

HR 17

Ymchwiliad i hawliau dynol yng Nghymru

Inquiry into Human Rights in Wales

Ymateb gan: Age Cymru

Response from: Age Cymru



## **Consultation Response**

### **Equality, Local Government and Communities Committee National Assembly for Wales Inquiry into Human Rights in Wales**

**February 2017**

Age Cymru is the leading national charity working to improve the lives of all older people in Wales. We believe older people should be able to lead healthy and fulfilled lives, have adequate income, access to high quality services and the opportunity to shape their own future. We seek to provide a strong voice for all older people in Wales and to raise awareness of the issues of importance to them.

We are pleased to respond to the Communities, Equality and Local Government Committee's Inquiry into Human Rights in Wales.

#### **The impact of the UK's withdrawal from European Union on human rights protection in Wales.**

1. Our age discrimination laws stem from EU treaty provisions and directives, but these have been incorporated into domestic legislation, notably through the Equality Act, so no further domestic legislation would be needed in the absence of EU legislation. The UK's existing Disability Discrimination Act was also replaced and strengthened by the Equality Act.
2. However, if EU legislation were to be removed or disapplied there would be nothing to prevent a future UK Government repealing these laws – something we would not wish to see. Additionally, we would want to ensure that the many UK nationals living and/or working in the EU would continue to have protection from other member states' discrimination against them.

#### **The impact of the UK Government's proposal to repeal the Human Rights Act 1998 and replace it with a UK Bill of Rights.**

3. A major area of focus for Age Cymru will be to ensure that older people's position is strengthened, not weakened, by any possible changes to equalities and human rights legislation.

4. The UK's withdrawal from the EU will not automatically affect the UK's status as a signatory to the European Convention on Human Rights (ECHR). The ECHR is an international treaty distinct from the EU Treaties and EU Charter on Fundamental Rights.
5. British citizens are still able to rely on their rights in the ECHR in domestic courts and can still take cases to the European Court of Human Rights. In addition, they are protected by the UN Convention on the Rights of Persons with Disabilities. However, they would be affected if they could no longer rely on the European Charter of Fundamental Rights (CFR) which in particular includes many wider social and economic rights, such as the rights to fair and just working conditions, to healthcare and to have personal data protected.

### Strengthening the rights of older people

6. Age Cymru's position is that any future human rights legislation must protect the rights and freedoms in the European Convention on Human Rights, must not undermine the effectiveness or scope of the HRA or the potential for enforcing it and must reflect the particular circumstances of Wales. We intend to engage fully in the consultation process to ensure that older people's rights are fully protected, and strengthened where necessary.
7. The lack of human rights protection for people who self-fund their care services is an issue of concern. All older people in care must have equal protection from abuse and poor treatment, regardless of how this care is organised or paid for.

### The international dimension

8. In this context, Age Cymru's work with Age UK and with Age International to promote a UN Convention on the Rights of Older People becomes ever more urgent. The need for international human rights legislation is set out in the publication: A UN convention on the rights of older people: time for the UK to lead.<sup>1</sup>

### Equal treatment

9. Specific areas of EU law or practice that Age Cymru would be keen to see retained (or enacted) include:
  - Proposals for a European Accessibility Act which would, if enacted, create a mechanism through which to ensure that manufacturers and providers of a wide range of products and services (including computers, phones, banking and transport) comply with agreed accessibility standards.
  - Live assistance to disabled travellers (under the EU Air Passengers Regulation 2006, the Rail Passengers Regulation 2007, the Sea and Inland Waterways Regulation 2010 and the Bus and Coach Regulation 2011).

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<sup>1</sup> Age International and Age UK. A UN convention on the rights of older people: time for the UK to lead [http://www.ageuk.org.uk/Documents/EN-GB/Events/Parliamentary%20Receptions/Time\\_for\\_the\\_UK\\_to\\_lead.pdf?dtrk=true](http://www.ageuk.org.uk/Documents/EN-GB/Events/Parliamentary%20Receptions/Time_for_the_UK_to_lead.pdf?dtrk=true)

- Mutual recognition of preferential parking facilities for disabled people (e.g. the Blue Badge in the UK) under the EU Parking Badge scheme.

### Workforce measures

10. Although the UK already enjoys protection against age discrimination that goes further than the EU minimum, there are a number of other employment issues stemming from EU directives that Age Cymru believes should be retained or strengthened. As all these provisions are incorporated into UK law, further legislation would be needed to disapply them, but the status of European case law in relation to these rights is unclear.
11. As well as existing provisions against age discrimination, which are thought unlikely to come under threat, employment protections that are particularly relevant to older workers and stem from EU directives include:
  - Protection for part-time and agency workers;
  - Enforcement rights and powers. For example, the UK Government has previously proposed capping the right to compensation on discrimination claims, which is currently forbidden under EU law. We would want to see the right to full compensation continue, as well as an end to the fees for Employment Tribunals which currently restrict access to justice for victims of age and other types of discrimination.
  - Protection against third party harassment, for example when an employer fails to protect staff members from discriminatory remarks by members of the public.
  - A maximum working week of 48 hours– this may be particularly relevant for workers in the care sector, for whom the ECJ has recently ruled that travelling to the first job of the day qualifies as working time.
12. It will ultimately be up to the UK Government of the day to set out what they see as the necessary and appropriate legal protections for workers. However, there will be no underpinning from the EU and the UK Government can change legislation if necessary, without reference to the European Court of Justice.

### **Public perceptions about human rights in Wales, in particular how understandable and relevant they are to Welsh people.**

13. Human rights have particular relevance to older people who may find themselves in situations where they experience infringements of their human rights in later life. This can take the form of abuse and degrading treatment; unwarranted deprivation of liberty and autonomy; lack of protection for family and private life; and routine discrimination.
14. All older people in Wales have the right to a life free from abuse. There are ‘few more basic human rights than that of being protected from violence or exploitation’.<sup>2</sup>

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<sup>2</sup> Welsh Government (2010) The Right to be Safe.

15. A study in 2007<sup>3</sup> estimated that the prevalence of abuse suffered by older people in their own homes in Wales was 6% of the older population aged 66 and over.
16. Most adult abuse referrals concern people aged 65 or over, and the main category of vulnerability of people referred continues to be older persons. The place of alleged abuse for most of the completed referrals in Wales continues to be people's own home, while the next largest group is care homes (residential and nursing).<sup>4</sup>
17. In July 2015 the Welsh Government published the independent review it commissioned into the neglect of older care home residents investigated as Operation Jasmine.<sup>5</sup> Age Cymru welcomed the publication of this report and its recommendations.
18. The Declaration of Rights for Older People in Wales aims to clarify the rights of older people as already underpinned by existing equality and human rights legislation, although it has no binding legal effect.<sup>6</sup> We welcome developments in January 2016 whereby the Older People's Commissioner for Wales secured cross-party support for legislation to be introduced by the Welsh Government that will protect and promote the rights of older people and embed a rights-based approach across our public services in Wales.<sup>7</sup>

We hope that these comments are useful and would be happy to provide further information if required.

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<sup>3</sup> O' Keeffe, M. *et al.* (2007) UK Study of Abuse and Neglect of Older People. Prepared for Comic Relief and the Department of Health. p72.

<sup>4</sup> CSSIW (2013) Adult Protection Monitoring Report 2010-2012.

<sup>5</sup> <http://gov.wales/topics/health/publications/socialcare/reports/accountability/?lang=en>

<sup>6</sup> Welsh Government (2014) Declaration of Rights for older people. <http://gov.wales/topics/health/publications/health/strategies/rights/?lang=en> 4 August 2014 (Accessed 17/01/17).

<sup>7</sup> Older People's Commissioner for Wales. Work Programme 2016-2017. [http://www.olderpeoplewales.com/Libraries/Uploads/Work\\_Programme\\_Briefing\\_2016-17\\_1.sflb.ashx](http://www.olderpeoplewales.com/Libraries/Uploads/Work_Programme_Briefing_2016-17_1.sflb.ashx)