

Ar 5 Ebrill, fe wnaethom ysgrifennu at y Prif Weinidog, ar y cyd â Chadeirydd y Pwyllgor Materion Allanol a Deddfwriaeth Ychwanegol, mewn perthynas â goblygiadau Brexit ar gydraddoldeb a hawliau dynol. Ar 16 Mai, fe wnaeth y Prif Weinidog ymateb i'n llythyr. Anfonwyd yr ymateb i'r rhanddeiliaid perthnasol i ofyn am eu sylwadau, sydd i'w gweld yn yr atodiad.

Rydym ni wedi derbyn ymatebion oddi wrth:

- Plant yng Nghymru
- Anabledd Cymru
- Simon Hoffman
- Y Comisiwn Cydraddoldeb a Hawliau Dynol



John Griffiths AC
Cadeirydd
Y Pwyllgor Cydraddoldeb, Llywodraeth Leol a Chymunedau

David Rees AC
Cadeirydd
Y Pwyllgor Materion Allanol a Deddfwriaeth Ychwanegol

16 Mai 2018

Annwyl John a David

Goblygiadau Brexit o ran cydraddoldeb a hawliau dynol

Rwy'n ysgrifennu mewn ymateb i'ch llythyr ar y cyd dyddiedig 5 Ebrill. Rwy'n croesawu'r gwaith y mae eich Pwyllgorau wedi ei wneud ar oblygiadau Brexit o ran cydraddoldeb a hawliau dynol yng Nghymru. Mae Llywodraeth Cymru wedi bod yn glir na ddylai'r ffaith bod y DU yn ymadael â'r Undeb Ewropeaidd arwain at wanhau mesurau i ddiogelu cydraddoldeb a hawliau dynol, nac unrhyw fesurau eraill i ddiogelu nodweddion cymdeithasol, amgylcheddol neu gyflogaeth.

Nodir ymatebion manwl i'r cwestiynau a'r argymhellion isod.

Cwestiwn y pwyllgorau: Rydym yn croesawu'r cam o gynnwys adran 7 yn y Bil Cyfraith sy'n Deillio o'r Undeb Ewropeaidd (Cymru), a fyddai'n golygu bod yn rhaid dehongli cyfraith Cymru sy'n deillio o'r UE yn unol â'r Siarter Hawliau Sylfaenol. Os nad yw'r Bil hwn yn mynd rhagddo am unrhyw reswm, hoffem weld Llywodraeth Cymru yn nodi sut y bydd yn sicrhau bod hawliau'r Siarter yn parhau i gael eu gweithredu yng Nghymru.

Atgyfeiriwyd y Bil Cyfraith sy'n Deillio o'r Undeb Ewropeaidd (Cymru) ("y Bil CDUE") at y Goruchaf Lys gan y Twrnai Cyffredinol. Fodd bynnag, yn dilyn llwyddiant Llywodraeth Cymru i sicrhau newidiadau i Fil yr Undeb Ewropeaidd (Ymadael) Llywodraeth y DU sy'n diogelu datganoli, disgwylir y bydd y Twrnai Cyffredinol yn tynnu hyn yn ôl. Bydd hyn yn galluogi'r Bil CDUE i gael Cydsyniad Brenhinol er mwyn i Weinidogion Cymru allu cymryd camau i ddiogelu'r diddymiad o'r hyn a fydd wedi hynny yn Ddeddf CDUE. O ganlyniad i'r datblygiadau hyn, disgwylir y bydd Bil yr Undeb Ewropeaidd (Ymadael) Llywodraeth y DU yn berthnasol yng Nghymru yn y dyfodol.

Ein hamcan yw sicrhau nad yw Brexit yn arwain at wanhau hawliau a'r safbwynt cyfredol. Felly, rydym yn cefnogi cynnwys diwygiadau anllwydraethol diweddar i Fil yr Undeb Ewropeaidd (Ymadael) Llywodraeth y DU a basiwyd gan yr Arglwyddi sy'n gwneud darpariaethau i'r Siarter Hawliau Sylfaenol barhau i gael ei gweithredu. Rydym ar hyn o

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

English Enquiry Line 0300 060 3300
Llinell Ymholiadau Cymraeg 0300 060 4400
YP.PrifWeinidog@llyw.cymru PS.FirstMinister@gov.wales

bryd yn aros am ymateb Llywodraeth y DU yn Nhŷ'r Cyffredin ac yn gobeithio y bydd y DU yn ei dderbyn a fydd yn caniatáu i'r diwygiadau hyn gael eu cynnwys o fewn y Bil a thrwy hynny yn sicrhau'r status quo mewn perthynas â gweithredu'r Siarter Hawliau Sylfaenol yng Nghymru.

Rydym hefyd wedi dechrau trafodaethau gyda Llywodraeth y DU, drwy Swyddfa Cydraddoldeb y Llywodraeth ('GEO', sydd bellach o fewn y Swyddfa Gartref) ynghylch ymrwymo i Gytundeb Gwleidyddol a fyddai'n cymeradwyo fframwaith presennol y ddeddfwriaeth sy'n ymwneud â thriniaeth gyfartal sydd ar waith o fewn ein gwledydd, sef Deddfau Cydraddoldeb 2006 a 2010 ac is-ddeddfwriaeth a wnaed o dan y Deddfau hynny. Ein hamcan yw sicrhau na chaiff unrhyw newidiadau deddfwriaethol eu gwneud a fyddai'n lleihau'r diogelwch parhaol presennol a ddarperir gan y ddeddfwriaeth honno.

Cwestiwn y Pwyllgorau: Rydym yn rhannu safbwynt ein tystion y dylai'r Gronfa Rhannu Ffyniant y mae Llywodraeth y DU wedi'i chynnig gael ei gweinyddu yng Nghymru gan Lywodraeth Cymru, a hynny er mwyn sicrhau ei bod yn ymateb i anghenion ac anghydraddoldebau lleol. Rydym hefyd o'r farn y dylid defnyddio'r Gronfa hon i fynd i'r afael ag anghydraddoldeb ac anfantais economaidd-gymdeithasol.

Ym mis Rhagfyr 2017 cyhoeddwyd papur polisi gennym o'r enw Buddsoddi Rhanbarthol yng Nghymru ar ôl Brexit, a ategodd ein safbwynt y dylid dyrannu cyllid i Lywodraeth Cymru, a dylai'r cyllid hwnnw gael ei reoli'n llwyr gan Lywodraeth Cymru, i ddisodli cronfeydd Strwythurol a Buddsoddi Ewropeaidd. Rydym hefyd wedi cynnal ymarfer ymgysylltu ar y papur polisi (a ddaeth i ben ar 23 Mawrth) i lywio gwaith datblygu yn y dyfodol a byddwn yn cyhoeddi dadansoddiad annibynnol o'r canfyddiadau hynny yn yr haf. Bydd hyn yn parhau i gryfhau'r dystiolaeth o'r galw am bolisi a wnaed yng Nghymru yn seiliedig ar anghenion fel y trafodwyd â Llywodraeth y DU.

Rydym yn parhau i roi pwysau ar Lywodraeth y DU i gadarnhau y caiff datganoli ei barchu mewn perthynas â threfniadau'r dyfodol, ac y bydd Llywodraeth Cymru yn cadw'r gallu i deilwra cyllid y dyfodol ar gyfer ein fframwaith polisi a deddfwriaethol penodol. Mae tystiolaeth gan Gynulliad Cenedlaethol Cymru hefyd yn cael ei chyflwyno i Lywodraeth y DU i bwysleisio nad yw'r galwadau hyn yn deillio o Lywodraeth Cymru yn unig.

Rydym yn cytuno mai dim ond dull a ddyluniwyd gan Gymru a fydd yn ymateb i anghenion ac anghydraddoldebau lleol ac mae Llywodraeth Cymru yn ymrwymedig i gydweithio mewn partneriaeth agos â chymunedau, busnesau a sefydliadau ledled Cymru i gyflawni hyn. Rydym hefyd wedi bod yn glir bod angen inni ymgorffori canlyniadau cymdeithasol ac amgylcheddol yn well i unrhyw fodel yn y dyfodol, gan ddatblygu Deddf Llesiant Cenedlaethau'r Dyfodol, ochr yn ochr â chanlyniadau economaidd mwy traddodiadol.

Argymhelliad y Pwyllgorau: Rydym yn argymhell y dylai Llywodraeth Cymru amlinellu ei safbwynt diweddaraf ynghylch cyflwyno'r ddyletswydd economaidd-gymdeithasol, o gofio y bydd y pŵer i wneud hynny yn cael ei ddatganoli o dan y setliad newydd.

Dyletswydd ar awdurdodau cyhoeddus i ymdrin â'r anghydraddoldeb sy'n deillio o anfantais economaidd-gymdeithasol, ac i roi'r amcan hwn wrth wraidd eu polisiau a'u rhaglenni, yw'r ddyletswydd economaidd-gymdeithasol. Caiff y ddyletswydd ei chynnwys yn Rhan 1 Deddf Cydraddoldeb 2010 ond nid yw wedi cael ei defnyddio yn unrhyw le arall yn y DU tan yn ddiweddar, a hynny yn yr Alban. Mae'r pŵer i ddeddfu'r ddyletswydd yng Nghymru wedi cael ei ddatganoli ers 1 Ebrill.

Yng Nghymru, Deddf Llesiant Cenedlaethau'r Dyfodol (Cymru) 2015 ('y Ddeddf') yw ein hofferyn allweddol ym maes ymdrin ag anghydraddoldeb economaidd-gymdeithasol yn

arbennig y nod llesiant o Gymru fwy cyfartal. Mae'r Ddeddf yn gosod dyletswydd gyfreithiol ar gyrff cyhoeddus penodol i bennu a chyhoeddi amcanion llesiant a ddyluniwyd i fanteisio i'r eithaf ar gyfraniad i gyflawni pob un o'r nodau llesiant hyn, gan gynnwys Cymru fwy cyfartal. Mae'r ddeddfwriaeth yn darparu'n benodol ar gyfer hyn fel cymdeithas sy'n galluogi pobl i gyflawni eu potensial waeth beth fo'u cefndir neu eu hamgylchiadau, gan gynnwys eu cefndir a'u hamgylchiadau economaidd-gymdeithasol. O gofio bod gennym y ddyletswydd gyfreithiol gadarnhaol a blaengar hon yng Nghymru sy'n ymdrin ag anghydraddoldeb economaidd-gymdeithasol nid ydym wedi rhoi pwysau ar Lywodraeth y DU yn ddiweddar i ddechrau'r ddyletswydd.

Yn dilyn ymgynghoriad cyhoeddus yn 2017, mae Llywodraeth yr Alban wedi dechrau'r ddyletswydd economaidd-gymdeithasol, a adwaenir fel Dyletswydd yr Alban Decach (the Fairer Scotland Duty). Yn sgil penderfyniad Llywodraeth yr Alban i weithredu'r ddyletswydd economaidd-gymdeithasol a'r cyfle i ailymweld â'r maes hwn gyda'r pwerau newydd a ddarparwyd gan Ddeddf Cymru, byddwn yn adolygu ein safbwynt yng nghyd-destun ein Hadolygiad Cyflym o Gydraddoldeb Rhywiol yng Nghymru ac archwilio'r materion a lywiodd penderfyniad Llywodraeth yr Alban i weithredu'r ddyletswydd. Bydd angen inni ystyried yn ofalus a fyddai'n gywir gosod dyletswyddau ychwanegol a chyfrifoldebau adrodd ar Gyrff Cyhoeddus Cymru yn arbennig pan mae gennym y ddyletswydd gyfreithiol flaengar yn Neddf Llesiant Cenedlaethau'r Dyfodol (Cymru) 2015. Byddwn yn parhau i ymgysylltu â'r Comisiwn Cydraddoldeb a Hawliau Dynol wrth inni fynd i'r afael â'r gwaith hwn.

Argymhelliad y Pwyllgorau: Rydym hefyd yn argymhell y dylai Llywodraeth Cymru ystyried ymgorffori rhagor o gytundebau hawliau dynol rhyngwladol yng Nghymru, yn yr un modd â'r Mesur Hawliau Plant a Phobl Ifanc (er enghraifft, y Cyfamod Rhyngwladol ar Hawliau Economaidd, Cymdeithasol a Diwylliannol (ICESCR), neu'r Confensiwn ar Hawliau Pobl ag Anableddau (CRPD)).

Bydd Llywodraeth Cymru yn parhau i roi ystyriaeth fanwl i gytundebau rhyngwladol a Chonfensiynau'r Cenhedloedd Unedig y mae'r Deyrnas Unedig yn llofnodwr iddynt, a bydd yn ceisio adlewyrchu naws a sylwedd pob confensiwn ar draws ei pholisïau a'i rhaglenni fel y bo'n briodol. Mae'n rhaid i weithredoedd Llywodraeth Cymru gyfateb â'i rhwymedigaethau rhyngwladol, fel y nodwyd yn Adran 82 Deddf Llywodraeth Cymru 2006, gan gynnwys saith Confensiwn y Cenhedloedd Unedig a lofnodwyd ac a gadarnhawyd gan blaid Gwladwriaeth y DU.

Byddwn hefyd yn parhau i fonitro effeithiolrwydd y dull hwn yn fanwl, yn cyfrannu at adroddiadau cynnydd ac adolygiadau cyfnodol gyda thystiolaeth ac enghreifftiau o Gymru, yn ymgysylltu â Phwyllgorau perthnasol y Cenhedloedd Unedig yn ystod archwiliadau cyfnodol yn Geneva, ac yn ystyried sut y byddwn yn mynd i'r afael â'r argymhellion a fydd yn deillio o hynny. Mae Llywodraeth Cymru yn cydweithio'n agos â Llywodraeth y DU a gweinyddiaethau datganoledig eraill i sicrhau bod Cymru yn cael ei chynrychioli'n llawn ac yr ymgysylltir â hi yn ystod pob cam o'r broses adrodd.

Bydd Deddf Llesiant Cenedlaethau'r Dyfodol (Cymru) yn parhau i fod yn brif offeryn deddfwriaethol mewn perthynas â hyn, o gofio bod y nodau llesiant a nodwyd yn y Ddeddf yn eang o ran cwrpas ac yn darparu'r fframwaith gorau i alluogi camau gweithredu cydlynol i sicrhau bod hawliau dynol yn cael eu diogelu yng Nghymru.

Cwestiwn y Pwyllgorau: Rydym yn galw ar Lywodraeth Cymru i gadarnhau mai bwriad y darpariaethau hyn (adran 3(2) ac adran 4(2)) yw sicrhau nad yw'r hawliau a'r rhwymedigaethau sy'n bodoli ar hyn o bryd (yn enwedig y safonau cydraddoldeb a hawliau dynol sydd o fewn cymhwysedd datganoledig y Cynulliad) yn cael eu tanseilio neu eu diddymu o ganlyniad i Brexit—naill ai gan Lywodraeth y DU yn

gweithredu o dan Fil yr Undeb Ewropeaidd (Ymadael), neu gan Weinidogion Cymru yn gweithredu o dan Fil y Cynulliad.

Ers eich llythyr ar y cyd dyddiedig 5 Ebrill, cytunwyd y bydd Llywodraeth Cymru yn cymryd camau i ddiddymu'r Bil Cyfraith sy'n Deillio o'r Undeb Ewropeaidd (Cymru), ar ôl iddo gael ei ddeddfu, yn dilyn cytundeb gyda Llywodraeth y DU ar Fil yr Undeb Ewropeaidd (Ymadael). O ganlyniad, bydd ffocws yr ymateb hwn ar y pwerau a gynhwysir o fewn Bil y DU.

Mae gan Lywodraeth Cymru hanes cryf o ddeddfu i ddiogelu safonau cydraddoldeb a hawliau dynol yng Nghymru. Mae hyn yn amlwg o enghreifftiau fel Mesur Hawliau Plant a Phobl Ifanc (Cymru) 2011 a Deddf Llesiant Cenedlaethau'r Dyfodol 2015. Rydym yn bwriadu parhau ag ymrwymiad y Llywodraeth hon i'r materion pwysig hyn wrth inni ymgymryd â'r dasg o weithredu Bil yr Undeb Ewropeaidd (Ymadael).

Nodwn gyda diddordeb, a chefnogaeth, yr egwyddorion a gyflwynwyd mewn diwygiadau anllywodraethol a basiwyd yn Nhŷ'r Arglwyddi i Fil y DU sy'n cyfyngu ar gwmpas y pwerau i addasu cyfraith yr UE i'r hyn sy'n angenrheidiol.

Argymhelliad y Pwyllgorau: Os yw'r Bil yn destun ddeddfiad, gofynnwn i Lywodraeth Cymru ddefnyddio'r pŵer hwn i flaenoriaethu mesurau i ddiogelu cydraddoldeb a hawliau dynol (cyn belled ag y bo modd). Rydym hefyd yn ailadrodd galwad y Pwyllgor Cydraddoldeb, Llywodraeth Leol a Chymunedau bod Llywodraeth Cymru yn "sefydlu mecanwaith ffurfiol i olrhain datblygiadau yn y dyfodol o ran hawliau dynol a chydaddoldeb yn yr UE, i sicrhau bod dinasyddion Cymru yn elwa o'r un lefel o ddiogelwch â dinasyddion yr UE". Credwn y dylai mecanwaith o'r fath fod ar gael i'r cyhoedd.

Y bwriad yw y caiff y Bil CDUE ei ddiddymu cyn hir ac felly ni fydd y pŵer yn y Bil hwnnw i wneud is-ddeddfwriaeth i gyd-fynd â chyfraith yr UE, gan gynnwys y rhai sy'n ymwneud â chydaddoldeb a hawliau dynol, ar gael. Fodd bynnag, mae mecanweithiau deddfwriaethol eraill yn bodoli, gan gynnwys deddfwriaeth sylfaenol a basiwyd gan y Cynulliad, i sicrhau nad yw Brexit yn arwain at hawliau pobl Cymru yn disgyn y tu ôl i'r rhai mewn gwledydd Ewropeaidd eraill.

Bydd Llywodraeth Cymru yn parhau i weithio gyda Chomisiwn Cydraddoldeb a Hawliau Dynol y DU i fonitro cynnydd hawliau dynol a chydaddoldeb yng Nghymru, gan nodi datblygiadau yn yr UE ac mewn gwledydd eraill. Mae'r Comisiwn yn y sefyllfa orau i asesu datblygiadau mewn perthynas â hyn. Mae Llywodraeth Cymru yn cydweithio'n agos â'i Bwyllgor a'i Swyddfa yng Nghymru i ystyried y safbwynt mewn perthynas â Chymru.

Mae cynllun pum pwynt y Comisiwn Cydraddoldeb a Hawliau Dynol yn cynnwys camau gweithredu i sicrhau bod y DU ar flaen y gad mewn perthynas â chydaddoldeb a hawliau dynol drwy sicrhau bod ein cyfreithiau a'n polisiau yn cyd-fynd â safonau cydraddoldeb a hawliau dynol y dyfodol sy'n deillio o'r UE, ar ôl inni ymadael, megis Deddf Hygyrchedd yr UE, yn ogystal â gwledydd cymharol eraill.

Cwestiwn y Pwyllgorau: Rydym yn gofyn i Lywodraeth Cymru amlinellu ei safbwyntiau ar y materion a ganlyn:

- pa asesiad y mae wedi'i wneud ynghylch y posibilrwydd o gyflwyno rhyw fath o hawl annibynnol i gydraddoldeb yng Nghymru, naill ai yn gyffredinol neu o fewn sectorau neu gyd-destunau penodol, a

- cynnig Llywodraeth y DU i sefydlu fframwaith anneddfwriaethol i ymdrin â chyfraith triniaeth gyfartal sy'n seiliedig ar gyfraith yr UE ar draws meysydd datganoledig a

meysydd nad ydynt wedi'u datganoli, a sut y bydd yn mynd ati i gynnal trafodaethau â Llywodraeth y DU ar y mater hwnnw.

Mae ymrwymiad cadarn i hyrwyddo cydraddoldeb a diogelu hawliau dynol wedi cael ei ymgorffori o fewn corff Llywodraeth Cymru ers datganoli. Adlewyrchir hyn yn glir mewn Deddfau olynol Llywodraeth Cymru, hyd at a chan gynnwys Deddf Cymru 2017. Adlewyrchir hyn hefyd mewn amrywiaeth eang o ddeddfwriaethau eraill Cymru yn ogystal â pholisïau a rhaglenni Llywodraeth Cymru ar draws pob maes datganoledig.

Yn benodol, mae gennym ddyletswydd sector cyhoeddus Cymru sy'n galluogi'r ddyletswydd cydraddoldeb sector cyhoeddus i gyflawni'n well. Mae dyletswyddau penodol Cymru yn flaengar ac yn eang, gan ei gwneud yn ofynnol i gyhoeddi amcanion cydraddoldeb, ymgysylltu, asesiadau effaith, cynlluniau cydraddoldeb strategol ynghyd â chynlluniau cyflog a chynlluniau gweithredu a gwahaniaeth rhwng cyflogau'r ddau ryw. Mae'r dyletswyddau penodol hyn yng Nghymru yn ceisio cael gwared ar wahaniaethu, aflonyddu, erledigaeth ac unrhyw ymddygiad arall a waherddir gan Ddeddf Cydraddoldeb 2010. Yn ogystal, mae'r dyletswyddau penodol yng Nghymru yn datblygu cyfle cyfartal rhwng pobl sy'n rhannu nodweddion gwarchoddedig perthnasol a'r rhai nad ydynt yn meddu ar y nodweddion hynny a hefyd meithrin perthynas dda rhwng pobl sy'n rhannu nodweddion gwarchoddedig perthnasol a'r rhai nad oes ganddynt y nodweddion hynny.

Yng Nghymru, mae gennym hefyd Ddeddf Llesiant Cenedlaethau'r Dyfodol (Cymru) 2015 ("Deddf 2015") sy'n ategu ymhellach ein penderfyniad i gynnal a mynd i'r afael â'n hymrwymiad i gydraddoldeb gan roi dyletswydd gyfreithiol ar gyrff cyhoeddus penodol a chyhoeddi amcanion llesiant sydd wedi'u dylunio i fanteisio i'r eithaf ar gyfraniad i gyflawni pob un o'r nodau llesiant, gan gynnwys Cymru fwy cyfartal. Mae Deddf 2015 yn darparu'n benodol ar gyfer hyn fel cymdeithas sy'n galluogi pobl i gyflawni eu potensial waeth beth fo'u cefndir neu eu hamgylchiadau, gan gynnwys eu cefndir a'u hamgylchiadau economaidd-gymdeithasol. Mae'r ddyletswydd gyfreithiol flaengar hon yn rhoi Cymru mewn safle unigryw ac yn dangos ymhellach yr ymrwymiad i sicrhau cydraddoldeb yng Nghymru, Yn sgil hyn, nid oes unrhyw gynlluniau ar hyn o bryd ar gyfer hawl ychwanegol, annibynnol arall i gydraddoldeb a allai ddyblygu neu fynd yn groes i ddarpariaeth sy'n bodoli eisoes.

Fel y nodwyd uchod, rydym hefyd wedi dechrau trafodaethau gyda Llywodraeth y DU, drwy Swyddfa Cydraddoldeb y Llywodraeth ('GEO', nawr o fewn y Swyddfa Gartref) ynghylch ymrwymo i Gytundeb Gwleidyddol a fyddai'n cymeradwyo fframwaith presennol y ddeddfwriaeth sy'n ymwneud â thriniaeth gyfartal sydd ar waith o fewn ein gwledydd, sef Deddfau Cydraddoldeb 2006 a 2010 ac is-ddeddfwriaeth a wnaed o dan y Deddfau hynny. Ein hamcan yw sicrhau na chaiff unrhyw newidiadau deddfwriaethol eu gwneud a fyddai'n lleihau'r diogelwch parhaol presennol a ddarperir gan y ddeddfwriaeth honno.

Argymhelliad y Pwyllgorau: Rydym yn argymhell y dylai Llywodraeth Cymru, yn ei drafodaethau â Llywodraeth y DU, ofyn am ymrwymiad gan Lywodraeth y DU na fydd yn taro unrhyw gytundebau masnach y byddai eu gweithredu yn erydu unrhyw ran o'r Ddeddf Cydraddoldeb neu'r Ddeddf Caethwasiaeth Fodern.

Rydym wedi bod yn glir yn ein papur diweddar Polisi Masnach: y materion ar gyfer Cymru ein bod yn credu mewn system deg ac effeithiol o ddiogelwch cymdeithasol i helpu pobl pan fydd angen y cymorth arnynt, ac y dylai polisi masnach gefnogi ein model cymdeithasol yn hytrach na'i danseilio. At hynny, rydym wedi gofyn am ddatblygu egwyddorion troswaol polisi masnach sy'n cynnwys cynnal mesurau diogelu pwysig o ran yr amgylchedd, yr economi a chymdeithas, cefnogi llesiant i bawb yn unol â Deddf Llesiant Cenedlaethau'r Dyfodol, cydnabod ein cyfrifoldebau ar lwyfan y byd a hyrwyddo masnach deg a moesegol.

Argymhelliad y Pwyllgorau: Rydym yn argymell y dylai Llywodraeth Cymru ddiweddarau'r Cynllun Cydlyniant Cymunedol cyn tymor yr haf 2018, a hynny er mwyn sicrhau ei fod yn cymryd i ystyriaeth y cynnydd a welwyd yn ddiweddar mewn troseddau casineb a'r heriau newydd sy'n bodoli o ran cydlyniant cymunedol yng Nghymru.

Mae Llywodraeth Cymru yn bwriadu cyhoeddi'r cynllun cydlyniant cymunedol a'r cynllun gweithredu i fynd â'r afael â throseddau casineb. Diweddarwyd ein cynllun cydlyniant cymunedol yn ddiweddar i adlewyrchu'r cynnydd mewn troseddau casineb o ganlyniad Brexit.

Rydym yn defnyddio ein dogfen waith wrth weithio gyda phartneriaid, ac mae hyn wedi ein galluogi i ganolbwyntio ar nifer o feysydd blaenoriaeth dros y misoedd diwethaf. Er enghraifft:

- Gweithio gydag amrywiaeth eang o bartneriaid i ddatblygu ein rhwydwaith cyfathrebu Cydraddoldeb a Chynhwysiant, i geisio cynyddu ein heffaith ar y cyd wrth atal rhyngwladol negyddol.
- Gweithio gyda Heddluoedd a Phrifysgol Caerdydd ar brosiect cyffrous i ddatblygu a gwella systemau monitro tensiwn sy'n ymgorffori gwaith amlasiantaeth.
- Gweithio gyda chydweithwyr addysg wrth iddynt ddiweddarau eu canllawiau Parchu Eraill a gwrth-fwlio er mwyn i'r ddogfen gefnogi athrawon i fod yn fwy hyderus wrth ymdrin ag achosion o fwlio sy'n ymwneud â chasineb mewn ysgolion.
- Gweithio gydag aelodau o Fwrdd Cyfiawnder Troseddol Cymru ar gyfer Troseddau Casineb i ddatblygu'r gwaith o fynd i'r afael â throseddau casineb, er enghraifft eleni rydym yn canolbwyntio ar "gyfraddau gadael cyn gorffen" (y llwybr a'r achosion a ollyngwyd rhwng cael eu hadrodd yn gyntaf, ymdriniaeth yr heddlu, ac erlyniad), troseddau casineb ar sail anabledd, a hefyd troseddau casineb sy'n ymwneud ag oedran a chamdriniaeth.

Mae Llywodraeth Cymru yn ariannu wyth Cydgysylltwyr Cydlyniant Cymunedol Rhanbarthol i hwyluso gweithio rhanbarthol. Caiff y Cydgysylltwyr eu monitro yn erbyn y camau gweithredu sydd yn y ddogfen waith. Caiff y camau gweithredu hyn eu grwpio o dan bedwar amcan:

- Gwaith ar lefel strategol i chwalu'r rhwystrau i gynhwysiant ac integreiddio ar draws grwpiau ymylol
- Gwaith ar lefel leol i chwalu'r rhwystrau i gynhwysiant ac integreiddio ar gyfer grwpiau a chymunedau penodol
- Cefnogi mewnffudwyr, ffoaduriaid a cheiswyr lloches a chymunedau sydd wedi setlo yn ystod y broses integreiddio
- Cefnogi cymunedau i atal gelyniaeth ac eithafiaeth a rheoli canlyniadau

Yours sincerely



CARWYN JONES



Children in Wales Plant yng Nghymru

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 NAFW 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

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>

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.

1.2 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.

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

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

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 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 placed 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 impious 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.

Sean O'Neill
Policy Director
Children in Wales

June 2018

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>

FGC is not a National Human Rights Institution (NHRI). This is in contrast to, for example, the Equality and Human Rights Commission (EHRC) and the Children's Commissioner for Wales (CCfW), both of which are NHRIs with statutory powers expressly relating to human rights and children's rights respectively. The FGC is not best placed to act as the guardian of human rights in Wales (although the FGC has important contributions to make in this respect). In my view, promoting and safeguarding human rights should be entrusted to existing NHRIs in Wales with an established record of meeting this objective, based on a framework of human rights obligations set out in discrete legislation (such as the child rights measure).

5. While the FGC has advisory, promotional, research and review functions relating to well-being objectives, the breadth of these responsibilities makes it unrealistic to anticipate that promoting human rights will be a priority. The FGC's Strategic Plan 2017-2023 refers to work with the CCfW on embedding children's rights, but makes no reference to human rights generally, or how these might be integrated into well-being objectives. The FGC's Annual report also references children's rights, but does not engage with human rights more widely. I emphasise: this is not a criticism of the FGC, and is understandable given the FGC's statutory responsibilities and breadth of activity. My concern relates to the indication that the WBFGA will be the delivery framework for human rights in Wales, and the burden of expectation falling on the FGC. In any event, the human rights function of specific commissioners is recognised in the FGC's *Future Generations Framework* which offers guidance to public bodies on the delivery of public services. The Framework signposts public bodies to human rights commissioners where a project impacts on older people, children, or people with protected characteristics.
6. A quick (admittedly unscientific) review of well-being plans from 17 PSBs in Wales (19 PSBs, 2 plans unavailable) reveals that only 5 make any reference to human rights in the context of well-being objectives, and of these 4 refer exclusively to the rights of the child. The child rights measure has prioritised children's rights at the highest level of policy development in Wales, and in my view it is significant that some well-being plans, as well as guidance from the Welsh Government and FGC, refer to children's rights while remaining silent on other human rights. This suggests that specific legal integration of children's human rights standards has had a positive impact to ensure their prioritisation in the policy sphere; and, therefore, the value of human rights legislation generally.
7. Finally, I have previously argued that human rights are the hallmark of an advanced nation, and human rights legislation a sign of confidence in Wales as a developing jurisdiction. Scotland is currently asserting itself in this respect, much as Wales has done to date with a highly innovative approach to due regard and incorporation of human rights. We are in danger of regression if in Wales we adopt the approach to the protection of social rights taken by UK governments, i.e. to rely on compliance with human rights as incidental to other policy objectives. Brexit has created the necessity, but also presented the opportunity for Wales to take further steps on protection of human rights. But this requires human rights-specific legislation if it is to be meaningful and effective.

Dr Simon Hoffman
Swansea University
s.hoffman@swansea.ac.uk

Disability Wales is pleased to note that given its new powers, Welsh Government will be considering implementation of the Socio Economic Duty through the current Rapid Review of Gender Equality. In its shadow report to the UN Committee on the Rights of Disabled People (June 2017) DW and its sister organisations in England, Scotland and Northern Ireland recommended to the UN Committee on the Rights of Disabled People that the UK Government should fully implement the Equality Act (2010) including the socio-economic duty. This reflects the well documented correlation between disability and poverty, nowhere more so in Wales, where JRF has found that disabled people in Wales are poorer than anywhere else in the UK (Poverty in Wales 2018). In their Concluding Observations, the CRPD supported the recommendation that the UK Government should fully implement the Equality Act as well as incorporate the UN Convention on the Rights of Disabled People into law and policy (August 2017).

Our concern, nevertheless, is with the emphasis Welsh Government places on the Well-being of Future Generations (Wales) Act 2015 as the 'key instrument in the area of addressing socio-economic inequality particularly the well-being goal of a more equal Wales'. In relation to Human Rights, the First Minister adds that the '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'.

We recognise that the Act is ground breaking and fully support its intentions, including the Wellbeing Goals such as achieving 'a more Equal Wales. However while it reflects the core values of human rights, we do not believe that the Act is a suitable framework to ensure that human rights are adequately protected and realised in Wales. The Act does not refer to human rights, nor does it set standards or establish duties based on human rights obligations. The well-being goals are highly aspirational, and provide a wide discretion to public bodies, including Ministers, on how they are met through well-being objectives. As we understand it, while the Act places duties on public bodies, it does not confer rights on individuals or act to safeguard these.

Furthermore the functions and powers of the Future Generations Commissioner (FGC) do not include protecting or promoting human rights, nor is the Commission a National Human Rights Institution (NHRI). This is in contrast to, the Equality and Human Rights Commission (EHRC), the Children's Commissioner for Wales (CCfW) and the Older People's Commissioner in Wales, all of which have statutory powers expressly relating to human rights.

Given the wide-ranging responsibility placed on the FGC, it is unrealistic to anticipate human rights will be a priority, nor would it appear that the Commission has the resources available to do so. The FGC's Strategic Plan 2017–2023 refers to work with the CCfW on embedding children's rights, but makes no reference to human rights generally, or how these might feature as well-being objectives. Indeed there is no specific reference to the UN Convention on the Rights of Disabled People, let alone guidance to public bodies on how these may be delivered through the Well-being Goals.

The Future Generations Act and the role of the Commissioner undoubtedly have a role to play in creating a culture in Wales that is supportive of Human Rights, however it is for Welsh Government to provide leadership on legislating for and the implementation of Human Rights in general and the specific human rights instruments in particular.

Equalities, Local Government and Communities Committee
-and-
External Affairs and Additional Legislation Committee

Human Rights Implications of Brexit
Comments on First Minister's Letter (16th May)

I am grateful for the opportunity to comment on the First Minister's response to the joint letter from the above committees (5th April).

1. I maintain there is a need for human rights legislation in Wales for the reasons set out in my previous submissions: in particular rights that relate to social protections. The Intergovernmental Agreement between the Welsh and UK governments fails to clarify the position on applicability of the Charter of Fundamental Rights, or on human rights generally; and, the *Law Derived from the European Union (Wales) Bill*, which would have provided some interpretive protection for Charter rights, has been withdrawn.
2. The First Minister's letter indicates that realisation of human rights will be through the framework of the WBFGA. In previous submissions I have suggested that the WBFGA well-being goals reflect core values of human rights. I maintain this is the case. However, I am firmly of the view that the WBFGA is not suitable to ensure that human rights are properly protected and realised in Wales. The WBFGA does not refer to human rights, nor does it set standards or establish duties based on human rights obligations. The Explanatory Memorandum accompanying the WBFGA makes no reference to human rights other than to note pre-existing statutory obligations. The well-being goals are highly aspirational, and provide a wide discretion to public bodies, including Ministers, on how they are to be met through well-being objectives. This may be contrasted with, e.g. the *Rights of Children and Young Persons (Wales) Measure 2011* which establishes a clear duty on Welsh Ministers to have due regard to specific rights set out in the Convention on the Rights of the Child. Human rights guarantees need to be clearly established in legislation if they are to be a visible priority for policy-makers.
3. The Welsh Government's programme for Government, *Taking Wales Forward*, establishes its WBFGA well-being objectives. This is accompanied by a delivery plan, *Prosperity for All*. Neither document, nor the Welsh Government's *Well-being Statement*, engages with or explains how human rights will be protected or realised in Wales. It is therefore difficult to understand how human rights relate to the Welsh Government's programme and delivery plan, or its well-being objectives. The Welsh Ministers, the primary devolved institution responsible for human rights in Wales, appear to be passing much of this responsibility to other public bodies and Public Services Boards (PSBs). This is particularly troubling as Statutory Guidance on the WBFGA merely reminds public bodies of the pre-existing commitment in Wales to children's rights.
4. I am concerned that a focus on the WBFGA as the framework for human rights delivery places an unreasonable burden on the Future Generations Commissioner (FGC), and does not take sufficient account of the functions of other commissioners in Wales. The functions and powers of the FGC do not expressly include protecting or promoting human rights, and the

FGC is not a National Human Rights Institution (NHRI). This is in contrast to, for example, the Equality and Human Rights Commission (EHRC) and the Children's Commissioner for Wales (CCfW), both of which are NHRIs with statutory powers expressly relating to human rights and children's rights respectively. The FGC is not best placed to act as the guardian of human rights in Wales (although the FGC has important contributions to make in this respect). In my view, promoting and safeguarding human rights should be entrusted to existing NHRIs in Wales with an established record of meeting this objective, based on a framework of human rights obligations set out in discrete legislation (such as the child rights measure).

5. While the FGC has advisory, promotional, research and review functions relating to well-being objectives, the breadth of these responsibilities makes it unrealistic to anticipate that promoting human rights will be a priority. The FGC's Strategic Plan 2017-2023 refers to work with the CCfW on embedding children's rights, but makes no reference to human rights generally, or how these might be integrated into well-being objectives. The FGC's Annual report also references children's rights, but does not engage with human rights more widely. I emphasise: this is not a criticism of the FGC, and is understandable given the FGC's statutory responsibilities and breadth of activity. My concern relates to the indication that the WBFGA will be the delivery framework for human rights in Wales, and the burden of expectation falling on the FGC. In any event, the human rights function of specific commissioners is recognised in the FGC's *Future Generations Framework* which offers guidance to public bodies on the delivery of public services. The Framework signposts public bodies to human rights commissioners where a project impacts on older people, children, or people with protected characteristics.
6. A quick (admittedly unscientific) review of well-being plans from 17 PSBs in Wales (19 PSBs, 2 plans unavailable) reveals that only 5 make any reference to human rights in the context of well-being objectives, and of these 4 refer exclusively to the rights of the child. The child rights measure has prioritised children's rights at the highest level of policy development in Wales, and in my view it is significant that some well-being plans, as well as guidance from the Welsh Government and FGC, refer to children's rights while remaining silent on other human rights. This suggests that specific legal integration of children's human rights standards has had a positive impact to ensure their prioritisation in the policy sphere; and, therefore, the value of human rights legislation generally.
7. Finally, I have previously argued that human rights are the hallmark of an advanced nation, and human rights legislation a sign of confidence in Wales as a developing jurisdiction. Scotland is currently asserting itself in this respect, much as Wales has done to date with a highly innovative approach to due regard and incorporation of human rights. We are in danger of regression if in Wales we adopt the approach to the protection of social rights taken by UK governments, i.e. to rely on compliance with human rights as incidental to other policy objectives. Brexit has created the necessity, but also presented the opportunity for Wales to take further steps on protection of human rights. But this requires human rights-specific legislation if it is to be meaningful and effective.

Dr Simon Hoffman
Swansea University
s.hoffman@swansea.ac.uk

June 13, 2018

John Griffiths AM and David Rees AM
Chairpersons, ELGC and EAAL Committees
National Assembly for Wales
Cardiff Bay
CF99 1NA

John.Griffiths@assembly.wales and David.Rees@assembly.wales

Dear John and David,

Subject: Brexit and equality & human rights

Thank you for sharing with us the First Minister's letter of May 16 and asking for our reflections on its content.

We welcome that the First Minister's stated objective is to ensure the UK's withdrawal from the EU does not lead to a dilution of equalities and human rights protections. The letter highlights positive actions that will be taken towards this aim. However, we believe the Welsh Government (and UK Government) can take further steps to protect and promote equality and human rights in Wales in light of the UK's decision to leave the EU.

The First Minister's letter makes clear that the Welsh Government views the Commission as well-placed to advise on these matters. We welcome this statement and the open dialogue we have with both the Welsh Government and your Committees. We look forward to continuing to play our part in legislative & policy development and scrutiny with the aim of securing equality and human rights protections in Wales.

Below we set out our reflections on key aspects of the letter.

The Charter of Fundamental Rights

We welcome the Welsh Government's stated support for retaining the Charter of Fundamental Rights (the Charter) in domestic law. It was pleasing that the Welsh Government included interpretive protection for Charter rights in its Law Derived from the EU (Wales) Bill. However, that Bill has now been withdrawn. In addition, the UK Government has so far given no indication that it will respond positively to the amendment passed in the House of Lords that seeks to retain the Charter in domestic law. Therefore, the Commission remains concerned that Charter protections will cease to be applicable in Wales following the

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Bloc 1, Cainc D,
Adeiladau Llywodraeth,
Heol Santes Agnes,
Caerdydd, CF14 4YJ

Block 1, Spur D,
Government Buildings,
St Agnes Road, Cardiff,
CF14 4YJ

Ffôn/Tel:
02920 447 710

E-bost/Email:
wales@equalityhumanrights.com

UK's withdrawal from the EU. The Commission will continue to press for the UK Parliament to pass amendments incorporating the Charter into domestic law. And, should that approach prove unsuccessful, we would welcome the Welsh Government exploring future legislative opportunities to incorporate Charter rights into Welsh law, insofar as the current devolution settlement allows it to do so. We will write to your Committees again on this point as the EU (Withdrawal) Bill continues its parliamentary course.

Loss of EU Funds

We fully support the Committees' suggestion that the Shared Prosperity Fund should be targeted at tackling inequality and socio-economic disadvantage. The Commission's *Healing the Divisions: A positive vision for equality and human rights in Britain* report states that the UK and Welsh Governments should ensure the loss of EU funding, such as the European Social Fund and the Equality and Citizenship Programme, does not undermine Wales's equality and human rights infrastructure. This includes academic research, for example on violence against women and how to police it, and voluntary sector services, for example those supporting older and disabled people in employment.

The Commission believes that funding mechanisms and priorities identified by the UK Government should take account of devolution and regional concerns. The UK and Welsh Government should conduct Equality Impact Assessments to guide decision-making on funding streams and projects.

New funding programmes in Wales should take into consideration people's protected characteristics and the relationship with socio-economic status and other disadvantages. Individuals should be placed at the centre of any criteria for funding allocations, with wider economic and geographical concerns being considered alongside. The public sector equality specific duties in Wales should be adhered to as a mechanism for this funding allocation and policymaking process.

We are currently commissioning a research report on the potential implications for equality and human rights in Britain of the loss of EU funds. We expect to publish our report in Autumn 2018 to inform UK and Welsh Government policymaking. We will be pleased to share the report with your Committees.

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CF14 4YJ

Ffôn/Tel:
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E-bost/Email:
wales@equalityhumanrights.com

Socio-economic duty

The Welsh Government has not yet taken steps to introduce the Equality Act 2010 socio-economic duty in Wales, following the powers over its commencement having recently transferred to Welsh Ministers via the Wales Act 2017. Therefore, it is pleasing that the letter confirms the Welsh Government is reviewing its position on the duty in light of the current Rapid Review of Gender Equality in Wales. We would welcome the Welsh Government setting out a timetable for its consideration of the duty as the Review itself is not due to be completed for twelve months.

We would warmly welcome the duty's introduction in Wales. This view is set out in our *Healing the Divisions* report and it has been expressed to Welsh Government.

As the letter states, we are in discussions with the Welsh Government on the duty. Our position has been informed by learning from our Scottish colleagues, with the duty currently being introduced in Scotland.

The Well-being of Future Generations Act

The Commission fully supports the Well-being of Future Generations Act. It is a transformative part of legislation. We are in regular liaison with the Commissioner's office to bring the Act's goals to fruition. However, the Commission does not believe that the Act means that separate protections, explicitly related to equality and human rights, are not needed.

For example, we believe the Equality Act socio-economic duty and the well-being goal of 'A more equal Wales' would be complementary duties rather than duplicative. International treaties fall outside of the Future Generations Commissioner's regulatory powers, so the Act does not fully cover the protection and promotion of human rights. Therefore the Act is not the vehicle for taking forward certain equality and human rights protections in Wales.

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Heol Santes Agnes,
Caerdydd, CF14 4YJ

Block 1, Spur D,
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St Agnes Road, Cardiff,
CF14 4YJ

Ffôn/Tel:
02920 447 710

E-bost/Email:
wales@equalityhumanrights.com

Incorporation of UN Treaties

The Commission's *Healing the Divisions* report sets out our position that UN human rights treaties, like the Convention on the Rights of Disabled People (UNCRPD), should be given further effect in UK and devolved law, and the UK and devolved governments should publish action plans for implementing UN recommendations on human rights.

The Welsh Government has taken steps to incorporate UN treaties into Welsh law, most noticeably with regards to the UN Convention on the Rights of the Child, and to a lesser extent with regards to the UN Principles for Older People and the UNCRPD. However, the Welsh Government's approach has not been fully consistent in taking forward opportunities to embed treaties into Welsh law and policy.

The Wales Act 2017 has given the Welsh Government more explicit powers in relation to the promotion of human rights than it had previously. We believe the Welsh Government should take advantage of this by building on its ground-breaking UNCRC legislation through further incorporation and promotion of UN treaties.

Tracking developments

Our *Healing the Divisions* report sets out that the UK and devolved governments should ensure 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.

It is important that the Welsh Government takes a leadership role in tracking and, where possible, replicating, progressive equality and human rights legislation that is taken forward within the EU after the UK's withdrawal from it. Therefore, we support the Committees' suggestion that the Welsh Government should establish a formal mechanism to track future developments.

As part of that process, we will play our role in monitoring, and advising on, equality and human rights developments. We warmly welcome the letter's statement that the Welsh Government will continue to work closely with us to consider developments and the position in relation to Wales.

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Adeiladau Llywodraeth,
Heol Santes Agnes,
Caerdydd, CF14 4YJ

Block 1, Spur D,
Government Buildings,
St Agnes Road, Cardiff,
CF14 4YJ

Ffôn/Tel:
02920 447 710

E-bost/Email:
wales@equalityhumanrights.com

I hope you find these reflections of interest. We would be pleased to offer further information, as required.

Yours sincerely,



Ruth Coombs

Pennaeth Cymru / Head of Wales

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