerable communities. It is important that the Welsh Government and Wales's four police forces continue to work together to increase confidence in hate crime reporting and improve support for victims.
11. We believe it is vital that we do not allow the narrative on migration in the referendum campaign and since to create divisions and strengthen prejudice against difference in Wales or the rest of the UK. The National Assembly and Welsh Government should continue to make space in the coming months and years to signal its ongoing commitment to human rights and equality in its policy actions.
12. Stonewall Cymru recognises the important contribution that EU citizens living in Wales make towards our economy, public services, communities and culture. We also recognise that LGBT people from across Europe and the world may have come to Wales as a place where LGBT people benefit from legal protections and rights. We believe that these citizens should have the right to remain in Wales after the UK has left the EU, and are concerned that any requirement for them to return to their country of origin could put some LGBT people at risk.

### **The impact of the UK Government's proposal to repeal the Human Rights Act 1998 and replace it with a UK Bill of Rights**

13. The European Convention on Human Rights has provided the basis for much of the equalities legislation that protects LGBT people in the UK – including The Human Rights Act 1998. By incorporating fundamental rights within the European Convention of Human Rights, the Human Rights Act (HRA) has significantly progressed LGBT equality since its introduction.
14. Stonewall Cymru remains deeply concerned about the UK Government's intentions to repeal the Human Rights Act and to replace it with a British Bill of Rights. It is not yet clear what the

content of this Bill will be, however any dilution of existing rights would signal that an individual's rights to be treated fairly and equally in the UK are not a priority and could undermine their ability for redress. It would also send a signal to other states that the UK no longer considers equality a priority and will in turn affect our ability to influence change at an international level.

15. The HRA brought the European Convention into UK law, meaning that people could have their case heard in a UK court and gave them access to justice without the cost and structural barriers to gaining a Strasbourg hearing. In *Ghaidan v Godin-Mendoza* (2004), Godin-Mendoza was evicted from the flat he had shared with his partner for twenty-nine years after his partner died, as his tenancy agreement did not extend to same-sex couples. Had he been a woman, he would have had the right to stay in the flat indefinitely. The Supreme Court ruled in favour of Godin-Mendoza, stating that this was a violation of his right to live free from discrimination under the HRA. A similar case had previously been brought before the court and lost, just three years earlier when the HRA was not in force.
16. In 2002, a trans woman named Christine Goodwin appealed to the European Court of Human Rights that her right to a private life and right to marry had been violated. Despite living and working as woman, under the eyes of British law, Christine was still considered male. This meant that she could not draw a pension at 60 or use her birth certificate as a form of ID, with the result that she could not access benefits such as winter fuel allowance, and felt unable to report crime to the police. Significantly, the law also prevented her from marrying a man, and the ECHR ruled on this basis that her right to respect for private and family life and her right to live free from discrimination were being denied in the UK. This ruling led to the introduction of the Gender Recognition Act in 2004, which provided a whole range of rights to trans people for the first time.
17. Through the HRA, UK Courts are also held accountable by the European Court of Human Rights for decisions which impact on the human rights of its citizens. A key example is the Court's ruling in the case of *Lustig-Prean and Beckett v UK* (2000), which stated that dismissing members of the Royal Navy on the basis of their sexual orientation was a breach of human rights. Officers suspected of being LGB had previously been subjected to intrusive and humiliating interviews about their personal lives, before being dismissed. The UK Government amended the law to comply with this ruling, meaning that LGB people can serve openly in the armed forces.
18. Similarly, until 1997 there was a different age of consent for men who had sex with men. The European Court of Human Rights found this to be discriminatory and 2001 saw the equalisation of the age of consent.
19. The role of the European Court of Human Rights was critical in these major advancements for equality, and Stonewall Cymru believes that a British Bill of Rights which removed this accountability to the European Court would weaken protections for LGBT people.
20. Stonewall has welcomed the role of the Court of Justice of the European Union (CJEU) which has made several progressive rulings on LGBT equality for those whose rights have been infringed, which have embedded or furthered LGBT equality in UK law. For example, in 2008, the CJEU ruled that employer's pension provisions for a surviving partner were to include those of the same-sex. Additionally, in the 1996 case of *P & S V Cornwall County Council*, it was ruled

that protections against gender-based discrimination at work should include people who had undergone or were planning to undergo gender reassignment surgery.

21. The role of the CJEU following an exit from the EU remains uncertain, and is dependent on the form of relationship the UK negotiates after exiting the EU and how it chooses to legislate during this process. Key to this will be whether pre-existing rulings apply as binding or as persuasive authority within UK Courts. The former would better protect the progress and existing rights on LGBT equality and we believe should be the path taken by the UK Government.
22. We believe that human rights should remain a central part of Wales's devolution framework. Welsh Government and the National Assembly for Wales should make representations to the UK Government opposing the repeal of the Human Rights Act, and in the event of its repeal, should seek to devolve appropriate powers in order to ensure a continued robust human rights framework for Wales.

### **Public perceptions about human rights in Wales, in particular how understandable and relevant they are to Welsh people**

23. There are ongoing issues concerning lack of knowledge about the meaning of human rights and how human rights protections function in Wales. This can lead to people not receiving the benefits of protections to which they are entitled. For example, through our work with schools and employers across Wales, we know that people are often unfamiliar with the Equality Act (2010) even when it puts specific requirements on people in their professional roles.
24. Particularly relevant in the current political context is that awareness of the real and tangible advancements that that people have benefited from as a result of the Human Rights Act, the European Convention on Human Rights and the EU Charter of Fundamental Rights appears to be low, and this can skew public perceptions of the value of human rights legislation.
25. We believe that Welsh Government, Assembly Members, public bodies and civil society organisations should all play a role in tackling these issues around public perceptions and awareness of human rights in Wales.

#### **For further information, please contact:**

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