



Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales

Cofnod y Trafodion The Record of Proceedings

[Y Pwyllgor Cydraddoldeb, Llywodraeth Leol a
Chymunedau](#)

[The Equality, Local Government and
Communities Committee](#)

06/04/2017

[Agenda'r Cyfarfod](#)
[Meeting Agenda](#)

[Trawsgrifiadau'r Pwyllgor](#)
[Committee Transcripts](#)

Cynnwys Contents

- 4 Cyflwyniad, Ymddiheuriadau, Dirprwyon a Datgan Buddiannau
Introductions, Apologies, Substitutions and Declarations of Interest
- 4 Ymchwiliad i Hawliau Dynol yng Nghymru: Sesiwn Dystiolaeth 1
Inquiry into Human Rights in Wales: Evidence Session 1
- 27 Ymchwiliad i Hawliau Dynol yng Nghymru: Sesiwn Dystiolaeth 2
Inquiry into Human Rights in Wales: Evidence Session 2
- 47 Papurau i'w Nodi
Papers to Note
- 47 Cynnig o dan Reol Sefydlog 17.42 i Benderfynu Gwahardd y cyhoedd o
Weddill y Cyfarfod
Motion under Standing Order 17.42 to Resolve to Exclude the Public
from the Remainder of the Meeting

Cofnodir y trafodion yn yr iaith y llefarwyd hwy ynnddi yn y pwyllgor. Yn ogystal, cynhwysir trawsgrifiad o'r cyfieithu ar y pryd. Lle y mae cyfranwyr wedi darparu cywiriadau i'w tystiolaeth, nodir y rheini yn y trawsgrifiad.

The proceedings are reported in the language in which they were spoken in the committee. In addition, a transcription of the simultaneous interpretation is included. Where contributors have supplied corrections to their evidence, these are noted in the transcript.

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

Gareth Bennett	UKIP Cymru
Bywgraffiad Biography	UKIP Wales
John Griffiths	Llafur (Cadeirydd y Pwyllgor)
Bywgraffiad Biography	Labour (Committee Chair)
Sian Gwenllian	Plaid Cymru
Bywgraffiad Biography	The Party of Wales
Bethan Jenkins	Plaid Cymru
Bywgraffiad Biography	The Party of Wales
Jenny Rathbone	Llafur
Bywgraffiad Biography	Labour
Joyce Watson	Llafur
Bywgraffiad Biography	Labour

Eraill yn bresennol
Others in attendance

Melanie Field	Cyfarwyddwr Gweithredol Cymru a Strategaeth a Pholisi Corfforaethol, Comisiwn Cydraddoldeb a Hawliau Dynol Executive Director, Wales and Corporate Strategy and Policy, Equality and Human Rights Commission
Dr Simon Hoffman	Darlithydd Cysylltiol, Coleg y Gyfraith a Throsedddeg, Prifysgol Abertawe Associate Professor, College of Law and Criminology, Swansea University
Dr June Milligan	Comisiynydd y Comisiwn Cydraddoldeb a Hawliau Dynol a Chadeirydd Pwyllgor Cymru Equality and Human Rights Commission Commissioner and Chair of the Wales Committee
Yr Athro / Professor Thomas Glyn Watkin	Cyn-bennaeth Ysgol y Gyfraith, Bangor a Phrif Gwnsler Deddfwriaethol Cymru 2007–2010 Former Head of Bangor Law School and First Welsh Legislative Counsel 2007–2010

Swyddogion Cynulliad Cenedlaethol Cymru yn bresennol
National Assembly for Wales officials in attendance

Chloe Davies	Dirprwy Clerc Deputy Clerk
Gwyn Griffiths	Uwch-gynghorydd Cyfreithiol Senior Legal Adviser
Hannah Johnson	Y Gwasanaeth Ymchwil Research Service
Naomi Stocks	Clerc Clerk

Dechreuodd y cyfarfod am 09:15.

The meeting began at 09:15.

Cyflwyniad, Ymddiheuriadau, Dirprwyon a Datgan Buddiannau Introductions, Apologies, Substitutions and Declarations of Interest

[1] **John Griffiths:** May I welcome everyone to this meeting of the Equality, Local Government and Communities Committee? We will begin with item 1 on the agenda: introductions, apologies, substitutions and declarations of interest. We have received two apologies. Janet Finch-Saunders is unable to be with us this morning, and we have no substitute. Rhianon Passmore is unable to be with us for the beginning of the meeting, but she may be able to join us later. Are there any declaratifons of interest? No.

09:16

Ymchwiliad i Hawliau Dynol yng Nghymru: Sesiwn Dystiolaeth 1 Inquiry into Human Rights in Wales: Evidence Session 1

[2] **John Griffiths:** Then we move on to item 2, which is the beginning of our inquiry into human rights in Wales, and our first evidence session with the Equality and Human Rights Commission. We're joined this morning by Melanie Field, executive director, Wales and corporate strategy and policy lead for the commission, and June Milligan, Equality and Human Rights Commission commissioner and chair of the Wales committee. Welcome both. Thank you very much for joining us this morning. Perhaps you may wish to make a brief opening statement to the committee.

[3] **Dr Milligan:** If I may, yes.

[4] **John Griffiths:** Certainly.

[5] **Dr Milligan:** Thank you very much, Chair. Good morning, everyone. We warmly welcome the committee's inquiry and the opportunity both to submit written evidence, which we have done, and to be here with you today. We welcome the committee's work to explore the potential implications for equality and human rights, even though, with UK withdrawal from the European Union, there are, as yet, many unknowns. So, for many of the areas that the inquiry is looking into, it will be difficult for us to give and for you to find definitive answers. Neither Melanie nor myself are legislative experts, so we were pleased to see that you have got some of those coming for your later part of this session.

[6] However, like you, we have begun our work to develop an understanding of the implications as proposals emerge, and we've recently set out a vision—a positive vision for equality and human rights in Britain, in the current context, in a publication. We've got copies of that that we can leave with you. It's called 'Healing the divisions', and it sets out a five-point plan for how Britain can keep and strengthen its status as a world leader on equality and human rights after we leave the European Union. The title 'Healing the divisions' acknowledges that the referendum debate was closely and hard-fought on both sides, passionately, with different parts of Britain, cities, rural communities and people of different ages feeling and voting very differently. But the result affects everyone, and so our publication is about finding a way to implement things so that everyone can group again around a shared vision of post-Brexit Britain, and that is our contribution to that endeavour.

[7] We have called, separately, for public and political debate to be conducted in a respectful manner, because that helps to heal the divisions, we feel. It is no sterile debate. Human rights matter for all of us. The international agreements reflect British values of decency, respect and fairness, and the rights themselves underpin all of our daily lives and the public services that we rely on. In Wales, we feel there is a real pride in those values, a real pride in the public services that deliver to us some of our rights, and in devolution that has meant that the rights can be incorporated in Welsh law, in the way that was done in the Rights of Children and Young Persons (Wales) Measure 2011. Our position in EHRC is that we would wish to see such advances across all legislatures and administrations in Great Britain. So, it would be useful to share information not just today, but as the further proposals emerge and as the implications become clearer. We'll study with interest your recommendations when you reach them.

[8] **John Griffiths:** Okay. Well, thank you very much for that, June. We look forward to receiving that plan. Okay. Well perhaps I can begin with questions, and our first area of questioning is about Brexit. I wonder if you could tell the committee, in terms of the negotiations around Brexit, what you think should be the top priorities in terms of human rights.

[9] **Ms Field:** Shall I take that one to start with? That is really the subject matter of the five-point plan than June referred to. So, the first one is about ensuring there's proper parliamentary scrutiny for the equality and human rights framework post Brexit, so, ensuring that the use of Henry VIII powers, for example, which has been discussed in relation to the great repeal Bill White Paper, are used responsibly in relation to what we see as fundamental rights.

[10] The second main area is about—as June has talked about—retaining our legal framework as we leave the European Union, so, ensuring that the fact that we will be losing the underpinning EU law that's like a safety net, in some respects, to some parts of our equality legislation doesn't mean that there's scope for regression in relation to those fundamental rights.

[11] The third area is about ensuring, as June has said, that the UK remains a global leader on equality and human rights, and we believe that that involves implementation of the provisions that the UK Parliament has already approved. So, there are some parts of the Equality Act, for example, that have not yet been implemented. We would like to see those implemented, and in particular, Part 1 of the Equality Act, which relates to socioeconomic inequalities. We think that's a key part of what we were talking about, about healing the divisions that we have in society, which were highlighted during the referendum campaign, and also ensuring that, again, there's no regression. We propose that there should be a constitutional right to equality that would ensure that, when we lose the protection from the charter of fundamental rights, the state's actions can be measured against a standard of equality that's a British standard.

[12] The fourth area is around protecting our equality and human rights infrastructure, so that affects our organisation, the Equality and Human Rights Commission, and we were very pleased to see, in the great repeal Bill White Paper, that there is a commitment to retain the protections in both the 2006 and 2010 Equality Acts, but also, as well as the commission itself, it's about the funding that comes from Europe that supports non-governmental

organisations that work in this field. We would like to see assurances about those, and the kinds of voluntary services supporting older and disabled people that rely on that funding.

[13] Then, finally, we want to promote the UK as an open and fair place to do business, so we think that that means ensuring that trade agreements—future trade agreements—support equality and human rights to at least the same standard that current EU trade agreements do.

[14] **John Griffiths:** Okay. Thanks very much for that. You mentioned in your opening remarks, and in answering the first question, the need to heal divisions that have developed around the referendum and Brexit, and some of the obvious tensions in some parts of our communities in terms of that feeling of being left behind and not having what people might describe as a fair crack of the whip, really. So, in terms of those social inclusion issues and equality issues—economic aspects, for example—given that that’s one of your priorities in terms of what you’d like to see addressed, is there anything that the commission will be doing to follow up from its plan in terms of trying to get necessary action, and perhaps getting Welsh Government to take any particular action?

[15] **Dr Milligan:** So, the call that Melanie’s referred to to implement the socioeconomic duty is one to UK Government and to other administrations, too. In Wales, we’re already working very closely with the Future Generations Commissioner for Wales, who has her own goals under the Well-being of Future Generations (Wales) Act 2015, as you’ll all know, which include not just a more equal Wales, but a prosperous Wales. And so we have been doing some work to align the things that we ask of public services, and the future generations commissioner asks of public services, particularly in terms of the data that are returned and whether we can get a sense of the equality impact of the way public services are delivered. And so we think that we will be able to demonstrate how different groups are affected by that work. That seems to us quite fundamental as she sets the standards for information that she’s going to be collecting. I think there’s scope as well to do more work once she’s done that initial round of work with public authorities.

[16] The other area, of course, is around hate crime, and the commission has called very publicly, following the referendum, and the events that we saw in the aftermath of the referendum last year, for there to be a tone and tenor of debate that doesn’t give any excuse to those who would use the discussions as a basis for hate crime.

[17] **John Griffiths:** Okay, thank you for that. Sian.

[18] **Sian Gwenllian:** Roeddwn i eisiau mynd ar ôl y cynllun pum pwynt yma. Rwy'n cymryd mai cynllun Prydain ydy hwnnw. Nid oes yna sôn am Gymru yn y cynllun yna. A ydych chi'n bwriadu dod â chynllun Cymru allan—rhywbeth tebyg—achos mae'n fy nharo i mai beth ydych chi'n sôn amdano fo yn y cynllun yna efallai ddim yn bethau sydd yn realistig iawn, o gofio'r sefyllfa wleidyddol yn Llywodraeth y Deyrnas Unedig? Ond efallai bod yna gyfle i greu rhywbeth gwahanol yng Nghymru ac, a dweud y gwir, mi ddylai ffocws y comisiwn yng Nghymru fod ar weld beth sy'n bosibl i'w greu allan o'r sefyllfa yma yng Nghymru.

Sian Gwenllian: I just wanted to pursue the five-point plan. I take it that this is a British plan. There's no talk of Wales in that plan. Do you intend to bring a Wales plan out that's similar, because it strikes me that what you're talking about in that plan may not be realistic, given the political climate in terms of the UK Government? But there may be an opportunity to create something different in Wales and, to tell you the truth, the focus of the commission in Wales should be on seeing what's possible to create out of the situation in Wales.

[19] **Ms Field:** Thank you for that question. You're quite right—it's a GB plan, because that's the commission's general remit, but I think there is definitely scope for seeing more progressive action in different parts of Britain. So, for example, June referred to the socioeconomic duty, which is a call on the UK Government, but we are pleased to see that the latest devolution arrangements have devolved competence to implement that duty in Scotland to the Scottish Government and to the Welsh Government, and we very much hope that that will happen in Wales.

[20] June also referred to the progress that's been made in Wales in relation to children's rights, and a key thing that we would like to see across the UK is greater incorporation of international treaty obligations. We've already seen that starting in Wales. That's great in terms of us being able to use that as a demonstration to the rest of the UK about the difference that that kind of action can make. We're pleased that that's also being considered in relation to older people's rights. Again, we would like to see that kind of action being taken in relation to all the international treaties that we've signed up to. And we're therefore pleased, where there is a more progressive

administration, that we can perhaps make some more progress in Wales.

[21] **John Griffiths:** Okay, Sian? Thanks for that. Could I ask you as well: in terms of any future repeal of the Human Rights Act 1998, and potential withdrawal from the European convention on human rights, and the Brexit negotiations generally, is there anything that the commission, in particular, would like to see Welsh Government doing to ensure a strong voice for Wales around those particular matters?

09:30

[22] **Dr Milligan:** So, I think it's—. Sorry, let me just—I get a little bit of feedback if I keep my headphones on. I think it's really important that Welsh Government, and other voices from Wales, keep highlighting the distinctive legislative context that we have here, and, in particular, the constitutional arrangements for, and the responsibilities of, the devolved legislatures in terms of compliance with human rights. I think you just have to keep pointing that out, because there's going to be lots of activity, and sometimes even things that seem very central may get pushed to the side.

[23] There are also opportunities, as we were saying, for the Welsh Government, and the Assembly, to be a progressive voice in the debates that will ensue, and to take forward issues that otherwise might get lost alongside the constitutional ones, and, practically, to talk, as we have done, about the advances that have already been made in Wales—some of them were firsts, some of them have then been replicated elsewhere—and to talk about the practical implementation and the difference that human rights is making in practice for people. It's that translation into something that is relevant to people's everyday life, I think, where you could help.

[24] Just noticing that the UK Government's White Paper on exiting the European Union proposes a very, very considerable number of statutory instruments—ahead of the actual moment of exit, it talks of some 800 to 1,000 statutory instruments a year to sort the statute book ready for leaving the European Union, and it says that some of that will be work for devolved legislatures. That's a very, very heavy burden of scrutiny to be undertaken, both in Westminster, and in devolved legislations, and you'll wish to be vigilant, not only, obviously, in terms of your own business, and where there are rights enshrined, but also, I think, there'll be a need to be vigilant for what's happening on non-devolved legislation. So, I think it's a really challenging time. So, if there's something you can do, yes—and I think

there's going to be a lot to do over the coming period.

[25] **John Griffiths:** Okay. And, in terms of the divergent approaches that have developed between the devolved Governments in the UK and the UK Government, and, indeed, UK Government and Europe more generally, do you see that divergence as potentially undermining universalism of human rights? Do you see an issue there?

[26] **Ms Field:** I think it's important to note that the international obligations that fall on the UK fall on the UK state, and that's an important safety net in terms of devolution, and that's built into the current devolution agreements. I think it's a positive that, beyond that safety net, devolved administrations are able to be more progressive and enhance rights in devolved areas, and that acts as a push to other parts of the UK to do the same. So, we've seen that in a specific way in terms of the public sector equality duty, for example. So, that applies GB-wide, but there are devolved powers to make specific duties, and we've seen, in Wales, a much more prescriptive and progressive approach to those specific duties. And that enables us to see what works well in different contexts, and, as the commission, we'll be looking at how those play out and how they impact on the delivery of public services in different parts of Britain. It enables us to push all areas to do better.

[27] **Dr Milligan:** So, we don't see a threat to universalism.

[28] **John Griffiths:** No. Okay. Thank you for that. Jenny.

[29] **Jenny Rathbone:** I just wanted to ask you about the impact on the rights of children, particularly today of all days, when third born and subsequent children are no longer entitled to in-work tax credit. I just wondered if (a) that's the sort of thing that the European Court of Human Rights is able to challenge and whether—. You know, we have our own legislation in relation to the rights and our obligations around children. I just wondered if you could advise us whether leaving the European Court of Human Rights would have a noticeable impact on the right of a child to challenge their economic and social rights, and whether that's something we'd be able to rectify in law here, if we were so minded.

[30] **Ms Field:** Interestingly, that was an issue that we were discussing at the commission yesterday. We opposed the provision that restricts in-work tax credits for third children. We had concerns about that on a number of

fronts, in particular around cultural differences, around expectations about family size, and religious differences around birth control. So, we were concerned about the disparate impact of that on different families.

[31] There are also issues about the regulations that provide an exception for children who are the product of rape or coercive sexual relationships. We raised those concerns during the passage of the primary legislation and we are writing to the relevant Minister about all of those concerns.

[32] What is positive is that the White Paper on the great repeal Bill asserts the Government's commitment to staying within the convention, and we also have the other international treaties that we've signed up to. But that is why we think it's really important that those treaties are properly incorporated in UK law, so that people can actually have redress for those rights in UK courts.

[33] **Jenny Rathbone:** Thank you.

[34] **John Griffiths:** Okay, thanks for that. Gareth, did you want come in at this stage?

[35] **Gareth Bennett:** Yes, thanks. You mentioned the possible problem of losing EU funding relating to older and disabled people. How will that threaten to impact them specifically? In what way is that likely to—

[36] **Ms Field:** There are various funding streams from the EU that support voluntary organisations that provide services to people who suffer particular disadvantage or challenges. We think it's important that that change is properly considered and the Government considers how that funding can be maintained when the EU funding streams are no longer there.

[37] **Gareth Bennett:** What does it particularly deal with—the funding? What sort of things? What sort of services are they likely to lose?

[38] **Ms Field:** They could lose advice services, services that provide practical support during times of difficulty.

[39] **Gareth Bennett:** Are there any other particular ways that leaving the EU could affect different groups in society? Are there any particular areas of concern? Any particular groups that you're particularly worried about?

[40] **Dr Milligan:** In relation to funding, it's also probably worth mentioning the European social fund, because that has been one of the most significant sources of funding, for example, for support into employment for disabled people. Much of that is not obvious; it appears in schemes that are the Government's schemes or the Welsh Government's schemes, because it has to be integrated with the provision of the member state. But the very fact that that is often targeted in a way that is designed to limit social exclusion, or to—we would say—encourage social inclusion, I think, has to be a concern, until we know what's going to happen in relation to those schemes that were previously significantly supported by the ESF. And that is, you know, a very, very large-scale funding support.

[41] **Gareth Bennett:** Okay. Thanks.

[42] **John Griffiths:** Okay. And Joyce.

[43] **Joyce Watson:** There are two things here. There's the right that you have and the need to access that right. We've already seen some significant changes in access to justice in terms of funding—so while you're on funding I'll keep on funding—and thereby people being denied their rights through a lack of affordability, whether that's in work, whether that's as a consequence of leaving somebody because they've been violent towards you or controlling of you, and having to pay upfront. So, we've already seen those changes, and denied access through those changes through the UK Parliament. So, following on from that and the fact that article 21—the UK's equivalent to the charter is protocol 12 and it hasn't been ratified by the UK—captures large-scale rights and particularly personal characteristics, how do we, here, watch out, if you like? I call it 'mind the gap'. How do we mind the gap or how would you advise us to mind that gap, and what is it that we particularly need to look at under that particular charter and that protocol?

[44] **Ms Field:** There are two aspects of this, both of which I've already mentioned. So, one is about giving greater domestic status to international treaty obligations, which would fill some of those gaps. So, obviously, we have the Human Rights Act and that incorporates article 14, which is the non-discrimination provision, but it only applies in relation to a substantive convention right. Protocol 12 would go beyond that and the UK hasn't chosen to ratify it. We continue to ask the UK Government to ratify it, but we are not confident that that will happen soon, but it's something that we will continue to call for in the context of the current changes. And then the other aspect is, we believe that there should be a constitutional right to equality to

replace that protection provided by the charter. That would give a broader protection than we currently have.

[45] **Joyce Watson:** There are, if I can—. There are also lots of conventions and lots of case law where, in reality, it hasn't been legislation that's driven it but norms and practices cited in the European courts and others, and thereby ruled on and effectively considered law. There must be considerable examples of that. Do you have any advice for us as a committee, looking along those lines, about capturing those cases to make sure that they're not lost in this?

[46] **Dr Milligan:** The White Paper, as I read it, on exiting the European Union, talks about case law continuing to be taken into consideration, and I think that is, if that's carried through, a really important provision that would be made. Because you're right to say that we have relied very much on those judgments. So, what happens thereafter, of course, has been reserved as a matter that would then be for British courts to decide, but there is that provision in relation to previous case law.

09:45

[47] The other thing—and I hope this is relevant to your question—is that it's one of the things that we can do, but I think it's also one of the things that you can do, and other voices in Wales can do, and that is, as part of the reporting that we make under the conventions, to highlight where we see the impacts of policy having an effect on people's rights. So, for example, in the recent universal periodic review report that we have presented, which draws on comment from civic society on a very broad base, we have highlighted the access to justice concerns, with some very specific examples around employment tribunals, and looking at the reduction in the number of people who have been able to access their rights through tribunals. And so, we have stated that very explicitly in the evidence that we have given, and so, we are able to use the conventions in that way as well.

[48] **Joyce Watson:** Okay.

[49] **John Griffiths:** In terms of the Brexit negotiations, again, and trade deals, do you see any potential tensions arising in human rights terms around those trade negotiations and trade deals? Are there any obvious areas that we ought to consider?

[50] **Ms Field:** Yes, I'll start off with that one. I think we do see risks, and there has been talk about the need to avoid a race to the bottom, if you like. So, that's why we're taking the position that new trade agreements should contain at least equivalent human rights and equality protections as are contained in current EU trade deals.

[51] **John Griffiths:** Okay.

[52] **Dr Milligan:** I mean, they've been used in the past—trade deals—to try to drive up human rights. This is part of the leadership that the UK has shown, and so we are advocating that that should continue. That shouldn't fall away because of exiting the European Union. And whether those trade deals are, you know, more of a bilateral nature, there is still the same opportunity to have requirements written into them. And very often, those are reciprocal requirements, so we have to acknowledge that as well. But there are opportunities to integrate human rights requirements, in that way, into the deals that are done and signed up to.

[53] **John Griffiths:** Okay. One final question from me, really, on Brexit, before we move on, and that is: in terms of the Equality Act and the Welsh public sector equality duties, and the impact of Brexit, is there anything more you'd like to say, further to what you've already said?

[54] **Dr Milligan:** I think the thing that postdates the evidence paper that we provided is the publication of the White Paper. I know you've seen it, so I don't want to keep repeating what the provisions of it are, but you know, we did particularly welcome the statement that's there, that the protections covered in the Equality Act will continue to apply once the UK has left the EU, and also a very explicit statement about workers' rights. These are important, and they're important things to hold to, as the scrutiny around that legislation comes forward. Those are commitments that have been put forward. Just on the public sector equality duty, it's worth clarifying that that's not derived from international or European Union. That is only in the UK. It's a unique way of ensuring that public services are provided with respect to equality and human rights, and as Melanie has mentioned, it was particularly strengthened in the Welsh context. So, that, we don't see as threatened in any particular way.

[55] **John Griffiths:** Okay. Thank you very much, and we'll move on, then, to the UK bill of rights, and Bethan Jenkins.

[56] **Bethan Jenkins:** Yn darllen y dystiolaeth, mae lot o'r hyn sy'n cael ei ddweud yn y maes yma yn weddol gymhleth, felly rydw i'n credu ei fod e'n bwysig i ni geisio sefydlu sut fydd diddymu'r Ddeddf Hawliau Dynol yn effeithio ar gyfansoddiad Cymru. Rwy'n deall gan y Cwnsler Cyffredinol yma y byddai angen cydsyniad y Cynulliad ar gyfer unrhyw newid, ond mae cydsyniad, wrth gwrs, yn wahanol i'r ffaith, ar ddiwedd y dydd, fod Llywodraeth Prydain yn gallu '*implement-eiddio*' hynny gan nad oes pwerau cyfan gwbl gyda ni o ran hawliau dynol. Felly, trio deall gennyh chi, fel arbenigwyr, ar hyn o bryd sut fyddai hynny'n effeithio arnom ni, efallai, a sut wedyn ydym ni'n gallu edrych i, efallai, cael Deddf unigryw i Gymru yn hynny o beth.

[57] **Bethan Jenkins:** In reading the evidence, much of what's said here is quite complex, so I think it's important that we do try and establish how the repeal of the Human Rights Act will affect the Welsh constitution. I understand from the Counsel General here that the Assembly's consent would be required for any change, but consent, of course, is different to the fact that, at the end of the day, the UK Government can implement that because we don't have comprehensive powers in terms of human rights in this place. I'm trying to understand from you, as experts, how that would impact us here in Wales, and how we can seek to have a Wales-only Act perhaps in that regard.

[58] **Dr Milligan:** Okay. I think there are a lot of questions there and this is an area where your later witnesses have much greater expertise—they really do—because it's a very complex area of law, as you suggest. It engages not just international obligations, but the constitutional arrangements within the UK. So, anything that I say is, you know, within that context.

[59] It appears that the plans to replace the Human Rights Act with a British bill of rights are currently on hold, with the UK Government advising that they will return to it once things are clearer about exiting the European Union. Just to say, I guess, that the commission's formal position is that the Human Rights Act is actually a very well-crafted piece of legislation because it maintains parliamentary sovereignty and a role for the domestic courts within the international obligations. And, most importantly I guess, here today, as we've said, it's been woven into the constitutional arrangements of the UK, including successive Government of Wales Acts, and so therefore it's woven into the legislative consideration of this Assembly. So, any amendments, therefore, or any replacement of that Act that was to be undertaken by the UK Government would need to take account of all of those things as well as the international aspects of it, and indeed of the

implementation that's already taken place, you know, with children's rights, for example, in Wales. As we've already said, we wouldn't want to lose any of the opportunities for progressive action under the treaties here, and we would say, therefore, that any change shouldn't weaken the protections that Welsh people currently enjoy under the arrangements. So, that would be the position that we would set out.

[60] As to legislative consent, it's quite difficult to speculate without something being put forward. I don't know whether you want to say anything about, you know, any sense of potential upsides of the opportunity to do more on human rights if there are legislative changes, Melanie.

[61] **Ms Field:** Well, again, it would be what I've said before, which is that we want to see more incorporation of the treaty obligations that are currently not fully implemented in domestic legislation. So, as June has said, we think the Human Rights Act works well. If it is replaced, it's not the only approach that one could take to ensuring the convention rights in the UK. But if there is a different approach, we would want to ensure that it's at least as effective in terms of the rights it protects and the access to justice, when those rights are breached, that it provides. It may be an opportunity for the incorporation of the children's rights convention rights, for example, on a UK-wide basis, rather than in devolved areas. So, there are potentially opportunities, but we like the Human Rights Act as it is, so we're not seeking for it to be changed.

[62] **Bethan Jenkins:** Rwyf jest eisiau gofyn, jest er mwyn deall yn fwy manwl, rydych chi wedi dweud ynglŷn â'r sylw dyledus sydd yn cael ei roi i hawliau i blant yma yng Nghymru, ond hoffwn i ddeall os ydych chi wedi gwneud darn o waith i asesu hynny ac effeithiolrwydd hynny, achos rydym ni yn gwybod ei fod yn bodoli, ond pa mor gryf yw hynny ynddo'i hun? Mae yna enghreifftiau dros Gymru gyfan lle mae plant ifanc yn dal i gredu nad yw eu barn nhw yn ddigon cryf—mewn penderfyniadau cyngor sir, er enghraifft. Felly, a yw hyn yn ddigon cryf? Achos beth na fyddem ni eisiau **Bethan Jenkins:** I just wanted to ask, just to have a deeper understanding of this, you've mentioned due regard to rights for children here in Wales, but I'd like to understand whether you've carried out a piece of work to assess that and the effectiveness of it, because we know that it exists, but how strong is that in and of itself? There are examples across Wales where young children still believe that their views aren't being taken into account—in county council decisions, for example. So, is this strong enough? Because what we wouldn't want to do is to use something that's already in existence

ei wneud yw defnyddio rhywbeth as a basis for the future, if the
sydd yma fel sail ar gyfer rhywbeth i'r Human Rights Act no longer existed,
dyfodol, pe na bai'r Ddeddf Hawliau if that isn't sufficiently robust to
Dynol yn bodoli, os nad yw hwnnw'n protect that group of people.
ddigon cryf i allu amddiffyn y set yna
o bobl.

[63] **Dr Milligan:** No, and I don't think that we would be suggesting that at all. We wouldn't be saying that you could take away the Human Rights Act and rely on what has been done here. Definitely, that wouldn't be the case. What we're saying, in relation to the Rights of Children and Young Persons (Wales) Measure 2011, is that it takes us a step further forward than has been taken elsewhere in the UK and provides us with, for example, a children's commissioner who is exactly the person who does, I know, exactly what you're suggesting—listens very carefully, takes note of practice and is there and able to advocate and bring forward reporting on how well children's rights are being respected. I know that successive commissioners have been very challenging around that. So, that's the strength of the approach, but it doesn't give people redress against their rights in the way that other arrangements do. So, it wouldn't sit instead of the Human Rights Act, for example.

[64] **Bethan Jenkins:** Océ. Yn eich **Bethan Jenkins:** Okay. In your
tystiolaeth, rydych yn dweud y evidence, you say that you would call
byddech chi'n galw ar Lywodraethau on devolved Governments to include
datganoledig i ymgorffori hawliau the United Nations' human rights in
dynol y Cenhedloedd Unedig mewn domestic law and that the Welsh
cyfraith ddomestig ac y byddai Government could take further steps
Llywodraeth Cymru yn gallu cymryd to ensure that. Can you just explain
camau pellach i sicrhau hynny. A how that could be implemented in
allwch chi jest esbonio sut fyddai reality?
hynny yn gweithredu mewn realiti?

[65] **Dr Milligan:** So, as well as the United Nations Convention on the Rights of the Child, there's a convention on the rights of people with disabilities, but that hasn't been taken into Welsh law in the same way as the children's rights have. So, I think that's all that we are trying to say when we make that reference—that there's further scope to make a difference to people's lives by putting those sorts of arrangements—

[66] **Bethan Jenkins:** Is that the only example that you've got or would

there be other international treaties that we could put in, if this changes, instead of—?

[67] **Dr Milligan:** No, none of them would be sufficiently broad to replace, for example, the Human Rights Act. But there is scope already for work to be done on disabled people's rights, for example, or indeed older people's rights, because those are already there in conventions and could be incorporated in the same way, but not as an alternative to the Human Rights Act.

[68] **Bethan Jenkins:** Jest i gadarnhau ar gyfer y record felly, roeddech yn dweud ar y cychwyn nad chi oedd yr arbenigwyr ar hyn, ond a oes barn gennych chi ar y posibilrwydd o allu creu deddfwriaeth gynhenid Gymreig ar hawliau dynol? Achos, wrth gwrs, mae arbenigwyr yn dod i mewn ar eich ôl chi ac fe allwn ni gael mwy o wybodaeth ganddyn nhw, ond mae'n bwysig, rwy'n credu, i ni wybod beth yw eich barn chi ar hynny hefyd.

Bethan Jenkins: Just to confirm for the record, you said at the outset that you weren't the experts in this area, but do you have a view on the possibility of drawing up inherently Welsh legislation on human rights? Because, of course, there are some experts coming in later and perhaps they can provide us with some more information, but I think it's important that we should know your views on that too.

[69] **Dr Milligan:** We're not the experts on what can be done within the constitution, so we've focused in terms of talking about Welsh provisions on the ones that we've just referred to, and on what the practical impact of those can be, because our concern in our reporting is with what happens in people's everyday lives. However, I was interested to see, in Simon Hoffman's evidence, that he considers that the latest Government of Wales Act might provide an opportunity for a space, as it were, for a Welsh-only human rights Act. I think all I should say it that I shall look with interest at the debate that will no doubt flow amongst constitutional lawyers around that. I think it's a really interesting take on what the provisions of that new Government of Wales Act says. It's the first time I have heard it or seen it expressed—in his evidence.

10:00

[70] **Sian Gwenllian:** And, in principle, would you be in favour of exploring that further, especially if the Human Rights Act is to be repealed?

[71] **Dr Milligan:** I think we're interested in being involved in any debates around equalities and human rights in Wales. I mean, our specific duties as a committee—the Wales committee—are to offer advice to the commission about Wales and matters affecting Wales and to offer advice to the Welsh Government about legislation that affects only Wales. So, you know, these things are all within that scope and we do take note in our committee meetings of the constitutional developments—of course we do—but we also take note, and we pay a lot of regard to what's actually happening as a result of the legal provisions that are in place.

[72] **John Griffiths:** Okay. One last question on this section in terms of the possible wider international effects of the weakening of human rights protection in the UK: what would you see as the dangers and the risks involved?

[73] **Dr Milligan:** Sorry?

[74] **Ms Field:** Could you repeat that?

[75] **John Griffiths:** If there was to be a weakening of human rights safeguards and protections in the UK, would you see that having international ramifications and risks?

[76] **Ms Field:** We've talked about the UK being seen as a world leader in this area, and I know that the Government, and certainly officials that we deal with in the Foreign and Commonwealth Office, see that as extremely important in terms of soft power with other nations. So, yes, I think it would be worrying if the UK were to regress in that way.

[77] **Dr Milligan:** And I suppose my take on it would be a, sort of, slightly different one, it would be a practical one, which is: so often we forget the things that our human rights give us, you know? So, education; privacy; family life; free and fair elections; a fair trial; the protection of law. I could go on, but there are so many things that actually are just part of our everyday life that sometimes you don't realise it. So, I think my take on it would be, well, yes, it would matter terribly if those protections were weakened for people in Wales.

[78] **John Griffiths:** Okay, thank you very much. And we'll move on, then, to public perceptions around human rights. Joyce Watson.

[79] **Joyce Watson:** Well, actually, it follows on quite nicely from what you've just said because I just want to ask whether you have any evidence or thoughts about recent misinformation and negative public coverage about human rights, and whether you think that has contributed to the current direction of travel for human rights in the UK in people's psyche and, in that, if there is a negative direction, whether we again need to perhaps ask people to consider that rights belong to all. So, if you deny somebody a right, you are therefore equally denying yourself that same right.

[80] **Dr Milligan:** Yes, absolutely. I would agree that there's been both misinformation and negative perception and we, alongside others, have got a really important role to play in trying to counter that and to actually tell a positive story to make sure that people do understand that these things are really relevant to their everyday lives. We said in our evidence paper that we've done some work a while ago now, actually, which was specifically about testing the understanding of people in Wales and the support of people for human rights, and what that, and subsequent discussions, have shown is that there is overwhelming support for the values of dignity, fairness, respect, safety, protection, and the rights that give them to us, but that people understand less well. So, the level of understanding is below the level of support, and I think in some of that lies the seeds of the negativity that comes. And that can be fuelled, of course, if there's misinformation or negative information around. So, the challenge is to improve understanding, and to actually make things meaningful, and that's why we do place a lot of emphasis on how these things matter in everyday life, and we try to make the reports that we do, and the evidence that we give—to keep connecting it back to the impacts on people.

[81] We're also trying to improve the ways that we communicate, so doing more on our website, and more by social media that's accessible. So, you will have seen our Power to the Bump campaign last year, which was designed to get directly to women, and to talk to them in really plain language, and some nice graphics, about how to claim their pregnancy and maternity rights. And that is seen as a successful way of communicating that. We've also got on our website—and not everyone looks at our website, I acknowledge that—a really good animated film that actually says what human rights are. And I wish I could somehow bring that out, so that everybody could see it, because it just explains in very, very simple terms, that these things matter, and that they matter in our families, our communities, and to us as individuals.

[82] Stories are also very good, and also, on our website, we've put some case studies of individuals who have claimed their rights and the difference it has made, and of public services that are taking a rights-based approach. And there are examples there of people talking about how it has changed the experience of those who get the services from those organisations. So, it's worth a look, and it's worth encouraging others to have a look. Directly on the point of misinformation, we've also got a 'fact and fiction' section on the website, where we put up the fiction and put some fact and explanation alongside it.

[83] **Joyce Watson:** But, if I can, Chair, it seems to me that, very recently, it's the fiction that has gained the widest publicity, so we have a job of work to do. So, you've said you've got all these—. I've looked at your website and they are really useful images and stories. Do you share any of that particularly with schools or colleges? Because it's that generation, I feel, that we need to influence right now.

[84] **Dr Milligan:** I don't know whether you want to say about targeting the material.

[85] **Ms Field:** So, we do have, as part of the materials we produce, teaching packs about human rights, and we're going to be reviewing those to make them even more engaging. We actually see this whole debate—. It is a risk, but it is also an opportunity, because much of the negative narrative about human rights is about 'these are things imposed on us by elsewhere'. And we, as you know, don't consider that to be the case. The convention is something that the UK drafted, and the Human Rights Act gives parliamentary and domestic court sovereignty. But this is an opportunity to actually demonstrate that these are things that we want as part of Britain outside Europe. So, it's something about actually bringing those rights home, owning them, and then being able to talk about them more confidently. And, as part of that, we are looking at how teaching about human rights and equality is reflected in the curriculum. And we do think it's really important that young people understand how the society they live in works, how they can engage in democracy and what these rights mean for them, and how they should behave towards other people. So, that's an area of work that we hope to develop over this period.

[86] **John Griffiths:** Bethan.

[87] **Bethan Jenkins:** Roedd e jst **Bethan Jenkins:** It was just about that,

ynglŷn â hynny, i fod yn onest, achos fe aethom i ysgol yng Nghasnewydd fel rhan o Senedd@Casnewydd, ac roeddwn i'n weddol *shocked* bod cynifer o bobl ifanc ddim yn ymwybodol o'u hawliau dynol. Rwy'n credu bod lot o bobl yn ei weld e fel rhywbeth sydd yn bell i ffwrdd oddi wrthyn nhw, neu'n rhywbeth sydd mor gymhleth fel nad ydyn nhw yn gallu deall, ond os ydych chi'n esbonio, nid yw e ddim. Tybed sut ydych chi'n defnyddio'r adnoddau yma er mwyn mynd mewn i wneud gweithdai ymarferol yn yr ysgolion, yn hytrach na dibynnu ar y wefan a bod pobl efallai yn mynd i gyrraedd y wefan, o ran sut rydych chi yn ei roi ar blatfformau gwahanol fel Facebook, Snapchat ac yn y blaen, lle mae pobl ifanc yn mynd i fod. Roedden nhw'n sôn bod nhw eisiau cael hysbysebion ar fsysys cyhoeddus ac mewn canolfannau hamdden lleol fel eu bod nhw'n ei weld bob dydd. Rwy'n credu bod hynny'n rywbeth sydd angen digwydd, ond a yw e'n digwydd yn eich tyb chi?

to be honest, because we went to a school in Newport as part of Senedd@Newport, and I was quite shocked that so many young people weren't aware of their human rights. I think that a lot of people see it as something that's far removed from them, or something that's so complex that they don't understand it, but if you do explain it to them, it's not. I wonder how you use these resources in order to do practical workshops in schools, rather than relying on the website and that people are going to visit the website, in terms of how you put it on different platforms such as Facebook and Snapchat, where young people are going to congregate. They were saying that they wanted adverts on public buses and in local leisure centres so that they see it every day. I think that that's something that needs to happen, but is it happening in your opinion?

[88] **Dr Milligan:** I think there are some really good ideas there. What we're trying to do is to up our game on this, and the Power to the Bump one was, I think, quite a step change in the way that we're approaching getting those messages out. And I wouldn't want to give the impression that we would be able to go directly ourselves into schools to do that. What we have to do is to work through others. So, a lot our material is aimed at, 'This is material to help you with your public sector equality duty, this material is to help you as an employer to understand your employees' rights.' And now, in the case of Power to the Bump, it was very much about, 'These are your own rights and this is how you can claim them.' So, I think we're more about providing the resources, but there is more that we can do to make sure that you choose those media to get them to the right place.

[89] We do rely a lot in Wales on networks. We've got an equality and human rights exchange network, which you'll be aware of, which involves employers and people from the public sector. And what we do is that when those people come together—and there are around 200 people in that network from all parts of Wales, and it meets across Wales—we encourage them to talk about the good practice and the way that they are doing things locally that make a difference, in the hope of encouraging others to do the same.

[90] **Bethan Jenkins:** Ond a ydych chi wedi cael trafodaethau, er enghraifft, gydag Estyn neu gyda'r grwpiau Donaldson efallai i wneud adolygiad thematig o'r hyn sydd yn digwydd mewn ysgolion ar hyn o bryd? Achos os ydyn nhw'n dweud wrthym ni nawr nad ydyn nhw ddim yn derbyn yr addysg, fel oedolion wedyn mae'n mynd i fod yn anoddach i ddylanwadu arny'n nhw, neu i gael y wybodaeth mas yna. I mi, dechrau'n gynharach sydd yn bwysig, i ffiltro trwodd pan maen nhw'n tyfu'n hŷn hefyd wedyn.

Bethan Jenkins: But have you had discussions, for example, with Estyn or with the Donaldson groups to undertake a thematic review of what's happening in schools at present? Because if they're telling us now that they don't receive the education, then as adults it's going to be more difficult to influence them, or to get that information out there. For me, starting earlier is important, to filter through to when they become older.

[91] **Dr Milligan:** There is one example that I should mention, which is a good example of children's rights being taken into practice, and that's at the Abertawe Bro Morgannwg university health board, where the committee met with the stakeholder reference group there. That health board is taking a rights-based approach, and we met a group there that represented all sorts of users of the service, including carers and older people. But we heard there about the children's rights charter that they've got, which colourfully describes exactly what can be expected of children in using that service; so, in other words, taking into practice the children's rights Measure. And that's the sort of thing that we will then take and share around our network in the hope of encouraging others to adopt that practice, so that they don't need to start from scratch in trying to communicate that, or in thinking how it might affect their services.

[92] **Ms Field:** I think it's also about ensuring that this is part and parcel of

the framework for education. So, as well as providing the materials, we want to influence Governments to make sure that this is in the curriculum. We want to make sure that regulators are inspecting to make sure that this part of the curriculum is being delivered effectively. And then we also work with—. In fact, around the children's rights convention, we took a group of children to Geneva to talk about their rights, and they helped us—

10:15

[93] **Bethan Jenkins:** Do you know if the education sector is—? That's what I don't hear from—

[94] **Ms Field:** Sorry—

[95] **Bethan Jenkins:** Do you know if the education sector is delivering? Because I don't know that I'm hearing that from you. Have you got evidence to show us, therefore, that they are doing X, Y and Z in school?

[96] **Ms Field:** I think our evidence is that they're not doing enough.

[97] **Bethan Jenkins:** They're not doing enough. And you're pressing on them to do—.

[98] **Ms Field:** We're pressing on policy makers and regulators and those who deliver by providing materials that they can use. So, we want it to be a requirement, we want it to be inspected against, and we want it to be delivered well.

[99] **Sian Gwenllian:** And have there been discussions with Kirsty Williams, for example, because of the Donaldson review and the changes that are happening anyway? Is this an area that is being considered now?

[100] **Dr Milligan:** It's something that I will certainly take back to the committee and talk about, having heard the comments today at this committee session, to see whether there's anything more that we can or should be doing in Wales on that particular communication challenge. I shall take that back.

[101] **John Griffiths:** Perhaps, June, you could let the committee have a note, once you've had those discussions, as to the result of them.

[102] **Dr Milligan:** I'd be happy to do that, Chair.

[103] **John Griffiths:** Jenny.

[104] **Jenny Rathbone:** All these things are excellent examples of things we can do, and should be doing, but it feels overall such a clunky sort of situation where the people who find it most difficult to navigate the system are the least empowered, the most vulnerable—it's an impossible situation for them. The right to vote should be an absolute, and yet we've just seen a tightening of the hurdles that people have to jump over in order to exercise that right. I'm not aware of anybody actually challenging—using the law to challenge that. I just don't see how we can make this more—. I mean, we don't have a UK Government that's particularly interested in people's rights at the moment. The emphasis is very much on responsibilities, and I just don't see how we can—. It seems to me such a challenge to combat that, particularly in relation to the right to vote, which has really serious implications for the buy-in by the whole of society.

[105] **Dr Milligan:** I'm not going to suggest that it's not. I think it is a huge challenge, but it's one that not only are we statutorily bound to address, but which we're really committed to addressing, and which the committee in Wales is really committed to addressing. In addition to the practical things we're trying to do, and the ways that go about doing what we do—. So, we're using information, not just in terms of campaigning, but publishing, monitoring, reporting. So, you would have seen earlier this week the analysis that we'd done of disability, and people's lived experiences of disability, drawing on a wealth of statistical evidence, but converting it back into, 'This is the lived experience of people'. We're not simply trying to say, 'This is terrible'. We're saying, 'This is terrible', but actually to have sufficient detail to pinpoint where something might be done about it. So, we're trying to use our publishing and our reporting to give information about where things might be done, and then to get into discussion with Governments and others who might do it.

[106] So, for example, in the reporting this week on disability there was a statistic around apprenticeships. Apprenticeships are a really important route into employment and are really valued, but the evidence there was that, out of every 100 starters of apprenticeships in Wales, one—well, it was 1.3 per cent, but around one—was a disabled person. One. Now, Government and employers working together could do something about that. So, we're trying to use the levers that are ours, statutorily, to go beyond just reporting and to

actually pinpoint where something might be done, and then to draw attention to it, and then to get into the discussions with those who've got the power to influence it. We're also using our statutory powers in an inquiry around housing for disabled people. So, yes, it's a huge challenge, but we are using the leverage that we have, and we're trying to ensure that we listen and that we amplify the voices of people who are less heard and, therefore, for whom it is more difficult to access their rights. As part of the process of reporting for the universal periodic review we funded Disability Wales to convene groups who knew about the lived experience of disabled people, and that drew together a report that then became part of our report into the GB report that went forward under that convention. So, I think the way that we can respond and do our part in the huge challenge is to use the powers that we have as carefully and acutely as we can and help those who've got the power to influence to know where to focus their effort in amongst all of it.

[107] **Ms Field:** I think it's also about doing things at the end of the process so that, as we discussed earlier, where people have had their rights breached, they can access redress. So, we are doing a big piece of work around improving access to justice in relation to equality and human rights breaches, and two parts of that involve building capacity in the advice sector, so expertise on these issues, because, quite often, they're quite technical issues, so making sure there's somewhere to go where people know what your remedies are, and then also. within the commission, we've just completed a pilot around disability discrimination cases, where we lowered the bar in terms of how strategic cases need to be for us to financially support them. We are funding just over 100 additional disability discrimination cases in a range of areas across employment and goods and services, and then we will be reviewing that and seeing how we can roll that out to other areas. So, we're really excited about that piece of work.

[108] **Jenny Rathbone:** Thank you.

[109] **John Griffiths:** Thank you very much. I'm afraid we are out of time. Thank you very much for giving evidence to committee this morning. You will be sent a transcript to check for factual accuracy, and we may write to you to raise further issues or, perhaps, some questions that we weren't able to reach this morning. Okay. Thank you very much indeed.

[110] **Dr Milligan:** I shall leave these copies with the clerk, if I may, Chair.

[111] **John Griffiths:** Thank you.

10:23

Ymchwiliad i Hawliau Dynol yng Nghymru: Sesiwn Dystiolaeth 2
Inquiry into Human Rights in Wales: Evidence Session 2

[112] **John Griffiths:** We're about to move on to evidence session 2, item 3 on the agenda today.

[113] **Dr Hoffman:** Good morning.

[114] **John Griffiths:** Morning. Morning, both. So, yes, evidence session 2 today, in pursuit of our short inquiry on human rights, and I'm very pleased to welcome Professor Thomas Glyn Watkin, formerly head of Bangor Law School and First Welsh Legislative Counsel 2007 to 2010, and Dr Simon Hoffman, associate professor, college of law and criminology, Swansea University. Welcome both. Perhaps I could begin our questions today by asking about the impact of Brexit on human rights and what you consider should be the top priorities during Brexit negotiations in terms of human rights.

[115] **Dr Hoffman:** I think, for me, it's unclear what are going to be the human rights implications of Brexit. As with so many other issues surrounding Brexit, it is not clear what the implications are going to be. My concern is that there will be the potential for regression in human rights protection where human rights protection emanates from the EU. On that basis, I would say that, for me, the top priority in the Brexit negotiations in terms of human rights would be to retain the current human rights protections that are derived from the EU. I would emphasise, I think, the importance of ensuring that any protections that relate to children, in particular, should be maintained.

[116] **John Griffiths:** Okay. Anything to add to that, Professor Watkin?

[117] **Professor Watkin:** Not really. I'm in entire agreement, I think, with what Dr Hoffman has said. The one thing I think it's important to remember as we move on—and it's possibly something that does need to remain very firmly on the agenda—is that the state of human rights protection at the moment we leave is a freeze-frame and that, as time moves on, of course, protection could increase within the EU countries. We need to monitor that

process and have in place, before we leave, a mechanism for ensuring that we don't fall behind as others move ahead. I think that that's an important factor, which is not something I hear being addressed very much in the talk about Brexit that's coming from Whitehall and Westminster.

[118] **John Griffiths:** Okay. Thank you for that. In terms of that Brexit process and the negotiations around it, and potential future withdrawal from the European convention on human rights, and, indeed, potential repeal of the Human Rights Act, is there anything that you would highlight to committee in terms of what Wales should be doing and saying—you know, what a strong voice for Wales would involve in terms of those possibilities and those Brexit negotiations? Is there anything in particular you'd like to see the Welsh Government doing to ensure that Wales has a strong voice?

[119] **Dr Hoffman:** I'm not sure I can comment on what the Welsh Government can do to ensure that it has a strong voice in the negotiations, but I would certainly urge the Welsh Government to seek to ensure to use its voice to guarantee that human rights is on the agenda when it comes to the Brexit negotiations. I think we'll all be aware that Wales has taken a very particular policy and legislative approach that seeks to give effect to human rights in Wales; perhaps more strongly in the field of children's rights than any other. I think that that gives the Welsh Government a degree of legitimacy in the Brexit negotiations to stand up for children and children's rights. It's a concern to me, and I know it's a concern to others that are involved in children's rights, not just in Wales but in England, Scotland, and Northern Ireland, that children are almost invisible and unheard in the debates around Brexit. The UK Government's White Paper on exiting the European Union—in that paper, the Prime Minister talks about the importance of the negotiations, the Brexit negotiations, for children and grandchildren, and yet the White Paper itself is almost completely silent on the priorities for children and the impact of Brexit on children. I think, if I were to urge the Welsh Government to do one thing, and to prioritise one thing in the Brexit negotiations, it would be to urge upon the UK negotiators the need to ensure that children have a voice in the Brexit negotiations, and that children's interests are prioritised in discussions and negotiations. I think Wales is well-placed to do that, given its track record on children's rights.

[120] **John Griffiths:** Yes. Well, thanks very much for that.

10:30

[121] **Professor Watkin:** The only thing I think I'd add to that is to say that I think—. You mentioned three things: Brexit, possible withdrawal from the European convention, possible replacement with a UK bill of rights. The problem, I think, we face on all of those fronts is that we're looking into a vacuum. We don't know what's going to happen; we're whistling in the dark in large measure. What's important is not so much that the vacuum is filled, but how well it will be filled and with what. That's where I think that the Welsh Government can make its voice heard, and is making its voice heard, by calling, for example, for a constitutional convention to make sure that we move to a position whereby those things that we currently enjoy as a consequence of our membership of the EU, our having signed and having incorporated convention rights into our domestic legal system—are not merely not lost, but that a step is taken to embed them within the legal systems of the United Kingdom in a manner that allows us to progress and grow and not merely stagnate, let alone fall behind.

[122] **John Griffiths:** Okay. Well, thank you very much for that. Okay. In terms of the divergence in approach to human rights between Wales and the rest of the UK—I guess between the UK and the devolved Governments within the UK—and, indeed, between the UK Government and the rest of Europe, do you see that divergence as in any way undermining universalism within human rights law? Is that an issue that we should be wary of, do you think, or not?

[123] **Professor Watkin:** Clearly, we talk about, in terms of universal human rights, fundamental human rights that inhere in us as human beings, so therefore the recognition of that needs to be global, needs to be universal in that sense. So, insofar as the rights themselves, I think, need to be recognised as existing, there is a separate question about how culturally they are best expressed, best protected, best promoted in different societies at different times. I think the EU has, of course, recognised generally the fact that, when it makes a law, it allows for that law to be implemented in the member states in a manner that suits the legal and political systems of that state. I think the same is true with human rights; the right needs to be recognised as being common to all, but the manner in which it is protected and promoted may well diverge from country to country. The important thing is that that divergence doesn't undermine the right itself.

[124] **John Griffiths:** Okay, thank you very much for that.

[125] **Dr Hoffman:** I'd entirely agree with that. In terms of divergence from the European Union, I think one of my concerns would be—. I entirely agree that there will be divergence in terms of implementation within different countries, and indeed within nations within countries, but one of the benefits of being a member of the EU at the moment is that we can take advantage of guidance provided by the European Union on human rights implementation, and that we can take advantage of research that is published by the European Union on human rights implementation. One of the ways that we can take advantage of that is by carrying out and being part of research ourselves and then we can learn from other European Union countries about human rights implementation, for example, in the UK or in Wales. We need, I think, to—if we're going, as we are going to, exit the European Union—think about how we prioritise research on human rights within Wales.

[126] **John Griffiths:** Okay, thanks very much for that. Sian.

[127] **Sian Gwenllian:** Yn y Senedd yr wythnos yma mae yna gynnig wedi cael ei basio i ddod â Bil parhad ymlaen—hynny yw, *continuity* neu *continuation Bill*—ar gyfer gwneud yn siŵr bod y pwerau sydd gennym ni yn fan hyn rŵan yn aros yma ar ôl gadael y Undeb Ewropeaidd. Rydym ni wedi bod yn ei drafod o, rydw i'n meddwl, yn bennaf yng nghydestun pwerau amaeth a phwerau amgylcheddol. A oes yna faterion yn y maes hawliau dynol y dylid cael eu cynnwys yn y Bil yna? Mae'n fwy cymhleth, onid ydy, oherwydd mae wedi ei blethu, mewn ffordd, yn fwy na mae'r pwerau amaeth, er enghraifft, ond a oes yna agweddau dylem ni fod yn edrych arnyn nhw rŵan i'w cadw ac i'w cynnwys mewn rhyw fath o Fil parhad?

Sian Gwenllian: In the Senedd this week there has been a motion that's been passed to bring a continuity or continuation Bill forward for ensuring that the powers that we have here stay here after we leave the EU. We've been discussing it mainly in the context of agricultural powers and environmental powers. Are there issues in the area of human rights that should be included in that Bill? It's more complex, isn't it, because it's interwoven more than agricultural powers are, but are there aspects of this that we should be looking at to keep and to include in some kind of continuation Bill?

[128] **Yr Athro Watkin:** Wel, nid wyf yn arbenigo yn y meysydd yna, felly mae'n anodd i mi ddweud pa hawliau

Professor Watkin: Well, I'm no expert in those areas, so it's difficult for me to say which particular rights exist in

arbennig sydd yn bodoli yn y meysydd yna. Ond y peth i'w sicrhau—mae hwn yn gwestiwn i'w ateb, eto, nid ydym yn gwybod beth yw'r ateb ar hyn o bryd—os oes yna hawliau yn y meysydd yna, pwy, yn y dyfodol, a fydd yn gyfrifol am ddeddfu ynglŷn â hwy? A fydd hawl gan y Cynulliad yma i wneud hynny ynglŷn â Chymru? Neu, a fydd yr hawliau hynny'n cael eu cadw yn ôl yn San Steffan? Dyna un o'r cwestiynau, rwy'n credu, sy'n mynd ar draws y meysydd.

[129] **Sian Gwenllian:** Ie. Nid yw'n glir, felly, yn y maes hawliau dynol, pa bwerau sydd yn gorwedd fan hyn.

[130] **Yr Athro Watkin:** Sori. Ai amaethyddol meddoch chi, sori?

[131] **Sian Gwenllian:** Ie, ond gofyn ydw i, ymhellach, wedyn, rydw i'n sôn am amaeth a'r amgylchedd—hynny sydd wedi cael y sylw—ond yn y maes hawliau dynol, a oes yna agweddau a ddylai fod yn cael eu cadw'n benodol, ac a oes modd dod â nhw i mewn i Fil, neu a ydy o'n rhywbeth rhy gymhleth? Mae yna gymaint o haenau gwahanol yn plethu i'w gilydd, a oes yna rai pethau penodol fedrwn ni ddweud, 'Reit. Dim ond yng Nghymru mae'r rhain yn digwydd'?

[132] **Yr Athro Watkin:** Mae'n dibynnu, wrth gwrs, sut mae hawliau dynol yn mynd i gael eu delio â nhw drwy broses Brexit, oherwydd ar hyn

those areas. But what we need to ensure—and this is again a question that needs to be answered, but we don't know the answer at present—is that if there are rights in those areas, who, in future, will be responsible for legislating on them? Will this Assembly have the right to do that in relation to Wales? Or, will those rights be reserved to Westminster? That's one of the questions, I think, which cuts across all of these areas.

Sian Gwenllian: Yes. It's not clear, therefore, in the area of human rights, which powers rest here.

Professor Watkin: Sorry. I thought you were talking about agriculture.

Sian Gwenllian: Yes, but I was asking further to that then, I did mention agriculture and the environment—that's what's been given the main attention here—but in the field of human rights, are there any aspects that should be retained specifically, and can they be brought within a Bill here, or is that just simply too complex? There are so many different interweaving strands here, are there certain specific things that we can say, 'Right. These will only happen in Wales'?

Professor Watkin: It depends, of course, on how human rights are going to be dealt with through the Brexit process, because at present,

o bryd mae'r Ddeddf Hawliau Dynol yn un o'r Deddfau nad yw'n bosibl i'r Cynulliad ymyrryd â hi o dan y setliad presennol nac o dan y setliad newydd, yn Neddf 2017. Ar ôl dweud hynny, mae yna rai agweddau lle mae'n bosibl i'r Cynulliad adeiladu ar sail yr hyn sydd yn gyffredin trwy'r Deyrnas Unedig. Fel enghraifft, ym maes cydraddoldeb lle nad yw'n bosibl i ni dynnu nôl unrhyw beth sydd wedi cael ei amddiffyn yn Neddf 2010, mae'n bosibl i ni adio neu adeiladu i roi gwell amddiffyniad, efallai, yng Nghymru na mewn llefydd eraill.

the Human Rights Act is one that it isn't possible for the Assembly to intervene in under the current settlement or the future settlement under the 2017 Act. Having said that, there are some aspects where it is possible for the Assembly to build on the basis of what's common throughout the UK. As an example, in the area of equalities where it's not possible for us withdraw from anything that is protected in the 2010 Act, but it is possible for us to add or to build and to provide better protection in Wales than in other places.

[133] **Sian Gwenllian:** Felly, mae'n bwysig edrych ar y materion hyn yng nghyd-destun y Bil parhad.

Sian Gwenllian: So, it's important that we look at these issues in the context of that continuation Bill.

[134] **Yr Athro Watkin:** Ydy.

Professor Watkin: Yes.

[135] **Dr Hoffman:** There are possibly two different issues. I think one is human rights in the generality. I have a particular view on human rights in Wales and what the Welsh Government and National Assembly for Wales could and perhaps should do in relation to human rights protections. And then, the other issue, I think, is: what are the protections that are currently available from the European Union? I have to admit that it's so complicated that I am unclear what protections there are. Part of the difficulty is that EU legislation and then the EU legislation that's been incorporated into UK law doesn't necessarily talk specifically about human rights or children's rights, but it will talk about areas such as asylum and immigration, environment, consumer protection and worker protection. And with that legislation from the EU comes protection for human rights, and that complexity is immense and difficult to engage with.

[136] So, my approach in the evidence that I've submitted in relation to human rights is to focus on the generality in relation to human rights as opposed to the specificity of EU legislation, but I have made the point, I think, right at the beginning, that it ought to be a priority in Brexit

negotiations that any protections that are there are maintained.

[137] **Sian Gwenllian:** Yes, okay. So, we don't really know what the protections are.

[138] **Dr Hoffman:** No. Until somebody actually sits down and starts looking at it. And, of course, you've got the additional complication of devolution, so there may be protections that have been brought into UK law at the UK national level, and there may be others that have been brought from UK law into Welsh law, because of the powers that are exercised by the National Assembly for Wales, and that complexity is going to take considerable efforts to work out.

[139] **John Griffiths:** Okay. Could I ask about the impact of Brexit on the Equality Act 2010 and, indeed, the Welsh public sector equality duties? What do you see as the issues there?

[140] **Dr Hoffman:** I have to confess that I am no expert in the area of equalities. My field is human rights and children's rights, but I have read the submission from the Equality and Human Rights Commission, and if you permit me, I will simply say that I would like to adopt everything they say in that submission; I agree with it totally and would have nothing to add to it.

[141] **John Griffiths:** Okay, well, that it useful; thank you.

[142] **Professor Watkin:** I've nothing to add to that because it's not an area that I specialise in either. The only thing I would add is, of course, that the Equality Act is based upon directives from the EU. And from that perspective, the point I made earlier about ensuring that we don't stagnate but keep abreast of developments applies there as well, because things are moving forwards. But more than that, I wouldn't be able to add.

[143] **John Griffiths:** Okay, thank you very much. We move on, then, to Bethan Jenkins and some questions on the UK bill of rights.

[144] **Bethan Jenkins:** Rydych chi **Bethan Jenkins:** You've touched on wedi cyffwrdd â hyn i raddau. Beth this to a certain extent. What is of sydd o ddiddordeb i mi i'w ddeall yw interest to me in terms of beth fydd effaith y potensial o understanding is what the impact will ddiddymu'r Deddf Hawliau Dynol ar be of repealing the Human Rights Act gyfansoddiad Cymru. Mae Dr Simon on the Welsh constitution. Dr Simon

Hoffman yn sôn am y ffaith bod yna hawliau ar hyn o bryd i bobl ifanc o ran y sylw dyledus sydd yn cael ei roi i bobl ifanc o fewn cyfreithiau Cymru a fyddai'n gallu bod yn sail i Ddeddf hawliau dynol newydd i Gymru. Ond yn y sesiwn ddiwethaf gofynnais i'r comisiwn hawliau dynol, ac roedden nhw'n dweud na ddylech chi roi'r sylw dyledus yn lle yr hawliau sydd yn bodoli'n barod. Felly, a fydd unrhyw Ddeddf hawliau dynol Gymreig yn ddigon cryf, os nad yw'r pwerau oll gennym ni, i allu newid yr hyn sydd yn cael ei dynnu i ffwrdd o Gymru, os yw hynny'n gwneud synnwyr? Os nad yw, jest dywedwch.

Hoffman talks about the fact that there are rights at present for young people in terms of the due regard that is given to young people within Welsh laws that could be a basis for a new human rights Act for Wales. But in the last session I asked the human rights commission, and they said that you shouldn't put due regard instead of the rights that already exist. So, will any Welsh human rights law be strong enough, if we don't have all of the powers, to be able to change what is taken away from Wales, if that makes any sense? If not, please just tell me.

[145] **Dr Hoffman:** No, that makes perfect sense. My position is—and I think I say it quite clearly in my submission—that I would not want to see the repeal of the Human Rights Act. I think that that would be a regressive step. I'm quite clear about that, and I agree with the Equality and Human Rights Commission and I agree with the British Institute of Human Rights that we should fight tooth and nail to retain the Human Rights Act.

[146] The point I am seeking to make is that the National Assembly for Wales has powers—or certainly will have powers when the relevant sections of the Wales Act 2017 come into effect—to insure against any regression in human rights protection at the UK level. I also feel that Wales has a developing—I hesitate to say 'jurisdiction'—but has worked on the model of due regard, both at ministerial level in relation to children's rights, and at local authority level in relation to children's rights and the rights of older people with the social services legislation, and it's a model that seems to work well in Wales to provide not only protection for human rights, but to make sure that human rights—certain human rights at present, but potentially all human rights in the future—are properly taken into account in ministerial decision making and the decision making of public authorities.

[147] I think it's quite clear what the Equality and Human Rights Commission is getting at. The type of protection that you see with the Human Rights Act and the mechanisms for enforcement and for holding duty

bearers to account are different from the mechanisms that we see with due regard. But when the child rights Measure was going through drafting processes and legislative processes, significant attention was given to whether or not the due regard model was an appropriate model for embedding rights in the work of the Welsh Government—at that time, the Welsh Government—and it was thought to be a suitable model for all sorts of reasons. I, for one, stand by due regard as a suitable model for embedding rights in the work of Ministers and public authorities.

10:45

[148] **Bethan Jenkins:** Can you just explain—?

[149] Sori, mae gen i fe yn Gymraeg. A allwch chi jest esbonio hyn? Rydych chi'n dweud am y pwerau newydd, ac rwy'n deall bod hyn yn mynd i fod yn rhan o Atodlen 7A sydd yn mynd i ddod i rym o ganlyniad i Ddeddf Cymru 2017. A allwch chi esbonio wedyn sut bydd hynny'n ehangu ar hawliau dynol yn hytrach na chyfyngu arnynt? Ai dyna'r hyn rydych chi'n dweud a allai fod yn sail i'r Ddeddf newydd, neu sylw dyledus ar gyfer pob hawl arall, ai dyna sail y Ddeddf hawliau dynol newydd? Er enghraifft, mae gennym ni hynny ar gyfer pobl ifanc nawr a byddem ni jest yn adio anabledau, pobl hŷn ac yn y blaen, ac yn y blaen, i unrhyw Ddeddf newydd.

Sorry, I have it in Welsh. Could you just explain this? You say about the new powers, and I understand that this is going to be a part of Schedule 7A, which is going to come into force as a result of the Wales Act 2017. Could you explain how that would expand on human rights, rather than limiting them? Is that what you say could be the basis for the new Act, or the due regard for every other right, is that the basis of the new human rights Act? For example, we have that for young people now, and we would just add disability, older people and so forth, and so forth, to any new Act.

[150] **Dr Hoffman:** To date, I think the Welsh Government has been quite creative in finding the powers to introduce legislation in the field of human rights. So, it's looked at its current powers in relation to, for example—its current powers, but, essentially, the powers of the National Assembly for Wales to legislate. It's looked in the field of well-being, it's looked in the field of social services and it has introduced legislation that provides protection for certain groups: children and older people—children with the Measure, and children and older people with the social services legislation.

But, at the moment, the Welsh Government has to find some competence of the National Assembly in order to put forward legislation that is going to provide rights protection.

[151] As I read the revised Schedule that will be brought into effect by the Wales Act 2017, whilst the Welsh Government wouldn't, for example, gain the power to enter into international human rights treaties—that's a reserved matter; that's foreign affairs—it actually specifically says within the revised Schedule that, and I've quoted it in my evidence,

[152] 'Observing and implementing international obligations, [and] obligations under the Human Rights Convention'

[153] —and that's the European convention on human rights—are specifically not reserved. So, to my mind, that opens up the possibility of the Welsh Government bringing forward legislation and the National Assembly for Wales passing legislation that is more general in relation to human rights—so, not having to look for a specific competence, but generally giving competence in the field of human rights.

[154] **Sian Gwenllian:** Which would then get over the problem of this complexity of the protections. We would not necessarily then have to rely on all of that complex protection that may be there. So, we would be replacing some of that with something that would be clear then for everybody, and we wouldn't have to rely on going to look for the protections.

[155] **Dr Hoffman:** That's right. It would certainly be a backstop in terms of human rights protection, but it would be more than that, because one aspect of due regard is that those who are under a due regard duty would be looking for opportunities to promote rights. So, not only does it provide protection in relation to what is there, but it would provide opportunity and motivation for duty bearers, essentially Ministers and public authorities, to look for opportunities to move forward.

[156] **Bethan Jenkins:** Can I just ask, though—? I'm a bit confused when you say about observing the international rights. What does that mean in practice and do other countries have that already so that we can reference—? Because if it's a general right, I'm a bit confused as to how you would then use that in a case that would need to be brought to bear on a certain individual right.

[157] **Dr Hoffman:** The United Kingdom is a state party to all of the main

international human rights treaties published by the United Nations, which include, of course, the United Nations Convention on the Rights of the Child, but there are other conventions. Dependent on the state concerned, international conventions either become part of the domestic law automatically, or they have to be drawn down into domestic law, and that's what the UK has done, for example, with the European convention on human rights and the Human Rights Act. The Welsh Government, the National Assembly for Wales wouldn't have competence to draw down international treaties because—

[158] **Bethan Jenkins:** Sovereignty.

[159] **Dr Hoffman:** Yes.

[160] **Bethan Jenkins:** Sorry. And don't we know it.

[161] **Dr Hoffman:** What the National Assembly for Wales, in my view, would have competence to do, when the relative sections of the Wales Act come into force, would be to require Ministers and public authorities to have due regard to the UK's international obligations, which could be more specific than that—it could be the UK's international human rights obligations, or it could even be more specific than that. It could, as has the Measure, refer to specific treaties. So, it could, for example, refer to the international covenant on economic social and cultural rights, but that would be, of course, a matter for whoever was wanting to introduce such legislation.

[162] **Bethan Jenkins:** I understand now. Thanks.

[163] **John Griffiths:** Okay, thank you very much for that. Professor Watkin, would you like to—?

[164] **Professor Watkin:** Just to say, I think the rights of the child Measure is an excellent example of how one can build upon something without actually affecting the content, as it were. It's a good example also, insofar as it shows that where we had competence under the existing settlement, we were able to take the step of incorporating it into the law applicable in Wales—laws that were not applicable in England and Wales and the United Kingdom, generally, even though the UK was a signatory to the convention. With the move to reserved powers, insofar as that broadens our competence, it should be possible to do that sort of exercise in more areas—insofar as it broadens our competence.

[165] **John Griffiths:** Okay. Jenny.

[166] **Jenny Rathbone:** Just going back to the Wales Act and its possibilities, obviously many hurdles have been put in front of people to make it more difficult for them to exercise their right to vote recently. Would it be possible, then, for Wales to legislate to ensure that all public bodies who were handling people's national insurance numbers for a variety of reasons could automatically get them put on the register? Because, at the moment, the citizen has to do it, and it isn't about actually voting, it's about even getting onto the register, and some people find it very difficult to fill in forms and get all the right information together all in one place at one time. It seems to me we're just making it more difficult for people. So, is that something that we could—we don't want to prevent accurate registers being compiled, but we do want to make it easier for the citizen to be able to exercise that right.

[167] **Dr Hoffman:** I have to confess, I think that would require me to think about things like data protection and electoral law, and I'm no expert in that field, so it would be very difficult for me to answer that question. If I come at it from a slightly different angle in terms of voting—of course, voting is about participation in society, it's about freedom of expression. From a human rights perspective, a duty on Ministers and public authorities to have due regard to human rights at times of election might place greater emphasis on publicising the need to vote and the need to register to vote. So, that's the angle I think I'd come at that question from.

[168] **Jenny Rathbone:** Okay, thank you.

[169] **Professor Watkin:** The only thing I think I'd add to that would be to say that it's a very particular example you've just raised, but it also shows quite clearly that when you drill down, as has become clear from Dr Hoffman's response, you begin to touch on very fundamental rights of a democratic nature. And I think one of the things that's been missing in the way within the United Kingdom we've addressed the whole area of the incorporation of human rights into our legal systems has been that linkage. We've not actually linked the rights with the laws we make clearly enough, and I think one of the things that there is an opportunity to do in Wales, particularly if we adopt consolidation and codification recommendations that have been made by the Law Commission, is to make that link clearer. Now, I don't want to stray into the area of public perception at this point, but I think the problems with public perception in the UK, as opposed to other countries in mainland

Europe in relation to the convention rights, has been the failure to make that linkage. It partly flows from our legal culture—so be it—but that’s no excuse for not making the linkage at least in our rhetoric concerning these issues.

[170] **John Griffiths:** Okay. Well, that does actually bring us on quite nicely to the next area of questioning, which is about public perceptions on human rights. Joyce Watson.

[171] **Joyce Watson:** You have started, so I think carrying on would be good and timely: how much do you believe that the misinformation and the negative public coverage of human rights has, in any way, contributed towards the current direction of travel for human rights in the UK, which, I’m assuming is a negative, and how could we turn that around?

[172] **Professor Watkin:** I would not want to be over-judgmental about misinterpretation and negative coverage because I think that flows from what I mentioned earlier, that is that we haven’t assimilated human rights law into our native legal systems in the manner in which they are assimilated in other legal systems in Europe. I think that lack of linkage has fed into negative coverage. I also wouldn’t want to assume that there is a direction of travel, necessarily, in human rights. It doesn’t follow, I think, from Brexit that we are going to leave the European convention necessarily.

[173] The difference, for me, is—if I can just set this in a context—if you look at other legal systems in mainland Europe, what you find where they have a written constitution is that the state recognises the rights of individuals and groups as being the core principles of its legal order, and then all the other laws that the state makes, as it were, radiate out from those core principles. If I could just take one example: peaceful enjoyment of possessions, which was the objection made to the asbestos-related diseases Bill here in Wales—the interference with that right. If you declare the peaceful enjoyment of possessions as being a fundamental right, albeit a qualified right, then the state protects that right by punishing unlawful interferences and calling it theft or burglary. It protects that right by allowing those whose property is interfered with to bring actions for trespass or wrongful interference with goods. It promotes the right by allowing for means of acquiring property, transferring property, buying and selling property, passing property—it’s all linked to the central principle.

[174] Now, I think, here in England and Wales, although the fundamental rights are and have been core values of our legal order, they are not

articulated as principles within the legal order, and therefore, although we have laws about theft and trespass and everything else, when the rights are articulated in the European convention, it is seen, almost, as noises off. It's something that is not within our legal system, but is somehow outside of it. I use the word 'other' in the written paper I prepared. And depending on one's perspective, they are then seen either as a critical friend, or as an interfering busybody, and it depends, then, upon one's perspective, which can be fuelled by all sorts of motivations, which can be partly political, economic or whatever. I think it's the failure to embed and assimilate the rights clearly within our legal order that has led to the negative coverage and misinformation, and regarding the convention and the convention of rights as an intruder upon the scene rather than as a natural dweller, if you like, within that context.

11:00

[175] **Joyce Watson:** I understand what you're saying full well, and I think that people would understand some core values in terms of their rights, and the right to life is a clear example of that. But the job that we have as politicians making law is how we simplify what you're saying, which could be quite complex, in feeding that message back. One of the things I noticed that you say in your paper was that you felt that the human rights commission in Wales should be an independent body, and should look after the laws in Wales rather than looking at the difference in England. So, if I put those two things together, which I have, do you think that might help?

[176] **Dr Hoffman:** Can I go back to where you started with your question? I'm not aware of any evidence, as such, that I could refer you to in relation to the impact of the sort of coverage we see in relation to human rights in the media, for example, or the way you might see it treated by politicians at the UK level. But from my own personal experience, I see misinformation and incorrect portrayals of human rights in the media and by politicians all the time, and it certainly makes my working life very difficult. What can be done about it? Well, clearly, the media have an important role, and they should take their responsibility seriously. Actually, I feel that the Welsh media in Wales has quite a progressive attitude towards human rights—certainly in relation to children. They seem to show an interest and take the issues seriously, but, of course, as we all know, Welsh media published in Wales is not the media that's most read in Wales, and that's a difficulty.

[177] What could we do, then, so that it doesn't become a counsel of

despair? Well, obviously, I feel that there's a role for the Welsh Government and the National Assembly for Wales to take a lead. Leadership is clearly important in relation to human rights, and I dismay of the approach that's taken at the UK level in relation to the narrative around human rights, and I think the Welsh Government and the National Assembly for Wales should be praised for taking a different approach to human rights. So, leadership is the first thing, I think—also that leadership can be demonstrated through legislation and what the Assembly legislates on, which is why I think a human rights (Wales) Act would be an important signal to the Welsh community in general that human rights are taken seriously in Wales.

[178] I also think the Welsh Government, as I say in my submission, should take the lead on public education around human rights. And I also feel, looking at human rights in the long term and future generations, that greater emphasis should be given within the school curriculum in Wales to human rights education. Now, I was given some advance notice of what the committee might be interested in, and I went and I looked at the school curriculum, because, as you know, as a result of a conference that we had at Swansea University, children and young people were making recommendations in relation to human rights teaching within the school curriculum. And although there is potential within the curriculum for schools to teach about human rights and human rights issues, it very much is about giving discretion to schools to choose the topics and the extent to which human rights are taught within the curriculum. My feeling is there should be greater direction from the Welsh Government in relation to topics that are taught on the Welsh curriculum, and the amount of time that's given over to teaching on human rights.

[179] In relation to the question that you asked about the Equality and Human Rights Commission, I make certain points about that in my submission. My feeling is that, rather than—. My impression is that the way that the Equality and Human Rights Commission currently conducts itself in Wales is out of step with developing devolution. I think it's time that Wales had an Equality and Human Rights Commission Wales, rather than the Equality and Human Rights Commission in Wales.

[180] **Joyce Watson:** But that—can I, Chair? That's what we did have, in many ways, and then the UK, who hold the budget and decide the compilation of the human rights bodies within the UK, gave us what we've got. That's how we've ended up where we are. I just wanted to put that on the record. It wasn't a choice, and some people might not necessarily be aware of that.

[181] The other thing I wanted to go on to ask was that, Professor Watkin, you talked earlier on about ensuring that the space that is filled from the current EU law and then transposed into national implementation doesn't lessen the intention of that human right. So, moving forward, how do we, here in Wales, watch the space? Because that gap could be widened somehow at different levels before we even try to implement it. What would your advice be specifically in that area?

[182] **Professor Watkin:** I think it's very important that the space is watched. It's partly a monitoring exercise, but, of course, the monitoring exercise is worthless if one can't then respond to what one sees happening. That takes us again to the importance of what arrangements are put in place between the UK and the devolved administrations, if and when Brexit occurs. I think it's very important that there are clear lines of demarcation as we move forward as to what decisions are going to be taken centrally and what decisions will be free for the devolved administrations to take in their own areas and jurisdictions.

[183] I use the word 'jurisdiction' deliberately because there is the background question, of course, in relation to Wales, of whether or not, because we remain a single jurisdiction of England and Wales, there would be greater restrictions upon the freedom of the Welsh Assembly and the Welsh Government to respond to fill the vacuum, as I put it earlier, than there might be in Scotland and Northern Ireland. I think that again needs to be something that is very firmly on the agenda when one is negotiating the terms for the shape of the constitutional settlement that is going to come out of the Brexit process.

[184] In fairness, I think I would add, whether or not Brexit occurs, it would be important to have some clearer constitutional lines in the United Kingdom in any event, which is why I think the calls for the convention and steps that have been taken, for example, by the Salisbury group to produce a new draft Act of union, are all steps in the right direction. They give clarity, where, currently, we do not have it.

[185] **Joyce Watson:** My final question, if I can: there are, of course, huge rafts of case law that has come out of the European Court of Human Rights, and, currently, therefore, adopted international law, by virtue of that case law. I want to ask the question: are there any implications that might arise? I suppose, again, it's the progressive argument that you've been making since

you stepped into the room about not being left behind, but it's also about the access, if we were to leave the European Union, that might be denied to our citizens.

[186] **Dr Hoffman:** Leaving the European Union wouldn't deny UK citizens access to the authoritative system of human rights within Europe, which is the European Court of Human Rights. My fear, which I express in my submission, is that the idea of leaving the European convention on human rights is even on the table. As, I think, the First Minister said in 2015, if we leave the European convention on human rights, we're going to look like a banana republic, and that is very true. But one of the consequences of withdrawing from the European convention on human rights is that we would lose access to the European Court of Human Rights. The European convention and the European court is a system of human rights jurisdiction and jurisprudence that is admired worldwide, and is considered to be the most advanced system of human rights protection in the world. How we can even entertain the thought of withdrawing from that system—and you are quite right, if I may respectfully say so, that case law from the European Court of Human Rights, which has a specific remit in relation to the convention, has helped and assisted the United Kingdom courts in their interpretation of human rights issues in the UK, including the Supreme Court, which draws regularly on human rights jurisprudence from the European Court of Human Rights, including in the field of children's rights.

[187] **John Griffiths:** Thank you for that. Gareth.

[188] **Gareth Bennett:** Thank you, Chair. Joyce raised the issue of misinformation regarding human rights in UK press stories, which, Dr Hoffman, you mentioned you were concerned about. Have you got any specific instances of this that have particularly disturbed you?

[189] **Dr Hoffman:** I couldn't point you immediately to particular press articles, but I think, in general, the way asylum and immigration have been treated by the media is concerning, not least because of the impact that it has on social cohesion and communities, not just in Wales but in the UK generally. The coverage of asylum and immigration, when I look at it as a human rights lawyer, is very often quite simply wrong—leaving aside whether or not there is a degree of prejudice, which I wouldn't wish to comment on, but quite simply it's wrong. It's incorrect, and I have great concerns about that, because of the impact of that kind of reporting, that kind of media coverage, on communities, for me, particularly, in Wales, but generally in the

UK. But, of course, it's not simply a UK problem; this is a problem across Europe and worldwide.

[190] **Gareth Bennett:** Where is it specifically incorrect?

[191] **Dr Hoffman:** In relation to the treatment of migrants and asylum seekers and refugees, and what rights actually mean for the treatment of those individuals who are seeking asylum and refuge in the UK.

[192] **Gareth Bennett:** Thanks.

[193] **John Griffiths:** Bethan.

[194] **Bethan Jenkins:** I'm really sorry to go back to the bill of rights issue, but I wanted to understand, if there was a bill here in Wales, that, even though you'd have a standalone human rights Bill, would that then be—? Would you expect for that to be used or put on the front of other Bills that the Senedd would put forward? I'm asking in the context of your response to say that the Welsh Government have shown leadership, because, in a session of the children's committee recently, the Minister said that we shouldn't slavishly have to put due regard for the rights of the child into every piece of legislation, because it would apply. But my understanding from the children's commissioner is that it wouldn't apply to public bodies—if you didn't put it on the Bill, it would apply to the Ministers only. So, I want to understand: if we did bother to do this, would you expect it to not only sit as a law in and of itself, but then to be referenced in other pieces of legislation so that it would strengthen it or it would apply to more bodies than just the Welsh Government?

11:15

[195] **Dr Hoffman:** The position at the moment is that Ministers are under the due regard duty and public authorities are not, unless, of course they're under the duty as a result of being social services authorities and the application of the social services legislation. At the moment, as it stands, if the Welsh Government wishes to impose a duty on public authorities, then that duty should be imposed by the legislation that's under consideration. I'd entirely agree with the Children's Commissioner for Wales on that point. To my mind, it's not slavishly repeating the duty; it's establishing that a duty that presently applies to Ministers and some public authorities acting in particular circumstances applies in another set of circumstances.

[196] So, I think the issue has arisen in the context of the additional learning needs legislation. The point there, of course, is that if you wish to have a degree of consistency in the way that public authorities operate and behave towards children and young people, it's no good having Ministers under a due regard duty and social services authorities under a due regard duty if education authorities are not under a similar duty. There needs to be consistency in the way that public authorities approach children—

[197] **Bethan Jenkins:** So, if you had a new piece of legislation, you would expect that it would only—you would think that law makers would apply that to—

[198] **Dr Hoffman:** My suggestion and my proposal, which I put forward in the submission, is, if we had a human rights (Wales) Act, the duty to have due regard to human rights would apply to Ministers. So, in terms of Ministers, there'd be an extension there, because, at the moment, they're only under that duty in relation to children's rights, but also it would apply to public authorities, so, again, there'd be an extension of duties. In that particular instance, there would be no requirement or no need to include something on the face of legislation, although, having said that, there's no harm in reminding people.

[199] **Bethan Jenkins:** Okay. Thanks for that clarification.

[200] **John Griffiths:** Perhaps I could just ask, as a final question to Professor Watkin: in your written evidence, you refer to the differences in laws passed in the UK Parliament, compared with some of the devolved institutions, and you stated that having a more consistent approach, perhaps—particularly including laws that are for England only, passed in the UK Parliament at the moment—in terms of human rights, would aid public understanding of the system. I know you touched upon this earlier, but could you say a little bit more about how you think that more consistent approach would lead to a better public understanding?

[201] **Professor Watkin:** There are two things that particularly concern me in this context. The first is that in Wales, Scotland, and Northern Ireland, if the devolved legislatures attempt to legislate in a manner that is incompatible with the convention rights, then it is open to the courts to strike down those provisions or interpret them in a way that makes them compatible. On the other hand, if the UK Parliament legislates, the most the courts can do is to

make a declaration of incompatibility and leave it to the politicians to make the necessary adjustment.

[202] Now, where I think there is currently an unfairness, and one that, therefore, leads to problems of understanding, is that, when the UK Parliament legislates for England only, even though the reason for doing that and excluding other MPs in the House of Commons from voting at all stages on that legislation is to readjust the balance with the devolved nations, nevertheless, the legislation that is passed cannot be challenged in the same way as that made for Wales, Scotland, and Northern Ireland only. Now, that, to me, puts the spotlight in the wrong place, because what matters is not the legislature that makes the legislation, what matters is how the citizen can challenge something that affects their fundamental rights.

[203] Flowing from that, as we've seen with the litigation about the asbestos-related diseases (Wales) Bill, the majority in the Supreme Court said that they would actually look at the quality of the decision making here in the Welsh Assembly, and the same probably goes for the Scottish Parliament and the legislative Assembly in Northern Ireland in a manner that is not open for them to do in relation to the UK Parliament, and therefore is not open for them to do in relation to England-only legislation in the UK Parliament. So, you have all these inconsistencies arising, which do not, I think, make it easy for the citizen to understand how their rights are being protected within the United Kingdom. Why should a person who lives in Monmouthshire be able to overturn a law made by the Assembly, but not get more than a declaration of incompatibility if they were living in Gloucestershire and it had been done by the UK Parliament? The choice lies between either having a political check, which is what exists with the UK Parliament, leaving it to politicians to rectify the incompatibility, or having legal checks, where the court can do that. I think that choice needs to be made, and I think if the choice is made consistently it would aid citizens in understanding how the human rights legislation works in the United Kingdom.

[204] **John Griffiths:** Thank you. Thank you very much for that; that's very clear. Okay. Well, thank you very much both of you for giving evidence to the committee this morning. You will be sent a transcript to check for factual accuracy. Thank you very much indeed.

[205] **Dr Hoffman:** Thank you very much.

[206] **Professor Watkin:** Diolch yn fawr iawn. Thank you.

11:21

Papurau i'w Nodi
Papers to Note

[207] **John Griffiths:** Okay, then, we move on to item 4, papers to note. Paper 4 is additional information from the Cabinet Secretary for Finance and Local Government in relation to agency workers. Paper 5 is a letter to the Cabinet Secretary for Communities and Children in relation to Communities First funding. And paper 6 is additional information from the Cabinet Secretary for Communities and Children in relation to refugees and asylum seekers in Wales. Is committee content to note those papers? Okay.

Cynnig o dan Reol Sefydlog 17.42 i Benderfynu Gwahardd y cyhoedd o
Weddill y Cyfarfod
Motion under Standing Order 17.42 to Resolve to Exclude the Public
from the Remainder of the Meeting

Cynnig:

Motion:

bod y pwyllgor yn penderfynu that the committee resolves to gwahardd y cyhoedd o weddill y exclude the public from the cyfarfod yn unol â Rheol Sefydlog remainder of the meeting in 17.42(vi).

accordance with Standing Order 17.42(vi).

Cynigiwyd y cynnig.

Motion moved.

[208] **John Griffiths:** In that case, then, we move on to item 5, which is a motion to exclude the public from the remainder of the meeting under Standing Order 17.42. Is committee content to so exclude? Okay, thank you very much. We will move into private session.

Derbyniwyd y cynnig.

Motion agreed.

Daeth rhan gyhoeddus y cyfarfod i ben am 11:22.

The public part of the meeting ended at 11:22.

