



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.**

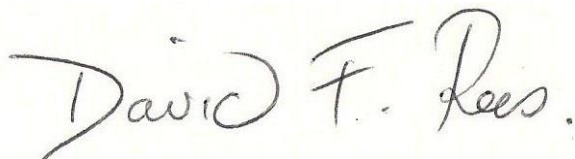


We would request responses to these questions and recommendations by 17 May.

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.