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Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA-(P) /JJ/4715/17

John Griffiths AM
Chair
Equality, Local Government and Communities Committee,
National Assembly for Wales

24 January 2018

Dear John,

Thank you for your letter of 12 December 2017 regarding the Equality, Local Government and Communities Committee's inquiry into human rights in Wales.

I welcome the Inquiry and the Committee's decision to narrow its scope to focus on the impact of Brexit on human rights in Wales. In what remains an uncertain time for human rights in the UK, it is vital we remain vigilant so that protections and standards which benefit the people living in Wales are not weakened.

The Welsh Government has been clear in its position that the UK's withdrawal from the EU should in no way lead to a dilution in human rights protections. Our consistent position is that the European Union (Withdrawal) Bill should preserve the Charter of Fundamental Rights as part of the body of law derived from the EU which is to form part of domestic law on and after exit day.

Thank you for the opportunity to contribute to the Committee's inquiry. Please see the attached response to the issues raised in your letter.

Yours sincerely,

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Leader of the House and Chief Whip

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Equality, Local Government and Communities Committee

Inquiry into Human Rights in Wales

Welsh Government Evidence Paper

Introduction

The Welsh Government welcomes this inquiry into human rights in Wales. We remain committed to the promotion and protection of the human rights of all people in Wales. Human rights are embedded in our founding legislation and they rightfully continue to influence our actions and decisions.

We also welcome the decision to narrow the focus of the inquiry to the impact of Brexit, as it allows the Committee to consider a pressing issue for human rights practitioners and the general public in Wales and across the UK.

Due to the overlapping nature of the Committee's requests, issues 1 and 2 are addressed together, and similarly issues 3 and 4.

1. Any analysis that is available on the current levels [of] EU funding that currently fund projects relating to human rights in Wales;

2. Information on the work done to date to consider alternative sources of funding for these projects

1. Wales currently receives, £370m a year from the EU to invest in our 2014 -2020 European Structural and Investment Fund Programmes. This includes the Structural Funds (ERDF and ESF), the Rural Development Programme (EAFRD) and the Maritime and Fisheries fund (EMFF).
2. Equal Opportunities and Gender mainstreaming (EO&GM) is one of three cross-cutting themes integrated into the 2014-2020 Programmes. Equality is a basic principle of human rights. The General Regulations governing the European Programmes stipulate that all operations funded through the Common Strategic Framework, must integrate Article 7 - Promotion of equality between men and women and non-discrimination. The Regulation states that equality between men and women and the integration of gender perspective are to be taken into account and promoted throughout the preparation and implementation of programmes, including in relation to monitoring, reporting and evaluation.
3. The Regulation also calls for appropriate steps to be taken to prevent any discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation during the preparation and implementation of

programmes. In particular, accessibility for disabled people shall be taken into account throughout the preparation and implementation of programmes.

4. The European Social Fund (ESF) has had a significant positive impact in supporting some key groups with protected characteristics in Wales and the 2014-2020 ESF programmes are building on the success of the previous funding round. The programmes in Wales have been developed around three priority areas.
5. Tackling Poverty through Sustainable Employment priority is the main lever ESF can bring to bear on tackling poverty, focusing on support for those who are economically inactive or unemployed, with work limiting health conditions or disabilities to access or return to sustainable employment.
6. The Skills for Growth priority is concerned with increasing the skills level, including work relevant skills of those in the workforce, supporting research and innovation activities with graduates and improving the position of women in the labour market.
7. The Youth Unemployment Attainment priority aims to reduce the number of young people at risk of NEET (Not in Education, Employment or Training), improve attainment levels in STEM (Science, Technology, Engineering and Mathematics) and up skill the Early Years and Childcare workforce in West Wales and the Valleys. The priority takes a focussed approach to supporting young people who are NEET and sit within specific target groups including lone parents, young people with disabilities and work limiting health conditions and those experiencing social or digital exclusion.
8. In addition, the West Wales and the Valleys Operational Programme includes a specific objective to reduce underemployment or absence rates for individuals with barriers to sustainable employment which might include disabilities or work limiting health conditions. These include positive actions with employers to encourage reasonable accommodation in the workplace.
9. Challenging gender inequality, both in the development of skills and in tackling the under-representation of women in key sectors, is a key issue for the European Social Fund (ESF) in Wales. Considering the impact on gender at every stage and at all levels of intervention, even when the issues seem gender neutral, allows for opportunities to be taken up and maximized upon.
10. The promotion of gender equality is also the focus of a dedicated funding stream within the ESF programmes for both West Wales and the Valleys and East Wales. The Agile Nation 2 project is supported through this funding and aims to promote gender equality and support career advancement through

targeted support for female employees and through working with employers on improvements in Equality and Diversity Strategies including flexible working initiatives.

11. All projects seeking ESF support are required to establish operational level targets, at a minimum, within the following categories:
 - Women
 - Age (over 54 with the exception of P3 Youth Attainment)
 - Care / childcare responsibilities
 - Disability
 - Work Limiting Health Condition
 - Migrant EU (Includes Roma), Migrant non EU
12. Projects funded are expected to clearly articulate specific actions to address the needs of the target groups and outcomes are monitored during regular and ongoing reviews and through quarterly claims. If an individual project does not meet its specific targets, then the managing authority WEFO can withhold or withdraw part or all of the funding if necessary.
13. To date, (up to 31 December 2017) the ESF programmes have approved 47 projects in the West Wales and the Valleys area with a total investment of over £841million (£543m European Social Fund). Thirty four projects have been approved in East Wales with a total investment of over £351m (£107m European Social Fund).
14. Alongside the support through the ESF programmes, the ERDF operational programmes support the agenda through capital projects which are DDA compliant or better, transport projects which assist access especially for those reliant on public transport and projects which enable communication functions e.g. Broadband.
15. Following the EU Referendum outcome, the Welsh Government sought a cast iron guarantee from the UK Government that Wales will not lose a penny of the funding currently received from the EU.
16. In December 2017 the Welsh Government published a policy paper 'Regional Investment in Wales after Brexit'¹, which marks the first step in the process of designing a new approach to regional investment policy in Wales.
17. The paper sets out the case for continued funding Post-Brexit, which reflects relative need and is vital to invest in priorities which strengthen people and places across Wales. The EU programmes leave a positive and valuable legacy

¹ [Regional Investment in Wales After Brexit](#) - December 2017

in Wales, the absence of replacement funding in full would have an adverse impact on the interventions currently undertaken to address the continuing economic and social needs, particularly for those in our most deprived areas

18. The strong emphasis which has been placed on the cross cutting themes in the Structural Funds programmes, has helped to maximise opportunities, ensure existing legislation and WG policy is being fully met and support good practice across a diverse range of operations.

3. An update on negotiations with the UK Government, particularly relating to human rights and equality; and

4. Information on any discussions you have had with the EU about the protection of human rights during and after Brexit.

19. The EU Charter of Fundamental Rights is currently an important part of the frameworks of legal protections applicable in the UK. It protects fundamental rights such as the right to equality, the protection of personal data, and the prohibition of slavery and forced labour. The UK Government has said the EU Charter of Fundamental Rights will not be incorporated into UK domestic law as part of the European Union (Withdrawal) Bill and this is provided for in clause 5(4) of the Bill.²

20. In *Securing Wales' Future*, published in January 2017, the Welsh Government made clear: "In leaving the EU, we need to be vigilant and insistent that protections and standards which benefit our citizens and the well-being of society as a whole are not eroded".³

21. The Welsh Government has been clear that the UK's withdrawal from the EU should in no way lead to a dilution in human rights protections. Our consistent position is that the European Union (Withdrawal) Bill should preserve the EU Charter of Fundamental Rights as part of the body of law derived from the EU which is to form part of domestic law on and after exit day.

22. On 26 October 2017, when appearing before the Commons' Exiting the EU Select Committee, Steve Baker MP, Parliamentary Under-Secretary of State at Department for Exiting the European Union, committed to publishing a '*detailed memorandum of precisely how every article of the Charter of Fundamental Rights is reflected in existing UK law, or UK law after the Withdrawal Bill has gone through*'.

² [European Union \(Withdrawal\) Bill](#) - Page 3

³ [Securing Wales' Future](#) - January 2017 - Page 8

23. This paper, “Charter of Fundamental Rights of the EU Right by Right Analysis”, was published by the UK Government on 5 December 2017. The paper sets out the UK Government’s analysis of the effect of the treatment of fundamental rights in the EU (Withdrawal) Bill.

24. The UK Government’s position can be summarised as follows:

- The UK Government has chosen not to incorporate the Charter into domestic law on the basis that the Charter does not create any new rights, freedoms or principles but instead catalogues the rights and principles already protected by EU law.
- The UK Government notes that the Charter is only currently applicable to Member States when they are ‘acting within the scope of EU law’.
- The UK Government argues that the removal of the Charter will not affect the rights that individuals already benefit from as the Charter is not the source of these rights.

25. The document states that the UK Government is “*willing to look again at some of the technical detail about how the Bill deals with the general principles of EU law*”⁴ – which we understand would include the protection of fundamental rights. We will carefully scrutinise any related proposals coming from the UK Government.

26. The Right by Right Analysis document suggests that the Human Rights Act 1998 and European Convention on Human Rights will be integral in ensuring the continued protection of the Charter rights following the withdrawal from the EU. However since 2015, members of the UK Government have discussed the intention to the repeal of the Human Rights Act 1998, and derogate from the European Convention on Human Rights.⁵

27. On 18 May 2016, the Queen announced at the state opening of Parliament that the UK Government would bring forward proposals for a Bill of Rights to replace the Human Rights Act. This followed a similar announcement from the Queen during the 2015 state opening of Parliament.

28. Since 2015 the UK Government has not been able to provide any concrete information on what changes a Bill of Rights would introduce. This lack of communication is creating uncertainty in what is already an unprecedented period for the UK. There are concerns that the proposed reform could lead to a

⁴ [Charter of Fundamental Rights of the EU Right by Right Analysis](#) – December 2017- Page 5

⁵ [Theresa May: Human rights laws could change for terror fight: BBC News](#) - 7 June 2017

weakening or regression on some rights, as reflected in the written evidence submitted as part of this ELGC Committee inquiry.⁶

29. The UK Government's plans to reform human rights are currently on hold. The Conservative 2017 General Election manifesto, *Forward Together*, stated: '*We will not repeal or replace the Human Rights Act while the process of Brexit is underway but we will consider our human rights legal framework when the process of leaving the EU concludes. We will remain signatories to the European Convention on Human Rights for the duration of the next parliament*'.⁷
30. This statement does not offer any guarantees over the long term future of the either the Human Rights Act 1998 or the UK's involvement in the European Convention on Human Rights. If the Charter is not incorporated into domestic law, the UK Government could potentially repeal the Human Rights Act 1998, or alter the UK's involvement in the European Convention on Human Rights following the withdrawal from the EU, resulting in the loss of some of the rights currently protected by the Charter, to the extent that those rights are also protected by the Human Rights Act 1998 and the European Convention on Human Rights.
31. The First Minister and Cabinet Secretary for Finance have met with representatives from the EU Commission and Parliament. During their visits they have discussed the Welsh Government's White Paper which sets out our position on a number of issues including the importance of maintaining human rights protections.
32. The Welsh Government is a member of the Joint Ministerial Committee (EU Negotiations) (JMC(EN)) which discusses each government's (UK, Wales, Scotland and Northern Ireland) requirements of the future relationship with the EU. Meetings have been taking place since November 2016; the sixth and most recent on 12 December 2017. The Cabinet Secretary for Finance published a Written Statement about this meeting on the Welsh Government website.⁸
33. Following the JMC (EN) meeting of 12 December 2017, the Cabinet Secretary for Finance wrote to the UK Government to urge it to consider how the principles of Dublin III Regulation⁹ can be incorporated into UK law following the withdrawal from the EU. The Dublin III Regulation provides a legal route for asylum seeking children who have fled to European Member States to be reunited with their families in the UK. This is a crucially important mechanism to safeguard children from smugglers and traffickers by providing safe passage.

⁶ [Inquiry into Human Rights in Wales: National Assembly for Wales](#) - 2017

⁷ [Forward, Together: The Conservative Manifesto](#) - 2017- Page 37

⁸ [Written Statement JMC \(EN\) - Welsh Government](#) - 13 December 2017

⁹ [EUR Lex Dublin III Regulation](#)