



John Griffiths AM
Chair
Equalities, Local Government & Communities Committee

David Rees AM
Chair
External Affairs & Additional Legislation Committee

16 May 2018

Dear John and David

Equality and human rights implications of Brexit

I am writing in response to your joint letter of 5 April. I welcome the work that your Committees have undertaken on the equality and human rights implications of Brexit in Wales. The Welsh Government has been clear that UK withdrawal from the EU should in no way lead to a dilution in equalities and human rights protections, or indeed any other social, environmental or employment protections.

Detailed responses to the questions and recommendations are set out below.

Committees' question: We welcome the inclusion of section 7 in the Law Derived from the European Union (Wales) Bill, which would require EU-derived Welsh law to be interpreted in line with the Charter of Fundamental Rights. Should this Bill not proceed for any reason, we would like the Welsh Government to set out how it will ensure that Charter rights continue to apply in Wales.

The Law Derived from the European Union (Wales) Bill ("the LDEU Bill") has been referred to the Supreme Court by the Attorney General. However, following the Welsh Government successfully securing changes to the UK Government EU (Withdrawal) Bill that protects devolution, it is the expectation that the Attorney General will withdraw his reference. This will enable the LDEU Bill to receive Royal Assent so that the Welsh Ministers can initiate steps to secure the repeal of what will then be the LDEU Act. As a result of these developments, it is the expectation that the UK Government EU (Withdrawal) Bill will apply in Wales going forward.

Our objective is to ensure that Brexit does not result in any dilution of rights and the current position. We therefore support the inclusion of recent non-government amendments to the UK Government EU (Withdrawal) Bill that were passed by the Lords which provide for the

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Charter of Fundamental Rights to continue to apply. We currently await sight of the UK Government response in the House of Commons and hope that the UK will accept them which would allow the inclusion of these amendments within the Bill thereby ensuring status quo in respect of the application of the Charter of Fundamental Rights in Wales.

In addition, we have also begun discussions with UK Government, via the Government Equality Office ('GEO', now within the Home Office) about entering into a Political Agreement which would endorse the existing framework of equal treatment legislation in force that applies in our nations, namely the Equality Acts 2006 and 2010 and secondary legislation made under those Acts. Our objective is to ensure that no legislative changes will be made that would reduce the existing substantive protections provided by that legislation.

Committees' question: We share the views of our witnesses that the Shared Prosperity Fund proposed by the UK Government should be administered by the Welsh Government in relation to Wales to ensure that it is sensitive to local needs and inequalities. We also think that the Fund should be targeted at tackling inequality and socio-economic disadvantage.

In December 2017 we published a policy paper *Regional Investment in Wales after Brexit*, which reiterated our view that replacement funding for the European Structural and Investment funds should be allocated to, and managed entirely by, the Welsh Government. We have also undertaken an engagement exercise on the policy paper (closed 23 March) to inform future development work and will publish an independent analysis of those findings in the summer. This will continue to strengthen the evidence of demand for a needs-based, made-in-Wales policy in our discussions with the UK Government.

We continue to press the UK Government to confirm devolution will be respected in future arrangements, and that the Welsh Government will retain the ability to tailor future funding to our specific policy and legislative framework. Evidence from National Assembly for Wales Committees is also being presented to the UK Government to emphasise these calls are not just coming from Welsh Government.

We agree that only a Welsh designed approach will be sensitive to local needs and inequalities and the Welsh Government is committed to working in close partnership with communities, businesses and organisations across Wales to deliver this. We have also been clear that we need to better incorporate social and environmental outcomes in any future model, building on the *Wellbeing of Future Generations Act*, alongside more traditional economic outcomes.

Committees' recommendation: We recommend that the Welsh Government should outline its latest position on the introduction of the socio-economic duty, given that the power to do so will be devolved under the new settlement.

The socio-economic duty is a duty on public authorities to address the inequality that arises from socio-economic disadvantage, and to place this objective at the core of their policies and programmes. The duty is included in Part 1 of the Equality Act 2010 but this has not been used anywhere in the UK, until recently in Scotland. The power to enact the duty in Wales has been devolved with effect from 1st April.

In Wales, the Well-being of Future Generations (Wales) Act 2015 ('the Act') is our key instrument in the area of addressing socio-economic inequality particularly the well-being goal of a more equal Wales. This places a legal duty on specified public bodies to set and publish well-being objectives that are designed to maximise its contribution to achieving each of the well-being goals, including a more equal Wales. The legislation expressly provides for this as a society that enables people to fulfil their potential no matter what their

background or circumstances including their socio economic background and circumstances. Given that we have this positive and progressive legal duty in Wales which addresses socio economic inequality we have not pressed the UK Government recently to commence the duty.

Following public consultation in 2017, the Scottish Government has commenced the socio-economic duty, to be known as the Fairer Scotland Duty. In light of the Scottish Government's decision to implement the socio-economic duty and the opportunity to revisit this area with the new powers provided by the Wales Act, we will be reviewing our position in the context of our Rapid Review of Gender Equality in Wales and exploring the matters that informed the Scottish Government's decision to implement the duty. We will need to consider carefully whether it would be right to impose additional duties and reporting responsibilities on Welsh Public Bodies particularly when we have the ground breaking legal duty within the Well-being of Future Generations (Wales) Act 2015. We will continue to engage with the Equality and Human Rights Commission as we take this work forward.

Committees recommendation: We also recommend that the Welsh Government should give consideration to the further incorporation of international human rights treaties in Wales, in the same manner as the Rights of Children and Young Persons Measure (for example, the International Covenant on Economic, Social and Cultural Rights (ICESCR), or the Convention on the Rights of Persons with Disabilities (CRPD).

The Welsh Government will continue to have high regard for international treaties and UN Conventions to which the United Kingdom is signatory, and will seek to reflect both the spirit and the substance of each convention across its policies and programme as appropriate. The actions of the Welsh Government must be compatible with its international obligations, as set out in Section 82 of the Government of Wales Act 2006, including the seven UN Conventions signed and ratified by the UK State party.

We will also continue to monitor the effectiveness of this approach in detail, contribute to progress reports and periodic reviews with Welsh evidence and examples, engage with the relevant UN Committees at periodic examinations in Geneva, and consider how we take forward the recommendations which follow. The Welsh Government works closely with the UK Government and other devolved administrations to ensure Wales is fully represented and engaged with every stage of the reporting process.

The Well-being of Future Generations (Wales) 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.

Committees' question: We call on the Welsh Government to confirm that the intention of these provisions (section 3(2) and section 4(2)) is to ensure that existing rights and obligations (particularly equality and human rights standards in devolved competence) are not eroded or removed as a result of Brexit - either by the UK Government acting under the EU (Withdrawal) Bill, or by Welsh Ministers acting under the Assembly Bill.

Since your joint letter of 5 April, it has been agreed that the Welsh Government will take steps to repeal the Law Derived from the European Union (Wales) Bill, once enacted, pursuant to an agreement with the UK Government on the European Union (Withdrawal) Bill. As a result, the focus of this response will now be on the powers contained in the UK Bill.

The Welsh Government has a strong record for legislating to protect equalities and human rights standards in Wales. This is evident from examples such as the Rights of Children and Young Persons (Wales) Measure 2011 and the Well-being of Future Generations Act 2015. We intend to continue this Government's commitment to these important issues as we undertake the task of implementing the EU (Withdrawal) Bill.

We note with interest, and support, the principles put forward in non-government amendments passed in the House of Lords to the UK Bill which limit the scope of powers to modify EU law to what is necessary.

Committees' recommendation: Should the Bill be enacted, we ask the Welsh Government to use this power to prioritise equality and human rights protections (as far as is possible). We also reiterate the ELGC Committee's call for the Welsh Government to "establish a formal mechanism to track future developments in human rights and equality in the EU to ensure that Welsh citizens benefit from the same level of protection as EU citizens". We believe that such a mechanism should be publicly available.

The intention is that the LDEU Bill will soon be repealed and therefore the power in that Bill to make subordinate legislation to keep pace with EU law, including those relating to equality and human rights, will not be available. However, other legislative mechanisms exist, including primary legislation passed by the Assembly, to ensure that Brexit does not result in the people of Wales seeing their rights fall behind those of other European countries.

The Welsh Government will continue to work with the UK's Equality and Human Rights Commission (EHRC) to monitor the progress of human rights and equality in Wales, taking note of developments in the EU and elsewhere. The Commission is best placed to assess developments in this regard. The Welsh Government works closely with their Wales Committee and Office to consider the position in relation to Wales.

The EHRC's five point plan includes action to ensure the UK is a global leader on equality and human rights by ensuring 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.

Committees question: We request the Welsh Government to outline its views on: what assessment it has made as to the possibility of introducing a form of freestanding right to equality in Wales, generally or within particular sectors or contexts, and

the UK Government's proposal to establish a non-legislative framework to deal with EU-based equal treatment law across devolved and non-devolved areas, and how it will approach discussions with the UK Government on that subject.

Firm commitment to promoting equality and safeguarding human rights has been built into the DNA of the Welsh Government since devolution. This has been clearly reflected in successive Government of Wales Acts, up to and including the Wales Act 2017. It is also reflected in a wide range of other Welsh legislation as well as the policies and programme of Welsh Government across all devolved areas.

Specifically, we have the Welsh public sector equality duty which enables the better performance of the public sector equality duty in Wales. The specific Welsh duties are progressive and expansive, requiring for example, the publication of equality objectives, engagement, impact assessments, strategic equality plans together with pay and action

plans and gender pay difference. These Welsh specific duties seek to eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Equality Act 2010. In addition the Welsh specific duties advance equality of opportunity between persons who share a relevant protected characteristics and those who do not and also foster good relations between persons who share a relevant protected characteristic and those who do not.

In Wales, we also have the Well-being of Future Generation (Wales) Act 2015 (“the 2015 Act”) which further reinforces our resolve to maintain and drive forward our commitment to equality placing a legal duty on specified public bodies to set and publish well-being objectives that are designed to maximise its contribution to achieving each of the well-being goals, including a more equal Wales. The 2015 Act expressly provides for this as a society that enables people to fulfil their potential no matter what their background or circumstances, which includes their socio economic background and circumstances. This ground breaking legal duty places Wales in a unique position and further demonstrates the commitment to ensuring equality in Wales. In light of this, there are no plans at present to provide for an additional, freestanding right to equality which might duplicate or cut across existing provision.

As indicated above, we have begun discussions with UK Government, via the Government Equality Office (GEO, now within the Home Office) about entering into a Political Agreement which would endorse the existing framework of equal treatment legislation in force that applies in our nations, namely the Equality Acts 2006 and 2010 and secondary legislation made under those Acts. Our objective is to ensure that no legislative changes will be made that would reduce the existing substantive protections provided by that legislation.

Committees’ recommendation: We recommend that in its discussions with the UK Government, the Welsh Government seeks a commitment from the UK Government that it will not enter into trade agreements whose implementation would erode any part of the Equality Act or Modern Slavery Act.

We have been clear in our recent paper *Trade Policy: the issues for Wales* that we believe in a fair and effective system of social protection to help people when they need it and that trade policy should support not undermine our social model. Furthermore we have called for the development of overarching principles for trade policy which include maintaining important environmental, economic and social protections, supporting well-being for all in line with the Well-being of Future Generations Act, recognising our responsibilities on the world stage and promoting fair and ethical trade.

Committees’ Recommendation: We recommend that the Welsh Government update the Community Cohesion Plan before summer 2018 to take account of recent rises in hate crime and new challenges to community cohesion in Wales.

The Welsh Government plans to publish the community cohesion plan and tackling hate crimes delivery plan. We recently updated our community cohesion plan to reflect the spike in hate crime as a result of Brexit.

We use our working document when working with partners, and this has enabled us to focus on a number of priority areas in the last few months. For example:

- Working with a wide range of partners to develop our Equality and Inclusion communications network, to try to increase our collective impact in countering negative rhetoric.

- Working with Police Forces and Cardiff University on an exciting project to develop and improve community tension monitoring systems that incorporate multi-agency working.
- Working with education colleagues as they update their Respecting Others anti-bullying guidance so that it supports teachers to be more confident in handling cases of hate-related bullying in schools.
- Working with members of the Hate Crime Criminal Justice Board Cymru to drive forward work to tackle hate crimes, for example this year we are focusing on “attrition rates” (the pathway and drop-off of cases between first report, through police handling, to prosecution), disability hate crime, and also age-related and misogyny hate crime.

The Welsh Government funds eight Regional Community Cohesion Coordinators (RCCCs) to facilitate regional working. The RCCCs are monitored against their delivery of actions in the working document. These actions are grouped under four objectives:

- Work at a strategic level to break down barriers to inclusion and integration across marginalised groups
- Work at a local level to break down barriers to inclusion and integration for particular groups and communities
- Supporting migrants, refugees and asylum seekers and settled communities during the integration process
- Supporting communities in preventing hostility and extremism and managing consequences

Yours sincerely

A handwritten signature in black ink, appearing to read 'Carwyn Jones', written in a cursive style.

CARWYN JONES