

Executive Summary

Context

See the [full report](#) for details on the Legislative Options Working Group's (LOWG) membership and the status of our report.

The LOWG is an independent working group of non-governmental experts on human rights. It was established to advise the Welsh Government on options to incorporate (or embed) international human rights into Welsh law through Senedd legislation. This work takes forward recommendations from the Strengthening and Advancing Equality and Human Rights (SAEHR) report in 2021. The SAEHR recommended making international human rights part of Welsh law so they can be enforced by a court or tribunal.

LOWG was asked (by Ministers) to prioritise two United Nations treaties: the Convention on the Elimination of Discrimination against Women (CEDAW) and the Convention on the Rights of Disabled People (CRDP).

Our work breaks new ground. We analysed CEDAW and the CRDP in the context of Welsh devolution and the ambition to incorporate these treaties into Welsh law.

Objectives

Our main objective was to examine what options are available to give legal effect to CEDAW and the CRDP in Welsh law. We also considered the main legal and practical risks, trade-offs and design choices attached to those options. Ministers later asked us to consider how Wales could strengthen implementation so that human rights translate into policy and services. We also looked at how to improve access to justice and effective remedies and identified future actions to support and build on this work.

Methods

To guide this work, LOWG developed a structured approach drawing on authoritative literature on human rights, incorporation, and CEDAW and the CRDP. We also drew on insights from experts involved in similar work in Scotland. These insights helped LOWG

develop an approach that combined structured analysis with group discussion and judgement, informed by the wide-ranging experience and expertise of its members. As the work progressed, we refined our approach to reflect the issues that proved most important in the Welsh context.

In particular, questions of Senedd legislative competence became central to our analysis of legislative options. We therefore used a method that was structured and systematic, but flexible enough to respond to the distinct legal and policy questions raised by each part of the work.

As part of our assessment of options to incorporate CEDAW and the CRDP, we looked closely at the reservations and restrictions in Schedules 7A and 7B to the Government of Wales Act 2006 (GoWA 2006), and the implications these may have for Senedd competence. This was important because, should the Senedd attempt to legislate in any area covered by a reservation or restriction, this could be challenged by the UK government, and the Supreme Court would have power to declare any proposed Bill unlawful.

To explore how implementation might be strengthened so human rights translate into policy and services, we used recommendations from the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of Disabled People to identify implementation gaps and priority areas for action in Wales. We also examined policies, action plans and other relevant sources, including insights from Welsh Government officials, to assess progress in Wales against those recommendations.

Key Messages on Incorporation

LOWG is acutely aware that stakeholders in Wales have been calling for incorporation of both CEDAW and the CRDP over many years. Organisations representing women and disabled people have sought '**direct incorporation**' of both these treaties. Direct incorporation would mean making CEDAW and the CRDP part of Welsh law with very little amendment. In our assessment, this form of incorporation would most clearly meet

the SAEHR recommendation of making the rights set out in those treaties enforceable by a court or tribunal.

LOWG carefully examined the option of direct incorporation of CEDAW and the CRDP. This required detailed analysis of both treaties. What emerged clearly and consistently from this examination is that the rights guaranteed by both CEDAW and the CRDP relate to 'equal opportunities', i.e. the prevention, elimination or regulation of discrimination against women or disabled people. This is significant because equal opportunities is a 'reserved matter' under Schedule 7A of the GoWA 2006 and it is only the UK Parliament that can legislate on a reserved matter for Wales. We also found that a number of specific rights guaranteed by CEDAW and the CRDP relate to other reserved matters or restrictions where the Senedd is generally prevented from enacting legislation (e.g. nationality, work and employment, and modern slavery).

Therefore, we have regrettably concluded that direct incorporation of CEDAW and/or the CRDP through Senedd legislation would be a risky approach, because it could be challenged as outside Senedd legislative competence.

In the light of the above, we gave careful consideration to whether CEDAW and/or the CRDP might be amended, either to remove material which relates to any matter where the Senedd is prevented from enacting legislation (i.e. a reserved or restricted matter); or to bring it within an exception which might give the Senedd legislative competence. Unfortunately, we concluded that amending either treaty would very likely weaken the rights and protections in the treaties to a significant degree.

We also believe that there is considerable uncertainty about how reservations or exceptions under Schedule 7A of the GoWA 2006 might be applied and interpreted (in particular by the Supreme Court). This was particularly significant to the assessment of Senedd competence to enact laws which might relate to equal opportunities.

In the light of all of the above, and after much deliberation and reflection, we regrettably came to the decision that we are unable to recommend direct incorporation as an option to embed CEDAW and the CRDP in Welsh law.

LOWG also examined the option of '**indirect incorporation**' of both CEDAW and the CRDP, adopting a 'due regard' approach, as used in, for example, the Rights of Children and Young Persons (Wales) Measure 2011 (Child Rights Measure). We found that this option is likely to be less risky (i.e. less open to challenge) than direct incorporation. However, we have decided not to recommend it as an option to incorporate CEDAW and the CRDP in Wales. This is primarily because indirect incorporation does not enable individuals to enforce their rights directly before a court or tribunal. As a result, indirect incorporation would not meet the ambition of the Welsh Government or stakeholders for incorporation in a manner which would enable enforcement.

What we recommend on incorporation

We recognise that this conclusion, and in particular our assessment of direct incorporation, may disappoint stakeholders who have long held the ambition of enforceable human rights for women and disabled people in Wales. However, our findings do not rule out that ambition. In our view, a **bespoke Welsh approach** is a progressive and attainable pathway to give legal effect to those rights in Welsh law.

Our recommended route is a Human Rights (Wales) Act that draws on CEDAW and the CRDP, and any other relevant human rights treaty, to establish bespoke fundamental rights for women and disabled people. We see this approach as a way for Wales to navigate the reservations and restrictions that present such a barrier to direct incorporation. It would provide a route for individuals to access enforceable remedies by introducing a requirement on public authorities in Wales to comply with bespoke rights. In our view, it would also create an opportunity to develop rights that fit the Welsh context and reflect the needs and interests of women and disabled people in Wales, as well as new rights like the right to a healthy environment.

Key Messages on Implementation

We found that Wales already does a lot for women's rights, disabled people's rights and other human rights areas. However, the link between human rights and action is not always visible, consistent or tracked. In our view, Wales needs stronger coordination,

follow-up and reporting to make sure recommendations from international monitoring bodies are carried through into day-to-day policy and services.

Our work found wide-ranging Welsh Government legislation, strategies, guidance, equality action plans and programme delivery that would seem to align with UN Committee recommendations. Wales also has legal frameworks (like the Wellbeing of Future Generations and Equality frameworks) that could help strengthen, coordinate and support these new human rights.

We would caveat this aspect of our work in that we encountered significant variability in the evidence available to us across policy areas, introducing a level of uncertainty about what policies or actions are in progress, or what outcomes they achieve.

Although there were areas where we would have liked more information, we are confident that a recurring issue is the gap between committee recommendations and how they are translated into action, coordinated and evidenced.

Across the policy areas we examined, the relationship between Welsh action and specific treaty provisions, committee recommendations and interpretive guidance is often unclear. Our analysis identified a number of connected themes, summarised below:

- Implementation is not consistently framed around treaty standards: it is often unclear which recommendations are being addressed, what evidence will demonstrate progress, or how outcomes will be tracked over time.
- Mainstreaming and capacity are uneven across portfolios, which contributes to inconsistent treatment of rights standards in policy design and delivery.
- Intersectionality is acknowledged more often than it is actually addressed with targeted measures, disaggregated data and reporting mechanisms.
- Implementation and continuity over time can be uneven, so for example some plans expire with no clarity on what happens next.
- There are gaps in the data which might be used to track, coordinate and evidence implementation of recommendations across government, including to

show what has been done, what remains outstanding and how progress will be monitored.

Our implementation recommendations, which we set out below, focus on strengthening systems and coordination alongside the creation of new law, which is addressed through incorporation. The central recommendation is to establish a Welsh National Mechanism for Implementation, Reporting and Follow-up (NMIRF), alongside stronger action planning, mainstreaming, targeted intersectional delivery, plan renewal and capacity building.

Key Messages on Access to Justice

It is clear that effective remedies need more than legal recognition of rights. People need clear, affordable and timely ways to get justice when their rights are not met. In practice, this means more than one way to access remedies, making sure people have the support they need to do so, including advice, advocacy, awareness and legal support.

Our work on access to justice has had to take account of some uncertainty about how far Wales can go to reform judicial or tribunal remedies within devolved competence, and how far Welsh legislation can address issues such as who may bring a claim, time limits for claims, and the resource implications. However, our view is that these issues should not prevent progress on our suggestions.

Judicial review is an important but limited back-stop. In practice it's costly and complex; cases are relatively few, and cuts to legal aid make judicial review a difficult exercise for many people (especially those with limited access to resources and expertise). We therefore argue for express routes to enforcement. We suggest that a new Welsh rights framework could set out routes to available remedies on the face of the legislation. Consideration could also be given to options such as creating rights of appeal, creating routes to remedy through devolved Welsh tribunals, and strengthening administrative justice routes.

We also consider that an oversight duty on oversight bodies in Wales (e.g. Ombuds, Welsh Commissioners), would promote accountability for bespoke Welsh rights. Better coordination between those bodies would improve access to justice by reducing fragmented and confusing ways for individuals to enforce their rights. This could include consultation duties, updated memoranda of understanding, and possible duties to collaborate.

We align with the SAEHR call to strengthen advocacy and advice in Wales and to build public awareness. We therefore urge sustained support for advocacy and advice services, consideration of statutory rights to independent advocacy, and possible statutory approaches to social welfare advice where these fall within competence. We also support legal education and public legal education to improve understanding of Welsh law.

If Wales introduces a Human Rights (Wales) Act we see scope to introduce a Welsh Human Rights Commission, which would have responsibility for monitoring and enforcing human rights in Wales, operating alongside the Equality and Human Rights Commission. This is what happens in Scotland.

Future Actions

In our view, a decision to proceed with a Human Rights Bill for Wales would require sustained follow-up action:

- We have identified the need for bespoke rights. This would require a participatory process to identify which rights should be included in a Bill and how they should be worded to reflect the needs of women and disabled people in Wales. We believe the Human Rights Advisory Group (HRAG) could provide a forum for this work. The Welsh Government has established HRAG to engage civil society in taking forward the recommendations of the SAEHR.
- We regard our work on CEDAW and the CRDP as only the start. In our opinion there is scope to consider how other treaties might be incorporated (including the Convention on the Elimination of All Forms of Racial Discrimination and wider

socioeconomic rights under the International Covenant on Economic, Social and Cultural Rights); and to examine options to develop bespoke rights based on the UN Principles for Older People. We also see scope to strengthen the protection of children's rights under the Child Rights Measure, possibly by extending the due regard duty to all public authorities in Wales and making children's rights enforceable.

- We also see the need to reach a consensus on minimum standards to be applied to any rights guaranteed by Welsh legislation, and to develop guidance and a human rights scheme to support consistent understanding and delivery by Welsh Government and other public authorities. Once again we see a role for HRAG in these projects.
- A key consideration in our assessment of options for incorporation was the limits imposed by the current devolution settlement. We have given a flavour of these above. In our view, the settlement constrains Wales' ability to strengthen human rights, especially because of the equal opportunities reservation. We consider a bespoke Human Rights (Wales) Act to be an appropriate and progressive way forward under the current settlement. However, we also see a need for wider reform. This should address the equal opportunities reservation, but also the limits in other important areas of human rights, including work, social security and access to justice. In our view, this would give Wales' elected representatives much greater freedom to strengthen human rights for the people of Wales.

Recommendations

These recommendations should be read alongside our suggestions on Access to Justice and Future Actions (above).

On incorporation

- **We recommend enshrining human rights in a Human Rights Bill for Wales, drawing on the guarantees and protections articulated in international treaties rationalised to a bespoke expression of women's rights and**

disabled people's rights which are capable of enactment through Senedd legislation.

On Implementation

- **Establish a Welsh National Mechanism for Implementation, Reporting and Follow-up (NMIRF)** to coordinate treaty implementation across government, maintain a live record of recommendations and actions, and support transparent reporting and stakeholder participation.
- **Strengthen human rights action planning** by explicitly mapping actions to committee recommendations, setting indicators and outcome targets, applying human rights impact assessment, and routinely reporting progress.
- **Embed human rights mainstreaming across portfolios and relevant public authorities** through practical guidance, training and clearer cross-government expectations.
- **Strengthen intersectional implementation** by moving from general commitments to targeted measures and data that make affected groups visible in delivery and reporting.
- **Ensure periodic renewal and continuity of equality action plans** so they do not lapse without successor arrangements and improve coherence with treaty obligations where relevant.
- **Build awareness and capacity across government** by strengthening understanding and practical capability across departments through clear guidance and training on human rights standards, treaty obligations, recommendations, and roles in implementation.