

HR 28

Ymchwiliad i hawliau dynol yng Nghymru

Inquiry into Human Rights in Wales

Ymateb gan: Comisiwn Cydraddoldeb a Hawliau Dynol

Response from: Equality and Human Rights Commission

## **Introduction**

### **The Equality and Human Rights Commission and the Wales Committee**

1. The Equality and Human Rights Commission is a statutory body established under the Equality Act 2006. It operates independently to encourage equality and diversity, eliminate unlawful discrimination, and protect and promote human rights. It contributes to making and keeping Britain a fair society in which everyone, regardless of background, has an equal opportunity to fulfil their potential. The Commission enforces equality legislation on age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. It encourages compliance with the Human Rights Act 1998 and is accredited by the UN as an 'A status' National Human Rights Institution. Find out more about the Commission's work at: [www.equalityhumanrights.com](http://www.equalityhumanrights.com)
2. The Commission has a statutory role to advise the UK Government and Parliament about the implications for equality and human rights of the proposed legislative and constitutional changes that arise from the UK's decision to leave the European Union. This role is delegated to the Commission's Wales Committee in respect of advising the Welsh Government about the likely effect of proposed changes of law affecting only Wales.

### **Scope of response**

3. The Equality and Human Rights Commission welcomes the opportunity to provide evidence to the Equality, Local Government and Communities Committee's Inquiry into human rights in Wales.
4. This response focuses on the three areas highlighted in the call for evidence. It draws on our submissions to the UK Parliament Joint Committee on Human Rights' Inquiry into the human rights implications of Brexit (Appendix I) and to the Women and Equalities Committee's Inquiry into ensuring strong equalities legislation after EU exit (Appendix II).
5. The Commission's recent submission to inform the UK's third assessment under the UN Human Rights Council's Universal Periodic Review (UPR) is at Appendix III. The UPR is a process set up by the UN Human Rights Council in 2006 to review the human rights situation in every UN Member State. Each state is assessed by a group of representatives from other Member States every five years. In May 2017, UK Government representatives will be questioned in Geneva by the UN Human Rights Council on how much progress has been made over the last five years. Our UPR report sets out the ongoing human rights challenges in Great Britain across 12 different areas of life, including education, health and privacy. It provides recommendations to the UK and Welsh governments on how to better respect and protect human rights, and fulfil their international obligations.
6. A report based on a human rights roundtable discussion held in partnership by the Equality and Human Rights Commission, Children's Commissioner for Wales and the Older People's Commissioner for Wales (July, 2014) is at Appendix IV. We welcome the

Chairperson's comments in plenary that this roundtable report will inform the Committee's Inquiry. Our response includes reference to other Commission publications that may help inform the Committee's work.

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

7. The UN human rights treaties stand separately from EU law. EU treaties, directives and regulations have however enshrined much human rights and equality law in EU law. As the terms of the UK's future relationship with the EU are not yet known, it is difficult to assess fully the implications for human rights and equality legislation of the UK leaving the EU.
8. The UK Government's approach will affect Wales directly, as equality and human rights are, with some exceptions, subjects not devolved to the National Assembly for Wales.
9. The Welsh Government has some powers in relation to equality and human rights. For example, the Welsh Government is able to build UN human rights treaties into Welsh legislation and policy. It has done this to some degree, most notably with regard to the UN Convention on the Rights of the Child. The Welsh Government could consider explicitly incorporating human rights principles into the service delivery of devolved functions, including health & social care, education and local government.
10. The Wales Specific Duties, passed by the National Assembly for Wales, of the Public Sector Equality Duty, provide a mechanism for the promotion of equality by devolved public bodies in Wales.
11. Much EU-derived discrimination law is fully incorporated into UK law. There is therefore no reason that any changes to these laws should automatically follow EU exit. In respect of those laws that are not currently incorporated into domestic law, but which have direct effect in the UK, the UK Government has indicated that existing protections will be maintained post-EU exit through a Great Repeal Bill, to be reviewed on a case by case basis by Parliament. Certain protections required by EU law are therefore vulnerable to repeal.
12. One particularly important source of directly applicable rights is the Charter of Fundamental Rights (the Charter). The Charter reaffirms the rights, freedoms and principles already recognised in EU law. It is divided into sections: dignity, freedoms, equality, solidarity, citizens' rights and justice. The protections under the Charter are particularly relevant in relation to equality law as Article 21 prohibits discrimination on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, sexual orientation or nationality. It therefore protects against discrimination on grounds which are not protected characteristics under the Equality Act 2010. The Charter provides protection in cases arising in an area within the scope of EU law. Article 21 of the Charter provides broader protection than the equivalent right in the Human Rights Act 1998 (HRA), because Article 14 of the European Convention on Human Rights (ECHR) is not a free-standing right to non-discrimination but can only be relied on in relation to one of the other ECHR rights. The ECHR's equivalent to Article 21 of the Charter is Protocol 12, which the UK has not ratified.

13. The protection provided by the Charter is powerful in UK law:

- Domestic legislation that conflicts with a fundamental right protected by the Charter can be 'disapplied' by the domestic courts.
- Claiming for damages for a breach of EU rights can be easier than claiming compensation for a breach of the Human Right Act.

14. The Charter is therefore a substantial source of protection in the UK that is unlikely to be preserved in domestic law following EU exit. To ensure that there is no regression in equality and human rights protections, a careful analysis will be required of the protections that will be lost when the Charter ceases to have effect.

15. The Commission's view is that the UK Government should ensure that there is no regression in equality or human rights protection as a consequence of EU exit. The Commission will be working to ensure that, in leaving the EU (and in any other constitutional changes which may result), we maintain and build on our heritage of respect and inclusion. Our guiding principles are that constitutional changes must:

- maintain, and where possible enhance, the protection and promotion of equality and human rights across the UK,
- provide for coherent and workable frameworks of legal and administrative responsibilities and accountability for equality and human rights between bodies within the UK.

#### **16. Possible legislative implications for equality and human rights of the UK leaving the EU**

- Some rights protected by the Charter of Fundamental Rights that advance equality may no longer be protected in UK law.
- It would be possible for the UK to repeal domestic laws that protect or advance equality and human rights, which we are currently required to have in place by EU laws.
- An increased divergence between EU and UK equality and human rights protections. The UK would not be bound to implement EU laws which come into force after the UK has left the EU, some of which may enhance protection against discrimination.
- The removal of certain constraints under EU law, for example, rules which regulate public procurement and prohibit more favourable treatment of a person because of a protected characteristic, may give rise to additional opportunities to promote equality.
- EU funding that supports the equality and human rights infrastructure in the UK, such as civil society organisations, academic research and the advice sector, will no longer be available.

## **Divisions in society**

17. 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<sup>1</sup>. Political and community leaders in Wales raised concern about this spike.
18. In November 2016, the Commission wrote to political parties expressing our concern that attacks on supporters of both sides of the Brexit debate have polarised many parts of the country. There are those who used, and continue to use, public concern about immigration policy and the economy to legitimise hate.
19. We welcomed the UK Government's hate crime action plan, but believe more concerted action is needed to counter the narrative from a small minority. We suggested the UK Government should carry out a full-scale review of the operation and effectiveness of the sentencing for hate crimes in England and Wales, including the ability to increase sentencing for crimes motivated by hate, and provide stronger evidence to prove their hate crime strategies are working.
20. Criminal justice is not devolved. However, the Welsh Government has taken - and could take further - legislative and policy opportunities with the aim of reducing hate crime and to help heal divisions in society. The Welsh Government's Hate Crime Delivery Plan and the Public Sector Equality Duty offer mechanisms for doing this. The Commission's monitoring of the PSED showed that many public authorities have set equality objectives that relate to tackling hate crime.

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

21. The UK Government has advised that it "will return to our proposals once we know the arrangements for exit from the EU."<sup>2</sup> The Commission considers the Human Rights Act to be a well-crafted piece of legislation. It maintains parliamentary sovereignty and a primary role for domestic courts in the interpretation of the European Convention on Human Rights (ECHR). It has led to greater quality and accountability in public service delivery.
22. Furthermore, it is woven into the constitutional arrangements for the UK. The Government of Wales Act 2006 states that Acts passed by the National Assembly for Wales must be compatible with the European Convention on Human Rights.
23. The Commission on a Bill of Rights reported that debate on a UK Bill of Rights must be acutely sensitive to issues of devolution. It stated: '*To come to pass successfully a UK Bill of Rights would have to respect the different political and legal traditions within all of the countries of the UK, and to command public confidence beyond party politics and ideology. It would also, as a technical matter, involve reconsideration of the scheme of the devolution Acts, which limit the powers of the devolved legislatures and governments expressly by reference to respect for 'Convention rights'*<sup>3</sup>.

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<sup>1</sup> Home Office statistics, reported [here](#)

<sup>2</sup> Minister for Courts and Justice Answer to Oral Questions 24 January 2017, available [here](#)

<sup>3</sup> Commission on a Bill of Rights report, view [here](#).

24. The Commission's position is that any proposed changes to human rights law must not weaken the protections we all enjoy, nor jeopardise the UK's record of upholding and promoting human rights. The Commission's goal is to see a Human Rights Act "plus".
25. The Welsh Government has introduced legislation that means Ministers need to have due regard to the UN Convention on the Rights of the Child when exercising any of their Ministerial functions. It has also made some legislative proposals with regard to the UN Principles for Older People and the UN Convention on the Rights of Disabled People, passed by the National Assembly for Wales in the Social Services and Well-being (Wales) Act and in related guidance.
26. The Commission has called for the Welsh - and UK and Scottish - Governments to build UN human rights treaties into domestic law. We would welcome the Welsh Government taking further steps to ensure the treaties are placed on a legislative footing equivalent to that of the UNCRC in Wales. Furthermore, it is paramount that clear plans are in place to ensure legislation leads directly to the enhancement of people's rights in their everyday lives.

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

27. The Commission has conducted surveys to ascertain people's understanding of human rights in Wales. They revealed support for human rights. However, the findings highlight the need to increase people's understanding of how human rights are relevant to their everyday lives. The Commission has a role to play in working with Government, public authorities and others to do this.

#### **Who do you see? and Human Rights Inquiry survey**

28. Soon after the Commission was established in 2007, we undertook the first major survey in Wales to look at people's attitudes towards age, race, religion, gender, sexual orientation, transgender, disability and human rights. Our [Who do you see? report \(2008\)](#) presents the survey findings.
29. There was overwhelming consensus in the survey that everyone should be entitled to respect, dignity and fairness when receiving public services. 93% of those surveyed supported UK laws protecting people's human rights. However, the findings show there is widespread misunderstanding about the purpose of such legislation with half of all adults believing that human rights issues do not affect them personally.
30. The Commission commissioned IPSOS Mori to conduct [a survey on public perceptions of human rights \(2009\)](#) in Britain as part of our Human Rights Inquiry. The survey findings include that values people hold most dear in terms of living in Britain are being treated with dignity and respect, having freedom of expression, and being treated fairly. There is a close alignment between the values that people think are important for society and those which people identify as being fundamental human rights. Two-thirds of people feel that human rights are meaningful to them in everyday life.
31. The survey highlighted that the level of knowledge about human rights could be improved. Two in five people (40 per cent) say they know a great deal or a fair amount about human rights generally compared with three in five (58 per cent) who don't know very much or anything at all.

32. Who do you see? and the IPSOS Mori survey were published some time ago, so some caution is needed when stating their relevance in today's Wales.

### **Human Rights roundtable**

33. In 2014, the Equality and Human Rights Commission, in partnership with the Children's and Older People's Commissioners for Wales, held a roundtable discussion about the promotion and protection of human rights in Wales. Participants identified priorities for taking forward human rights in Wales.

34. Participants expressed the belief that the human rights agenda in Wales is distinctive. For example, Wales has taken a distinctive human rights approach for children and young people in Wales, based upon the UNCRC.

35. Some participants stated that they believe that human rights practice is sometimes usefully spoken about in terms of dignity, respect, fairness, safety and protection, rather than the language of UN Conventions. Some felt this approach can be helpful in enabling people to understand that human rights apply to them.

36. During the roundtable discussion, consensus emerged in a number of respects. Key points included that human rights can best be seen as a prospective tool for improving people's lives, rather than as a retrospective remedy. Human rights can be a practical tool and a moral compass for staff in organisations

37. Participants expressed the belief that human rights, if used effectively, can help develop better services and give individuals confidence in their dealings with public authorities.

38. Greater emphasis could be given to exploring how human rights can be meaningfully embedded into policy and practice. It is important that public authorities understand how human rights underpin their public service delivery and what the impact is in practice. Public authorities can be supported by third sector and other organisations in implementing an approach that takes account of human rights.

39. Participants felt that greater expertise and capacity on human rights within the civil service would support the development of human rights approaches in Wales and that this would result in more consistent level of approaches being applied in Wales.

### **40. Conclusions and possible next steps identified at the roundtable included:**

- Developing a human rights narrative that sets out that human rights are for everyone and that they can be used to improve services.
- Developing and implementing tools for effective human rights scrutiny and procurement at all levels of service delivery.
- Developing the capacity of the third sector to use these tools
- Developing effective human rights impact assessment tools, which are implemented consistently in the future
- Explore possible linkages between the Public Sector Equality Duty and the promotion and protection of human rights.
- Develop a common understanding of what 'due regard to human rights' means in policy and practice terms.

41. The report's conclusions have informed the work of the Commission and others working in the field of human rights in Wales. The Commission's Equality and Human Rights Exchange of employers and service providers enables the sharing of good human rights practice, including on topics identified in the conclusions. The Commission has [a range of human rights guidance](#), including that which sets out how human rights are relevant to people's everyday lives, can be [embedded into health and social care](#), and what is expected in [business with respect to human rights](#). The Commission, Government and others have a role to play in ensuring that further steps are taken on the report's conclusions – and other areas - to enable greater promotion and protection of human rights in Wales.

## **Further information**

### **Appendix I**

Commission submission to the UK Parliament's Joint Committee on Human Rights' Inquiry into the human rights implications of Brexit, available [here](#).

### **Appendix II**

Commission submission to the Women and Equalities Committee's Inquiry into ensuring strong equalities legislation after EU exit, available [here](#).

### **Appendix III**

The Commission's submission for the UK's third assessment under the UN Human Rights Council's Universal Periodic Review, available [here](#).

### **Appendix IV**

A report based on a human rights roundtable discussion held in partnership by the Equality and Human Rights Commission, Children's Commissioner for Wales and the Older People's Commissioner for Wales (July 15, 2014), available [here](#).