

# Equalities and Brexit

Joint findings by the Equality, Local Government and Communities Committee and the External Affairs and Additional Legislation Committee

October 2018

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## Background

The Equality, Local Government and Communities Committee conducted an inquiry into Human Rights in Wales which included consideration of the impact of the UK's withdrawal from the European Union on Human Rights.

Previously, the External Affairs and Additional Legislation Committee considered some of the equalities and human rights implications of Brexit during its wider work on the implications for Wales of leaving the European Union.

On 26 February 2018, the External Affairs and Additional Legislation Committee held a series of panel discussions on the impact of Brexit for equalities in Wales.

The Committee took evidence from:

- Nicola Williams, Equality and Human Rights Commission Wales
- Gideon Calder, Equality Trust
- Dr Koldo Casla, Just Fair
- Dr Panos Kapotas, University of Portsmouth
- Professor Simon Hoffman, Swansea University



- Rhian Davies, Disability Wales
- Andrew White, Stonewall
- Uzo Iwobi, Race Council Wales

In response to the key themes emerging from this session both committees agreed to write a joint-letter to the First Minister encapsulating their views, conclusions and recommendations. Two members of the Equality, Local Government and Communities Committee did not agree with the conclusions or recommendations of the letter: Janet Finch-Saunders AM and Gareth Bennett AM.

The joint-letter is provided at Annex A.

The First Minister's response is provided at Annex B.

Following the passage of the European Withdrawal Act 2018, and the subsequent commitment of the Welsh Government to repeal the Law Derived from the European Union (Wales) Act, the Chair of the External Affairs and Additional Legislation Committee wrote to the First Minister to seek further clarification about the implication of these developments for equalities and Brexit in Wales. This letter is provided at Annex C.

The First Minister's response to the Chair of External Affairs and Additional Legislation Committee's request for clarification is provided at Annex D.

The findings of both committees have been laid before the National Assembly for Wales on 24 October 2018.

# Annex A



Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales

Rt Hon Carwyn Jones AM  
First Minister of Wales

5 April 2018

Dear First Minister,

## Equality and human rights implications of Brexit

Wales has a proud history of protecting equality and human rights in world-leading and innovative ways, even within a restricted devolution settlement. From 2003, when the Assembly became the first legislative body in the world to achieve gender parity, to the passing of the *Rights of Children and Young Persons (Wales) Measure 2011*, Wales has gone beyond other UK nations to lead the way.

The Equality, Local Government and Communities (ELGC) Committee and the External Affairs and Additional Legislation (EAAL) Committee have undertaken work on the equality and human rights implications of Brexit in Wales.

The written and oral evidence provided to ELGC, and the oral evidence provided to EAAL are available on the Assembly's webpages. This letter summarises the views, questions and recommendations arising from this evidence on behalf of both committees. Two Members of the ELGC Committee, Gareth Bennett AM and Janet Finch-Saunders AM do not agree with the views or recommendations in the letter.

## EU Charter of Fundamental Rights

Following our evidence sessions, we remain unconvinced by the UK Government's assertion in its right-by-right analysis of the Charter that all Charter rights are already protected by UK domestic law. As stated in the Equality and Human Rights Commission's (EHRC) legal advice, "contrary to the [UK] Government's analysis, the Charter has created valuable new rights, and extended the scope of existing

rights, and could continue to do so if Charter provisions were incorporated into domestic law”.

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.**

## **Funding**

We heard concerns about the future of EU funding from many organisations. As outlined in the Welsh Government’s response to the ELGC inquiry:

“Wales currently receives £370m a year from the EU to invest in our 2014 – 2020 European Structural and Investment Fund Programme [which includes the European Social Fund (ESF) and the European Regional Development Fund (EDRF)]. [...] Equal Opportunities and Gender mainstreaming (EO&GM) is one of three crosscutting themes integrated into the 2014–2020 Programmes”.

Recent research by the Equality and Diversity Forum (EDF) on replacing EU funding for equality and human rights after Brexit highlights that objectives 8, 9 and 10 [of the EU Structural and Investment Funds Programme] relate directly to equality and human rights and are worth £4.15 billion in the UK between 2014 and 2020. The target groups for these three objectives are: young people not in education employment or training (NEETs), older people aged 50 or over, women, disabled and minority ethnic people, people with multiple complex barriers, offenders and ex-offenders.

The research found that the ESF budget amounts to £1.4 billion in Scotland, Wales and Northern Ireland. Around 60% of ESF-funded projects identifiably target people with one or more protected characteristic under the *Equality Act 2010*. It

also found that more than half of ESF funds focused on employability, skills and experience.

EAAL Committee has previously highlighted concerns about the future of ESF funding as part of its [inquiry into the future of regional policy in Wales](#). The Committee also recently [recommended](#) that “the Welsh Government [should] seek clarity from the UK Government on how the proposed Shared Prosperity Fund would be allocated and administered”.

**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.**

### **Wales as a world leader**

As outlined above, Wales has a tradition of going beyond minimum requirements of equality and human rights standards. Witnesses suggested ways that this tradition can be continued, such as:

- **commencing the *Equality Act's* socio-economic duty**, a power that will be devolved under the new settlement from April: the duty would require public bodies to make decisions in a way that tackles inequalities of outcome caused by socio-economic disadvantage. Scotland is currently [in the process](#) of introducing the duty, and
- **further incorporation of international human rights treaties**: Professor Simon Hoffman [argued](#) that the ‘due regard’ model used by the *Rights of Children and Young Persons Measure and the Social Services and Wellbeing (Wales) Act* could be used to require Welsh public authorities to pay due regard to other international treaties (for example, the International Covenant on Economic, Social and Cultural Rights (ICESCR), or the Convention on the Rights of Persons with Disabilities (CRPD)).

There is an indisputable link between inequality and socio-economic disadvantage in Wales, and nearly a quarter of the population live in poverty. 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. We also note the Scottish Government's moves to introduce the duty, and that its financial impact assessment concluded that 'it has no significant financial effect of the Scottish Government, local authorities or on business'.

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*.

#### Non-regression

We note that section 3(2) of the *Law Derived from the European Union (Wales) Bill* states that Welsh Ministers must 'seek' to continue the rights, powers, obligations and remedies that are available by virtue of the *European Communities Act 1972*.

We also note that section 4(2) of the Bill places a restriction on the modifications that Welsh Ministers can make to an existing enactment when restating it. Welsh Ministers can only make a modification in so far as they 'consider [it] ... necessary to ensure the effective operation of the restated enactment after the withdrawal of the United Kingdom from the European Union'.

While we interpret these sections effectively as 'non-regression' clauses (which were called for by many of our witnesses), we call on the Welsh Government to confirm that the intention of these provisions 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.

## Progression of equality and human rights law beyond Brexit

Many witnesses raised concerns that UK citizens will not benefit from future EU equality and human rights legislation, such as the [European Accessibility Act](#), which aims to “increase the supply of accessibility products in the marketplace, reducing barriers to education and the open labour market and improving accessibility for smartphones, ATMs and TV equipment”.

We note that section 11 of the *Law Derived from the European Union (Wales) Bill* would allow Welsh Ministers to make regulations introducing new legislation or modifying existing legislation so that Wales can keep pace with new EU legislation passed after the UK exits the EU. 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.**

Unlike in many other states, the right to equality in the UK is not protected by a constitutional bill of rights, which would limit the extent to which equality could be eroded or removed by Parliamentary legislation. EU law currently performs this ‘backstop’ function by ensuring that rights in the *Equality Act* cannot be removed or eroded (because they are required by EU law). Article 14 of the European Convention on Human Rights only partially fulfils the same function; it applies only where another Convention right is in play and UK Parliamentary legislation cannot be struck down for non-compliance with it (unlike the position vis a vis EU law).

The EHRC is campaigning for a constitutional, freestanding right to equality (by amending the *Human Rights Act 1998* or the *Equality Act 2010*) as part of its [five-point Brexit plan](#).

On 9 March, the UK Government published [a list](#) of the areas currently held at the European level where it wants the UK Parliament to temporarily retain exclusive competence following Brexit (rather than the default position being that that competence lies with the devolved legislatures). Regarding equal treatment legislation,<sup>1</sup> the UK Government considers that non-legislative common frameworks ‘may be required’, but ‘will require more detailed discussion and may include a mixture of reserved and devolved competence, including where technical standards that derive from EU law are relevant’.

Currently, the Assembly has competence over “Equal opportunities in relation to equal opportunity public authorities” (i.e. in relation to all devolved public bodies in Wales, and also some bodies which might not classically be considered as devolved, but in respect of which the Welsh Ministers exercise some functions), under heading 14 ‘Public Administration’ of Schedule 7 to the Government of Wales Act 2006. Under the settlement that is going to come into force on 1 April this year, “Equal opportunities” is generally a reserved matter. We note that there are fairly wide exceptions from this reservation, but also note in this regard the very wide-ranging reservation of “employment law”. **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.**

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<sup>1</sup> Including Directives that: implement the principle of equal treatment between persons irrespective of racial or ethnic origin (2000/43/EC); establish a general framework for equal treatment in employment and occupation, prohibiting discrimination because of age, disability and sexual orientation (2000/78/EC); implement the principle of equal treatment between men and women in the access to and supply of goods and services, and in matters of employment and occupation (2004/113/EC and 2006/54/EC). Also relevant in this context is Article 157 of the Treaty on the Functioning of the EU.



## Trade Bill

Clause 2 of the UK *Trade Bill* gives UK and Welsh Ministers authority to make any regulations they “consider [appropriate] for the purpose of implementing an international trade agreement” including regulations that “make provision [for] modifying primary legislation that is retained EU law” (although we note that Schedule 1 to the Bill imposes certain restrictions on Welsh Ministers’ powers in that regard).

The use of the term ‘consider appropriate’ is also used in the *EU (Withdrawal) Bill* and has been criticised for its breadth. In its response to the Commons Public Bill Committee on the Trade Bill, Liberty stated that “retained EU law appears to include a wide range of primary legislation relating to various EU mandates, including the *Equality Act 2010* and the *Modern Slavery Act 2015*. There are no safeguards to prevent Ministers from using this power to erode rights granted by Parliament”.

We note that it would, in principle, be outside the Welsh Ministers’ powers to affect the Acts referred to, or to use their powers under the *Trade Bill* to make laws relating to equal opportunities or modern slavery. However, we trust that the Welsh Government will use every opportunity to influence the UK Government not to compromise on equality or human rights standards in any way, in negotiations on trade agreements.

**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.**

## Hate crime

In the ELGC Committee’s inquiry, a number of witnesses raised concerns about the perceived rise in hate crime following the EU Referendum. The EHRC stated that “in the month following the EU referendum, reports show that racist or

religious abuse incidents recorded by police in England and Wales increased by 41% compared to the previous year.”

Figures released by the Home Office in October 2017 showed that in 2016–17, there were 80,393 offences recorded by the police in England and Wales in which one or more hate crime strands were deemed to be a motivating factor. This was an increase of 29% compared with the 62,518 hate crimes recorded in 2015–16, the largest percentage increase seen since the series began in 2011–12. The Home Office stated that “the increase over the last year is thought to reflect both a genuine rise in hate crime around the time of the EU referendum and also due to ongoing improvements in crime recording by the police.”

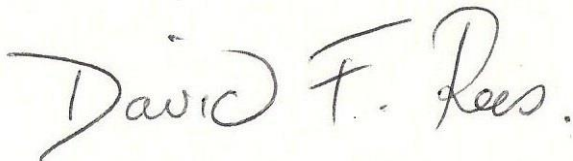
The Welsh Government published Tackling Hate Crimes and Incidents: A Framework for Action in 2014, and produces annual progress reports. In its inquiry into refugees and asylum seekers, the ELGC Committee recommended that the Welsh Government should update its Community Cohesion Plan. The Government committed to updating the Plan by summer 2017, but it has not yet been published. **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.**

We would request responses to these questions and recommendations by 17 May.

Yours sincerely,

A handwritten signature in black ink that reads "John". The letters are cursive and connected.

John Griffiths AM, Chair of the Equalities, Local Government and Communities Committee

A handwritten signature in black ink that reads "David F. Rees.". The letters are cursive and connected.

David Rees AM, Chair of the External Affairs and Additional Legislation Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

# Annex B

Y Gwir Anrh/Rt Hon Carwyn Jones AC/AM

Prif Weinidog Cymru/First Minister of Wales



Llywodraeth Cymru  
Welsh Government

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

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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.

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**

# Annex C

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**Cynulliad Cenedlaethol Cymru**

Y Pwyllgor Materion Allanol a Deddfwriaeth Ychwanegol

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**National Assembly for Wales**

External Affairs and Additional Legislation Committee

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The Rt Hon Carwyn Jones AM  
First Minister of Wales

28 June 2018

Dear First Minister,

## **Equality and human rights implications of Brexit**

Following my joint letter with the Chair of the Equalities, Local Government and Communities Committee Chair, John Griffiths AM, I am writing to seek further clarification on a couple of the points raised.

As of last week the final text of the European Union (Withdrawal) Bill has been agreed by Parliament. You will be aware that during the passage of the Bill, the UK Government rejected the House of Lords amendments which contained provisions for the inclusion of the European Charter of Fundamental Rights in UK law. You will also be aware that the Bill was amended to provide an enhanced scrutiny procedure for statutory instruments which amend or revoke subordinate legislation made under section 2(2) of the European Communities Act 1972 to implement EU law. However the enhanced procedure does not apply to instruments made by Welsh Ministers and subject to scrutiny in the Assembly. Furthermore, I note that the Welsh Government has formally begun the process of repealing the Law Derived from the European Union (Wales) Act as of 8 June 2018.



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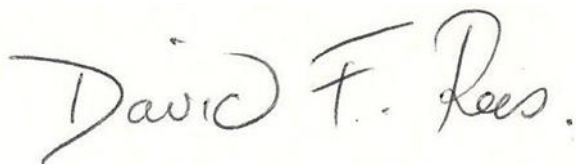
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In light of these developments, I would welcome an updated response from you in relation to:

- ***the EU Charter of Fundamental Rights***: how the Welsh Government will ensure that Charter Rights continue to apply in Wales; and
- ***Non-regression***: how the Welsh Government intends 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.

I am copying this letter to the Chair of the Equality, Communities and Local Government Committee and would welcome a response from you within the usual timescales.

Yours sincerely,

A handwritten signature in black ink that reads "David F. Rees." The signature is written in a cursive style with a large initial 'D' and 'R'.

David Rees AM

Chair of the External Affairs and Additional Legislation Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



# Annex D



Y Gwir Anrh/Rt Hon Carwyn Jones AC/AM

Prif Weinidog Cymru/First Minister of Wales

Llywodraeth Cymru  
Welsh Government

David Rees AM  
Chair  
External Affairs & Additional Legislation Committee

23<sup>rd</sup> July 2018

Dear David

## Equality and human rights implications of Brexit

I am writing in response to your letter of 28 June. Please see the response below to your request for further clarification on points raised in my last letter.

### **The EU Charter of Fundamental Rights: how the Welsh Government will ensure that Charter Rights continue to apply in Wales.**

The Welsh Government had previously supported efforts to amend the EU (Withdrawal) Bill in the House of Lords to ensure that the Charter was fully incorporated into UK law after Brexit. We are therefore disappointed that the Charter will not form part of domestic law after the exit day.

The 'Charter of Fundamental Rights of the EU: Right by Right Analysis'<sup>1</sup> sets out the UK Government's analysis of the effect of the treatment of fundamental rights in the EU (Withdrawal) Bill.

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.

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<sup>1</sup> [Charter of Fundamental Rights of the EU Right by Right Analysis](#) 5.12.2017

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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.

- 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.

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.

These are matters which require careful consideration. We will work with the UK Government to seek assurances on individual rights in the coming months. We will also continue to engage actively with the Equality and Human Rights Commission on these issues.

**Non-regression: how the Welsh Government intends 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.**

Human rights are built into the DNA of the Welsh Government. In addition to the current requirement to act compatibly with EU law, the Government of Wales Act 2006 also requires the Welsh Government to act compatibly with “the Convention rights”, as reflected in the Human Rights Act 1998, and likewise the Assembly cannot legislate in a way which is incompatible with those rights. This legislation will on exit, rightly continue to influence everything we do.

The Welsh Government believes that the mechanisms contained within the Human Rights Act are an important and appropriate means for the people of Wales to challenge inequality and injustice and the Convention rights enshrined within that Act rightly continue to influence its policies, legislation and decisions. We have consequently continued to be fundamentally opposed to any withdrawal from the European Convention on Human Rights or any repeal of the Human Rights Act 1998.

We therefore welcomed the fact that when the UK Government recently published its White Paper, ‘The Future Relationship between the United Kingdom and the European Union’ on 12 July 2018 it confirmed that ‘the UK is committed to membership of the European Convention on Human Rights’.<sup>2</sup>

The Government of Wales Act 2006 also includes provision relating to international obligations beyond the Convention rights and we similarly remain committed to reflecting the principles of our international obligations in our policies, legislation and decisions.

An example of this commitment is the Social Services and Well-being (Wales) Act 2014 which places duties on persons exercising functions under the Act to have regard to the United Nations Convention on the Rights of a Child and the United Nations Principles for Older Persons. Likewise, the Rights of Children and Young Persons (Wales) Measure 2011 made provision in connection with giving further effect in Wales to the rights and obligations set out in the United Nations Convention on the Rights of the Child.

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<sup>2</sup> [The Future Relationship between the United Kingdom and the European Union](#) – 12.07.2018, Page 52

The Well-being of Future Generations (Wales) Act 2015 further reinforces our resolve to maintain and drive forward our commitment to equality by placing a legal duty on specified public bodies to set and publish well-being objectives, which maximise achievement of the well-being goals, including a more equal Wales. This coordinated action will help ensure that equality and human rights are safeguarded in Wales.

Yours sincerely

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

**CARWYN JONES**