

On 5 April we wrote to the First Minister, together with the Chair of the External Affairs and Additional Legislation Committee, in relation to the equality and human rights implications of Brexit. On 16 May the First Minister responded to our letter. We circulated the response to relevant stakeholders to seek their views, which are enclosed.

We received responses from:

- Children in Wales
- Disability Wales
- Simon Hoffman
- The Equality and Human Rights Commission



John Griffiths AM
Chair
Equalities, Local Government & Communities Committee

David Rees AM
Chair
External Affairs & Additional Legislation Committee

16 May 2018

Dear John and David

Equality and human rights implications of Brexit

I am writing in response to your joint letter of 5 April. I welcome the work that your Committees have undertaken on the equality and human rights implications of Brexit in Wales. The Welsh Government has been clear that UK withdrawal from the EU should in no way lead to a dilution in equalities and human rights protections, or indeed any other social, environmental or employment protections.

Detailed responses to the questions and recommendations are set out below.

Committees' question: We welcome the inclusion of section 7 in the Law Derived from the European Union (Wales) Bill, which would require EU-derived Welsh law to be interpreted in line with the Charter of Fundamental Rights. Should this Bill not proceed for any reason, we would like the Welsh Government to set out how it will ensure that Charter rights continue to apply in Wales.

The Law Derived from the European Union (Wales) Bill ("the LDEU Bill") has been referred to the Supreme Court by the Attorney General. However, following the Welsh Government successfully securing changes to the UK Government EU (Withdrawal) Bill that protects devolution, it is the expectation that the Attorney General will withdraw his reference. This will enable the LDEU Bill to receive Royal Assent so that the Welsh Ministers can initiate steps to secure the repeal of what will then be the LDEU Act. As a result of these developments, it is the expectation that the UK Government EU (Withdrawal) Bill will apply in Wales going forward.

Our objective is to ensure that Brexit does not result in any dilution of rights and the current position. We therefore support the inclusion of recent non-government amendments to the UK Government EU (Withdrawal) Bill that were passed by the Lords which provide for the

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

English Enquiry Line 0300 060 3300
Llinell Ymholiadau Cymraeg 0300 060 4400
YP.PrifWeinidog@llyw.cymru PS.FirstMinister@gov.wales

Charter of Fundamental Rights to continue to apply. We currently await sight of the UK Government response in the House of Commons and hope that the UK will accept them which would allow the inclusion of these amendments within the Bill thereby ensuring status quo in respect of the application of the Charter of Fundamental Rights in Wales.

In addition, we have also begun discussions with UK Government, via the Government Equality Office ('GEO', now within the Home Office) about entering into a Political Agreement which would endorse the existing framework of equal treatment legislation in force that applies in our nations, namely the Equality Acts 2006 and 2010 and secondary legislation made under those Acts. Our objective is to ensure that no legislative changes will be made that would reduce the existing substantive protections provided by that legislation.

Committees' question: We share the views of our witnesses that the Shared Prosperity Fund proposed by the UK Government should be administered by the Welsh Government in relation to Wales to ensure that it is sensitive to local needs and inequalities. We also think that the Fund should be targeted at tackling inequality and socio-economic disadvantage.

In December 2017 we published a policy paper *Regional Investment in Wales after Brexit*, which reiterated our view that replacement funding for the European Structural and Investment funds should be allocated to, and managed entirely by, the Welsh Government. We have also undertaken an engagement exercise on the policy paper (closed 23 March) to inform future development work and will publish an independent analysis of those findings in the summer. This will continue to strengthen the evidence of demand for a needs-based, made-in-Wales policy in our discussions with the UK Government.

We continue to press the UK Government to confirm devolution will be respected in future arrangements, and that the Welsh Government will retain the ability to tailor future funding to our specific policy and legislative framework. Evidence from National Assembly for Wales Committees is also being presented to the UK Government to emphasise these calls are not just coming from Welsh Government.

We agree that only a Welsh designed approach will be sensitive to local needs and inequalities and the Welsh Government is committed to working in close partnership with communities, businesses and organisations across Wales to deliver this. We have also been clear that we need to better incorporate social and environmental outcomes in any future model, building on the *Wellbeing of Future Generations Act*, alongside more traditional economic outcomes.

Committees' recommendation: We recommend that the Welsh Government should outline its latest position on the introduction of the socio-economic duty, given that the power to do so will be devolved under the new settlement.

The socio-economic duty is a duty on public authorities to address the inequality that arises from socio-economic disadvantage, and to place this objective at the core of their policies and programmes. The duty is included in Part 1 of the Equality Act 2010 but this has not been used anywhere in the UK, until recently in Scotland. The power to enact the duty in Wales has been devolved with effect from 1st April.

In Wales, the Well-being of Future Generations (Wales) Act 2015 ('the Act') is our key instrument in the area of addressing socio-economic inequality particularly the well-being goal of a more equal Wales. This places a legal duty on specified public bodies to set and publish well-being objectives that are designed to maximise its contribution to achieving each of the well-being goals, including a more equal Wales. The legislation expressly provides for this as a society that enables people to fulfil their potential no matter what their

background or circumstances including their socio economic background and circumstances. Given that we have this positive and progressive legal duty in Wales which addresses socio economic inequality we have not pressed the UK Government recently to commence the duty.

Following public consultation in 2017, the Scottish Government has commenced the socio-economic duty, to be known as the Fairer Scotland Duty. In light of the Scottish Government's decision to implement the socio-economic duty and the opportunity to revisit this area with the new powers provided by the Wales Act, we will be reviewing our position in the context of our Rapid Review of Gender Equality in Wales and exploring the matters that informed the Scottish Government's decision to implement the duty. We will need to consider carefully whether it would be right to impose additional duties and reporting responsibilities on Welsh Public Bodies particularly when we have the ground breaking legal duty within the Well-being of Future Generations (Wales) Act 2015. We will continue to engage with the Equality and Human Rights Commission as we take this work forward.

Committees recommendation: We also recommend that the Welsh Government should give consideration to the further incorporation of international human rights treaties in Wales, in the same manner as the Rights of Children and Young Persons Measure (for example, the International Covenant on Economic, Social and Cultural Rights (ICESCR), or the Convention on the Rights of Persons with Disabilities (CRPD).

The Welsh Government will continue to have high regard for international treaties and UN Conventions to which the United Kingdom is signatory, and will seek to reflect both the spirit and the substance of each convention across its policies and programme as appropriate. The actions of the Welsh Government must be compatible with its international obligations, as set out in Section 82 of the Government of Wales Act 2006, including the seven UN Conventions signed and ratified by the UK State party.

We will also continue to monitor the effectiveness of this approach in detail, contribute to progress reports and periodic reviews with Welsh evidence and examples, engage with the relevant UN Committees at periodic examinations in Geneva, and consider how we take forward the recommendations which follow. The Welsh Government works closely with the UK Government and other devolved administrations to ensure Wales is fully represented and engaged with every stage of the reporting process.

The Well-being of Future Generations (Wales) Act will remain our principle legislative instrument in this regard, given that the Well-being goals set out in that Act are wide-ranging in scope and provide the best framework to enable coordinated action to ensure that human rights are safeguarded in Wales.

Committees' question: We call on the Welsh Government to confirm that the intention of these provisions (section 3(2) and section 4(2)) is to ensure that existing rights and obligations (particularly equality and human rights standards in devolved competence) are not eroded or removed as a result of Brexit - either by the UK Government acting under the EU (Withdrawal) Bill, or by Welsh Ministers acting under the Assembly Bill.

Since your joint letter of 5 April, it has been agreed that the Welsh Government will take steps to repeal the Law Derived from the European Union (Wales) Bill, once enacted, pursuant to an agreement with the UK Government on the European Union (Withdrawal) Bill. As a result, the focus of this response will now be on the powers contained in the UK Bill.

The Welsh Government has a strong record for legislating to protect equalities and human rights standards in Wales. This is evident from examples such as the Rights of Children and Young Persons (Wales) Measure 2011 and the Well-being of Future Generations Act 2015. We intend to continue this Government's commitment to these important issues as we undertake the task of implementing the EU (Withdrawal) Bill.

We note with interest, and support, the principles put forward in non-government amendments passed in the House of Lords to the UK Bill which limit the scope of powers to modify EU law to what is necessary.

Committees' recommendation: Should the Bill be enacted, we ask the Welsh Government to use this power to prioritise equality and human rights protections (as far as is possible). We also reiterate the ELGC Committee's call for the Welsh Government to "establish a formal mechanism to track future developments in human rights and equality in the EU to ensure that Welsh citizens benefit from the same level of protection as EU citizens". We believe that such a mechanism should be publicly available.

The intention is that the LDEU Bill will soon be repealed and therefore the power in that Bill to make subordinate legislation to keep pace with EU law, including those relating to equality and human rights, will not be available. However, other legislative mechanisms exist, including primary legislation passed by the Assembly, to ensure that Brexit does not result in the people of Wales seeing their rights fall behind those of other European countries.

The Welsh Government will continue to work with the UK's Equality and Human Rights Commission (EHRC) to monitor the progress of human rights and equality in Wales, taking note of developments in the EU and elsewhere. The Commission is best placed to assess developments in this regard. The Welsh Government works closely with their Wales Committee and Office to consider the position in relation to Wales.

The EHRC's five point plan includes action to ensure the UK is a global leader on equality and human rights by ensuring our laws and policy keep pace with future equality and human rights standards coming from the EU, after we exit, such as the EU Accessibility Act, as well as other comparator countries.

Committees question: We request the Welsh Government to outline its views on: what assessment it has made as to the possibility of introducing a form of freestanding right to equality in Wales, generally or within particular sectors or contexts, and

the UK Government's proposal to establish a non-legislative framework to deal with EU-based equal treatment law across devolved and non-devolved areas, and how it will approach discussions with the UK Government on that subject.

Firm commitment to promoting equality and safeguarding human rights has been built into the DNA of the Welsh Government since devolution. This has been clearly reflected in successive Government of Wales Acts, up to and including the Wales Act 2017. It is also reflected in a wide range of other Welsh legislation as well as the policies and programme of Welsh Government across all devolved areas.

Specifically, we have the Welsh public sector equality duty which enables the better performance of the public sector equality duty in Wales. The specific Welsh duties are progressive and expansive, requiring for example, the publication of equality objectives, engagement, impact assessments, strategic equality plans together with pay and action

plans and gender pay difference. These Welsh specific duties seek to eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Equality Act 2010. In addition the Welsh specific duties advance equality of opportunity between persons who share a relevant protected characteristics and those who do not and also foster good relations between persons who share a relevant protected characteristic and those who do not.

In Wales, we also have the Well-being of Future Generation (Wales) Act 2015 (“the 2015 Act”) which further reinforces our resolve to maintain and drive forward our commitment to equality placing a legal duty on specified public bodies to set and publish well-being objectives that are designed to maximise its contribution to achieving each of the well-being goals, including a more equal Wales. The 2015 Act expressly provides for this as a society that enables people to fulfil their potential no matter what their background or circumstances, which includes their socio economic background and circumstances. This ground breaking legal duty places Wales in a unique position and further demonstrates the commitment to ensuring equality in Wales. In light of this, there are no plans at present to provide for an additional, freestanding right to equality which might duplicate or cut across existing provision.

As indicated above, we have begun discussions with UK Government, via the Government Equality Office (GEO, now within the Home Office) about entering into a Political Agreement which would endorse the existing framework of equal treatment legislation in force that applies in our nations, namely the Equality Acts 2006 and 2010 and secondary legislation made under those Acts. Our objective is to ensure that no legislative changes will be made that would reduce the existing substantive protections provided by that legislation.

Committees’ recommendation: We recommend that in its discussions with the UK Government, the Welsh Government seeks a commitment from the UK Government that it will not enter into trade agreements whose implementation would erode any part of the Equality Act or Modern Slavery Act.

We have been clear in our recent paper *Trade Policy: the issues for Wales* that we believe in a fair and effective system of social protection to help people when they need it and that trade policy should support not undermine our social model. Furthermore we have called for the development of overarching principles for trade policy which include maintaining important environmental, economic and social protections, supporting well-being for all in line with the Well-being of Future Generations Act, recognising our responsibilities on the world stage and promoting fair and ethical trade.

Committees’ Recommendation: We recommend that the Welsh Government update the Community Cohesion Plan before summer 2018 to take account of recent rises in hate crime and new challenges to community cohesion in Wales.

The Welsh Government plans to publish the community cohesion plan and tackling hate crimes delivery plan. We recently updated our community cohesion plan to reflect the spike in hate crime as a result of Brexit.

We use our working document when working with partners, and this has enabled us to focus on a number of priority areas in the last few months. For example:

- Working with a wide range of partners to develop our Equality and Inclusion communications network, to try to increase our collective impact in countering negative rhetoric.

- Working with Police Forces and Cardiff University on an exciting project to develop and improve community tension monitoring systems that incorporate multi-agency working.
- Working with education colleagues as they update their Respecting Others anti-bullying guidance so that it supports teachers to be more confident in handling cases of hate-related bullying in schools.
- Working with members of the Hate Crime Criminal Justice Board Cymru to drive forward work to tackle hate crimes, for example this year we are focusing on “attrition rates” (the pathway and drop-off of cases between first report, through police handling, to prosecution), disability hate crime, and also age-related and misogyny hate crime.

The Welsh Government funds eight Regional Community Cohesion Coordinators (RCCCs) to facilitate regional working. The RCCCs are monitored against their delivery of actions in the working document. These actions are grouped under four objectives:

- Work at a strategic level to break down barriers to inclusion and integration across marginalised groups
- Work at a local level to break down barriers to inclusion and integration for particular groups and communities
- Supporting migrants, refugees and asylum seekers and settled communities during the integration process
- Supporting communities in preventing hostility and extremism and managing consequences

Yours sincerely

A handwritten signature in black ink, appearing to read 'Carwyn Jones', written in a cursive style.

CARWYN JONES



Children in Wales Plant yng Nghymru

Equality, Local Government and Communities Committee and the External Affairs and Additional Legislation Committee joint inquiry on the equality and human rights implications of Brexit.

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

Our Response

Children in Wales welcomes the opportunity to aid the Committee's joint inquiry on the equality and human rights implications of Brexit by providing comment to the First Minister's response to the Committee's recommendations. Our 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 delivered 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.

The 5 guiding overarching principles for our present **Brexit and Children Rights** programme of work centres on the objective of securing the best possible outcomes for children, young people and the services which support them. They are -

- That there is no roll back on the existing rights of children and young people in Wales as part of the Brexit negotiation process
- That there is no roll back on the existing rights of children and young people in Wales following the date of departure (including within any 'transition period')

- That children and young people have mechanisms in place for their voices to be heard as part of the Brexit process
- That opportunities are in place for the engagement of the children's workforce and services which work to support children, young people and their families in Wales
- That full compliance with the UNCRC is maintained by all decision makers throughout the whole process

Drawing on preliminary research, advocacy statements and consultation responses amongst key stakeholders, Children in Wales in partnership with the Observatory on Human Rights of Children in Swansea University has produced a joint briefing paper¹, which focuses on the emerging key thematic priorities for children and young people in Wales arising from EU withdrawal.

The paper considered emerging concerns in relation to the following key priority areas:

- The erosion of guarantees of fundamental rights for children and young people
- The undermining of social cohesion
- The loss of EU funding to support disadvantaged communities
- The need to engage and hear the voices of children and young people
- Consideration of UK wide matters impacting on Wales, which include existing cross border safeguarding structures and the future status of EU national children and young people.

In March 2018, Children in Wales also published a Summary Report of the Roundtable Exchange Event² which was held in November 2017, which further developed our thinking by capturing many of the priorities identified by practitioners working with and for children and young people across Wales.

Our priorities have been further shaped by the report of a parliamentary joint committee of human rights in which concerns over the approach to protecting individuals rights post withdrawal³ were expressed; our written input into that inquiry and that of the UK European Scrutiny Committee. The NAFW EAAL Committee inquiry into the implications for Wales of Britain exiting the EU provided an additional opportunity to help shape our thinking and that of others.

1. EU Charter of Fundamental Rights

1.0 Our position is clear in that 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.

1.1 The EU Charter of Fundamental Rights (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

¹ <http://www.childreninwales.org.uk/resource/brexit-childrens-rights-wales-briefing-paper/>

² <http://www.childreninwales.org.uk/resource/brexit-childrens-rights-implications-wales-summary-report-round-table-exchange-event/>

³ <https://publications.parliament.uk/pa/jt201617/jtselect/jtrights/695/695.pdf>

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.

1.2 The UK Government has consistently rejected calls to incorporate the rights provisions set out in the Charter believing that withdrawal from the Charter will not affect the substantive rights already in place which citizens of the UK already benefit from. We welcome the Welsh Governments consistent position that the Charter should be preserved as part of the body of law derived from the EU⁴ and their acceptance of Recommendation 18 of the recent External Affairs and Additional Legislation Committee report earlier this year

1.3 The Committee is right to '*remain unconvinced*' by the UK Government's declaration that all Charter rights are already protected through UK legislation, with the recent analysis undertaken by the EHRC and the interventions by members of the House of Lords and Commons suggesting that these reservations are shared more broadly.

1.4 Whilst we await the response of the UK Government expected later this month to the amendments passed at the Report stage of the EU (Withdrawal) Bill in the House of Lords, we can only reiterate our previous concerns that as currently presented, the Bill does not contain a commitment to incorporate the Charter into UK law, and will no longer be enforced through the European Court of Justice. As such, the Charter will no longer apply once EU law is transposed into UK law and children will not enjoy the same level of rights protection as they presently do.

1.5 We note that the WG '*hope*' that the UK will accept the amendments but we have no firm intelligence which suggests that the UK Governments direction will dramatically change from their previous position. If the amendments are rejected, and with the LDUE Bill now not proceeding, we are unclear how existing Charter rights will continue to apply in Wales, if at all without an alternative response from the Welsh Government. The Committee will also wish to keep a keen interest on developments in Scotland should they have the legal capacity to take a different approach and retain aspects of the Charter under their law.

1.6 The Committee 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 will need to go through the same due diligence process. This will help inform the Committees consideration of whether there is indeed a roll back on existing rights and protections, and whether the WG can continue to meet their objective of ensuring that '*Brexit does not result in any dilution of rights and the current position*' and the assertions outlined in Securing Wales' Future'.

1.7 In practice we also seek reassurance that work is being done at UK level to provide a detailed analysis of the impact of moving out of the EU with regard to all aspects of safeguarding children across borders and wider child safety issues caused by any deregulation⁵.

⁴ <http://www.assembly.wales/laid%20documents/gen-ld11553/gen-ld11553-e.pdf>

⁵ <http://www.childreninwales.org.uk/resources/brexit-childrens-rights/>

1.8 At a UK level, to ensure that the substantive rights within the Charter are protected for all children, we have consistently called for the UNCRC to be brought fully into UK law. The UK Government have been reluctant to fully incorporate UN human rights treaties, such as the UNCRC into domestic law, in spite of successive UN recommendations to do so. This is in contrast to the great strides made in Wales in championing, protecting and further enhancing children's rights through Wales specific legislation, most notably through the Rights of Children and Young Persons (Wales) Measure 2011 and the Social Services and Well-being Act 2014. The incorporation of other Conventions, such as the UNCRPD given its impact on children, must also be worked towards.

2. Shared Prosperity Fund

2.0 We support the Committee's concerns in relation to the future of EU funding and share the view that the Shared Prosperity Fund should be administered in Wales to a Wales specific design co-produced with stakeholders and should be targeted at tackling inequality, socio-economic disadvantage and enhancing social cohesion

2.1 There is insufficient information in the public domain about the Shared Prosperity Fund and a lack of communication by the UK Government around future intentions.

2.2 We must retain our ability to shape our own priorities and tailor resources to meet our own needs. We must have scope to identify our own delivery models for distributing funds and look at ways to improve the ability for third sector organisations to be able to access funding, and address some of the perpetual barriers by reviewing the present monitoring, reporting and accountability mechanisms.

2.3 For these reasons, it is essential that Wales is an active and equal partner in all discussions, and is involved in shaping the SPF from the very beginning. It would not be acceptable for the SPF to be developed without the full involvement and cooperation of the WG and third sector services operating in Wales. Wales has to be involved in shaping the SHF in advance of public consultation, which would then allow for the beneficiaries within our communities, including children and young people, an opportunity to determining the next set of priorities for Wales to invest in, thus helping to secure their stake in future outcomes.

2.4 We echo the Welsh Governments demand of the UK Government to make good the promises made during the Referendum campaign that Wales would not be financially worse off when we leave the EU. After December 2020, we must receive at least the existing levels of funding presently allocated via the EU Structural and Investment Funds with no constraints, and must continue to engage in cooperation programmes, such as Erasmus +.

2.5 Children in Wales welcomed the recent opportunity to provide a response to the WG consultation on Regional Investment in Wales after Brexit. We particularly supported the emphasis in the consultation on

- Partnerships
- Building upon our experience and knowledge

- Engaging with the Third Sector and communities
- Channelling needs based funding to our poorest communities
- Emphasis on economic AND social investment
- Integration
- Applying a people AND placed based approaches to investment

2.6 Our response drew on the engagement we undertook with our members and wider workforce in respect of future funding arrangements and the implications for services and communities.

2.7 We share the concerns that there are no guarantees that existing levels of funding would be protected or whether the present priorities would be retained. Delegates were concerned about the continuity of existing services funded through ESF and the potential negative impact cuts would have on third sector services and the communities they serve, already under pressure, should existing EU funded projects and programmes be lost.

2.8 Many respondents were representing services located in areas of Wales with disproportionate levels of child poverty compared to other parts of the UK. There is some anxiety that further cuts to income and services for vulnerable families will have an adverse consequences for poverty and inequality levels in Wales, escalating pressure on existing sources of support already struggling to meet demand. There were fears that any loss of services could potentially fuel further political disengagement and a sense of abandonment by marginalized sections of the community at a time of greatest need, threatening the Welsh Governments ambition to create a prosperous and more equal nation.

2.9 It is for this reason that in order for the next set of priorities to build a more inclusive and prosperous country, that the focus should be on **investing in children, prioritising early intervention and prevention**. This would be consistent with the European Commission's Recommendation on Investing in Children (2013) and build on the ESF current priorities whereby 20% of existing funds must be allocated to tackling poverty

2.10 We agree with the Committee that amongst the priorities should be an explicit focus on **tackling socio economic disadvantage and inequality**. Independent research has clearly demonstrated the children are being disproportionately affected by economic austerity and the negative impact of welfare reform. With over 200,000 children living in poverty and anticipated to increase, Wales can ill afford to miss this opportunity of ensuring that the SPF improves the outcomes for those most at risk and those most vulnerable.

2.11 Children in Wales have been engaging in dialogue with our European partners to influence the post 2020 European Multiannual Financial Framework (see [Position Paper – February 2018](#)). Whilst the UK may well have left the EU at the point when the next programme gets underway, we would urge the Welsh Government to retain a keen interest in current discussions as priorities are being identified so as to ensure there is no significant divergence from European wide priorities. New arrangements will also need to be established between Cardiff and Brussels to ensure that Wales is not completely marginalised in the post EU landscape and that the rights of our citizens do not fall behind those of our European neighbours. There is currently considerable knowledge exchange

funded by funds from the European Commission through Eurochild of which Children in Wales was a founder member

3. Socio Economic Duty

3.0 New powers provided through the Wales Act has given the Welsh Government an opportunity to enact the socio economic duty under the Equality Act 2010. This and the commencement of the duty in Scotland following support through the public consultation has increased previous calls in Wales for the Welsh Government to follow suit and enact the duty here in Wales. We are of the view that these are significant development which should provide the impious for the WG to at the very least examine the potential for strengthening existing arrangements in Wales and to build upon duties placed on Welsh Public Bodies prescribed through the WBoFGAct.

3.1 Whilst the First Ministers commitment to review the current position in respect of gender equality is welcomed, we would suggest that a holistic review with engagement of key stakeholders be undertaken so that the full potential of enacting the duty in Wales can be fully considered, with the sufficiency of existing duties forming part of that conversation. We are also reminded that the report of the last Assembly's CELG Committee of their inquiry into equality and human rights called for further research to examine the practicalities of introducing the duty including the potential for the existing duty under the Equality Act to be redrafted for the context in Wales.

3.2 While the duty to tackle socio-economic inequalities is indeed a key strand of the WBoFGAct, it is still too soon to fully assess how this is being driven in practice. Children in Wales facilitates the End Child Poverty Network Cymru (ECPN) and recently undertook a short review of the draft Public Service Boards Well-Being Plans to examine what consideration was being given to addressing the duty to tackle child poverty. Our report⁶ highlighted that, as with the Wellbeing Assessments, the length, presentation and level of detail within the Plans varied enormously. Draft plans featured predominantly high level statements with few having specific objectives against poverty and inequality or milestones and indicators to track progress. Only three explicitly made reference to children's rights.

3.3 The EHRC has recently issued a GB wide report⁷ on the state of socio-economic rights two years on from the UK Governments examination by the UN. It reports that the UK's withdrawal from the EU poses risks to the protection and fulfilment of socio-economic rights, noting the high level of child poverty in Wales and the key issues impacting on children and families in poverty in Wales, which echo those of our Child and Family Poverty report⁸. Their report recommends that

"The UK and Welsh governments implement the duty on certain public authorities to have due regard to the desirability of reducing socio-economic disadvantage when taking strategic decisions on exercising their functions under Section 1 (Equality Act)."

⁶ <http://www.childreninwales.org.uk/news/news-archive/briefing-paper-public-service-boards-responses-child-poverty-local-draft-wellbeing-plans-160518-w/>

⁷ <https://www.equalityhumanrights.com/sites/default/files/progress-on-socio-economic-rights-in-great-britain.pdf>

⁸ <http://www.childreninwales.org.uk/resource/child-family-poverty-wales-results-child-family-survey-2016/>

3.4 Given that poverty and inequality are indisputable rights violations, we would welcome the Welsh Government giving due deliberation to the EHRC recommendation in the context of their new powers, the developments underway in Scotland, and with consideration to the sufficiency of existing duties under the WBoFGAct and compliance to date with those duties by Welsh public bodies.

4. Human Rights

4.0 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. While these legislative measures do not create legal remedies for individual rights violations, they are significant advances towards incorporation of the UNCRC in Wales and the promotion and protection of children's human rights in legislation, policy development, practice and culture.

4.1 Whilst the principles of the UNCRC can of course apply to those over 18, the UNCRC is a vehicle for realising the rights of children and young people up to this age, and was internationally developed for this specific reason. Presently the rights of young adults should be protected in existing law and we have legislation through the Human Rights Act (HRA) and the EU Charter for this very purpose. Given the continued uncertainty around the future of EU Charter and the threat to the HRA once the UK leaves the EU, it is timely now for the WG to be considering how existing protections can be maintained and could indeed be enhanced beyond 2020.

4.2 There is certainly mileage in the WG giving due consideration to how best to further incorporate international human rights treaties in Wales, building upon the legacy and learning to date from the implementation of the Rights Measure and the due regard duties placed on local authorities to the UNRPD through the SSWBAct. Presently, there is no equivalent 'due regard' duty through Welsh legislation to protect and enhance the rights of other sections of the population, including care leavers, young adult carers or some vulnerable groups of young people transitioning to adult services post 18. The needs of some very vulnerable children clearly do not evaporate on their 18th birthday and it is essential that dialogue begins now to help ensure that the withdrawal from the EU does not lead to existing rights protections currently in place in Wales being lost or undermined. Finally, it is worth reinforcing that the WBoFGAct does not include an explicit legal duty of due regard to the UNCRC or any other human rights duties.

5. Community Cohesion

5.0 We welcome the WGs commitment to publish both the revised Community Cohesion Plan and Tackling Hate Crimes Delivery Plan, and the recognition which is being given to the rise in hate crimes in Wales.

5.1 Our conference summary report⁹ from our national Children's Rights and Brexit event highlighted a number of emerging issues with recommendations for future action under the theme of Social Cohesion. These including the increase in negative attitudes, tensions and the reporting of hate crime in the aftermath of the EU Referendum result, and the experiences of some sections of the community expressing fears of social discontentment, being abandoned or 'left behind', and the adverse effects community divisions will have on children and young people if the rifts which emerged during the Referendum were not properly healed.

5.2 We were delighted to attend the recent information gathering session with the United Nations Special Rapporteur on Contemporary forms of Racism, Racial Discrimination, Xenophobia and related intolerance which took place in Cardiff in May. Our report with the Wales UNCRC Monitoring Group drew attention to many of the issues impacting on children, young people and families in Wales in respect of this agenda, and also provided an opportunity to showcase a number of activities and resources developed in Wales. We would suggest that the WG take account of the UN Rapporteurs statement¹⁰ and the UN Concluding Observations on the Elimination of All Forms of Racial Discrimination and fully address the issues pertaining to Wales within existing competence.

Sean O'Neill
Policy Director
Children in Wales

June 2018

⁹ <http://www.childreninwales.org.uk/resource/brexit-childrens-rights-implications-wales-summary-report-round-table-exchange-event/>

¹⁰ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23073&LangID=E>

Disability Wales is pleased to note that given its new powers, Welsh Government will be considering implementation of the Socio Economic Duty through the current Rapid Review of Gender Equality. In its shadow report to the UN Committee on the Rights of Disabled People (June 2017) DW and its sister organisations in England, Scotland and Northern Ireland recommended to the UN Committee on the Rights of Disabled People that the UK Government should fully implement the Equality Act (2010) including the socio-economic duty. This reflects the well documented correlation between disability and poverty, nowhere more so in Wales, where JRF has found that disabled people in Wales are poorer than anywhere else in the UK (Poverty in Wales 2018). In their Concluding Observations, the CRPD supported the recommendation that the UK Government should fully implement the Equality Act as well as incorporate the UN Convention on the Rights of Disabled People into law and policy (August 2017).

Our concern, nevertheless, is with the emphasis Welsh Government places on the Well-being of Future Generations (Wales) Act 2015 as the 'key instrument in the area of addressing socio-economic inequality particularly the well-being goal of a more equal Wales'. In relation to Human Rights, the First Minister adds that the 'Act will remain our principle legislative instrument in this regard, given that the Well-being goals set out in that Act are wide-ranging in scope and provide the best framework to enable coordinated action to ensure that human rights are safeguarded in Wales'.

We recognise that the Act is ground breaking and fully support its intentions, including the Wellbeing Goals such as achieving 'a more Equal Wales. However while it reflects the core values of human rights, we do not believe that the Act is a suitable framework to ensure that human rights are adequately protected and realised in Wales. The Act does not refer to human rights, nor does it set standards or establish duties based on human rights obligations. The well-being goals are highly aspirational, and provide a wide discretion to public bodies, including Ministers, on how they are met through well-being objectives. As we understand it, while the Act places duties on public bodies, it does not confer rights on individuals or act to safeguard these.

Furthermore the functions and powers of the Future Generations Commissioner (FGC) do not include protecting or promoting human rights, nor is the Commission a National Human Rights Institution (NHRI). This is in contrast to, the Equality and Human Rights Commission (EHRC), the Children's Commissioner for Wales (CCfW) and the Older People's Commissioner in Wales, all of which have statutory powers expressly relating to human rights.

Given the wide-ranging responsibility placed on the FGC, it is unrealistic to anticipate human rights will be a priority, nor would it appear that the Commission has the resources available to do so. The FGC's Strategic Plan 2017–2023 refers to work with the CCfW on embedding children's rights, but makes no reference to human rights generally, or how these might feature as well-being objectives. Indeed there is no specific reference to the UN Convention on the Rights of Disabled People, let alone guidance to public bodies on how these may be delivered through the Well-being Goals.

The Future Generations Act and the role of the Commissioner undoubtedly have a role to play in creating a culture in Wales that is supportive of Human Rights, however it is for Welsh Government to provide leadership on legislating for and the implementation of Human Rights in general and the specific human rights instruments in particular.

Equalities, Local Government and Communities Committee
-and-
External Affairs and Additional Legislation Committee

Human Rights Implications of Brexit
Comments on First Minister's Letter (16th May)

I am grateful for the opportunity to comment on the First Minister's response to the joint letter from the above committees (5th April).

1. I maintain there is a need for human rights legislation in Wales for the reasons set out in my previous submissions: in particular rights that relate to social protections. The Intergovernmental Agreement between the Welsh and UK governments fails to clarify the position on applicability of the Charter of Fundamental Rights, or on human rights generally; and, the *Law Derived from the European Union (Wales) Bill*, which would have provided some interpretive protection for Charter rights, has been withdrawn.
2. The First Minister's letter indicates that realisation of human rights will be through the framework of the WBFGA. In previous submissions I have suggested that the WBFGA well-being goals reflect core values of human rights. I maintain this is the case. However, I am firmly of the view that the WBFGA is not suitable to ensure that human rights are properly protected and realised in Wales. The WBFGA does not refer to human rights, nor does it set standards or establish duties based on human rights obligations. The Explanatory Memorandum accompanying the WBFGA makes no reference to human rights other than to note pre-existing statutory obligations. The well-being goals are highly aspirational, and provide a wide discretion to public bodies, including Ministers, on how they are to be met through well-being objectives. This may be contrasted with, e.g. the *Rights of Children and Young Persons (Wales) Measure 2011* which establishes a clear duty on Welsh Ministers to have due regard to specific rights set out in the Convention on the Rights of the Child. Human rights guarantees need to be clearly established in legislation if they are to be a visible priority for policy-makers.
3. The Welsh Government's programme for Government, *Taking Wales Forward*, establishes its WBFGA well-being objectives. This is accompanied by a delivery plan, *Prosperity for All*. Neither document, nor the Welsh Government's *Well-being Statement*, engages with or explains how human rights will be protected or realised in Wales. It is therefore difficult to understand how human rights relate to the Welsh Government's programme and delivery plan, or its well-being objectives. The Welsh Ministers, the primary devolved institution responsible for human rights in Wales, appear to be passing much of this responsibility to other public bodies and Public Services Boards (PSBs). This is particularly troubling as Statutory Guidance on the WBFGA merely reminds public bodies of the pre-existing commitment in Wales to children's rights.
4. I am concerned that a focus on the WBFGA as the framework for human rights delivery places an unreasonable burden on the Future Generations Commissioner (FGC), and does not take sufficient account of the functions of other commissioners in Wales. The functions and powers of the FGC do not expressly include protecting or promoting human rights, and the

FGC is not a National Human Rights Institution (NHRI). This is in contrast to, for example, the Equality and Human Rights Commission (EHRC) and the Children's Commissioner for Wales (CCfW), both of which are NHRIs with statutory powers expressly relating to human rights and children's rights respectively. The FGC is not best placed to act as the guardian of human rights in Wales (although the FGC has important contributions to make in this respect). In my view, promoting and safeguarding human rights should be entrusted to existing NHRIs in Wales with an established record of meeting this objective, based on a framework of human rights obligations set out in discrete legislation (such as the child rights measure).

5. While the FGC has advisory, promotional, research and review functions relating to well-being objectives, the breadth of these responsibilities makes it unrealistic to anticipate that promoting human rights will be a priority. The FGC's Strategic Plan 2017-2023 refers to work with the CCfW on embedding children's rights, but makes no reference to human rights generally, or how these might be integrated into well-being objectives. The FGC's Annual report also references children's rights, but does not engage with human rights more widely. I emphasise: this is not a criticism of the FGC, and is understandable given the FGC's statutory responsibilities and breadth of activity. My concern relates to the indication that the WBFGA will be the delivery framework for human rights in Wales, and the burden of expectation falling on the FGC. In any event, the human rights function of specific commissioners is recognised in the FGC's *Future Generations Framework* which offers guidance to public bodies on the delivery of public services. The Framework signposts public bodies to human rights commissioners where a project impacts on older people, children, or people with protected characteristics.
6. A quick (admittedly unscientific) review of well-being plans from 17 PSBs in Wales (19 PSBs, 2 plans unavailable) reveals that only 5 make any reference to human rights in the context of well-being objectives, and of these 4 refer exclusively to the rights of the child. The child rights measure has prioritised children's rights at the highest level of policy development in Wales, and in my view it is significant that some well-being plans, as well as guidance from the Welsh Government and FGC, refer to children's rights while remaining silent on other human rights. This suggests that specific legal integration of children's human rights standards has had a positive impact to ensure their prioritisation in the policy sphere; and, therefore, the value of human rights legislation generally.
7. Finally, I have previously argued that human rights are the hallmark of an advanced nation, and human rights legislation a sign of confidence in Wales as a developing jurisdiction. Scotland is currently asserting itself in this respect, much as Wales has done to date with a highly innovative approach to due regard and incorporation of human rights. We are in danger of regression if in Wales we adopt the approach to the protection of social rights taken by UK governments, i.e. to rely on compliance with human rights as incidental to other policy objectives. Brexit has created the necessity, but also presented the opportunity for Wales to take further steps on protection of human rights. But this requires human rights-specific legislation if it is to be meaningful and effective.

Dr Simon Hoffman
Swansea University
s.hoffman@swansea.ac.uk

June 13, 2018

John Griffiths AM and David Rees AM
Chairpersons, ELGC and EAAL Committees
National Assembly for Wales
Cardiff Bay
CF99 1NA

John.Griffiths@assembly.wales and David.Rees@assembly.wales

Dear John and David,

Subject: Brexit and equality & human rights

Thank you for sharing with us the First Minister's letter of May 16 and asking for our reflections on its content.

We welcome that the First Minister's stated objective is to ensure the UK's withdrawal from the EU does not lead to a dilution of equalities and human rights protections. The letter highlights positive actions that will be taken towards this aim. However, we believe the Welsh Government (and UK Government) can take further steps to protect and promote equality and human rights in Wales in light of the UK's decision to leave the EU.

The First Minister's letter makes clear that the Welsh Government views the Commission as well-placed to advise on these matters. We welcome this statement and the open dialogue we have with both the Welsh Government and your Committees. We look forward to continuing to play our part in legislative & policy development and scrutiny with the aim of securing equality and human rights protections in Wales.

Below we set out our reflections on key aspects of the letter.

The Charter of Fundamental Rights

We welcome the Welsh Government's stated support for retaining the Charter of Fundamental Rights (the Charter) in domestic law. It was pleasing that the Welsh Government included interpretive protection for Charter rights in its Law Derived from the EU (Wales) Bill. However, that Bill has now been withdrawn. In addition, the UK Government has so far given no indication that it will respond positively to the amendment passed in the House of Lords that seeks to retain the Charter in domestic law. Therefore, the Commission remains concerned that Charter protections will cease to be applicable in Wales following the

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The Commission welcomes correspondence in Welsh or English.

Bloc 1, Cainc D,
Adeiladau Llywodraeth,
Heol Santes Agnes,
Caerdydd, CF14 4YJ

Block 1, Spur D,
Government Buildings,
St Agnes Road, Cardiff,
CF14 4YJ

Ffôn/Tel:
02920 447 710

E-bost/Email:
wales@equalityhumanrights.com

UK's withdrawal from the EU. The Commission will continue to press for the UK Parliament to pass amendments incorporating the Charter into domestic law. And, should that approach prove unsuccessful, we would welcome the Welsh Government exploring future legislative opportunities to incorporate Charter rights into Welsh law, insofar as the current devolution settlement allows it to do so. We will write to your Committees again on this point as the EU (Withdrawal) Bill continues its parliamentary course.

Loss of EU Funds

We fully support the Committees' suggestion that the Shared Prosperity Fund should be targeted at tackling inequality and socio-economic disadvantage. The Commission's *Healing the Divisions: A positive vision for equality and human rights in Britain* report states that the UK and Welsh Governments should ensure the loss of EU funding, such as the European Social Fund and the Equality and Citizenship Programme, does not undermine Wales's equality and human rights infrastructure. This includes academic research, for example on violence against women and how to police it, and voluntary sector services, for example those supporting older and disabled people in employment.

The Commission believes that funding mechanisms and priorities identified by the UK Government should take account of devolution and regional concerns. The UK and Welsh Government should conduct Equality Impact Assessments to guide decision-making on funding streams and projects.

New funding programmes in Wales should take into consideration people's protected characteristics and the relationship with socio-economic status and other disadvantages. Individuals should be placed at the centre of any criteria for funding allocations, with wider economic and geographical concerns being considered alongside. The public sector equality specific duties in Wales should be adhered to as a mechanism for this funding allocation and policymaking process.

We are currently commissioning a research report on the potential implications for equality and human rights in Britain of the loss of EU funds. We expect to publish our report in Autumn 2018 to inform UK and Welsh Government policymaking. We will be pleased to share the report with your Committees.

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CF14 4YJ

Ffôn/Tel:
02920 447 710

E-bost/Email:
wales@equalityhumanrights.com

Socio-economic duty

The Welsh Government has not yet taken steps to introduce the Equality Act 2010 socio-economic duty in Wales, following the powers over its commencement having recently transferred to Welsh Ministers via the Wales Act 2017. Therefore, it is pleasing that the letter confirms the Welsh Government is reviewing its position on the duty in light of the current Rapid Review of Gender Equality in Wales. We would welcome the Welsh Government setting out a timetable for its consideration of the duty as the Review itself is not due to be completed for twelve months.

We would warmly welcome the duty's introduction in Wales. This view is set out in our *Healing the Divisions* report and it has been expressed to Welsh Government.

As the letter states, we are in discussions with the Welsh Government on the duty. Our position has been informed by learning from our Scottish colleagues, with the duty currently being introduced in Scotland.

The Well-being of Future Generations Act

The Commission fully supports the Well-being of Future Generations Act. It is a transformative part of legislation. We are in regular liaison with the Commissioner's office to bring the Act's goals to fruition. However, the Commission does not believe that the Act means that separate protections, explicitly related to equality and human rights, are not needed.

For example, we believe the Equality Act socio-economic duty and the well-being goal of 'A more equal Wales' would be complementary duties rather than duplicative. International treaties fall outside of the Future Generations Commissioner's regulatory powers, so the Act does not fully cover the protection and promotion of human rights. Therefore the Act is not the vehicle for taking forward certain equality and human rights protections in Wales.

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Bloc 1, Cainc D,
Adeiladau Llywodraeth,
Heol Santes Agnes,
Caerdydd, CF14 4YJ

Block 1, Spur D,
Government Buildings,
St Agnes Road, Cardiff,
CF14 4YJ

Ffôn/Tel:
02920 447 710
E-bost/Email:
wales@equalityhumanrights.com

Incorporation of UN Treaties

The Commission's *Healing the Divisions* report sets out our position that UN human rights treaties, like the Convention on the Rights of Disabled People (UNCRPD), should be given further effect in UK and devolved law, and the UK and devolved governments should publish action plans for implementing UN recommendations on human rights.

The Welsh Government has taken steps to incorporate UN treaties into Welsh law, most noticeably with regards to the UN Convention on the Rights of the Child, and to a lesser extent with regards to the UN Principles for Older People and the UNCRPD. However, the Welsh Government's approach has not been fully consistent in taking forward opportunities to embed treaties into Welsh law and policy.

The Wales Act 2017 has given the Welsh Government more explicit powers in relation to the promotion of human rights than it had previously. We believe the Welsh Government should take advantage of this by building on its ground-breaking UNCRC legislation through further incorporation and promotion of UN treaties.

Tracking developments

Our *Healing the Divisions* report sets out that the UK and devolved governments should ensure our laws and policy keep pace with future equality and human rights standards coming from the EU, after we exit, such as the EU Accessibility Act, as well as other comparator countries.

It is important that the Welsh Government takes a leadership role in tracking and, where possible, replicating, progressive equality and human rights legislation that is taken forward within the EU after the UK's withdrawal from it. Therefore, we support the Committees' suggestion that the Welsh Government should establish a formal mechanism to track future developments.

As part of that process, we will play our role in monitoring, and advising on, equality and human rights developments. We warmly welcome the letter's statement that the Welsh Government will continue to work closely with us to consider developments and the position in relation to Wales.

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Bloc 1, Cainc D,
Adeiladau Llywodraeth,
Heol Santes Agnes,
Caerdydd, CF14 4YJ

Block 1, Spur D,
Government Buildings,
St Agnes Road, Cardiff,
CF14 4YJ

Ffôn/Tel:
02920 447 710

E-bost/Email:
wales@equalityhumanrights.com

I hope you find these reflections of interest. We would be pleased to offer further information, as required.

Yours sincerely,



Ruth Coombs

Pennaeth Cymru / Head of Wales

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Bloc 1, Cainc D,
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