

Devolved and evolved: Human rights in Wales

Abstract

The Universal Declaration on Human Rights is a statement of entitlements for all humanity, setting forth civil and political rights, as well as economic and social rights. The aspiration of the UDHR is given legal form in international law through UN human rights treaties. These treaties, and associated commentaries by UN Treaty Monitoring Bodies require States parties to adopt a range of measures to realise human rights, including legal, administrative, judicial, educative and other measures. This article will discuss how Wales, a small, devolved nation which forms part of the UK, has made efforts to embrace the ambition of the UDHR, and to progress human rights through law and policy. The article also discusses the potential for Wales to progress human rights in the future, including discussion of recommendations from recent research commissioned by the Welsh Government on a progressive human rights agenda, and how these recommendations are being implemented.

Devolved and evolved: Human rights in Wales

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The Universal Declaration on Human Rights (UDHR) is a statement of entitlements for all humanity, setting forth civil and political rights (C&PRs), as well as economic and social rights (ESRs).¹ The UDHR Preamble calls on “every organ of society” to “promote progressive measures” for the “effective recognition and observance” of all human rights. The aspiration of the UDHR is given legal form in international law through UN human rights treaties.² These are more directive in allocating responsibility for progress on human rights to States which are party to human rights treaties.³ Several commentaries by UN Treaty Monitoring Bodies (TMBs) confirm that States parties should adopt a range of measures to realise treaty rights, including legal, administrative, financial, judicial, educative and other measures.⁴ This article will discuss how Wales, a small nation which forms part of the United Kingdom (UK), has sought to progress human rights through high level leadership.

In 1999 devolution took effect in Wales when certain executive functions were transferred from the UK Government to an elected corporate National Assembly for

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Internet sources last accessed on 3rd November 2023.

¹ Universal Declaration on Human Rights 1948 (UDHR): [Universal Declaration of Human Rights | OHCHR](#)

² UN core treaties: [The Core International Human Rights Treaties | OHCHR](#)

³ For example: UN core treaties, Covenant on Civil and Political Rights, Article 2; Covenant on Economic, Social and Cultural Rights, Article 2.

⁴ For example: Human Rights Committee, *General Comment No.31, The nature of the general legal obligation imposed on States parties to the covenant* (UN, 2004) paragraph 7; Committee on Economic, Social and Cultural Rights, *General Comment No.3, The nature of States parties obligations* (UN, 1998) paragraph 7.

Wales (the ‘Assembly’), including competence over some secondary legislation.⁵ Since 1999 changes to Welsh devolution have seen Wales-national institutions given additional competence over policy and legislation (collectively ‘public policy’).⁶ This enlargement of devolution has seen the establishment of a Welsh Government to exercise executive functions in devolved areas, and the extension of legislative competence over primary legislation first to the Assembly then to its successor, a Welsh parliament known as the Senedd.⁷ While there remain areas of competence reserved to the UK Government and Parliament, changes to the architecture of Welsh devolution have increased the potential for Wales to progress human rights through devolved public policy. This article will explain on how Welsh institutions have used public policy to direct the conduct of Welsh Ministers, and to a lesser extent some public authorities, toward compliance with international human rights. It will demonstrate how these institutions have necessarily been innovative, driven by a need to *evolve* public policy within the changing parameters of Welsh devolution.

While, for reasons which will become apparent the focus below will largely be on the UN Convention on the Rights of the Child (CRC),⁸ it will argued below that experience in the area of children’s rights has potential to influence progress on human rights in Wales more broadly. The article will contend that while progress has been and continues to be inhibited by limitations on devolved competences, these limitations have contributed to an *evolved* approach which reflects the ambition of the UDHR and the expectations of TMB’s on human rights leadership. The final

⁵ Government of Wales Act 1998 (GWA 1998).

⁶ For an historical overview: [History of devolution \(senedd.wales\)](https://www.senedd.wales)

⁷ Government of Wales Act 2006 (GWA 2006), Wales Act 2017.

⁸ See: UN core treaties.

section of this article will discuss recommendations from recent research commissioned by the Welsh Government on a progressive agenda on human rights in Wales, and how these recommendations are being implemented.

TOWARD AN EVOLVED APPROACH

In 1998, UK legislation gave effect to devolution in Wales, as well as Scotland and Northern Ireland.⁹ The arrangements for devolution were, and remain, asymmetrical with institutions in both Northern Ireland and Scotland being granted different powers to Wales.¹⁰ When devolution took effect in Wales in 1999 it was limited to the transfer of certain executive functions from the UK Government to an elected Assembly with competence over policy and some secondary legislation. The Assembly at that time has been described as a “social policy body” as it lacked many levers of control over legislation available to UK-State institutions.¹¹ Achieving consensus proved a challenge during the early years of Welsh devolution, with several political parties represented in the Assembly. However, the topic of children’s rights proved an exception, and so the Assembly set about proclaiming a commitment to children’s rights through policy statements and by unanimously adopting the CRC as the foundation for all policy-making affecting children.¹²

⁹ GWA 1998, Scotland Act 1998, Northern Ireland Act 1998.

¹⁰ For a recent account of the asymmetries of UK devolution see: House of Commons Library, *Introduction to devolution in the UK* (London: House of Commons Library, 2022): <https://researchbriefings.files.parliament.uk/documents/CBP-8599/CBP-8599.pdf>

¹¹ I. Butler and M. Drakeford, “Children’s rights as a policy framework in Wales” in Jane Williams (ed), *The Rights of the Child in Wales* (Cardiff: University of Wales Press, 2013), p.10, at p.10.

¹² NAW, Record of Proceedings, 14th January 2004 (Cardiff: NAW). Repeated in a number of policy documents fully discussed by contributors in, Jane Williams (ed), *The Rights of the Child*. Butler and Drakeford, “Children’s rights”.

Whilst this is significant for children’s rights, it is also relevant more broadly as signalling the Assembly’s willingness to embrace human rights as a framework for policy. It is also worth noting that the CRC is a document of both C&PRs and ESRs, further signalling a readiness to embrace the full breadth of human rights in the discharge of policy-making functions.¹³ This approach has found its way into other Welsh Government strategies, most recently to promote the rights of disabled people to independent living, where policy is expressly based on the UN Convention on the Rights of Persons with Disabilities (CRDP);¹⁴ and, in its flagship strategy, a *Programme for Government* promoting well-being in Wales which sets out an intention to incorporate international human rights treaties into Welsh law (discussed below).¹⁵

EVOLVING THE PUBLIC POLICY FRAMEWORK

In 2006, UK legislation established a Welsh executive known as the Welsh Government and conferred primary law-making powers in prescribed areas (referred to as ‘Fields’) on the Assembly.¹⁶ These changes afforded Welsh institutions greater control over public policy in Wales, but limitations remained. Notably for present

¹³ The commitment to ESRs was given effect in, for example, Welsh Assembly Government, *A Fair Future for Our Children: The Strategy of the Welsh Assembly Government for Tackling Child Poverty* (Cardiff: Welsh Assembly Government, 2005). See fn 16 on the Welsh Assembly Government.

¹⁴ UN core treaties. Welsh Government, *Action on Disability: The right to independent living* (Cardiff: Welsh Government, 2019), <https://www.gov.wales/sites/default/files/publications/2019-09/action-on-disability-the-right-to-independent-living-framework-and-action-plan.pdf>, pp.1-2.

¹⁵ Welsh Government (WG), *Programme for Government – Update* (Welsh Government: Cardiff, 2021).

¹⁶ GWA 2006, Schedule 5, for Fields (now repealed). The NAW established a *de facto* executive in 2002 known as the Welsh Assembly Government.

purposes, the Assembly was not given express competence over human rights.¹⁷ However, human rights were not irrelevant to the conduct of devolved public policy. A common feature of devolution in Wales, Scotland and Northern Ireland is that the devolved executives and legislatures are prohibited from exercising their functions in a manner which is not compatible with rights under the European Convention of the Human Rights incorporated into UK law by the Human Rights Act 1998 ('Convention rights').¹⁸ Convention rights are woven into the fabric of devolution, providing a common thread amongst the UK Government and the three devolved executives, and distinguishing the devolved legislatures from the UK Parliament, which is not bound by Convention rights.¹⁹ However, Convention rights are regarded as C&PRs and merely establish boundaries for the conduct of devolved institutions where those rights are engaged by public policy. This framing is primarily prohibitive, offering hardly any guidance on how devolved functions might be exercised to meet the ambition of the UDHR to progress C&PRs, or ESRs.

Limitations on competence might have restricted the Welsh Government and the Assembly to a focus on embedding human rights through policy. However, when the Assembly gained primary law-making competence Welsh Ministers looked for an opportunity to give effect to the CRC through legislation. This presented itself in 2008 when the UK Parliament conferred a new legislative competence on the Assembly to pass legislation to safeguard the well-being of vulnerable children, with well-being

¹⁷ Although many Fields set out in GWA 2006 schedule 5 are areas where policy will have an impact on human rights, for example: education; health; housing (Fields 5, 9, 11).

¹⁸ GWA 2006, sections 81 and 108A (similar provisions are included in the devolution statutes for Scotland and Northern Ireland). Convention rights are set out in the Human Rights Act 1998 (HRA 1998), schedule 1.

¹⁹ HRA 1998, section 6(3).

defined to include securing rights.²⁰ While this was far from a direct conferral of competence over human rights, Welsh Ministers nevertheless sought to exploit the reference to rights to introduce primary legislation to incorporate the CRC into Welsh law. At the time primary legislation in Wales was referred to as a Measure, and so the Assembly passed the Rights of Children and Young Persons (Wales) Measure 2011 (the '2011 Measure'). This requires Welsh Ministers to have due regard to Part 1 of the CRC and prescribed articles of its first and second optional protocols in the exercise of all their functions.²¹ The due regard duty means that Welsh Ministers must take children's rights meaningfully into account when exercising their functions but are not bound to act in compliance with those rights, nor is there any remedy provided for a child who feels their rights have been violated.²² At the time the legislation was passed it was the view of Welsh Ministers and non-governmental stakeholders that it was not possible to make the CRC enforceable in Wales, influencing the legal form of incorporation adopted by the 2011 Measure.²³

A full discussion of the 2011 Measure is beyond the scope of this article. However, for present purposes there are several points worth noting about the due regard approach to incorporation. The 2011 Measure may be seen as Welsh law-making

²⁰ National Assembly for Wales (Legislative Competence)(Social Welfare and Other Fields) Order 2008 (SU 2008/3132), paragraph 3.

²¹ Rights of Children and Young Persons (Wales) Measure 2011 (2011 Measure), section 1.

²² For a discussion of due regard and accountability under the 2011 Measure: S. Hoffman and J. Williams, "Accountability" in Jane Williams (ed), *The Rights of the Child*, p.167.

²³ J. Williams, "General legislative measures of implementation: individual claims, 'public officer's law' and a case study on the UNCRC in Wales" *International Journal of Children's Rights* (2012) 20(2), 224. S. Hoffman, "Incorporating the UN Convention on the Rights of the Child in Wales" in Ursula Kilkelly, Laura Lundy, Bronagh Byrne, *Incorporating the UN Convention on the Rights of the Child into National Law* (Cambridge: Intersentia Ltd, 2021) p. 99.

adapting or evolving to fit within the limitations of devolution. It may also be seen as having consequential impacts on how human rights more broadly might be progressed in Wales. Perhaps foremost amongst these is that the Welsh Government, the Assembly and more recently the Senedd have demonstrated an increasing confidence to pursue Wales-only legislation on human rights, and rights-based principles. This has included sectoral legislation incorporating the CRC but also the CRPD in the field of additional learning needs education,²⁴ and the CRC s and the UN Principles for Older Persons in the field of social care,²⁵ making these conventions and principles relevant to the discharge of functions by certain public authorities in Wales. This willingness to embrace human rights conventions and principles as legal frameworks for public policy has not gone unnoticed by civil society in Wales. Organisations working in the field of disabled people's rights, women's rights and housing rights have sought to persuade Welsh Ministers to incorporate the CRPD,²⁶ the Convention on the Elimination of Discrimination Against Women (CEDAW),²⁷ and the right to adequate housing as constitutional Welsh law.²⁸ The Welsh Government responded positively in a 2021 update to its

²⁴ Additional Learning Needs and Education Tribunal (Wales) Act 2018, sections 7 and 8.

²⁵ Social Services and Well-being (Wales) Act 2014, section 7

²⁶ Disability Wales, *Bring Us Our Rights: Disabled People's Manifesto*, 2020: <https://www.disabilitywales.org/wp-content/uploads/2020/12/DW-Manifesto2020-E.pdf>.

²⁷ WEN Wales, *CEDAW: Strengthening and Embedding Women's Rights in Wales*, 2020: [CedawBriefing.WenWales.Booklet.indd](#).

²⁸ As an aspect of the right to an adequate standard of living under Article 11 of the Covenant on Economic, Social and Cultural Rights. Tai Pawb, the Chartered Institute of Housing Cymru, and Shelter Cymru, *The Right to Adequate Housing in Wales: Feasibility Report*, 2019: [The right to adequate housing in Wales: Feasibility report - Shelter Cymru](#)

Programme for Government, signalling an intention to incorporate the CRPD and CEDAW, and to introduce a Welsh right to adequate housing.²⁹

A further consequence of the legal form of the 2011 Measure is that attention is necessarily given to promoting non-legal mechanisms to secure better compliance with children's rights and to enhance Ministerial accountability. To promote compliance the 2011 Measure requires Welsh Ministers to make and publish a Children's Scheme setting out steps they will take to comply with the due regard duty.³⁰ To promote accountability the 2011 Measure requires Welsh Ministers to report periodically to the Assembly (now the Senedd) on progress to comply with the due regard duty.³¹ The first Children's Scheme (2014) and a revised version (2021) both set out steps to embed due regard to the CRC in Welsh Government decision-making and action.³² Amongst these are: impact assessment, to predict the likely impact of proposals for public policy on children's rights; training on the CRC for all Welsh Government officials; steps to be taken to promote participation and empowerment of children; and, raising awareness of children's rights. On participation, the 2011 Measure promotes engagement between the Welsh Government, and children and the Children's Commissioner for Wales (the 'CCfW') by requiring Welsh Ministers to involve them in the preparation of the Children's Scheme.³³ The 2011 Measure also promotes engagement with the international

²⁹ WG, *Programme for Government*, p.7 and 14.

³⁰ 2011 Measure, section 2.

³¹ 2011 Measure, sections 4.

³² Children's Rights Scheme 2014: [Children's Rights Scheme 2014 | GOV.WALES](#); Children's Rights Scheme 2021: [DRAFT Children's Rights Scheme 2021 \(gov.wales\)](#).

³³ Trudy Aspinwall and Rhian Croke, "Policy advocacy communities: the collective voice of children's NGOs in Wales" in Jane Williams (ed), *The rights of the Child*, p.35 (and other contributions in this text).

framework of children's rights by requiring Welsh Ministers to have regard to reports and commentaries published by the Committee on the Rights of the Child (the 'Committee') in the preparation of the Children's Scheme.³⁴ These legal devices give children and the CCfW an opportunity to influence how the Welsh Government implements children's rights through public policy, and provide a route by which public policy in Wales can embed internationally recognised good practice guidance.

While the intention behind the 2011 Measure is to give effect to the CRC in Wales, for present purposes it is significant that it deploys or promotes mechanisms which are often suggested as key steps to effective achievement of human rights generally. For example, incorporation or integration of human rights treaties into national law is a prioritised by several TMBs, while the Children's Scheme introduces administrative and educative mechanisms which are amongst the measures identified as key to State party adoption of a human rights approach.³⁵

ONGOING EVOLUTION OF THE APPROACH TO HUMAN RIGHTS

This article contends that the approach to human rights in Wales is an evolved approach. In one sense, this is demonstrated by the way in which Welsh devolved institutions have sought to exploit opportunities to embed some human rights treaties

³⁴ 2011 Measure, section 3.

³⁵ Committee on the Rights of the Child (Committee), *General Comment No.5*. Human Rights Committee, *General Comment No.31*. Committee on Economic, Social and Cultural Rights, *General Comment No.3*. Danish Institute for Human Rights, *Applying a rights-based approach: An inspirational guide for civil society*, (DIHR: Copenhagen, 2007): [RBA7.indd \(humanrights.dk\)](#). Committee on Economic, Social and Cultural Rights, *Pledge to leave no-one behind: the International Covenant on Economic, Social and Cultural Rights and the 2030 Agenda for Sustainable Development*, 2019: [21780E_C.12_2019_1_edited.pdf \(un.org\)](#). UN Population Fund, 2023: [The Human Rights-Based Approach \(unfpa.org\)](#).

and principles through public policy, taking care to adapt to the contours of devolution. A second sense in which this approach is evolved is the way in which different levers of public policy have been used to embed both C&PRs and ESRs: these include incorporation, but also non-legal procedures to promote compliance, accountability, and participation of stakeholders, and to raise awareness of human rights. It is contended that the key features of children's rights in Wales establish a pattern-book for an evolved or progressive approach to human rights through public policy more broadly, reflecting the ambition of the UDHR for progressive measures to achieve realisation of both C&PRs and ESRs. Whether this evolved approach will contribute to future progress on human rights in Wales remains to be seen, with initial signs seeming somewhat (although not wholly) positive.

In 2020, the Welsh Government commissioned research on how Wales might strengthen and advance equality and human rights (the '2020 research').³⁶ Significantly, in 2017 the Senedd's legislative competence was extended when Wales moved from conferred model of devolution to a reserved model. Under a reserved model legislative competence on any matter is assumed unless expressly reserved to the UK Parliament.³⁷ Partly motivated by a desire to use Welsh competences to the fullest extent to promote human rights, and partly in response to increasing hostility toward human rights from the UK Government, Welsh Ministers

³⁶ Welsh Government (WG), *Strengthening and Advancing Equality and Human Rights in Wales* (Cardiff: Welsh Government, 2021): [Strengthening and advancing equality and human rights in Wales | GOV.WALES](#)

³⁷ GWA 2006 as amended by Wales Act 2017. Reserved matters are set out in GWA 2006, schedules 7A and 7B.

were keen to receive recommendations on how human rights might be progressed in Wales through devolved public policy.³⁸

The 2020 research undertook a literature review and scoping of relevant legal and policy frameworks on human rights, equality and well-being in Wales, before gathering evidence from professionals and people with lived experience of equality and human rights issues. Evidence was received through surveys, interviews, workshops, Welsh Government standing policy forums,³⁹ and focus groups. In total 169 professional stakeholders, 69 people from diverse groups representative of those with lived experience, and 30 children and young people participated in the evidence gathering phase of the 2020 research. Based on literature review the evidence gathering phase on human rights was structured around a number of themes: incorporation of human rights, the value and methods of enforcement, guidance, monitoring and raising awareness of human rights. Participants were also asked for their assessment of what currently works to progress human rights in Wales, and on areas for improvement. The data from participants was collated and analysed adopting a reflexive approach, initially to identify and code general themes and then through further familiarisation, to confirm overarching themes (e.g. views on value of legal integration and raising awareness, the need for guidance), and to generate sub-themes (on practices, procedures or necessary resources).⁴⁰ The

³⁸ For example, the Welsh Government expressed concern about the UK Government's proposal (which it is no longer progressing) to repeal the Human Rights Act 1998: [The Welsh Government's Response to the 'Human Rights Act Reform: A Modern Bill of Rights' consultation, launched by the UK Government on 14 December 2021](#). On the human rights situation in the UK generally: Human Rights Watch, *World Report 2022, 2023*; [World Report 2023 Book \(hrw.org\)](#), p.651.

³⁹ On race, disability, older people and faith.

⁴⁰ WG, *Strengthening and Advancing*, chapter 3, "Methodology".

findings from the research are presented in a research report, *Strengthening and Advancing Equality and Human Rights in Wales 2021* (the '2021 report') which sets out 40 recommendations under nine headings: Legislation and Leadership; Guidance; Impact Assessment; Process Alignment; Monitoring; Accountability and Enforcement; Raising Awareness; and COVID-19. Space does not permit a full discussion of the 2021 report and so what follows is a selective account focussing on recommendations on how the Welsh Government should develop (or evolve) the public policy framework in Wales to progress human rights.

The 2021 report confirms that the Senedd has competence to observe and implement the UK's international obligations which is taken to include human rights obligations arising from treaties to which the UK is a State party.⁴¹ It notes a strong desire amongst research participants for further incorporation of international human rights treaties into Welsh law. While the Welsh Government has indicated an intention to incorporate the CRPD and CEDAW, the 2021 report notes a broader desire in Wales for a holistic approach to embedding more UN conventions. Some research participants explained why they see incorporation as an important step. Reasons given include the need to secure compliance and to provide for mechanisms for redress where rights are violated.⁴² As already noted, the due regard model of incorporation used in the 2011 Measure does not provide a redress mechanism for individuals whose rights are breached. The 2021 report notes dissatisfaction with due regard as an underpinning of support for enforceable human

⁴¹ GWA 2006, schedule 7A paragraph 10(3): expressly *excludes* observing and implementing international obligations from a reserved competence over 'Foreign Affairs', which remains with the UK Parliament.

⁴² WG, *Strengthening and Advancing*, chapter 4 "Legislation", chapter 5 "Human Rights Incorporation".

rights.⁴³ However, it also identifies a number of strengths of the due regard approach, drawing in part on research in 2018 for the Equality and Human Rights Commission in Wales on the impact of the 2011 Measure: notably, the way in which due regard encourages attention to human rights in policy development and its potential (demonstrated by the Children’s Scheme) to mainstream human rights into policy development.⁴⁴

The 2021 report recommends further incorporation of international human rights into Welsh law and for Welsh Ministers to examine how this might be achieved in a way which provides for judicial enforcement. The Welsh Government accepted these recommendations and established a Legislative Options Working Group (the ‘Working Group’) to examine options for legislation within the current framework of devolution, as well as non-legislative options to support implementation of human rights incorporated into Welsh law, or to embed those rights which are deemed incapable of incorporation because of reservations to devolved competences.⁴⁵ At the time of writing the Working Group is yet to present its findings, but an initial report confirms it is examining options to incorporate the UN core treaties in a way which makes rights enforceable, and that it is engaging with relevant stakeholders to

⁴³ For example, evidence noted at paragraphs 5.20 and 5.21: WG, *Strengthening and Advancing*.

⁴⁴ S. Hoffman and S. O’Neill, *The Impact of Legal Integration of the UN Convention on the Rights of the Child in Wales* (Cardiff: Equality and Human Rights Commission, 2018). WG, *Strengthening and Advancing*. Strengths of due regard are discussed at paragraph 5.23 and aspects of mainstreaming at 6.18-6.23.

⁴⁵ Welsh Government (WG), *Welsh Government response to the ‘Strengthening and Advancing Equality and Human Rights in Wales’ research report* (Cardiff: Welsh Government, 2022): [Report \(gov.wales\)](https://gov.wales).

determine how non-legislative mechanisms might support embedding of rights in the Welsh public policy framework.⁴⁶

While acknowledging support for legislation to incorporate more human rights in Wales, the 2021 report notes dissatisfaction with current Welsh legislation on human rights (discussed above). Research participants highlighted an implementation gap between the aspirations of public policy and the lived experience of many individuals and groups who experience ongoing deficit in their access to services and resources otherwise guaranteed by human rights.⁴⁷ To help address this deficit the 2021 report draws on learning from the 2011 Measure (as discussed above), as well as the literature on human rights implementation and a human rights approach.⁴⁸ It makes a number of recommendations to promote better recognition of human rights by Welsh Ministers and public authorities at all stages of policy development and implementation.⁴⁹ These recommendations reflect features of the pattern-book for an evolved approach to human rights which emerged from the experience of children's rights in Wales, and include: signalling support for human rights in all significant policy and strategic documents; carrying out human rights impact assessment; and, involving people with an interest, including those with lived experience, in developing public policy targets and outcome indicators.⁵⁰

⁴⁶ Not yet published, author's personal archive.

⁴⁷ WG, *Strengthening and Advancing*, paragraph 6.18, drawing on participant views but also evidence from other research. See: Equality and Human Rights Commission, *Is Wales Fairer? The state of Equality and Human Rights* (Cardiff: Equality and Human Rights Commission, 2018).

⁴⁸ WG, *Strengthening and Advancing*, chapter 6 "The implementation Gap", chapter 7 "Impact Assessment".

⁴⁹ WG, *Strengthening and Advancing*, paragraphs 3.19 and 12.2.

⁵⁰ WG, *Strengthening and Advancing*, recommendations 2-4, 6-8, 17-20, and 22.

In addition to the Working Group, the Welsh Government has established a Human Rights Advisory Group (the ‘Advisory Group’) to monitor progress on the 2021 report recommendations, with members drawn from civil society and academia.⁵¹ Welsh Ministers have also committed to developing a Human Rights Approach and referring to discrete policy areas, specifically children and older people, point at ongoing collaborative work to embed a rights-based approach.⁵² This includes work with the Future Generations Commissioner for Wales to prepare non-statutory guidance on how the Well-being of Future Generations (Wales) Act 2015 (the ‘2015 Act’) and human rights can “work together”.⁵³ The 2015 Act prioritises sustainable development as an objective for public authorities in Wales including Welsh Ministers, and establishes seven well-being goals to embed this objective in public policy.⁵⁴ There are certainly connections between human rights and well-being, perhaps most usefully articulated in the UN resolution, *Transforming our world: the 2030 Agenda for Sustainable Development* (the ‘2030 Agenda’). The 2030 Agenda declares a vision of a world where: “physical, mental and social well-being are assured” and of “universal respect for human rights...equality and non-discrimination; of respect for race, ethnicity and cultural diversity; and of equal opportunity”.⁵⁵ The 2030 Agenda goes on to describe a relationship between

⁵¹ About HRAG: <https://www.gov.wales/action-strengthen-human-rights-wales-2018-2022-html>, “Human Rights”.

⁵² WG, *Welsh Government response*, section B.

⁵³ WG, *Welsh Government response*, section B.

⁵⁴ Well-being of Future Generations (Wales) Act 2015, sections 2-5. The well-being goals are set out in section 4: a resilient Wales, a prosperous Wales, a healthier Wales, a more equal Wales, a Wales of cohesive communities, a Wales of vibrant culture and thriving Welsh language, a globally responsible Wales.

⁵⁵ UN General Assembly (UNGA), *Transforming our world: the 2030 Agenda for Sustainable Development* (UNGA: 2015): [A/RES/70/1 - Transforming our world: the 2030 Agen | Department of Economic and Social Affairs \(un.org\)](https://www.un.org/en/content/dam/sgsm/ga/docs/2015/70/70-1-2015.pdf), paragraphs 7 and 8.

equality, human rights and well-being based around the UN sustainable development goals. Similarly, the UN Committee on Economic, Social and Cultural Rights has described the relationship between sustainable development and socio-economic human rights as a “fundamental pillar” of the 2030 Agenda and sustainable development.⁵⁶ It is certainly the case that some well-being goals set out in the 2015 Act reflect objectives in the 2030 Agenda: for example, a more equal Wales, a resilient Wales, a healthier Wales.⁵⁷ However, in the context of the Welsh public policy framework approaching human rights through the vehicle of well-being raises a number of concerns.

The 2015 Act well-being goals do not include reference to human rights and the 2021 report draws attention to concerns raised by research participants about a lack of connectivity between well-being and human rights as public policy agendas in Wales, with well-being seen as diverting attention away from recognition and enforcement of human rights.⁵⁸ Research participants also commented that the well-being goals in the 2015 Act are vague, leading to a perception that Welsh legislation is weak, “lacks teeth” and fails to protect human rights.⁵⁹ While it is welcome that the Welsh Government has expressed a commitment to a Human Rights Approach, there is a risk that a continued focus on well-being as a driver of public policy in Wales will distract attention away from human rights. This risk is accentuated by the

⁵⁶ Committee on Economic, Social and Cultural Rights, *The pledge to leave no one behind: the International Covenant on Economic, Social and Cultural Rights and the 2030 Agenda for Sustainable Development* (CESCR) available here: [The pledge to leave no one behind : \(un.org\)](https://www.un.org/en/development/desa/destresilience/pledge-to-leave-no-one-behind), paragraph 4.

⁵⁷ 2015 Act. See e.g. UNGA, *Transforming our world*, on resilience and equality at paragraphs 7 and 8, and on health at paragraph 26.

⁵⁸ WG, *Strengthening and Advancing*, chapter 4 “Legislation”.

⁵⁹ WG, *Strengthening and Advancing*, paragraph 4.20.

Welsh Government's response to recommendations in the 2021 report for human rights to be the basis for setting targets and outcome indicators for public policy.⁶⁰ While the Welsh Government has expressed general agreement with these recommendations it has been ambivalent on how they might be put into effect. For example, on human rights as outcome indicators, Welsh Ministers have suggested that some existing well-being indicators in Wales embed human rights, although reference to the indicators themselves are hardly convincing on this point: with a tendency toward generalised pointers of well-being, with very few indicators which directly or indirectly reference to how people experience human rights guarantees.⁶¹ And while Welsh Ministers have suggested there "could be scope to widen this coverage [of indicators] in some key areas" it seems this is likely to be through elaboration of well-being indicators, rather than the development of a new set of bespoke human rights outcome indicators as contemplated in the 2021 report.⁶²

Another area of concern relates to the 2021 report recommendation that the Welsh Government should introduce a Human Rights Impact assessment to prioritise human rights in the development and implementation of public policy.⁶³ The Welsh Government has committed to updating the tools and guidance accompanying its Integrated Impact Assessment (IAA) which officials apply to assess proposals for public policy.⁶⁴ At the time of writing the IAA template used by Welsh Government

⁶⁰ WG, *Strengthening and Advancing*, recommendations 4, 11, 13,16, 24.

⁶¹ Welsh Government, National Well-being Indicators: [Wellbeing of Wales: national indicators | GOV.WALES](#)

⁶² WG, *Welsh Government response*, p.9.

⁶³ WG, *Strengthening and Advancing*, chapter 7, "Impact Assessment", recommendations 17-22.

⁶⁴ WG, *Welsh Government response*, section D. Information on Integrated Impact Assessment: <https://www.gov.wales/sites/default/files/publications/2021-03/atish14824doc10.pdf>.

officials has been updated to include a section on “Human Rights”.⁶⁵ However, at the time of writing, fully 26 months after the 2021 report the Welsh Government has yet to yet to report to the Advisory Group on the content of a new IAA template or on guidance on human rights to accompany the IAA.

A further set of recommendations in the 2021 report deal with public education on human rights. The 2021 recommendations urging a comprehensive educative programme on human rights. The Welsh Government response notes that the revised curriculum for Wales requires schools to include education on human rights.⁶⁶ These developments are welcome, and consistent with the expectation that human rights leadership which includes the adoption of educative measures. What is less positive is that the Welsh Government appears reluctant to demonstrate leadership toward Higher Education institutions in Wales by requiring them to include human rights in Higher Education curricula. Instead, the Welsh Government suggests that this would usurp the function of the Law Council of Wales, and undermine the independence of universities in Wales.⁶⁷ This appears to be an abdication of responsibility not least because in relation to the CRC at the very least, the Committee has stated that it “expects to see the [CRC] reflected in professional training curricula...and educational curricula at all levels.”⁶⁸ But also, because a comprehensive review of justice in Wales, set up by the Welsh Government in 2019, recommended that “[a]ll university and college education providers in Wales should

⁶⁵ It has not been possible to download a blank IAA template. The Welsh Government publishes completed IAAs. An example, on an Infrastructure Bill, may be found here: [Integrated Impact Assessment for the Infrastructure \(Wales\) Bill \(gov.wales\)](https://gov.wales/integrated-impact-assessment-for-the-infrastructure-wales-bill)

⁶⁶ WG, *Welsh Government response*, section E.

⁶⁷ WG, *Welsh Government response*, section E.

⁶⁸ Committee, *General Comment No.5*, paragraph 54.

teach Welsh law as part of the ordinary undergraduate syllabus”.⁶⁹ Welsh law already embeds a number of human rights treaties and work is progressing to incorporate more treaties. Welsh universities play a key role in training medical, legal, education, social care and other professionals, many of whom will go on to practice in Wales. Through direct delivery, or through service planning functions, these practitioners will often deal directly with individuals who require advice on human rights (for example, legal professionals) or access to services where human rights should be to the fore in determining how services are planned and delivered (for example, health or social care). The Welsh Government’s reticence to demonstrate leadership in this area may detrimentally impact how practitioners understand, advise on, apply or otherwise engage with the Welsh human rights framework in their professional lives.

Conclusion

This article has demonstrated how public policy in Wales has evolved to accommodate the changing architecture of devolution to embed progressive measures to progress human rights through public policy. With the move to a reserved model of devolution the stage is set for Wales to make further progress, drawing on ready bank of accumulated experience in the field of children’s rights and the 2021 report recommendations, which themselves draw on a wealth of experience from amongst civil society in Wales. There is reason to be optimistic about where Wales will go next on human rights, bearing in mind the ongoing commitment to

⁶⁹ Commission on Justice in Wales, *Justice in Wales for the People of Wales* (Cardiff: Commission on Justice in Wales, 2019): [Justice Commission ENG DIGITAL 2.pdf \(gov.wales\)](#), recommendation 48.

incorporation and the anticipated outcome from the LOWG.⁷⁰ However, there are challenges ahead. The obsession with well-being as a driver of public policy in Wales has potential to distract from progress on human rights, and key recommendations in the 2021 report on impact assessment and raising awareness may not be fully implemented. If public policy in Wales is to embrace the ambition of the UDHR for progressive measures to achieve human rights, the Advisory Group and civil society generally, as well as interested Senedd Members will need to be vigilant to ensure the Welsh Government delivers on its commitment to strengthen and advance human rights.

⁷⁰ On 5th September 2023 the Chief Whip and Minister for Social Justice, Jane Hutt MS confirmed that the Welsh government continues to see incorporation as a key step toward protecting human rights in Wales. Letter to Sioned Williams MS, Chair of the Senedd Cross Party Group on Human Rights. Author's personal archive.