

Cynulliad Cenedlaethol Cymru / National Assembly for Wales

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol a'r Pwyllgor Materion Allanol a Deddfwriaeth Ychwanegol / The Constitutional and Legislative Affairs Committee and the External Affairs and Additional Legislation Committee

Ymgynghoriad ar Fil yr Undeb Ewropeaidd (Ymadael) a'i oblygiadau i Gymru / The European Union (Withdrawal) Bill and its implications for Wales

EUWB 16

Ymateb gan Blant yng Nghymru / Evidence from Children in Wales

Children in Wales is the national umbrella organisation in Wales for children and young people's issues, bringing organisations and individuals from all disciplines and sectors together to speak with one voice, to exchange knowledge and practice, and to provide opportunities to enhance policy and practice through shared learning. One of our core aims is to make the United Nations Convention on the Rights of the Child (UNCRC) a reality in Wales. Children in Wales campaigns for sustainable quality services for all children and young people, with special attention for children in need and works to ensure children and young people have a voice in issues that affect them. Children in Wales facilitates the voice of children and young people to influence government policy making through its 'Cymru Ifanc/Young Wales' programme of work.

For further information on the work of Children in Wales, please see www.childreninwales.org.uk and www.youngwales.wales

1. Our Response

Children in Wales welcomes the opportunity to aid the Committee's joint inquiry into the European Union (Withdrawal) Bill and its implications for Wales. This response is informed by our evolving programme of work which is focused on the potential impact of Brexit on the rights of children and young

people in Wales, and which is being developed in partnership with key stakeholders in Wales, and informed by parallel activity with our colleagues in other child rights alliances across the UK and in Europe through our membership of Eurochild.

1.1 Our statement issued in the aftermath of the EU Referendum election last year stressed the importance of safeguarding the existing rights of children and young people and of involving them in helping to shape our countries future. On the 19th June 2017, the day in which the UK Government opened dialogue with the European Union, we set out four headline calls for action, developed in partnership with other UK and European child rights alliances, representing over 1800 organisations across Europe.

1.2 In the context of this consultation, this included

- Providing assurances that there will be no roll back on existing rights of children and young people in the UK and across the EU
- Developing a mechanism to listen to children and young people as part of the Brexit negotiation process

1.3 Our priorities followed the report of a parliamentary joint committee of human rights which expressed concerns over the approach to protecting individuals rights post withdrawal¹, and our written input into that inquiry and that of the European Scrutiny Committee, as well as the NAFW EAAL Committee inquiry into the implications for Wales of Britain exiting the EU.

1.4 The UN in their recent scrutiny of the UK and devolved governments progress in implementing their obligations under human rights treaties through the Universal Periodic Review process, recommended that human rights achievement are preserved in the context of the withdrawal from the EU

¹ <https://publications.parliament.uk/pa/jt201617/jtselect/jtrights/695/695.pdf>

and that there is no weakening of human rights protection from any changes in national legislation.

1.5 The UN has been clear in its General Comment no. 5 that Article 4 of the UNCRC requires State Parties to scrutinize decisions against their impact on children and the standards set out in the CRC.

1.6 There must be no weakening, regression or dilution of the rights children currently enjoy through our membership of the EU as EU laws are transferred into domestic law.

2. General Comments

The European Union (Withdrawal) Bill will convert European Union (EU) law at the point in which the UK departs the EU into domestic law. The Bill presents many implications for the protection of the human rights of children in Wales within the broader context of Brexit, current and future devolved settlement and the UK's anticipated withdrawal from the European Union in March 2019.

2.1 Protecting the existing human rights of children

All existing EU legislative protections for the human rights of children must be protected and incorporated into UK law following withdrawal. There must not be any dilution or changes to existing rights protections which have a direct or indirect impact on children in Wales.

2.1.1 Since devolution, the National Assembly for Wales and successive Welsh Governments have made great strides in championing, protecting and further enhancing children's rights through Wales specific legislation. The Rights of Children and Young Persons (Wales) Measure 2011 provides that Welsh Ministers have due regard to the United Nations Convention on the Rights of the Child (UNCRC) when exercising their functions, with similar duties placed

on relevant partners at a local level through the Social Services and Well-being Act 2014.

2.1.2 Withdrawal from the European Union must not work to undermine this progress.

2.1.3 Meticulous scrutiny by the National Assembly for Wales will be required to ensure that all human rights protections for children are incorporated in full. This should include applicable EU Regulations, Directives and Treaties, with EU Case Law having the same legal binding as legal decision in domestic courts upon withdrawal. We welcome the commitment in the White Paper to preserve existing EU Case Law. However, consideration will need to be given to how UK courts consider developments in the EU post 2019 when existing ties will be broken.

2.1.4 It is accepted that some degree of adaption will be necessary in instances where there is reference made to an institution of the EU or to the role or function of EU member states. Wales will wish to be involved in shaping any amendment required.

2.1.5 Where a matter is within the competency of the National Assembly, any issues should be resolved through secondary legislation. It is essential that there is effective dialogue with agreement between both Governments around such transition arrangements prior to withdrawal to help plan and avoid any gaps or delay.

2.1.6 In order to fully protect existing safeguards for the protection of the human rights of children, we would not wish to see any changes to existing laws by the UK or devolved Government, other than in the limited circumstances as described above.

2.2 Human rights of children within the EU Charter of Fundamental Rights

The Charter is viewed as the overarching framework for the full range of civil, political, economic, cultural and social rights of all people in the EU and has been in place since December 2009. Article 24 of the Charter guarantees the protection of children's rights by EU institutions, as well as by EU member states when they implement EU law.

2.2.1 The UK Government has rejected calls to incorporate the rights provisions set out in the EU Charter of Fundamental Rights ('Charter') believing that withdrawal from the Charter will not affect the substantive rights already in place which citizens of the UK already benefit from. UK Government make reference to a number of the Charter rights being located in UN treaties which the UK Government have ratified.

2.2.2 Yet the repeated reluctance of successive UK Governments to fully incorporate UN human rights treaties, such as the UNCRC into domestic law, in spite of successive UN recommendations, has resulted in children not having an equivalent legislative protection under UK law. The UNCRC provides special human rights protection for children 0–17 which State Parties are expected to implement.

2.2.3 To ensure that the substantive rights within the Charter are protected for children, the UNCRC which has been ratified by the UK Government, must now be brought fully into UK law. The incorporation of other Conventions, such as the UNCRPD given its impact on children, must also be worked towards.

2.2.4 Assembly members will wish to consider the consequence of our withdrawal from the Charter and will need to have sight of a comprehensive Child Rights Impact Assessment of the effect for children in Wales. Welsh

legislation already requires an assessment to be made and any changes as a result of the withdrawal from the EU will need to go through the same due diligence process.

2.3 Devolved powers

We are in agreement with the Llywydd that Brexit will result in fundamental changes to the way the UK is governed and that there should be no diminution of the Assembly's competence and freedom to legislate. Brexit must not undermine devolution. Concerns have been raised over any centralization of power by Westminster post withdrawal. Regardless of the likelihood or not of this happening, this will be something Assembly Members will need to be mindful of, particularly in light of the new reserved powers model coming into force through the Wales Act 2017 from next April.

2.3.1 Wales has a strong due regard duty in place under the Rights of Children and Young Persons (Wales) Measure 2011 and we must ensure that we build upon existing powers in areas of future competency.

2.3.2 There are many areas protecting children's rights which are matters for the UK Government yet directly impact on children living in and from Wales, for example in respect of child poverty and criminal justice. Assembly Members will need to be alert to this as EU laws are transferred to Westminster to ensure that current safeguards are not lost should the Charter be rejected and the UNCRC not brought into UK law.

2.3.3 Given the volume of Brexit related legislation, it will be necessary for sufficient Assembly time, resources and capacity to be made available for appropriate scrutiny arrangement to take place. Robust information sharing processes and co-operation must be established and sustained between the

UK, Welsh and NAFW. Agreement between Wales and the UK must be reached sooner rather than later of how this will happen

2.4 Children's voices must be heard

Children and young people will be the most impacted in the long term by the outcome of the decision to leave the EU, yet have had very little opportunity to have their opinions heard on the issues by decision-makers in Westminster. The process for the engagement of children and young people on matters related to EU withdrawal has clearly been found wanting.

2.4.1 The Welsh and UK administrations, as well as the EU leaders, all have a role to play in ensuring that the rights of children are prioritised at the negotiating table and that there are appropriate mechanisms in place to capture and share their concerns and opinions.

2.4.2 Children in Wales will continue to call for action to be taken to bring children into the heart of negotiations on Brexit.

3. End comments

On exit day, we have to ensure that our constitutional and legal frameworks fully protect children and that we do not fall behind our European neighbours when it comes to the human rights of children and other important social protections.

3.1 Given the many positive developments and safeguards the EU has put in place for children and young people, we urge both Committee's to ensure that **additional scrutiny** is given to any changes which will have an impact on under 18s.