

HR30

Ymchwiliad i hawliau dynol yng Nghymru

Inquiry into Human Rights in Wales

Ymateb gan: Plant yng Nghymru

Response from: Children in Wales

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 NAW 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 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 <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>

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.

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

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

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

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 place 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 impetus 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.

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>