

**LEGISLATIVE OPTIONS WORKING GROUP**

**OPTIONS FOR  
INCORPORATION:**

**Convention on the Elimination of Discrimination  
Against Women**

**and**

**The Convention on the Rights of Disabled People**

## FOREWORD BY LOWG

As members of the Legislative Options Working Group (LOWG), we are pleased to share this report with Welsh Ministers and officials, Senedd Members, and stakeholders across Wales with an interest in the protection and practical realisation of human rights. We offer it to those involved in shaping legislation and policy, across civil society, public bodies, regulatory and scrutiny bodies, and the legal and academic communities. Our purpose throughout has been a practical one: to help identify credible routes through which rights can be embedded and protected in ways that are capable of making a difference in people's lives in Wales. We also recognise that there is growing interest in Wales' approach from stakeholders in other parts of the UK, where similar questions are being asked about how international human rights standards can be given meaningful effect in law at the devolved level. Wales has a long-standing commitment to human rights and has, on several occasions, sought to lead the way in translating international rights into domestic decision-making. The Rights of Children and Young Persons (Wales) Measure 2011 remains a notable illustration of that pioneering approach. The Measure was an early example of an enduring ambition to endorse rights in principle, and to embed them in the everyday systems, decisions, and services that shape people's lives.

Our shared intent in this work has been straightforward. We want rights that are set out in UN treaties - treaties which the UK has agreed, signed and ratified - to be protected in a way that is clear, accessible, usable, and capable of making a difference. Rights that are not only recognised, but are actionable, supported by effective systems of implementation, and accompanied by meaningful routes to remedy when things go wrong. We have approached our task in a constructive and solutions-focused spirit, drawing on evidence, expertise and experience to clarify options, surface trade-offs, and identify practical questions that we think will need to be resolved as Wales takes the next steps in this area.

The LOWG was established to advise the Welsh Government on next steps to progress recommendations made through the Strengthening and Advancing Equality and Human Rights in Wales research. That work gathered extensive evidence and perspectives on the case for strengthening human rights and accountability in Wales. Our contribution has not been to revisit that work, but to focus on the "how". To

examine some possible legislative routes available within the framework of Welsh devolution, and to identify where those routes appear most promising, most complex, or more constrained.

In undertaking this work, we have found that questions of Senedd legislative competence are unavoidable, and a central organising challenge. In particular, we identified significant constraints, within the current devolution settlement, on the scope for direct incorporation of the Convention on the Elimination of Discrimination Against Women and the Convention on the Rights of Disabled People into Welsh law. We emphasise that these constraints are not a reflection of the importance of the rights themselves, nor do they diminish the strength of the case for seeking to give them greater domestic effect. Rather, they frame the range of legislative options that appear (to us) realistically available to the Senedd at present, and they require careful, deliberate design choices if a durable and effective model is to be achieved.

We view our work as entirely complementary to long-standing and ongoing efforts to strengthen and advance human rights in Wales, including through legal recognition in Welsh law. It is crucial that these efforts continue, and for some stakeholders, our competence findings may also sharpen a wider question: whether, over time, reform of the devolution settlement is key to securing additional pathways for human rights incorporation in Wales. This is not a question LOWG had the capacity to explore. However, we consider it important that the implications of the current settlement are clearly understood, so that future policy and legislative choices, whether within the existing framework, or through longer-term constitutional change, can be made with full sight of the opportunities, and constraints.

Crucially, we do not regard these challenges as closing down progress. On the contrary, a central message of this report is that there are positive routes forward. In our collective assessment, the most credible path to realising the underlying ambition, within the current constitutional context, lies in exploring a distinctive Welsh approach, potentially through a Human Rights (Wales) Act that sets out a holistic framework of human rights, grounded in international treaties ratified by the UK, but tailored so as to have maximum effect within Senedd legislative competence.

In this report we set out the reasoning that leads us to this conclusion. We begin early thinking on what a bespoke Welsh approach could look like in practice

alongside the wider access to justice, implementation and system changes that could support the effective realisation of rights.

We hope this report lays some of the groundwork for further development and engagement. If Wales is to take forward a Human Rights (Wales) Act in a way that is meaningful and resilient, there is much still to do on the detailed policy choices, mechanisms for oversight and accountability, arrangements for remedies, and the practical systems and resources needed to make rights real in everyday settings. There is also further work to undertake beyond the two treaties that were prioritised for our initial focus, and to consider how any future approach relates coherently to Wales' wider legal and policy landscape.

We are grateful to all those who have supported LOWG in reaching this point, from Welsh Government officials who provided secretariat support and facilitated our work, to the Human Rights Advisory Group, and wider stakeholders who engaged with us early on, including colleagues in Scotland. We also wish to acknowledge the invaluable contributions of Melissa Wood. While she was not an appointed member of LOWG, her work in supporting the group, applying our methodology and helping to shape the implementation-focused dimensions of the analysis was essential.

We offer this report in the spirit of partnership and practical progress. We hope it assists Welsh Government and the Senedd in navigating a complex policy and legal terrain, and that it provides civil society, public bodies and other stakeholders with a shared reference point for the next phase of discussion and development. Above all, we hope it helps Wales continue to shape a distinctive approach to legislating for human rights, one that is ambitious, workable, and focused on improving people's lives.

This report reflects the collective work of LOWG. While it has been informed by the collective experience and contributions of LOWG members, the views expressed and the recommendations in this report do not necessarily represent the views of the organisations or institutions mentioned below.

On behalf of LOWG:

- Nazir Afzal, independent member.
- Rhian Davies, Chief Executive, Disability Wales.

- Simon Hoffman, Observatory on Human Rights and Social Justice.
- Elisabeth Velina Jones, independent member.
- Emily Kakoullis, Lecturer in Law, Cardiff University.
- Sarah Nason, Reader in Law, Bangor University.
- Charles Whitmore, Head of Strategic Partnerships and Policy, WCVA.
- Alicja Zalesinska, Chief Executive, Tai Pawb.

We are also grateful to WEN Wales which was represented on the group for a significant period of the work, but went through two leadership changes throughout the duration of the project which made continuous representation difficult:

- WEN Wales – Catherine Fookes; Victoria Vasey.

The Equality and Human Rights Commission (Wales Office) sat as observers on the group.

## **Acronyms and Abbreviations**

ALNETA 2018	Additional Learning Needs and Education Tribunal (Wales) Act 2018
CAA 2021	Curriculum and Assessment (Wales) Act 2021
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
Child Rights Measure	Rights of Children and Young Persons (Wales) Measure 2011
CommEDAW	Committee on the Elimination of Discrimination Against Women
CommCRDP	Committee on the Rights of Persons with Disabilities
CRC	Convention on the Rights of the Child
CRDP	Convention on the Rights of Disabled People
DRCWales	Dispute Resolution Centre Wales
ECHR	European Convention on Human Rights
HRA 1998	Human Rights Act 1998
HRAG	Human Rights Advisory Group

ICESCR	International Covenant on Economic, Social and Cultural Rights
LGBTQ+	Lesbian, gay, bisexual, transgender and queer people and other identities
LOWG	Legislative Options Working Group
NAN	National Advice Network Wales
NHRI	National Human Rights Institution
NMIRF	National Mechanism for Implementation Reporting and Follow-up
PSED	Public Sector Equality Duty
PSOW	Public Services Ombudsman for Wales
RAN	Regional Advice Network
SDGs	Sustainable Development Goals
SAEHR	Strengthening and Advancing Equality and Human Rights Report
SSWBA 2014	Social Services and Well-being (Wales) Act 2014
UK	United Kingdom
UNTB	UN Treaty Body
WDRP	Wales Dispute Resolution Pledge
WFA 2015	Well-being of Future Generations (Wales) Act 2015
WSED	Wales Specific Equality Duties

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# 1. INTRODUCTION

## Background

- 1.1 This report is submitted to support Welsh Government and civil society to take forward key recommendations from the Strengthening and Advancing Equality and Human Rights (the SAEHR) research to give effect to international human rights in Wales.<sup>1</sup> The SAEHR concluded that there is a strong desire in Wales for further incorporation of international human rights through Welsh law, and a need for stronger accountability for human rights across public functions. To achieve this, the SAEHR recommended Wales-only primary legislation to incorporate international human rights treaties into Welsh law. The Welsh Government has established a Legislative Options Working Group (LOWG) to examine options to take forward this recommendation.
- 1.2 LOWG comprises independent members with expertise in human rights. In carrying out our work we have focussed in particular on the SAEHR recommendations 1 and 25, which may be broadly summarised as:
- incorporation should be progressed through Wales-only primary legislation.
- And
- incorporation should be capable of providing individuals with a route to an enforceable remedy in practice, including by enabling action before a court or tribunal.
- 1.3 LOWG's work was carried out against an unstable and evolving politico-legal landscape, which shaped our thinking and sequencing. The previous UK Government's proposals to replace the **Human Rights Act 1998** (HRA 1998) with a Bill of Rights Bill raised the prospect of regression in rights protection at UK level and uncertainty about the future interpretive baseline.
- 1.4 The focus on human rights legislation in Wales matters because the human rights landscape remains unsettled, both internationally and at UK level.

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<sup>1</sup> Hoffman, S.; Nason, S.; Beacock, R.; Hicks, E. (with contribution by Croke, R.) (2021), [\*Strengthening and advancing equality and human rights in Wales\*](#), Cardiff: Welsh Government, GSR report number 54/2021.

Against an uncertain backdrop, we have taken the role of Welsh legislation as being to secure as durable a baseline of protections for rights as is constitutionally possible, so that rights are more relevant and accessible. It would also make them less exposed to short-term policy change and therefore more likely to endure for future generations.

- 1.5 The SAEHR sets out the evidence base and a comprehensive rationale for strengthening human rights in Wales, including the case for legislative incorporation. We have treated the findings of the SAEHR as the starting point for our work, rather than re-examining the merits of incorporation. Our focus throughout has remained on what can realistically be achieved through devolved law and policy to give effect to treaty rights in such a way that they improve people's lives
- 1.6 It follows that the principal emphasis of this report is on options for incorporation through Senedd legislation. As our work progressed, inevitably and unavoidably Senedd legislative competence became the central organising frame for our analysis to assess what options might be available to give effect to international human rights in Welsh law, but it also provided a (necessary) basis for narrowing and sequencing the work within the limited resources and capacity available to us.
- 1.7 Our [Terms of Reference](#)<sup>2</sup> provided for a broad scope and did not prescribe a detailed programme of work or methodology. We therefore determined our own approach, including sequencing, the form of outputs, and working methods.
- 1.8 In practice, we found that there is no pre-existing approach for us to adopt to undertake this work, so a significant proportion of our time has been devoted to iteratively developing, piloting and refining a methodology capable of analysing treaty rights in the specific Welsh devolved context. This was an inherently novel and complex exercise. The available literature provides limited practical guidance on how to translate and assess international treaty standards against the contours of devolved legislative competence in Wales. As described in our account of the methodology, we began with structured

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<sup>2</sup> [Human Rights Legislative Options Working Group | GOV.WALES](#)

templates and a pilot phase but refined this approach as it became clearer which forms of analysis were most capable of producing informed, coherent findings and recommendations within the limits of our capacity.

- 1.9 LOWG members were supported by a Welsh Government secretariat and maintained regular engagement with Welsh Government officials as the work progressed. We also reported routinely to the Human Rights Advisory Group (HRAG), providing a channel for civil society (including those representing women and disabled people) and Welsh Government to jointly ask questions and offer insights as the work developed. We found HRAG input helpful, especially as resource constraints and our time frame (determined by the need to submit our report in advance of the Senedd elections in May), meant we were unable to consult more broadly on our findings or recommendations.
- 1.10 In practice, input from officials provided a steer that included an expectation that our report should include reflections on non-legislative mechanisms alongside the legislative assessment, notwithstanding the additional demands this placed on our resources.
- 1.11 LOWG's remit was initially framed broadly and, as reflected in our Terms of Reference, Ministers indicated that they would welcome an inclusive approach going beyond the Programme for Government commitments to the United Nations Convention on the Elimination of Discrimination Against Women (CEDAW) and the United Nations Convention on the Rights of Persons with Disabilities. We note that in Wales [this](#) convention is referred to as the 'Convention on the Rights of Disabled People', in line with the social model of disability. We will adopt the acronym CRDP to reflect this. However, where we cite the CRDP directly we retain the wording used in the convention (people with disabilities).
- 1.12 As the scale of the work became increasingly apparent to us, Ministers asked that we prioritise a focus on CEDAW and the CRDP. We have been clear throughout that we view this prioritisation as a starting point and that further stages of work will be required to consider additional treaties and rights, and we reflect on this in the report.

## Structure of the report

- 1.13 **Part 1** sets out our analysis of legislative options for incorporating human rights in Welsh law, using CEDAW and the CRDP as examples. It includes an account of our methodology. While we initially used templates to support article-by-article analysis, as the work progressed we placed increasing weight on a more reflective approach, using Senedd legislative competence as the organising frame. Part 1 then examines the implications of the reservations and restrictions in the Government of Wales Act 2006 (GoWA 2006) on modes of incorporation.
- 1.14 **Part 2** provides an implementation-focused supplement to Part 1. Taken together, Parts 1 and 2 reflect the accepted understanding, derived from UN Treaty Body (UNTB) guidance, that legislation and implementation must work in tandem to fully realise human rights for individuals.<sup>3</sup> We view the former as necessary to create durable, “sticky” frameworks (our phrasing), and provide accountability, and practical implementation as essential to ensure that rights form part of people’s everyday lives. Our primary lens is Welsh Government’s response to the UNTB’s concluding observations and recommendations following the UK’s most recent examinations under CEDAW (2019) and the CRDP (2017). We reviewed the extent to which Welsh Government action responds to those recommendations, and draw out where progress appears stronger, where it is uneven, and where action may be required. This analysis is intended to inform the design choices in any future Welsh Government policy and practice.
- 1.15 **Part 3** considers access to justice and effective remedy, and what these requirements mean in practice. Building on the SAEHR emphasis on a multi-institutional approach, we examine how legislation and duties interact with routes to redress, and the strengths and limits of judicial review as a backstop remedy in Wales. We explore options for more accessible and effective remedies, including the roles of courts and tribunals, standing, time limits and remedies, and the contribution of the wider administrative justice system;

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<sup>3</sup> See for example, Committee on the Rights of the Child, 2003, General Comment No. 5, *General Measures of Implementation of the Convention on the Rights of the Child*.

alongside the supporting conditions of advocacy, advice, legal aid and public legal education.

- 1.16 **Part 4** recognises that progress on strengthening and advancing human rights is an ongoing activity for government. We have therefore given consideration to what might be key future actions to support and complement any incorporation of CEDAW and/or the CRDP in Wales. Part 4 includes discussion of actions to continue to embed international human rights in Wales, develop guidance, set minimum and progressive standards, monitoring, and strengthening institutions.

### **Status of our Work and our Recommendations**

- 1.17 The nature of our work means we have necessarily been required to pay attention to the legal framework on Senedd legislative competence; and to developments in the legal domain concerning incorporation of human rights in devolved jurisdictions, in particular developments in Scotland (discussed as relevant in this report). We note that work on incorporation in Scotland has been an engagement between government and civil society, one which has seen civil society make an informed contribution to discussions about what might be achievable within the legal framework established by the relevant devolution settlement.<sup>4</sup> We see our work as making a similar contribution in Wales.
- 1.18 Inevitably and unavoidably, given the nature of our work, we have been required to reflect on and assess aspects of the legal framework governing Senedd legislative competence. However, we strongly emphasise from the outset that whilst we examine and discuss matters relating to legislative competence, in no way do we seek to present our report, our conclusions or our recommendations as legal advice. Rather, our recommendations are necessarily framed by our collective understanding of ‘what is likely to be challenging’ and ‘what may be possible’ in Wales to achieve the ambition of the SAEHR recommendations 1 and 25.

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<sup>4</sup> For example: Scottish Government, (2021), [National Taskforce for Human Rights: leadership report](#).

- 1.19 This report sets out the LOWG assessment of steps the Senedd might take to incorporate CEDAW and the CRDP in the manner recommended by the SAEHR. We feel it important to further emphasise that whilst we are confident in our assessment of options for incorporation and recommendations, our report is not to be read as legal advice to the Welsh Government. The much spoken about ambiguities in the Welsh devolution settlement regarding the boundaries and ‘jagged edges’ between Senedd and UK Parliament legislative competence have become very apparent to us during our work.<sup>5</sup>
- 1.20 We acknowledge (and emphasise) that there is room for differences in understanding of possible barriers to incorporation arising from the current devolution settlement, and relatedly, options for incorporation. We have sought to apply our collective experience and expertise to derive logical, informed and supportable conclusions and recommendations, but recognise that others may take a different view, including (and in particular) Welsh Government legal advisors. With this in mind, we emphasise (and will reiterate elsewhere in this report) that our report is **not** to be read as legal advice to the Welsh Government or anyone else, on any matter or issue discussed below.

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<sup>5</sup> Jones, R.; Wyn Jones, R. (2022), [\*The Welsh Criminal Justice System: On the Jagged Edge\*](#); Rayner, J. [‘Jagged edge of devolution’ | Feature | Law Gazette](#) (2022)

## 2. PART 1: EXAMINING OPTIONS FOR INCORPORATION

2.1 The Welsh Government has asked LOWG to examine options and make recommendations to achieve incorporation of CEDAW and the CRDP into Welsh law through Senedd legislation. As a necessary first step, we considered different approaches to incorporation, drawing on available literature, including the comprehensive literature review carried out as part of the SAEHR.

### **Incorporation: A Flexible Concept**

2.2 The notion of incorporation is susceptible to interpretation. A broad description of incorporation sees human rights as integrated into domestic law and policy through various ‘pathways’ which might include: constitutionalising international standards; legislative adoption of international human rights; administrative embedding through policy and programme action; or acting in compliance with the decisions of international mechanisms or judicial decisions.<sup>6</sup> All of these could be significant to bring about legal recognition and better implementation of human rights in Wales through the exercise of functions by devolved public authorities, at all levels.

2.3 The pathway to incorporation contemplated by the SAEHR is legislation to adopt international human rights into Welsh law. It follows that this is the main focus of our work. However, ‘administrative embedding through policy and programme action’ is relevant to our work on non-legislative mechanisms to give effect to human rights as discussed in Part 2.

2.4 Legislation to adopt international human rights treaties directly into national law is a mode of incorporation favoured by UNTBs,<sup>7</sup> including enabling

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<sup>6</sup> Boyle, K, (2019), [\*Models of Incorporation and Justiciability for Economic, Social and Cultural Right\*](#), Scottish Human Rights Commission, at p.9.

<sup>7</sup> See: Committee on Economic, Social and Cultural Rights, General Comment No.9, 1990, *The Domestic Application of the Covenant*, paragraph 8; and, Human Rights

individuals to directly rely on their human rights before a court.<sup>8</sup> This is the thrust of the SAEHR Recommendation 25, i.e. that human rights should be incorporated into Welsh law so that individuals are able to bring an action before a court or tribunal to enforce their human rights.<sup>9</sup>

2.5 We note guidance from the Committee on the Elimination of Discrimination Against Women (CommEDAW) concerning how to give ‘appropriate legal effect’ to CEDAW in domestic law which states that how this is achieved is dependent on the status of treaties within the domestic legal regime.; and urging States to consider incorporation of CEDAW to facilitate the full realisation of treaty rights.<sup>10</sup> In this respect, we have found guidance from the Committee on Economic, Social and Cultural Rights (CommESCR) particularly helpful. Referring to the [International Covenant on Economic, Social and Cultural Rights](#) (ICESCR), CommESCR notes that how a treaty is given effect in national law is ‘a matter for each State party to decide, the means used should be appropriate in the sense of producing results which are consistent with the full discharge of its obligations by the State party.’<sup>11</sup> The CommESCR goes on to note that some States have transformed ICESCR into domestic law by ‘supplementing or amending existing legislation’, without invoking the specific terms of ICESCR, whereas others have ‘adopted or incorporated it into domestic law, so that its terms are retained intact and given formal validity in the national legal order.’<sup>12</sup> Although the CommESCR is referring to rights under ICESCR, in our view this is equally instructive in relation to other treaties.

2.6 What emerges consistently from guidance is that the approach taken to give legal effect to international human rights treaties in national law depends on

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Committee, *General Comment No. 31, 2004, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, paragraph 13.*

<sup>8</sup> See Fn 3, paragraph 20.

<sup>9</sup> See Fn 1, p.137.

<sup>10</sup> CommEDAW General Recommendation No. 28, 2010, *On the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, paragraph 31.*

<sup>11</sup> See Fn 7, GC 9, paragraph 5.

<sup>12</sup> *Ibid*, paragraph 6.

how treaties are treated in the domestic legal system.<sup>13</sup> Guidance also confirms that whatever the approach, this must be adequate to ensure human rights obligations are realised and to ensure justiciability.<sup>14</sup>

## Legislative Incorporation

2.7 Taking account of the above, in the context of LOWG's work, we have taken incorporation in Wales to imply:

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*Adoption of CEDAW and the CRDP into the Wales national legal framework through Senedd legislation in a manner which promotes realisation of the rights guaranteed, and which would enable individuals to bring an action before a court or tribunal to enforce their rights.*

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2.8 The literature broadly describes three approaches to legislative incorporation.<sup>15</sup> These are:

- Direct incorporation.
- Indirect incorporation.
- Sectorial incorporation.

### *Direct incorporation*

2.9 Direct incorporation of international human rights means taking the full text of an international human rights treaty and making it part of a national constitution or national legislation with very limited redaction or amendment, and requiring compliance with the rights guaranteed.<sup>16</sup> This approach means

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<sup>13</sup> Ibid.

<sup>14</sup> Ibid, paragraph 7.

<sup>15</sup> Hoffman, S. and Stern, R. (2020), *Incorporation of the UN Convention on the Rights of the Child in National Law*, The International Journal of Children's Rights, 28(1), 133-156; UINICEF-UK, 2012, [The UN Convention on the Rights of the Child: a study of legal implementation in 12 countries.](#)

<sup>16</sup> Ibid.

human rights become binding on government and public authorities in law and are enforceable by a national court or tribunal. An example of direct incorporation in the UK is the HRA 1998, which incorporates the **European Convention on Human Rights** (ECHR) into the UK legal system. A key feature of the HRA 1998 is that it enables individuals to rely on rights under the ECHR before a court or tribunal, either as a defence to a claim brought against them, or directly as a claim.<sup>17</sup>

### *Indirect incorporation*

2.10 Indirect incorporation means that a human rights treaty is given some legal effect through domestic legislation. The key distinction from direct incorporation is that incorporated rights are not binding, but have some indirect effect, e.g. by requiring government or public authorities to take particular rights into consideration when exercising their functions.<sup>18</sup> Words in legislation requiring relevant authorities to 'have regard to' or 'due regard to' specified human rights are indicative of indirect incorporation. Indirect incorporation establishes a procedural duty on relevant authorities and failure to comply can lead to review by the courts. However, as indirect incorporation does not introduce a substantive duty to comply with human rights, individuals cannot bring an action to enforce their rights directly. An example of indirect incorporation in **Wales is the Rights of Children and Young Persons (Wales) Measure 2011** (the Child Rights Measure). This makes the Convention on the Rights of the Child (CRC) part of Welsh law and requires Welsh Ministers to have 'due regard' to children's rights when exercising any of their functions. Individuals affected by decisions made by Welsh Ministers can seek judicial review of a Ministerial decision if they believe insufficient attention has been given to relevant rights, but such review is confined to public law grounds, with very limited scope to challenge the rights-based substance of the decision.

### *Sectoral incorporation*

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<sup>17</sup> Section 7, HRA 1998.

<sup>18</sup> See references at Fn 15.

2.11 Sectoral incorporation means giving some effect to human rights in legislation in relevant areas of public policy (i.e. sectors). This usually means that some rights are decoupled from the relevant treaty and referred to in sectoral legislation.<sup>19</sup> The mode of incorporation is usually indirect incorporation, making use of wording such as ‘due regard’ to refer to relevant rights. As is the case for indirect incorporation, individuals may be able to challenge a decision which fails to take proper account of the rights incorporated, but such review is confined to public law grounds. In Wales the **Social Services and Well-being (Wales) Act 2014**<sup>20</sup> (SSWBA 2014) is an example of sectoral incorporation. Section 7 of the Act requires a person exercising functions under that Act to have due regard to the United Nations Principles for Older Persons and the CRC.

### **An Alternative Approach**

2.12 In our assessment, a key message from the literature – in particular from UNTBs – is that the mode of incorporation of international human rights into a national legal system is not pre-determined. We have taken note that in some jurisdictions the approach to giving legal effect to human rights treaties is to enshrine rights at a constitutional level, or to introduce a Bill of Rights.<sup>21</sup>

2.13 As we will explain below, as we carried out our assessment of options for incorporation of CEDAW and the CRDP we found it helpful to reflect on different approaches, including direct and indirect/sectoral incorporation but also a possible bespoke legislative model. Under this approach, Senedd legislation would identify and enact a set of Wales-specific rights and duties, informed by CEDAW and the CRDP but expressed in domestic legal terms specifically designed to sit within devolved competence. This offers an additional route (with its own advantages and challenges) to give legal effect to the substance of treaty based human rights standards. We return to this

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<sup>19</sup> See references at Fn 15.

<sup>20</sup> Other examples: Additional Learning Needs and Educational Tribunal (Wales) Act 2018 and Curriculum (Wales) Act 2021.

<sup>21</sup> For example, the [Constitution of South Africa](#); See also discussion in references at Fn 15.

model later but introduce it here because we understand a bespoke approach as a distinct pathway to incorporation to giving treaty standards domestic legal effect.

## **Incorporation and Enforcement**

- 2.14 It is generally assumed that direct incorporation means human rights are enforceable by courts and tribunals with appropriate remedies available to enforce compliance. This assumption appears to us to be too simplistic. The extent to which national courts can provide effective redress or enforce compliance with rights will depend on the structures, powers and traditions of the legal regime within which an individual seeks to enforce their rights. Our understanding of the available literature is that it confirms that effective enforcement of rights will depend on how a national legal system functions, its traditions, and the remedies available to adjudicating bodies.<sup>22</sup> For example, in relation to rights which impact on economic and social policy, the UK courts (and many other national courts) tend to permit public authorities a considerable margin of discretion in how rights are given effect. This is often referred to as a ‘deferential approach’, and it has been suggested that it undermines the court’s ability to uphold individual rights.<sup>23</sup>
- 2.15 For present purposes we have assumed that direct incorporation is the mode of incorporation most likely to meet the SAEHR recommendation for directly enforceable rights: at the very least it enables an individual to directly rely on incorporated rights before a court or tribunal, although routes to redress or direct enforcement via the courts may not always be straightforward. However, we also note that where bespoke rights are introduced (e.g. via a Bill of Rights) it may be possible to make rights enforceable by a court or tribunal.

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<sup>22</sup> K. Boyle et al (2025), *Access to Social Justice: Effective Remedies for Social Rights* (Bristol University Press); K. Boyle (2020) *Economic and Social Rights Law: Incorporation, Justiciability and Principles of Adjudication* (Routledge). King, J., (2012), *Judging Social Rights* (Cambridge University Press).

<sup>23</sup> Ibid. See also: O’Connell, P., (2011), *The Death of Socioeconomic Rights*, *Modern Law Review*, 74(4) 532-54.

## Note on Terminology

### *Duty-bearers and Relevant Functions*

2.16 Obligations in international human rights treaties are drafted to apply to States (States parties). However, the objective of incorporation in Wales is to impose duties on public authorities exercising public functions in Wales in areas of devolved policy (our reading of the SAEHR). In this respect, we have taken note of a recent Supreme Court decision dealing with the powers of the Scottish Parliament to enact legislation to incorporate children's rights (the Scotland CRC case).<sup>24</sup> As we explain later in this report, it appears to us that the Scotland CRC case has raised the prospect of unanticipated and uncertain limitations on Senedd legislative competence over human rights (we note that others may interpret this case differently). Taking these considerations into account, in the remainder of this report the following references are to be read as described below, unless otherwise stated:

### *'State party' or 'States parties' in CEDAW or the CRDP*

2.17 References to 'State party' or 'States parties' in CEDAW or the CRDP are to be with a 'legislative gloss'<sup>25</sup> so as to refer to a devolved Welsh authority.<sup>26</sup>

### *Relevant functions*

2.18 As we understand it, generally speaking under the current devolution settlement the Senedd does not have legislative competence to impose duties on non-devolved public authorities, or which apply to non-devolved

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<sup>24</sup> Reference by the *Attorney General and the Advocate General for Scotland – United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill*, UKSC/2021/0079.

<sup>25</sup> This is the approach taken in section 2 of the *United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024*.

<sup>26</sup> As defined in section 157A and/or Schedule 9A of the *GoWA 2006*.

functions.<sup>27</sup> For this reason, references to ‘relevant functions’ in the remainder of this report are to be taken as referring to functions: exercised by a devolved Welsh authority which do not relate to a matter which is reserved under Schedule 7A or restricted under Schedule 7B of the GoWA 2006. In this respect, the Scotland CRC case would appear to us to require relevant functions to be further limited to functions conferred by a Senedd enactment or by a statutory instrument made under an enabling power conferred by a Senedd enactment.<sup>28</sup>

## **Senedd Legislative Competence**

- 2.19 Legislation to incorporate CEDAW and the CRDP will need to carefully navigate the complex contours of devolution. This section discusses Senedd legislative competence to incorporate human rights as governed by the GoWA 2006, including reservations and restrictions on competence.<sup>29</sup>

### *Human Rights*

- 2.20 The GoWA 2006 establishes a reserved powers model of devolution for Wales. This report is not the venue for a full discussion of the devolution settlement for Wales: information on the reserved powers model is available elsewhere.<sup>30</sup> For present purposes it is noted that under the reserved powers model, Acts of the Senedd cannot ‘relate’ to any reserved matter under Schedule 7A of the GoWA 2006;<sup>31</sup> and, must not breach any of the restrictions

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<sup>27</sup> This is a simplified account of competence, for ease of reading. See also, in particular, the exceptions (i.e. widening of competence in this regard) in paragraph 8 of Schedule 7B to the GoWA 2006.

<sup>28</sup> This is our understanding of the judgment, supported by: N. McEwen, A. McHarg, J. Hunt, C. McCorkindale, (2026) [Conditioning Power: Devolved Law-Making after the Supreme Court’s s.28\(7\) Rulings](#); and, A. McHarg, (2024) [Incorporating International Human Rights: The Implications of the UNCRC \(Incorporation\) \(Scotland\) Bill Reference for the Scottish Human Rights Bill](#).

<sup>29</sup> We have based our assessment on the GoWA 2006 in force at 1<sup>st</sup> January 2026.

<sup>30</sup> See: Senedd, (2024) [Making laws in Wales: from executive devolution to a reserved powers model](#); See also, Senedd, (2020), [Powers](#).

<sup>31</sup> Section 108A(2)(c).

in Schedule 7B of the GoWA 2006.<sup>32</sup> Any attempt by the Senedd to introduce a legislative provision which relates to a reserved matter, or where a restriction applies is vulnerable to challenge by the UK government.<sup>33</sup> Ultimately such a challenge could give rise to a declaration by the Supreme Court that the provision is unlawful.<sup>34</sup>

2.21 While Schedule 7A reservations and Schedule 7B restrictions impose significant limitations on Senedd legislative competence, our review of those schedules leads us to conclude that they do not impose any general express reservation or restriction on Senedd legislative competence in the field of human rights. We note, there is a specific restriction to prevent modification of the HRA 1998, which is discussed further below ('The Human Rights Act 1998 Restriction').

2.22 We note that, Schedule 7A lists competence over 'Foreign Affairs' as a reserved matter.<sup>35</sup> Entering into international treaties is a matter for the UK government acting on behalf of the UK State. The UK is a party to a number of international human rights treaties.<sup>36</sup> From this it might be assumed that Foreign Affairs includes competence over human rights, as human rights are set out in international human rights treaties. However, we note that it is expressly stated in Schedule 7A that the reservation does not include 'observing and implementing international obligations...'<sup>37</sup>. It is commonly understood, that as a matter of international law the UK State is bound to

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<sup>32</sup> Section 108A(2)(d).

<sup>33</sup> Section 114.

<sup>34</sup> Section 112.

<sup>35</sup> Paragraph 10.

<sup>36</sup> The UK has ratified seven core human rights treaties:

- International Covenant on Economic, Social and Cultural Rights (ICESCR).
- International Covenant on Civil and Political Rights (ICCPR).
- UN Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT).
- International Convention on the Elimination of All Forms of Racial Discrimination (CERD).
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).
- Convention on the Rights of Persons with Disabilities (CRDP).
- UN Convention on the Rights of the Child (UNCRC).

<sup>37</sup> Paragraph 10(3).

perform the obligations arising from any UN human rights treaty (or any human rights treaty) which it has ratified.<sup>38</sup> This duty rests initially with the UK government and UK Parliament, but UNTBs have confirmed this extends to all devolved governments, as well as public authorities and other manifestations of the State.<sup>39</sup>

## **Reserved and Restricted Matters**

### *General Relevance*

2.23 We have not identified any express reservation or restriction which limits Senedd legislative competence over human rights generally. However, human rights extend into different areas of policy which means that Senedd legislative competence needs to be considered in the light of any reservations or restrictions which apply to discrete areas of policy which engage human rights. The issue of whether Senedd legislation relates to a reserved matter under Schedule 7A is determined 'by reference to the purpose of the provision, having regard (among other things) to its effect in all the circumstances'.<sup>40</sup> There are numerous reservations and restrictions under the GoWA 2006: reference should be had to both Schedule 7A and Schedule 7B for a complete list of reserved matters and restrictions, as well as exceptions.

### *The Human Rights Act 1998 Restriction*

2.24 Schedule 7B includes a restriction which means the Senedd cannot enact legislation to modify the HRA 1998.<sup>41</sup> We have taken this restriction as limited to a protected enactment of the UK Parliament, rather than of general application to all human rights. However, any Senedd legislation to incorporate human rights cannot include a provision which might be interpreted as modifying the HRA 1998. The HRA 1998 makes the ECHR part of UK law. The ECHR is generally regarded as a document setting out civil

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<sup>38</sup> See: Vienna Convention and Law on Treaties 1969, Article 26.

<sup>39</sup> See: Fn 3 and 7.

<sup>40</sup> Section 108A(6), GoWA 2006.

<sup>41</sup> Paragraph 5.

and political rights, although it is recognised that there is the possibility that those rights may extend into the sphere of socioeconomic rights.<sup>42</sup> We see this as potentially significant for incorporation of CEDAW or the CRDP where articles may be read as guaranteeing civil or political rights, and incorporation might therefore be seen as modification of the HRA 1998.

### *Application of Reservations and Restrictions*

- 2.25 In carrying out our work LOWG has sought to take account of the general approach of the Supreme Court to interpretation and application of qualifications on devolved competence. In this respect, as we understand it:
- The Supreme Court has made it clear that if a provision has merely a ‘loose or consequential connection’ with a reserved matter it will not relate to that matter.<sup>43</sup>
  - The approach of the Supreme Court suggests it will not approve of strained or creative interpretations of the GoWA 2006.<sup>44</sup>
- 2.26 With the above in mind, we have consciously sought to avoid strained or creative interpretations of limitations on Senedd legislative competence in Schedule 7A and 7B. Instead, we have sought to assess how Wales might incorporate CEDAW and the CRDP, taking a cautious and realistic approach to assess whether or not there is scope to introduce Senedd legislation to give either or both treaties legal effect in Wales. As we explain below, we developed a methodology to facilitate our assessment which included a pilot phase. This pilot phase highlighted that one reservation was likely to be a significant barrier to direct incorporation of both CEDAW and the CRDP, this was the Equal Opportunities reservation (EO reservation) under section N1 of GoWA 2006 Schedule 7A.<sup>45</sup> This initial finding was discussed by LOWG, and

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<sup>42</sup> See, for example: European Court of Human Rights, *Case of Airey v. Ireland*, 1979, Application no. 6289/73 paragraph 26.

<sup>43</sup> See: *Christian Institute* case [2016] UKSC 51, at paragraph 29 quoting *Martin v Most* [2010], UKSC 10.

<sup>44</sup> *Imperial Tobacco Ltd v the Lord Advocate* [2012] UKSC 61.

<sup>45</sup> We note that this is consistent with the position arrived at in Scotland: Scottish Government, [A Human Rights Bill for Scotland: Discussion Paper](#) (2025).

we agreed that the EO reservation merits particular consideration as a possible barrier to Senedd legislative competence to incorporate CEDAW and the CRDP. For this reason, we discuss the EO reservation and exceptions to the reservation in the following sections.

## **The Equal Opportunities Reservation and Exceptions**

- 2.27 Reference should be had to the GoWA 2006 for the full text of the EO reservation and its exceptions.<sup>46</sup> This section provides a summary based on our collective understanding of those provisions.
- 2.28 The reservation applies to Equal Opportunities which is to be interpreted as follows:

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*‘...the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds, or on grounds of disability, age, sexual orientation or social origin, or of other personal attributes, including beliefs or opinions, such as religious beliefs or political opinions, but not including language.’<sup>47</sup>*

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- 2.29 There are four exceptions to the reservation.<sup>48</sup> In summary, these are:

### *First exception: Encouraging observance of equal opportunities*

- 2.30 This exception enables the Senedd to encourage the observance of equal opportunities: in particular, the observance of the equal opportunity requirements. The equal opportunity requirements mean ‘the law for the time being relating to equal opportunities’.<sup>49</sup> This exception does not extend to ‘prohibition or regulation’. We have taken this to mean that incorporating a provision from CEDAW or the CRDP in manner which prohibits (discriminatory) actions or regulates functions relating to equal opportunities in

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<sup>46</sup> Schedule 7A, section N1, paragraph 187.

<sup>47</sup> Schedule 7A, section N1, paragraph 187, under the sub-heading “Interpretation”

<sup>48</sup> Paragraph 187.

<sup>49</sup> Paragraph 187, *Interpretation*.

the field of human rights will be outside the scope of this exception. On this basis we do not see the first exception as relevant to our work.

The 'law for the time being'

- 2.31 We have read the 'law for the time being' as referring to 'in-force' UK enactments on equal opportunities, primarily the **Equality Act 2010** (EA 2010) and related secondary legislation (equalities law). We have assumed that the 'law for the time being' does not include unincorporated international human rights treaties, even if these refer to equality or non-discrimination. This is because the Supreme Court has confirmed that international treaties ratified by the UK, but not incorporated into domestic law, are not part of the law of any part of the UK.<sup>50</sup>

*Second exception: Making arrangements to secure due regard to equal opportunity requirements*

- 2.32 This exception enables the Senedd to impose duties on any devolved Welsh authority<sup>51</sup> to make arrangements to secure that its functions are carried out with due regard to the need to meet the equal opportunity requirements. As for the first exception, the equal opportunity requirements means 'the law for the time being relating to equal opportunities'.

*Third exception: In relation to non-executive posts*

- 2.33 This exception is a narrow exception focussed on tackling discrimination which prevents individuals with particular protected characteristics<sup>52</sup> in non-executive posts on boards of devolved Welsh authorities. Given the limited application of this exception, we have not considered it in our assessment of options for incorporation.

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<sup>50</sup> *R (on the application of SC, CB and 8 children) (Appellants) v Secretary of State for Work and Pensions and others (Respondents)*, [2021] UKSC 26.

<sup>51</sup> Defined in GoWA 2006, section 157(A).

<sup>52</sup> As defined in Chapter 1, Equality Act 2010.

*Fourth exception: Provision which is supplemental or additional to the Equality Act 2010*

- 2.34 This exception enables the Senedd to enact a provision on equal opportunities in relation to the functions of a devolved Welsh authority, which is supplemental or additional to a provision made by the EA 2010, but without modifying that enactment (or any subordinate legislation under the EA 2010). As we read this exception, it might enable the Senedd to require a devolved Welsh authority to take action on equal opportunities based on incorporated human rights, provided that such action does not modify, or is not prohibited by the EA 2010 (or subordinate legislation).<sup>53</sup>

**Assessing the Exceptions to the EO Reservation**

- 2.35 As will be discussed further below, we read many, if not all articles of both CEDAW and the CRDP as relating to the EO reservation. It follows, that there is a risk that any attempt by the Senedd to incorporate either treaty will be challenged on legislative competence grounds. For this reason, we have given consideration to whether there is scope to rely on the second or fourth exceptions discussed above to enable the Senedd to enact legislation to incorporate CEDAW and/or the CRDP. As noted above, we take the view that the first and third exceptions do not assist with our task.

*Second exception: the due regard exception*

- 2.36 We have come to the conclusion that the second exception, which we will refer to as the ‘due regard’ exception, may give competence to enact legislation to incorporate CEDAW and the CRDP with the purpose of securing that relevant functions of devolved public authorities are carried out with due regard to the equal opportunities requirements. To avoid overstepping the boundary of this exception, legislation would need to impose duties which sit

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<sup>53</sup> It also permits the Senedd to make a provision which reproduces or applies anything contained in the EA 2010, with or without modification, provided that any modification does not affect the way that the EA 2010 is applied. We do not see this as relevant to our work.

within the limits of 'due regard'. In our view, this would require legislation to adopt an indirect approach to incorporation (above 'Legislative Incorporation'). For example, by requiring a Welsh authority to have due regard to CEDAW and the CRDP when exercising relevant functions in compliance with the duties imposed by the EA 2010. This would impose a procedural duty i.e. to give appropriate consideration (due regard) to articles from CEDAW or the CRDP in the exercise of relevant functions.

- 2.37 In the light of the above, we see the due regard approach as a route to indirect incorporation of CEDAW and the CRDP provided the duty is aligned with (and limited to) the boundary established by the exception.
- 2.38 As a due regard approach is already a feature of legislation to incorporate the CRC, the CRDP and the UN Principles on Older People into Welsh law (see above, 'Indirect Incorporation' and 'Sectoral Incorporation') we see it as an option which minimises the risk of challenge on legislative competence grounds (the Scotland CRC case also appears to confirm that the due regard approach to CRC incorporation in Wales is not problematic). However, we would add two strong caveats:
- First, indirect incorporation of CEDAW and the CRDP would fail to meet the recommendations of the SAEHR for incorporation to enable individuals to bring an action before a court or tribunal to enforce their rights.
  - Second, it would still be necessary to determine whether any other reservation or restriction might apply (i.e. other than the EO reservation). Our initial reading of both treaties suggests this is likely to be the case, e.g. we have read both Article 9 of CEDAW and Article 18 of the CRDP as relating to the GoWA 2006 Schedule 7A reservation on *Nationality*.<sup>54</sup>
- 2.39 Whilst we have included some discussion of a due regard approach/indirect incorporation later in our report, this is for completeness only. We do not see the due regard exception, or a due regard approach as meeting SAEHR recommendations 1 and 25, nor does it meet the expectations of the stakeholders who contributed evidence to the underpinning research.

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<sup>54</sup> Paragraph 28.

*The fourth exception: the going beyond exception*

2.40 Our reading of the fourth exception, which we will refer to as the ‘going beyond’ exception, is that it may enable the Senedd to enact legislation to give some legal effect to CEDAW and/or the CRDP, to supplement the EA 2010 by requiring devolved Welsh authorities to take certain actions – as set out in those treaties – on equal opportunities. We have discussed the going beyond exception as a possible route to indirect incorporation later in our report. However, we note that even if this exception applies, it would still be necessary to determine whether any other reservation or restriction might apply (i.e. other than the EO reservation) to prevent the Senedd enacting legislation.

### **3. METHODOLOGY**

- 3.1 LOWG has been asked to undertake a ground-breaking exercise which involves consideration of the nature and scope of select international human rights treaties, set against the contours of devolution in Wales, taking account of the ambition to achieve direct incorporation in Welsh law.
- 3.2 The available literature provides insights into modes of incorporation but provides very little guidance on the approach to be adopted to determine the most appropriate legislative mechanism to achieve incorporation at a jurisdictional level. During our preparatory work we took account of the literature on incorporation and UNTB guidance; we also sought to reach out to experts working on a similar project in Scotland for insights into methodological approaches on assessing options to achieve incorporation of international human rights.
- 3.3 Whilst we gained helpful insights from the work of others, particularly from Scotland, we agreed that our work requires a bespoke approach to determine recommendations for the most appropriate mode of incorporation of CEDAW and the CRDP in Wales. As noted in the introduction to this report, developing this approach has been an iterative process and as we carried out our work it became increasingly apparent that our findings and recommendations would cohere through organic analysis, group discussion, reflection and appraisal, informed by our wide-ranging experience and expertise. This realisation made reliance on formal structured procedures less significant as our work progressed.

#### **Initial Approach**

- 3.4 Our initial approach was to develop templates to facilitate analysis of individual articles of CEDAW and the CRDP. The first of these sought to establish the fundamental purpose of the article under consideration and identify required actions and outcomes relating to individual rights. This exercise was intended to support our assessment of Senedd legislative competence to give effect to the article and any action or outcome

requirements arising from the article. The second template helps establish the most significant practical implications of the article under consideration to develop insights into how existing legislative and non-legislative mechanisms might promote implementation (discussed in Part 2).

## **Pilot Phase**

- 3.5 Articles 1-3 and 5, and 10 and 11 of CEDAW were selected for the pilot phase of our analysis as a mixture of objective setting articles (1-3 and 5) and articles dealing with substantive issues (10 and 11, education and employment). The pilot phase established that a common purpose of all the articles is to address discrimination against women, and to promote equality. This finding highlighted the possibility that in general terms CEDAW relates to the EO reservation, raising doubts about Senedd legislative competence to incorporate. A brief review of the remaining articles of CEDAW confirmed that, with one exception (Article 6, on tackling trafficking and exploitation), they deploy language consistent with the notion of equal opportunities under Schedule 7A of GoWA 2006, i.e. consistent with the prevention, elimination or regulation of discrimination against women.
- 3.6 Conscious of the possible implications of the pilot phase findings for our assessment of Senedd legislative competence for both CEDAW and the CRDP, we applied our collective knowledge and understanding of those treaties to further reflect on the relevance of the EO reservation. We took particular note of the preamble to both CEDAW and the CRDP, as well as articles in the treaties which include words making reference to equality or non-discrimination, alongside relevant commentary on the purpose of the treaties issued by the UNTBs. Our understanding is that the guidance confirms that a key purpose of both treaties is to address historical and continuing discrimination against women, and against disabled people. We undertook a general review of the CRDP. We found that the overarching purpose and principles of the CRDP, and the general obligations on States Parties (in the Preamble, and in Articles 1, 3 and 4), were strongly orientated towards the concepts of equality. In addition, a review of Articles 6-30 of the CRDP confirmed that a very high number of them, or of elements of them

(including sub-paragraphs), are expressly drafted in terms of ending discrimination or ensuring equality for disabled people.

- 3.7 After discussion and reflection on the above, we came to the preliminary conclusion that it is likely that when read as whole documents, both CEDAW and the CRDP will relate to the EO reservation, with implications for Senedd legislative competence.

## **Revising Our Approach**

- 3.8 The experience of the pilot phase suggested that our assessment of Senedd legislative competence to incorporate CEDAW and the CRDP would need to be informed by our collective experience and knowledge on human rights, the treaties and their accompanying guidance. It also highlighted to us that we would need to apply this collective expertise to reflect on how treaty rights fit within devolved legislative competence. The pilot phase also confirmed that we are undertaking our work in an area where there is a good deal of uncertainty and room for interpretation, both as to the scope of treaty articles and the application of reservations and restrictions under the GoWA 2006. With this in mind, we decided to move away from a formal 'template' driven analysis to a more organic process of assessment of articles from CEDAW and the CRDP, and reflection informed by group discussion.
- 3.9 As we sought to apply a revised methodology to assess legislative competence in relation to CEDAW and the CRDP we found the reflective and collective approach also helped facilitate our consideration of a bespoke approach to incorporation, to meet the challenges we identified to direct incorporation brought about by the current devolution settlement. For reasons discussed below, this became increasingly significant to our overall assessment of options for incorporation.
- 3.10 Whilst we recognised the necessity of revising our approach, we remained conscious of the need to ensure clarity and consistency in our methodology. We therefore sought to frame our assessment by focusing on the following key questions:

1. Does the article relate to equal opportunities to the extent that the connection is more than loose or consequential?
2. Does the article relate to any other reservation or restriction to the extent that the connection is more than loose or consequential?
3. Where the article relates to the EO reservation (Q1 above): Is there a possibility that an exception might apply in relation to the article?
4. Where the article relates to the any other reservation (Q2 above): Is there a possibility that an exception might apply in relation to the article?

3.11 Taking account of:

- a. The express wording of CEDAW and CRDP articles (including sub-paragraphs).
- b. The wording of treaty preambles.
- c. For the purposes of clarifying any ambiguity only: any relevant general recommendation (CommEDAW) or general comment (Committee on the Rights of Disabled People (CRDP)<sup>55</sup>).
- d. The express wording of enactments in the GoWA 2006, in particular the wording of reservations and exceptions in Schedule 7A, and restrictions in Schedule 7B, avoiding strained or creative interpretations.

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<sup>55</sup> We use Committee on the Rights of Disabled People in preference to Committee on the Rights of Persons with Disabilities.

## 4. OUR ASSESSMENT OF LEGISLATIVE COMPETENCE

- 4.1 The following sections are an account of our assessment of legislative competence for CEDAW and the CRDP.
- 4.2 At this stage we feel it important to again emphasise that whilst we have reached our assessments after careful and detailed consideration (within the scope of the resources available to us), our report is not to be read as legal advice to the Welsh Government; and indeed, the Welsh Government has made clear, from the outset of the HRAG, and the LOWG process, that it is not our role to provide such advice, which is the exclusive domain of Welsh Government Legal Services, the Office of Legislative Counsel, and any external lawyers instructed by them.
- 4.3 As noted in the introduction, ambiguities in the Welsh devolution settlement regarding the boundaries and ‘jagged edges’ between Senedd and UK Parliament legislative competence have become more and more apparent to us during our work. In this respect, we have also been conscious of the implications of the Scotland CRC case. A full account and analysis of this judgment is beyond the scope of LOWG (and is unnecessary for our purposes), but our reading of the case, and relevant commentaries,<sup>56</sup> leads us to conclude that the decision has introduced unexpected and significant limitations on legislative techniques to achieve policy objectives through devolved legislation, in Wales as well as in Scotland. The precise scope of those limitations also appears to us to be uncertain. This understanding of the case chimes with commentaries by highly respected experts in public and devolution law.<sup>57</sup>
- 4.4 Specifically, as we read the Scotland CRC case it appears to place (uncertain) limits on the manner, and extent, to which devolved legislation can affect public functions granted or imposed by (or under) a statute of the UK Parliament: even where those functions are within the scope of devolved legislative competence. In practice, this represents an extremely wide-ranging

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<sup>56</sup> See Fn 28.

<sup>57</sup> Ibid.

limitation, as many functions of Welsh, as well as Scottish, public authorities are set out in UK Parliamentary statutes, or subordinate legislation made under those statutes. In many cases, this is because those statutes existed before devolution; in others, provisions about devolved Welsh or Scottish matters have been included in UK Parliamentary legislation, often with the consent of the devolved Parliaments. The limitation that this judgment appears to place on devolved law-making, and the uncertainty about its scope, are additional factors we have had to take into account in our assessment of legislative options for incorporation, and the associated risks. They are factors which have added to the complexity of our task.

- 4.5 In the light of the above, our report aims to suggest robust foundations upon which the Welsh Government, with advice from its legal advisers, can build in order to determine for itself whether or not the Senedd is competent to enact legislation to incorporate articles from CEDAW or the CRDP.

### **General Considerations CEDAW and the CRDP**

- 4.6 CEDAW comprises a Preamble followed by 30 articles. Articles 1-16 (inclusive) include statements of general principles, as well as interpretative provisions, and substantive articles requiring particularised actions. The CRDP comprises a Preamble followed by 50 articles. Articles 1– 30 (inclusive), again including statements of general principles, interpretative provisions, and substantive articles requiring particularised actions. Articles 17 to 30 (inclusive) of CEDAW and articles 31-50 (inclusive) of the CRDP establish their respective UN monitoring committees, CommEDAW and CommCRDP, as well as including provisions covering State party reporting to the committees, monitoring by the committees, and “boiler-plate” treaty provisions on for example, signature, ratification, reservations, language version status. These requirements have either already been fulfilled, or, in the case of continuing requirements, are the responsibility of the UK State, discharged through the UK Government (although the Welsh Government will contribute evidence and content to inform the UK’s reports to the Committees).

4.7 For the above reasons articles 17 to 30 (inclusive) of CEDAW and articles 31-50 (inclusive) of the CRDP have been excluded from our assessment as they are inappropriate for incorporation by Senedd legislation, for practical reasons as well as on competence grounds. Our assessment focuses on articles 1-16 (inclusive) of CEDAW and articles 1-30 (inclusive) of the CRDP. We have sought to identify where the Senedd could potentially legislate in a manner that does not relate to a reserved matter listed in Schedule 7A to the GoWA 2006, or might fall within the scope of an exception to a reserved matter; and, in a way that does not breach a restriction under Schedule 7B to the GoWA 2006.

*NB: From this point forward, references to Schedule 7A and Schedule 7B are references to those schedules in the GoWA 2006.*

## **Limitations**

- 4.8 We do not have capacity to undertake an analysis of the restrictions that relate to the Senedd's competence to affect the functions of Ministers of the Crown and other bodies, contained in paragraphs 8-12 of Schedule 7B. Similarly, LOWG does not have the resources to investigate whether the Welsh Ministers may have powers to give effect to rights or duties set out in CEDAW or the CRDP by executive action, including potentially the making of subordinate legislation, although the Senedd would not have legislative competence to pass primary legislation to the same effect.
- 4.9 We noted above that the due regard exception to the EO reservation offers a route to indirect incorporation of both CEDAW and the CRDP which minimises the risk of challenge on legislative competence grounds. However, we also noted that indirect incorporation would fail to meet the recommendations of the SAEHR for incorporation to enable individuals to bring an action before a court or tribunal to enforce their rights. For this reason, we have not considered the application of the due regard exception as part of our assessment of legislative competence. We return to discuss the due regard/indirect incorporation option later in our report.

- 4.10 As will be discussed below, it has become apparent that it may be possible to amend or redact (in part or in full) certain articles and provisions in both CEDAW and the CRDP to mitigate either: the risk that they relate to a reserved matter; or, to bring them within the scope of an exception, in particular in reliance on the going beyond exception. However, we have been unable to find authority on the application of the going beyond exception and we have worked in the context of considerable uncertainty as to how the Supreme Court might interpret, for example, the permissible extent of supplemental or additional provisions on equal opportunities.
- 4.11 Likewise, it is uncertain what would be regarded as a “modification” of the EA 2010 and therefore prohibited. We note that section 158 of the GoWA 2006 contains a non-exhaustive definition of the meaning of “modifications” which includes amendments, repeals and revocations. Our reading of relevant cases and authoritative commentary on public law and statutory interpretation suggest that a prohibition on “modifications” includes both express changes and changes that are necessarily implied.<sup>58</sup> Once again we observe a level of unpredictability arising from the possibility that different courts may take different views as to what is implied. Added to this is the uncertainty we have already highlighted as a consequence of the Scotland CRC case.
- 4.12 There are, thus, significant complexities when examining the possible wording or extent of any amendment to comply with the going beyond exception, or indeed any other exception, or the necessary extent of any redaction. LOWG does not have capacity to undertake such an examination, and so our assessment of legislative competence is limited to identifying where it may be possible to rely on an exception, or where some redaction may be available to bring a provision of CEDAW and/or the CRDP within legislative competence.

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<sup>58</sup> See: *R v IRC ex parte Wilkinson* [2005] UKHL 30; *Martin v Most* [2010] UKSC 10; and *The UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill Reference by the Attorney General and the Advocate General for Scotland* [2018] UKSC 64, at para. 51

## **Assessing Competence: Descriptive Coding**

- 4.13 In our methodology we explained that our assessment of Senedd legislative competence would be framed by four key questions which direct attention to: the EO reservation (Q1); other reservations or restrictions (Q2); and, possible exceptions (Q3, Q4). Taking account of these considerations, and reflecting on our assessment, it has been possible to develop a basic descriptive coding to encapsulate our assessment of articles of both CEDAW and the CRDP.
- 4.14 The coding terminology is:
- The article relates to the EO reservation.
  - The article appears to relate to another reservation (other than EO reservation).
  - A restriction may apply.
  - The going beyond exception may apply.
  - Another exception may apply (other than the going beyond exception).
- 4.15 We found this coding helpful when considering options for incorporation, in particular to highlight any challenges to legislative competence, and any complexities likely to arise for legislation to overcome those challenges.

## **Presentation**

- 4.16 In the following two sections we provide an overview of our assessment of Senedd legislative competence to directly incorporate CEDAW and/or the CRDP. We provide some examples of articles from both conventions to illustrate how we applied the coding, accompanied by an explanatory narrative. The need for brevity means the commentaries are limited to highlighting key considerations which have influenced our assessment in application to the examples below. We do not discuss all 16 articles of CEDAW, nor all 30 articles of the CRDP which we examined: although we applied the same methodology to all articles examined.
- 4.17 When discussing the examples, we use terminology such as ‘risk’ and a ‘risky approach’. In context, reference to risk means: the risk that the approach to

giving legal effect to the article will not be sufficient to bring the intended enactment within Senedd legislative competence.

*NB: When referring to incorporation in our discussion of the examples below, we are referring to direct incorporation as described earlier in our report.*

*NB: For the sake of brevity we refer below to some articles from [CEDAW](#) and the [CRDP](#) without setting out the text of the article. In these cases readers should refer directly to the relevant treaty.*

## **5. OUR ASSESSMENT OF SENEDD LEGISLATIVE COMPETENCE FOR CEDAW**

- 5.1 As noted above, our assessment of CEDAW focuses on articles 1-16. These include statements of general principles and interpretative provisions (articles 1-5), and substantive articles requiring particularised actions and outcomes (articles 6-16).
- 5.2 CEDAW is a significant contribution to the international human rights framework because of its exclusive focus on women's human rights and tackling equality and non-discrimination. The UK ratified CEDAW in 1986. CEDAW provides a definition of discrimination against women and sets out to address the root causes of discrimination, including the continuance of traditional gender roles and stereotypes. The approach to equality in CEDAW is underpinned by the notion of substantive equality between men and women, recognising that equality of opportunity and equal treatment is not enough to address and reverse women's inequality.
- 5.3 CEDAW sets out an action and outcome framework for identifying and tackling discrimination against women and achieving substantive equality for women. It includes particularisation of appropriate measures to eliminate discrimination, to tackle stereotypes and to promote equality between men and women.

### **Overview of competence**

- 5.4 In our opinion, with the exceptions of articles 5 and 6, the express wording of articles 1-16 of CEDAW means they each relate to the EO reservation and a number of articles relate to other reservations, with some possibility that exceptions apply in relation to some provisions. Whilst articles 5 and 6 may be distinguished as not including express wording which relates to the EO reservation, the context in which the articles are situated (CEDAW), means that they may (and in our view) should be read as relating to that reservation. We have arrived at this position after examination and reflection on the express wording of the articles under consideration to assess whether or not

there is more than a loose or consequential connection between the right conferred or actions/outcomes required and a reserved matter or a restriction; taking into account the Preamble and general principles of CEDAW.

- 5.5 Whilst the EO reservation introduces a possible bar to incorporation of each and all of CEDAW articles 1-16, we have identified, in the course of our assessment, that there may be some provisions of CEDAW to which the Senedd may be able to give **some** effect in Welsh law (examples below). However, in the case of those articles where this opportunity arises, **in all cases** this would require further careful consideration to devise and assess possible amendment(s) and/or redaction(s) to ensure they fit within the boundaries of devolved competence or to bring them within the scope of a relevant exception. In our view, as discussed above, although amendment or redaction may be an option in relation to some CEDAW articles to facilitate incorporation, there will inevitably be a degree of persistent uncertainty as to whether or not any contemplated amendment or redaction will be sufficient to bring a provision within Senedd legislative competence. We also feel articles 6 and 9 cannot be incorporated even in amended form: these articles are amongst the examples discussed below.

### **Examples**

- 5.6 To illustrate our approach to assessing Senedd legislative competence, this section provides short commentaries on selected articles. Each example highlights the key considerations that informed our assessment.

## **CEDAW Article 1**

- The article relates to the EO reservation.
- The going beyond exception may apply.

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### *Article 1*

*For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.*

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- 5.7 The objective of Article 1 is to define discrimination for the purposes of application of CEDAW. It provides a broad account of discrimination and the areas where discrimination may have an impact on women (political, economic, social, cultural, civil or any other field). Article 1 directs attention to both direct and indirect discrimination and requires duty-bearers to focus on the consequences of their actions on women's human rights. It is an important provision which enables duty bearers to identify discrimination against women, and to challenge inequalities.
- 5.8 If incorporated Article 1 would apply to the exercise of functions by public authorities which engage incorporated CEDAW rights. As Article 1 expressly deals with the meaning of discrimination for the purposes of tackling (preventing, eliminating or regulating) discrimination, and set in the context of CEDAW, we see it as relating to the EO reservation and therefore it cannot be incorporated unless an exception applies.
- 5.9 The Senedd may be capable of giving some legal effect to Article 1 in reliance on the going beyond exception, i.e. to supplement the provisions of the EA 2010: possibly to provide guidance on the meaning of discrimination in the exercise of relevant functions which engage substantive rights or particularised actions as set out in CEDAW. However, this would inevitably require very careful consideration of the wording of Article 1 and whether it modifies the EA 2010 definition of discrimination (which would put it beyond the scope of the exception).

- 5.10 In our assessment, having regard to the uncertainty inherent in the application of the going beyond exception, we are agreed that seeking to incorporate Article 1 would be a risky approach. Given the foundational nature of Article 1, we see no purpose in attempting to amend it so that it falls within the ambit of the going beyond exception.
- 5.11 Article 1 could possibly be redacted from any incorporated text, so that the remaining provisions of CEDAW are read and applied within the equality and non-discrimination framework established by the EA 2010. However, in our view, Article 1 is foundational to understanding the nature of the discrimination which CEDAW sets out to address, and its redaction from the text may be seen as removing a key interpretive provision.

## **CEDAW Article 2**

- The article relates to the EO reservation.
- The article appears to relate to another reservation (other than EO reservation).
- The going beyond exception may apply.
- Another exception may apply (other than going beyond exception).

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### *Article 2*

*States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:*

*(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;*

*(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;*

*(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;*

*(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;*

- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;*  
*(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;*  
*(g) To repeal all national penal provisions which constitute discrimination against women.*
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- 5.12 Article 2 condemns discrimination against women in all its forms. It requires States to pursue a policy to eliminate discrimination against women and sets out a number of undertakings in order for States to achieve this objective. The undertakings are overarching provisions to help ensure that States use all the levers at their disposal to address and reverse discrimination against women, including law. The article and its accompanying undertakings are complementary to Article 1. In our view, the wording of Article 2 means it relates to the EO reservation and cannot be incorporated unless an exception applies.
- 5.13 In reliance on the going beyond exception, the Senedd may be capable of incorporating some undertakings set out in Article 2 to establish objectives for public authorities to promote action to address and eliminate discrimination by taking all appropriate measures. However, we see all the undertakings as very much intertwined with the requirements of the EA 2010, including what may be covered by section 149, the Public Sector Equality Duty (PSED). Therefore, while there may be some scope to give effect to Article 2 through Senedd legislation, the connections between the undertakings and the requirements of the EA 2010 would, in our assessment, inevitably require very careful consideration of the wording of Article 2 and whether it might in any way modify the EA 2010.
- 5.14 We also feel Article 2(g) could be read as falling under the reservation Prisons and offender management, under Schedule 7A, section L11: although we cannot predict how this will be interpreted. Therefore, as for Article 1, having regard to the uncertainty inherent in the application of exceptions, we are agreed that seeking to amend Article 2 to ensure it is within the scope of the going beyond exception would be a risky approach.

## **CEDAW Article 6**

- The article relates to the EO reservation.
- The article appears to relate to another reservation (other than EO reservation).

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### *Article 6*

*States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.*

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- 5.15 While Article 6 makes no direct reference to discrimination or equality, in the context of CEDAW as whole we see it as relating to the EO reservation.
- 5.16 Article 6 requires States Parties to take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women. In our assessment, the article relates to the reserved matters of *Prostitution* and *Modern Slavery* (Schedule 7A, sections B7 and B8). The wording of Article 6 is clear and intended to achieve specific and discrete objectives, and the reservations permit no exceptions.
- 5.17 Article 6 also deals with issues covered by Article 4 ECHR (prohibition on slavery or servitude) as incorporated into UK law in the HRA 1998. The Senedd has no competence to modify the HRA 1998 in any way, under the restriction in paragraph 5 of Schedule 7B.
- 5.18 We see no purpose in amending the article to achieve any other objectives in order to bring it within the scope of devolved legislative competence. In our view the Senedd is not competent to incorporate Article 6 and it would need to be redacted wholesale from any enactment seeking to achieve incorporation of CEDAW.

## **CEDAW Article 9**

- The article relates to the EO reservation.

- The article appears to relate to another reservation (other than EO reservation).

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*Article 9*

*1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.*

*2. States Parties shall grant women equal rights with men with respect to the nationality of their children.*

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- 5.19 Article 9 guarantees women equal rights with men to acquire, change or retain their nationality and that of their children. We see this article as relating to the EO reservation, but also relating to the *Nationality* reservation (Schedule 7A, section B2, paragraph.28). The *Nationality* reservation permits no exceptions and is not particularised beyond the broad subject matter of nationality. We see no purpose in amending the article to achieve any other objectives in order to bring it within the scope of devolved legislative competence. In our view the Senedd is not competent to incorporate Article 9 and it would need to be redacted wholesale from any enactment seeking to achieve incorporation of CEDAW.

## **CEDAW Article 10**

- The article relates to the EO reservation.
- The article appears to relate to another reservation (other than EO reservation).
- The going beyond exception might apply.
- Another exception might apply (other than going beyond exception).

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*Article 10*

*States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:*

- (a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;*
- (b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;*
- (c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;*
- (d) The same opportunities to benefit from scholarships and other study grants;*
- (e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;*
- (f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;*
- (g) The same opportunities to participate actively in sports and physical education;*
- (h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.*

- 5.20 In our assessment, Article 10 relates to the EO reservation as it refers to measures to eliminate discrimination in the field of education. The measures or actions listed at (a)-(h) establish policy, practice and outcome objectives to promote equality in the field of education. They are a blueprint for delivery of education for women and girls. Whilst the Senedd has legislative competence in the field of education, in our view incorporation of these actions in the context of CEDAW means they relate to the EO reservation and cannot be incorporated unless an exception applies.
- 5.21 The going beyond exception may apply to enable the Senedd to enact legislation requiring adoption of the specified measures to supplement the EA 2010 in the field of education. For example, providing opportunities to participate in sports and physical education, or to ensure access to the same curricula as men and boys. Action 10(a) refers to vocational guidance and vocational training which may relate to the reservation of *Job search and*

*support* (Schedule 7A, section H3). However, there are exceptions in relation to education and vocational training. The Senedd may be capable of incorporating action 2(a) in reliance on these exceptions (and the going beyond exception). We note once again that there are uncertainties as to the permissible limits of exceptions, including the going beyond exception, we therefore see some risk in this approach to giving legal effect to Article 10.

5.22 Over the course of our assessment, we have noted that the wording of Article 10 does not expressly establish a right to education for women (or at least it does not do so in clear and explicit terms). Rather, the article seems to be premised on a pre-existing or assumed right to education (possibly as provided by Article 13 of the ICESCR). In our view, giving legal effect to Article 10 in Welsh law would fall short of an express guarantee of the right to education for women. However, we believe the Senedd could enact a right to education for women as a free-standing obligation. We note that Schedule 1 to the HRA 1998, repeats Article 2 of the 1<sup>st</sup> Protocol to the ECHR: *No person shall be denied the right to education*. However, it is our understanding that this negative formulation does not introduce a right to education, and introducing such a right would not therefore modify the HRA 1998 (which would be restricted under Schedule 7B). In our assessment, the Senedd is not prevented from enacting the right on which the HRA 1998 protection is premised.

### **CEDAW Article 11**

- The article relates to the EO reservation.
- The article appears to relate to another reservation (other than EO reservation).
- The going beyond exception may apply.
- Another exception may apply (other than going beyond exception).

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#### *Article 11*

*1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to*

*ensure, on a basis of equality of men and women, the same rights, in particular:*

- (a) The right to work as an inalienable right of all human beings;*
- (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;*
- (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;*
- (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;*
- (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;*
- (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.*

*2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:*

- (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;*
- (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;*
- (c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;*
- (d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.*

*3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary*

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5.23 Article 11 relates to the EO reservation as it refers to measures to eliminate discrimination in the field of employment. Article 11 also appears to relate to other reservations under Schedule 7A:

- Section H1, *Employment and industrial relations*, including 'Employment rights'.
- Section H3, *Job search and support*.

- Head G, *Professions*.

5.24 Making arrangements for assisting persons to train for and obtain employment is a reserved matter with the exceptions of:

- Education.
- Vocational, social and physical training.
- Careers services.

*(Schedule 7A, section H3).*

5.25 Social security schemes is a reserved matter and includes the type of social security covered by Article 11(1)(e): Schedule 7A, section F1, *Social security Schemes*. There may be some limited scope to give effect to outcome focused actions in Article 11 which may sit outside the reservation, e.g. to promote access to ‘supporting social services’ as envisaged by Article 11(2)(c) ancillary to the right to work.

5.26 In our assessment, whilst Article 11 relates to the EO reservation, it also relates to other reservations where there are limited exceptions which might permit the Senedd to legislate to incorporate select actions. For example, where actions relate to vocational training or careers services (as an aspect of Article 11(1)(c)). However, in our opinion the extent of redaction that might be required to remove material relating to a reservation would be so significant as to denude the article of its fundamental purpose, and in any event there would remain significant uncertainty as to whether this would be sufficient to place any action outside a relevant reservation.

## **6. OUR ASSESSMENT OF SENEDD LEGISLATIVE COMPETENCE CRDP**

- 6.1 As noted above, the assessment of the CRDP focuses on articles 1-30. These include statements of general principles and interpretative provisions (articles 1-4), and substantive articles requiring particularised actions (articles 5-30), with variation in the degree of particularisation.
- 6.2 The CRDP was adopted in 2006, that is 27 years later than CEDAW. It has a clear structure, starting by setting out important general principles and objectives, before going on to enshrine or recognise rights in particular policy fields, and to require States parties to take action to make those rights a reality. The requirements for action vary in how specific and detailed they are, and also in how strongly they are worded (for instance, some requirements are merely for States parties to “encourage” certain action, while others are to “put in place” particular measures or to “ensure” particular outcomes).
- 6.3 The CRDP starts by setting out clearly, for the first time in an international human rights treaty, the principle that disabled people are entitled to full and equal enjoyment of all human rights and fundamental freedoms. (Preamble, particularly paragraphs (a) and (b), and Article 1).
- 6.4 Article 1 (Purpose), and paragraph (e) of the Preamble, also go some way to enshrining, in international law, the social model of disability, as opposed to the medical model. According to the social model of disability, “disability” is the inequality, disadvantage, disempowerment or discrimination affecting people with health impairments as a result of barriers to access and inclusion. The barriers, for example, physical/environmental, social, attitudinal, are what is “disabling”, rather than the health condition, which is referred to as an “impairment”. Under the medical model, the focus was on the impairment, rather than on the barriers; the impairment was seen as the disability. The social model of disability was developed by disabled people and was adopted by the Welsh Government in 2002 to guide its policy development and actions. As Article 1 sets out the overarching Purpose of the CRDP, its provisions will influence, in international law, the way in which all subsequent Articles are interpreted.

6.5 Articles 2-4 set out further important provisions that will influence, in international law, the interpretation of the more specific Articles that follow. Articles 2-4 contain important definitions, general principles, and general obligations on States parties to the CRDP. Articles 5-30 inclusive then deal with rights and supporting duties (required actions) in particular fields, as mentioned above.

### **Overview of competence**

6.6 As mentioned above, the provisions of Article 1 (Purpose), Article 3 (General Principles) and Article 4 (General Obligations) are intended to, and will, influence the interpretation of all the other articles of the CRDP, in international law. And all, or important elements of, those articles relate, in our assessment, to the EO reservation. Further, Articles 1-7, 9, 10, 12-15, 17-19, 21-25 and 27-30 all expressly use terms such as “on an equal basis” or “without discrimination on the basis of disability”. To the extent that such terms are used, it is clear, in our view, that the articles relate to the EO reservation. This creates an obvious risk to the incorporation of any article of the CRDP.

6.7 Whilst the EO reservation introduces a possible bar to incorporation of articles 1-30 we have identified some provisions which the Senedd may be able to give **some** effect in Welsh law. In the case of some articles this would require further careful consideration to devise and assess possible amendment(s) and/or redaction(s) to ensure they fit within the boundaries of devolved competence or to bring them within the scope of a relevant exception. As was the case with our assessment of CEDAW, there will be some persistent uncertainty as to whether or not any contemplated amendment or redaction will be sufficient to bring a provision within Senedd legislative competence.

### **Examples**

6.8 To illustrate our approach to assessing Senedd legislative competence, this section provides short commentaries on selected articles. Each example highlights the key considerations that informed our assessment.

## CRDP Article 1

- The article relates to the EO reservation.
- The going beyond exception may apply.

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### *Article 1*

*The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.*

*Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.*

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- 6.9 The first paragraph of Article 1 relates to the EO reservation (use of “equal”). The second paragraph of Article 1 describes what is meant by “persons with disabilities” in the CRDP. The EA 2010 contains a definition of “disability”, which is different from the description of disability in Article 1. The EA 2010 definition is based on the medical model of disability. If Senedd legislation modified the EA 2010 definition of disability, either expressly or by changing the way in which the meaning of disability was applied in practice, it would be outside legislative competence.<sup>59</sup>
- 6.10 The going beyond exception might provide competence for the description of disability enshrined in Article 1 to be given effect in Welsh law in relation to certain functions or in certain contexts. This would involve exploring whether the description could be said to be supplemental or additional to the provisions of the EA 2010, rather than modifying them. Legislation might go further than the description used in Article 1 and give more complete effect to the social model of disability, if possible, in relation to certain functions or in

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<sup>59</sup> We also feel it would also be outside legislative competence by reason of the restriction in paragraph 1 of Schedule 7B, which prohibits Senedd legislation from “modifying” any UK Parliament enactment (or provision of subordinate legislation deriving from such an enactment) dealing with reserved matters.

certain contexts. However, having regard to the inherent uncertainty in the application of the going beyond exception, in our assessment, relying on the exception in either case would be risky.

- 6.11 Arguably, the purpose of “promot[ing] respect for [the] inherent dignity” of disabled people (an element of the first paragraph of Article 1) does not relate to the EO reservation, as it does not address “discrimination”, either expressly or impliedly. Nor is it based on an attempt to level up the inherent dignity of disabled people with that of non-disabled people. Rather, it addresses the inherent dignity of disabled people as a stand-alone concept. On this view, that particular purpose of the CRDP could be enacted into Welsh law as a free-standing obligation (right) decoupled from the CRDP (there being no obvious reservation or restriction to prevent this).

### **CRDP Article 3**

- The Article relates to the EO reservation.
- The Article appears to relate to another reservation (other than EO reservation).
- The going beyond exception may apply.
- Another exception may apply (other than the going beyond exception).

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#### *Article 3*

*The principles of the present Convention shall be:*

- a. Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;*
  - b. Non-discrimination;*
  - c. Full and effective participation and inclusion in society;*
  - d. Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;*
  - e. Equality of opportunity;*
  - f. Accessibility;*
  - g. Equality between men and women;*
  - h. Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.*
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- 6.12 The principles set out in Article 3, if fully utilised, could inform changes to legislation, policy and practice to ensure that disabled people are equal and

meaningful participants in the mainstream. The principles are closely connected to each other and, overall, to every provision in the CRDP (the article is given the title General Principles in the CRDP).<sup>60</sup> Giving legal effect to Article 3 to guide the interpretation of other specific rights, or the exercise of functions by public authorities, has the potential to transform the lives of disabled people, enabling them to thrive, rather than barely survive.<sup>61</sup>

- 6.13 In our assessment, Article 3 relates to the EO reservation. The wording of the Preamble, as well as Article 1, frames all the CRDP provisions as aimed at ensuring equality and non-discrimination for disabled people. Further, the express wording of sub-paragraphs (b), (e), and (g) of Article 3 indicates that they relate to the EO reservation, while there is a risk that words such as “respect for difference” in (d) and “Accessibility” in (f) will be interpreted as showing that those principles also relate to the EO reservation.
- 6.14 There may be scope to recognise the principles in Senedd legislation, as supplementary or additional to the EA 2010 in relation to disability, i.e. in reliance on the going beyond exception. However, given the wording of some of the provisions of the Article (3(b), 3(e) and 3(g)) there is, in our assessment, a risk of modifying the EA 2010 (and therefore exceeding the scope of the reservation). In our assessment, having regard to the inherent uncertainty in the application of the exceptions, relying on the going beyond exception would be risky.
- 6.15 In addition, the very broad nature of the principles set out in Article 3 means they may relate to other reservations in Schedule 7A: for example, the relationship between the principle of accessibility, set out in sub-paragraph (f), and the various reservations regarding transport under Head E in Schedule 7A.

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<sup>60</sup> Schulze, M. (2010) [\*A Handbook on the Human Rights of Persons with Disabilities - Understanding The UN Convention On The Rights Of Persons With Disabilities\*](#), Handicap International, 3rd ed., 2010.

<sup>61</sup> See Disability Wales, [\*From Barely Surviving to Truly Thriving – Disabled People’s Manifesto 2026-2031\*](#).

Similar to our comment in relation to Article 1, we see Article 3(a), which refers to the inherent dignity, autonomy, freedom and independence of disabled people, as not appearing to relate to a reservation, and therefore having potential to be reflected in a Senedd enactment.

## **CRDP Article 8**

- The Article relates to the EO reservation.
- The Article appears to relate to another reservation (other than EO reservation).
- The going beyond exception may apply.

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### *Article 8*

*States Parties undertake to adopt immediate, effective and appropriate measures:*

*a) To raise awareness throughout society, including at the family level, regarding persons with disabilities, and to foster respect for the rights and dignity of persons with disabilities;*

*b) To combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life;*

*c) To promote awareness of the capabilities and contributions of persons with disabilities.*

*Measures to this end include:*

*a) Initiating and maintaining effective public awareness campaigns designed:*

*i. To nurture receptiveness to the rights of persons with disabilities;*

*ii. To promote positive perceptions and greater social awareness towards persons with disabilities;*

*iii. To promote recognition of the skills, merits and abilities of persons with disabilities, and of their contributions to the workplace and the labour market;*

*b) Fostering at all levels of the education system, including in all children from an early age, an attitude of respect for the rights of persons with disabilities;*

*c) Encouraging all organs of the media to portray persons with disabilities in a manner consistent with the purpose of the present Convention;*

*d) Promoting awareness-training programmes regarding persons with disabilities and the rights of persons with disabilities.*

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- 6.16 Article 8 imposes duties on States Parties, rather than enshrining rights. If incorporated, this would equate to imposing duties on the Welsh Government

and potentially on other devolved Welsh authorities. The article does not expressly use terms such as “equal” or “on the same basis as others”. It has been noted that “there is no comparative treatment exercise needed in order to fulfil the obligations set forth in it”, and that, therefore, it might be included among the few treaty provisions which, in fact, set forth new specific ‘disability rights’.<sup>62</sup> If decoupled from the CRDP, incorporation of Article 8 appears possible within Senedd competence. However, given its setting within the CRDP, the core purpose of Article 8 can still be seen as the prevention of discrimination on grounds of disability and therefore, in our assessment, there is a risk that it would be interpreted as relating to the EO reservation.

- 6.17 There may be scope to explore whether the going beyond exception could enable the Senedd to incorporate the overarching undertakings in Article 8(1), and most of the more specific measures listed in Article 8(2), to supplement and/or be additional to the provisions of the EA 2010. However, the article covers similar ground to section 149 of the EA 2010, the PSED. Therefore, there is a risk that incorporation of the article could be seen as modifying the EA 2010, which would put it beyond the scope of the exception. Care would be needed for another reason: Article 8(2)(c) could be seen as relating to the reserved matters listed in Schedule 7A, section K1 *Media*, paragraph 158 *Broadcasting and other media*, and 159, *The British Broadcasting Corporation*. These reservations are not elaborated so it is difficult to assess their extent. There are no exceptions to either reservation.
- 6.18 If Article 8 were to be decoupled from the CRDP it may be possible to incorporate it as a free-standing right. However, the same caveats would apply as to the risk of being seen as modifying the EA 2010 (on this occasion breaching a restriction under Schedule 7B, paragraph 1), and the specific risk regarding Article 8(2)(c) might need to be redacted from any incorporated free-standing right.

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<sup>62</sup> Bantekas, I., Stein, M. A., Anastasiou, D. (2018), [\*The UN Convention on the Rights of Persons with Disabilities: A Commentary\*](#) (OUP).

## CRDP Article 9

- The article relates to the EO reservation.
  - The article appears to relate to another reservation (other than EO reservation).
  - The going beyond exception may apply.
  - Another exception may apply (other than the going beyond exception).
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### *Article 9*

*To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia:*

*a) Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;*

*b) Information, communications and other services, including electronic services and emergency services.*

*States Parties shall also take appropriate measures:*

*a) To develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public;*

*b) To ensure that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities;*

*c) To provide training for stakeholders on accessibility issues facing persons with disabilities;*

*d) To provide in buildings and other facilities open to the public signage in Braille and in easy to read and understand forms;*

*e) To provide forms of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public;*

*f) To promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;*

*g) To promote access for persons with disabilities to new information and communications technologies and systems, including the Internet;*

*h) To promote the design, development, production and distribution of accessible information and communications technologies and*

*systems at an early stage, so that these technologies and systems become accessible at minimum cost.*

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- 6.19 Article 9(1) introduces objectives to promote independence and participation for disabled people, and particularise areas where these objectives are to be prioritised, (Article (1)(a) and (b)). Article 9(1) uses wording which relates to the EO reservation (“on an equal basis with others”). Whilst the measures listed in Article 8(2) are not introduced using words which refer to equality or discrimination, in the context of the CRDP as a whole, in our view, the article relates to the EO reservation.
- 6.20 There may be scope to explore the going beyond exception to enable the Senedd to incorporate the objectives in Article 9(1), and the more specific measures listed in Article 9(2), to supplement and/or additional to the provisions of the EA 2010. However, the EA 2010 prohibits discrimination in access to many services and aspects of life and requires “reasonable adjustments” to facilitate this. There is therefore a high degree of overlap between Article 9 and the provisions of the EA 2010. In our view, this introduces a high risk that Senedd legislation attempting to incorporate Article 9 would be interpreted as modifying the EA 2010, and thus it would be beyond the scope of the going beyond exception.
- 6.21 Our understanding is that reservations in the following paragraphs of Schedule 7A may also raise barriers to incorporation of the rights as areas of provision which are dealt with in Article 9:
- Paragraph 117 – railway services.
  - Paragraph 120 – Shipping ...
  - Paragraph 125 - Aviation, air transport, airports and aerodromes.
  - Paragraph 127 - Technical specifications for public passenger transport for disabled persons ...
  - Paragraph 83, reservation of Telecommunications and wireless telegraphy.
  - Paragraph 84, reservation of Internet services.
- 6.22 Apart from the reservations in paragraphs 83 and 84, each of the above is subject to exceptions (i.e. matters that are within Senedd competence).

However, all of these are narrow and technical and therefore, in our assessment, would not open the way to giving holistic and meaningful effect to Article 9.

### **CRDP Article 19**

- The article relates to the EO reservation.
- The article appears to relate to another reservation (other than EO reservation).
- The going beyond exception may apply.
- Another exception may apply (other than the going beyond exception).

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#### *Article 19*

*States Parties to the present Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that:*

*a) Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement;*

*b) Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;*

*c) Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.*

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- 6.23 Article 19 affords disabled people the same right to live independently as enjoyed by non-disabled people. We note also that the introductory paragraph of the article, along with its sub-paragraphs (a) and (c), expressly use equality terminology. In our assessment, Article 19 relates to the EO reservation and incorporation would be outside the Senedd's competence unless an exception applies.

- 6.24 The going beyond exception might provide scope for Senedd legislation to require relevant authorities to address discrimination which prevents enjoyment of the entitlements guaranteed by Article 19. As always where the EO reservation appears to be engaged, incorporation of Article 19 would raise the risk of modifying the EA 2010, which would put incorporation outside the scope of the going beyond exception.
- 6.25 Incorporation of sub-paragraph (b) appears possible within competence, as we understand it: we note that the Senedd's SSWBA 2014 covers similar terrain. However, redacting the rest of Article 19 would appear to deprive the provision of its status and impact as a guarantee of fundamental entitlements for disabled people.
- 6.26 We also consider that there is potential for the Senedd to create a bespoke right to give legal effect to the fundamental purpose of Article 19, which is to express the right of disabled people to live independently in the community.

## **CRDP Article 27**

- The Article relates to the EO reservation.
- The Article appears to relate to another reservation (other than EO reservation).
- The going beyond exception may apply.
- Another exception may apply (other than the going beyond exception).

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### *Article 27*

*1. States Parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia:*

*a. Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions;*

- b. Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances;*
  - c. Ensure that persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others;*
  - d. Enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training;*
  - e. Promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment;*
  - f. Promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one's own business;*
  - g. Employ persons with disabilities in the public sector;*
  - h. Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures;*
  - i. Ensure that reasonable accommodation is provided to persons with disabilities in the workplace;*
  - j. Promote the acquisition by persons with disabilities of work experience in the open labour market;*
  - k. Promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities.*
- 2. States Parties shall ensure that persons with disabilities are not held in slavery or in servitude, and are protected, on an equal basis with others, from forced or compulsory labour.*
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- 6.27 The introductory words to Article 27(1) position the article as relating to the EO reservation. The sub-paragraphs of the article set out more specific rights and duties that support the overall right contained in the introductory words. Of those sub-paragraphs, (1)(a)-(c) are also drafted in terms that expressly relate to the EO reservation. In our assessment, Article 27 relates to the EO reservation and incorporation would be outside the Senedd's competence unless an exception applies.
- 6.28 The EA 2010 is intended to achieve many of the aims of the Article, particularly those set out in paragraphs (a), (b), (c), (d), (g), (h) and (i). Incorporation would risk modifying that Act, which would put incorporation outside the scope of the going beyond exception

- 6.29 Moreover, Schedule 7A also contains many other relevant reservations: see section H1, *Employment and Industrial Relations*; section H3, *Job Search and Support*; section J6, *Health and Safety*; and Head G, *Professions*. Areas covered by section H1 include pay, paid leave, hours of work, trade unions, transfer of undertakings and termination of employment. Section H3 reserves *Arrangements for assisting persons to select, train for, obtain and retain employment, and to obtain suitable employees*. “Employment” is specifically defined as including employment of a disabled person (including work on the disabled person's own account) under special conditions. There are, however, some exceptions, which are dealt with below.
- 6.30 Further, the reservation of *Social security schemes supported from public funds* (section F1, paragraph 130 of Schedule 7A) is relevant to Article 27(1)(e), which requires States Parties to provide disabled people with “*assistance in finding, obtaining, maintaining and returning to employment*”.
- 6.31 Finally, incorporation of Article 27(2) would, as we understand it, relate to the reservation in paragraph 45 of Schedule 7A to the GoWA 2006, *The subject-matter of the Modern Slavery Act 2015*. Article 27(2) is also terrain covered by Article 4 of the ECHR, as incorporated into UK law in the HRA 1998. The Senedd has no competence to modify the HRA 1998 in any way, because of the restriction in paragraph 5 of Schedule 7B.
- 6.32 As mentioned previously, section H3 reserves *Arrangements for assisting persons to select, train for, obtain and retain employment, and to obtain suitable employees*. However, there are exceptions for the following matters:
- Education.
  - Vocational, social and physical training.
  - Careers services.
- 6.33 It appears to us that there is an ambiguity within section H3. The Senedd has competence to enshrine a right to vocational training for people with disabilities (or legislate directly about such training). Vocational training means training specifically designed for entry into, or progression within, a particular trade, profession or other career sector. However, the Senedd cannot legislate

about “arrangements for assisting persons to ... train for ... employment”. A possible interpretation seems to us to be that the reservation is aimed at training directly linked to the unemployment/job-seeking benefit system. This would fit with the reservation of social security schemes, referenced above. If this interpretation is adopted, then there may be potential for the Senedd to legislate. It may be possible for the Senedd to rely on the going beyond exception to create a bespoke right to vocational, social and/or physical training and career services for all disabled people in Wales. An element of the legislation could be a requirement for the services provided to implement the right to be co-designed with (and, wherever possible, delivered by) disabled people. However, given the inherent uncertainty in relation to application of exceptions, the equal opportunities reservation would still appear to present a risk.

- 6.34 We also note that CommCRDP has highlighted the links between Article 27 and Article 8, calling upon the UK to “*Take appropriate measures to combat any negative and discriminatory stereotypes or prejudice against persons with disabilities in public and the media*”.

## **CRDP Article 28**

- The Article relates to the EO reservation.
- The Article appears to relate to another reservation (other than EO reservation).
- The going beyond exception may apply.
- Another exception may apply (other than the going beyond exception).

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### *Article 28*

1. “*States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.*

2. *States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate*

*steps to safeguard and promote the realization of this right, including measures:*

- a. To ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs;*
  - b. To ensure access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programmes and poverty reduction programmes;*
  - c. To ensure access by persons with disabilities and their families living in situations of poverty to assistance from the State with disability-related expenses, including adequate training, counselling, financial assistance and respite care;*
  - d. To ensure access by persons with disabilities to public housing programmes;*
  - e. To ensure equal access by persons with disabilities to retirement benefits and programmes.*
- 

- 6.35 Article 28 is an important provision as an adequate standard of living is essential, to enable disabled people to truly thrive and not just barely survive. In our assessment, the references in Article 28(1) to discrimination, and to equal access in Article 28(2)(a) and (e), means that Article 28 relates to the EO reservation and cannot be incorporated unless an exception applies. However, the EO reservation is not the only reservation which, in our understanding, affects Senedd competence to give legal effect to Article 28. An adequate standard of living requires an adequate income either from earnings or from social security support, or ‘social protection’, see Article 28(2). The measures specified in Article 28(2) include reference to ‘social protection’ and ‘poverty reduction programmes’ (28(2)(b)), as well as ‘financial assistance’ for disabled people living in poverty (28(2)(c)), and ‘retirement benefits’ (28(2)(e)). All of these would imply financial support, which in the case of support from the State is delivered through social security schemes, a reserved matter (Schedule 7A, section F1, *Social security schemes*). The interpretation clause linked to the reservation expressly includes schemes providing financial assistance to disabled people, as well as state pensions.
- 6.36 Article 28 could be amended to bring it within the scope of devolved competence. However, in our assessment this would require the redaction of aspects of the right which imply financial assistance, denuding the article of significant protections.

6.37 Despite the above, we note that other elements of the right to an adequate standard of living may prove less challenging to express as a right capable of enactment within Senedd legislative competence, for example: adequate food, clean water and sanitation, adequate clothing and adequate housing (provided these are guaranteed as entitlements secured for disabled people through the exercise of devolved functions).

## 7. OPTIONS FOR INCORPORATION

7.1 Earlier in our report we discussed a commonly used categorisation of incorporation into three different approaches: direct incorporation, indirect incorporation and sectoral incorporation. We noted that direct incorporation is the approach which best reflects the ambition of the Welsh Government to give effect to recommendations 1 and 25 of the SAEHR. In this section we first consider direct incorporation of CEDAW and/or the CRDP as an option in Welsh law, followed by indirect incorporation. As noted earlier, we have sought to keep open the possibility of an alternative to direct incorporation to meet the ambition of the Welsh Government to embed and enshrine human rights in Welsh law. We discuss this option below as a bespoke approach to promoting and protecting the rights of women and disabled people in Wales through legislation.

### **Direct Incorporation**

7.2 Direct incorporation requires legislation to adopt a treaty into national law so that the text of the treaty is 'drawn down' as completely (or fully) as possible. This is the approach favoured by UNTBs, and it is very clearly the mode of incorporation favoured by NGO stakeholders who have campaigned for many years for recognition of international human rights in Welsh law (most recently reflected in the findings and recommendations of the SAEHR). With this in mind, we feel it is important to stress that we have given close and very careful attention to the option of direct incorporation of CEDAW and/or the CRDP.

7.3 In coming to our collective view on direct incorporation we have reflected on our assessment that when CEDAW and the CRDP are read in their entirety, including the treaty preambles, they both clearly relate to the EO reservation. In addition, individual articles from both treaties relate to the EO reservations, and some articles from both treaties relate to other reservations. Our examples above illustrate this.

- 7.4 Through our work to assess how the Senedd might give effect to CEDAW and the CRDP we have come to the conclusion that the current devolution settlement places numerous limitations (reservations and restrictions) on legislative competence which have an impact on how elected representatives in Wales can ensure progress toward stronger protection of human rights for the people of Wales.
- 7.5 Our work has led us to the - in our view regrettable - conclusion that in the case of CEDAW and the CRDP, those limitations curtail the scope for progressing legal recognition and therefore protection of human rights for women and disabled people through direct incorporation.
- 7.6 As a group we have discussed the possibility of amending or redacting both CEDAW and the CRDP to remove any material relating to reserved matters, or to bring an article within the scope of a relevant exception. In our view, this exercise is likely to be difficult, time-consuming and fraught with uncertainties about the scope and application of any reservation or any exception. As such, we would see it as a risky approach to giving legal effect to either treaty and one which might result in a challenge to any proposed enactment on legislative competence grounds.
- 7.7 In addition, although our analysis has identified the possibility to incorporate some articles from both CEDAW and the CRDP via the going beyond exception to the EO reservation, we feel that in the context of the legislative and policy landscape in Wales this would locate human rights as an adjunct of equality law. On our reading, this is not what was intended by SAEHR: rather, the SAEHR emphasised the value of human rights to provide a concrete framework for actions in areas where there is an obvious alignment with human rights, these include equality and well-being. We feel that even if it is possible to achieve incorporation of some articles from either CEDAW or the CRDP in amended or partially redacted form (and we note that this is a risky approach), this would undermine the utility of human rights, and limit the potential of rights to underpin progressive policies beyond the field of equal opportunities.

- 7.8 In the light of our assessment of limitations on Senedd legislative competence to incorporate CEDAW and/or the CRDP, we are agreed that in order to minimise the risk of challenge on legislative competence grounds (and the likelihood that such a challenge would be successful), some articles from both treaties would need to be excluded in their entirety, whilst others would need significant amendment or redaction. We see amending or redacting either treaty to bring it within the scope of Senedd legislative competence as introducing the considerable risk of a much reduced and denuded set of rights and required actions compared to that which currently appears in either CEDAW or the CRDP. We take the view that this would very likely seriously compromise the intended protections and guarantees provided by either treaty.
- 7.9 We also take the view that there is internal consistency and emphasis in the way rights, actions and outcomes are articulated in both CEDAW and the CRDP, and there is therefore a serious risk that amending or redacting either treaty will result in an incomplete and non-coherent patchwork of rights, seriously undermining the coverage and impact of the rights guaranteed and weakening the overall impact of the treaties to promote and protect the rights of women and disabled people.
- 7.10 Finally, in addition to amending or redacting articles from CEDAW and the CRDP the Senedd could state expressly in any legislation adopting a direct incorporation approach that in the event of any conflict with the provisions of the EA 2010, the UK statute would prevail. This might be an option to mitigate the risk that even after amendment or redaction, any rights incorporated might be interpreted as conflicting with the requirements of the EA 2010. However, we see this safeguard as introducing further complexity: it would mean duty-bearers having to apply a partial and possibly incoherent rights framework, whilst also having to decide on a case-by-case basis, whether, in seeking to exercise their functions in compliance with the requirements of incorporated rights there might be the possibility of conduct which is prohibited or prescribed by the EA 2010. In our assessment, this would not be a situation conducive to the better realisation of rights and would place an undue burden on duty-bearers.

**As a consequence of our assessment of the limitations imposed on Senedd legislative competence by the current devolution settlement for Wales, it is with regret that we find ourselves unable to recommend an approach to incorporation based on direct incorporation of either CEDAW or the CRDP.**

- 7.11 We wish to add that in our opinion it is highly regrettable that the Senedd lacks competence over equal opportunities. We see the EO reservation as the main barrier to direct incorporation of the majority of provisions in both CEDAW and the CRDP. It is our collective opinion that this provides good reason to turn attention (on the part of government and community stakeholders) toward reform of the devolution settlement, and in particular the EO reservation, to enable a future Senedd to act to the fullest extent possible to embed international human rights in Welsh law (see: Future Action).
- 7.12 We also wish to note that our assessment is not a reflection of the importance of CEDAW or the CRDP or the rights they contain, nor does it diminish the strength of the case for seeking to give those rights greater domestic effect.

### **Indirect Incorporation**

- 7.13 As noted earlier in our report, indirect incorporation (and sectoral incorporation, as a form of indirect incorporation) provides some recognition of a treaty in national legislation. We also noted that indirect incorporation is not consistent with recommendations 1 and 25 of the SAEHR, nor does it meet the ambition of the Welsh Government for incorporation of international human rights in Wales. It is also clear from campaigns for incorporation in Wales, as well as the evidence and findings of the SAEHR, that stakeholders want Wales to pursue a stronger form of incorporation than indirect incorporation.
- 7.14 In our view, legislation to introduce a procedural duty which obliges devolved public authorities to have due regard to CEDAW and the CRDP in the exercise of relevant functions is a viable option for Senedd legislation.

However, as noted above, indirect incorporation would not meet the ambition of the SAEHR, recommendations 1 and 25, specifically it would not incorporate human rights in a way which would enable individuals to rely on those rights directly before a court or tribunal.

**We do not recommend an approach to incorporation based on indirect incorporation in reliance on the due regard exception to the EO reservation for either CEDAW or the CRDP.**

### **A Bespoke Approach**

- 7.15 Given our assessment of the options of direct incorporation and indirect incorporation we have given consideration to how an effective form of incorporation might be achieved within the constraints of the current devolution settlement. We have set out above how we see considerable risks and challenges in any attempt to achieve direct incorporation of CEDAW and/or the CRDP within the boundaries of the current devolution settlement. We have also noted the less risky, but unsatisfactory option of indirect incorporation.
- 7.16 We see the risks and challenges of direct incorporation, and the weakness of indirect incorporation as pointing very clearly to the need for a bespoke approach to legal recognition of CEDAW and the CRDP in Wales. Such an approach would draw on the guarantees and protections articulated in international treaties but rationalise these to a clear expression of women's rights, and disabled people's rights which are capable of enactment through Senedd legislation.
- 7.17 A bespoke approach would depart from direct or indirect incorporation, but in our view it would be a route to meeting SAEHR recommendations 1 and 25. We are also firmly of the opinion that whilst a bespoke approach would not meet the description of either direct or indirect incorporation we have provided above, it would nonetheless meet the general requirement of incorporation as described by UNTBs: to provide legal recognition and enforcement of human rights within a national legal framework.

- 7.18 In our view, the Senedd has competence over areas of legislation and policy touching directly on matters which are the concern of international human rights. For example: education, health and social care, living standards, housing, inclusion and some aspects of participation in economic, social and cultural life. These are matters dealt with in both CEDAW and the CRDP, and indeed other human rights instruments in different ways and using a variety of wording and expression.
- 7.19 We feel that there is, in Wales, sufficient expertise (and ambition) to draw on international frameworks to develop a set of bespoke rights setting out clear guarantees for women and disabled people in areas of policy and service delivery that sit squarely within devolved competence. With this in mind, there is every reason to move toward introducing a Human Rights Bill for Wales.

**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.**

- 7.20 We wish to add that whilst the above recommendation addresses the specific task LOWG was asked to undertake (i.e. to focus on incorporation of CEDAW and the CRDP), we see potential to extend this work (and apply our methodology) to consider how Wales might incorporate other international human rights treaties (discussed further below, under ‘Future Action’).
- 7.21 The following paragraphs further explain our reasons for the above recommendation.

*Securing access to rights through an appropriate duty on public authorities*

- 7.22 Legislation to introduce bespoke rights could require public authorities to act in compliance with those rights. We have given consideration to a duty which repeats the wording of section 6 of the HRA 1998, i.e. a duty ‘not to act

incompatibly' with a prescribed right. Whilst this would be an option for any future legislation, we see such a duty as giving leeway for public authorities to do 'just enough' to avoid acting incompatibly with rights, and very little to promote a proactive approach to securing the better, and eventually the full realisation of rights. We feel a compliance duty would be a more positive approach and better suited to encouraging a progressive approach to rights implementation.<sup>63</sup> We also feel that a compliance duty should be accompanied by an additional express requirement of progressive realisation in relation to bespoke socioeconomic rights that may be developed for Wales; and a requirement on the Welsh Government to agree and establish national minimum standards of provision alongside rights (both are discussed below: Future Action).

### *Giving access to rights*

- 7.23 A Human Rights Bill could provide access to rights by enabling individuals to rely on the compliance duty to raise or defend any civil proceedings. In this respect, the model provided by the HRA 1998 offers a precedent. A provision could be included similar to section 7 of the HRA 1998 which enables a 'victim' to rely on an unlawful act (as defined in section 6 of HRA 1998) by a public authority to bring or defend proceedings.
- 7.24 However, adopting a cautionary approach to the uncertainties of how the Supreme Court might interpret the limitations on Senedd legislative competence, we see the need to ensure that any duty imposed on public authorities to act in compliance with bespoke rights to be exercised within the framework of current equality and non-discrimination duties under the EA 2010 (as is the requirement in relation to the exercise of functions generally), and subject to an exception where a public authority is compelled to act in a manner prescribed by UK or Senedd legislation. Although as to the latter, consideration could be given to whether a Human Rights Bill setting out bespoke rights should provide for a court to make a declaration of

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<sup>63</sup> This is also the view of the Scottish Government which is proposing a compliance duty in Scots legislation on human rights. See Fn 45.

incompatibility, i.e. that Senedd legislation is incompatible with bespoke rights, perhaps similar to the procedure under section 4 of the HRA 1998.<sup>64</sup>

### *Bringing clarity and accessibility*

- 7.25 Any process to develop bespoke rights could focus on the fundamental purpose of the right as expressed in international law, without the necessity of adopting the full wording of the right or any accompanying actions/outcomes. It could also focus on key actions and outcome requirements to reflect the needs of women and disabled people in Wales. Allied to this, a bespoke approach would enable Wales to more easily navigate the reservations and restrictions of the current devolution settlement. We have already noted, in our discussion of select examples from CEDAW and the CRDP above, where some articles might provide a template for Welsh legislation to embed or enshrine fundamental guarantees. For example, a right to education for women and girls, or recognising the right of disabled people to live independently in the community.
- 7.26 Whilst a bespoke approach would require (through the necessity of navigating the devolution landscape), differentiation from the wording of international human rights treaties, differentiation amongst and within treaties is already a feature of international human rights. Rights and accompanying actions set out in CEDAW and the CRDP are expressed in various ways, and very often deal with similar or overlapping issues. Related concepts appear in different articles in the same treaty and are expressed using different wording. It is also the case that similar rights and accompanying undertakings and measures are often expressed using different language in different treaties, including CEDAW and the CRDP, but also other treaties. And, in some instances the language of an article is not as clear as it could be to express a substantive right. For example, Article 10 of CEDAW seems to be premised on the right to education but does not itself express or set out the right.
- 7.27 The variation and multiplicity in the manner of expression of rights sometimes make it challenging for duty-bearers to make sense of the different concepts

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<sup>64</sup> As is proposed in Scotland.

and obligations that are an aspect of human rights practice. This challenge would be worsened if either CEDAW or the CRDP were incorporated in an amended or redacted form. The variation in the manner of expression of human rights within and across treaties is also testament to the fact that there is no single mode of expression of human rights.

- 7.28 Our proposal would enable Wales to take advantage of the inherent openness in the wording of human rights to develop bespoke women's rights, and disabled people's rights, which are more directly applicable to the social, economic and cultural experience of women and disabled people in Wales; and which are worded in such a way as to be clear statements of rights, accessible and understandable for stakeholders and duty-bearers. Adopting the model of the HRA 1998 and the Child Rights Measure, bespoke rights could be set out as schedules to a Human Rights Bill, and consideration given to specifying duties, standing to bring a claim, routes and mechanisms for redress (where these are within the scope of devolved competence). In our view, this would empower women and disabled people to access their rights and better enable duty-bearers to realise rights through policy and action.

### *Embedding intersectionality*

- 7.29 Prior to CEDAW and the CRDP the UN treaty system did not adequately protect the human rights of women and disabled people. CEDAW seeks to address the systemic, specific, and often private-sphere, violations of women's rights; and the CRDP addresses the fact that disabled people fell 'through the gaps' in the other conventions which are not designed to meet the specific needs of disabled people and the barriers that they experience.
- 7.30 Intersectionality recognises that individuals can experience discrimination on the basis of multiple and intersecting identities, such as gender, disability, race, class, and sexual orientation.
- 7.31 Whilst the CommEDAW and CommCRDP address intersectionality in some of their communications, and some treaty provisions address multiple discrimination (for example, the CRDP Article 6 recognises that disabled

women face multiple discrimination), neither CEDAW nor the CRDP explicitly address intersectionality.

- 7.32 Our proposal would enable Wales to take stock of both the concept of human rights (including by drawing on CEDAW, the CRDP, and other human rights treaties), as well as the concept of intersectionality to develop bespoke intersectional human rights, enabling Wales to address the intersectional experiences of discrimination that people experience, including women and disabled people.

### *Overarching principles*

- 7.33 The opportunity could be taken to consider whether any Human Rights Bill ought to include one or more overarching principles. This might be helpful to support understanding and implementation of any future enshrined human rights, and aid interpretation by the courts. For example, an overarching principle might require that public authorities should, when interpreting and implementing rights, do so in a manner which respects, protects and fulfils rights (consistent with the notion of acting in compliance with rights and progressive realisation), or to act in a manner which promotes the concept of human dignity.

### *New rights*

- 7.34 Developing bespoke rights would be an opportunity to consider whether there is a need for additional rights, informed by developments at the international level. In particular consideration could be given to new rights which might align with existing priorities for Wales, such as the sustainable development principle embodied in the **Well-Being of Future Generations (Wales) Act 2015** (WFA 2015). For example, consideration of the UN Sustainable Development Goals, alongside the sustainable development principle might see the emergence of bespoke right to a healthy environment in Wales. Another possibility would be to fill gaps in existing treaty provision. For example, CEDAW does not include an express right to an adequate standard

of living for all women (Article 14 guarantees adequate living condition for rural women).

### *A participatory process*

- 7.35 In developing bespoke rights, we see scope to adopt a participatory process drawing on the expertise and experience of the current HRAG: to confirm relevant rights drawing on the international human rights core treaties; and, to inform how bespoke rights are expressed (including any associated actions or anticipated outcomes) to ensure they are directly relevant to the needs and interests of women and disabled people in Wales.
- 7.36 A participatory process would also give the opportunity to gear human rights in Wales more clearly and directly toward meeting the needs of beneficiaries, either when considering how rights are expressed or how they are to be interpreted and applied: including as an aspect of progressive realisation or when setting minimum standards, both of which we discuss in Part 4.
- 7.37 For the avoidance of doubt, we see the continuation of HRAG as essential to progress toward, and implementation of any future Human Rights Bill. HRAG provides a valuable source of expertise and experience to support officials working on human rights and is a forum for supportive challenge and accountability. It also provides an important link between government and key community stakeholders, via their representatives, and is therefore an opportunity for input and recognition of stakeholder viewpoints.

### *Aligning to existing legal frameworks*

- 7.38 Developing bespoke women's rights and disabled people's rights would enable those rights to be aligned to existing legal frameworks in Wales and the UK, in particular the EA 2010, but also the WFA 2015. Both these enactments establish objectives and requirements which promote action to address discrimination and promote equality. Non-discrimination and equality are key principles of human rights. A Human Rights Bill would be an opportunity to develop objectives for women's rights, and disabled people's

rights to be realised within the framework of the EA 2010 and the WFA 2015. This might include requiring rights to be given effect in a manner which complies with the requirements of the EA 2010 and Wales Specific Equality Duties (WSEDs), and in a manner which is aimed at furthering the well-being goals under the WFA 2015.

## **Challenges to a Bespoke Approach**

- 7.39 We recognise that a bespoke approach presents a number of challenges, but in our view none of these should be seen as a bar to moving forward to embed human rights through Senedd legislation.

### *Fitting rights into devolved competence*

- 7.40 A clear challenge is that any bespoke rights would need to fit within the framework of the current devolution settlement, including the EO reservation but also other reservations and restrictions. However, we see a significantly reduced set of rights and actions as the inevitable result of seeking to directly incorporate either CEDAW or the CRDP. We accept that having regard to areas which are not currently devolved (for example, in general terms: work, social security, much of the justice system) there would be limitations on the bespoke rights which could be developed. However, we feel that developing bespoke women's rights and disabled people's rights would ensure a maximal approach to secure the largest number of rights that are within the **current** legislative competence of the Senedd. A bespoke approach would also have the advantage of enabling the Senedd to consider new rights, or rights that are not included in either CEDAW or the CRDP (see above).

### *Overlooking rights*

- 7.41 Seeking to draw together and rationalise rights from different sources runs the risk that aspects of a right would be lost or overlooked. This might arise from where a right is expressed in different treaties, or where the right is to be understood in relation to other rights included in a treaty. We accept that this is a risk, but we begin from the understanding that it is already evident from the

international human rights system that there are different ways in which rights may be expressed, and room for confusion and omission in the way that rights are put into practice. We see the need to ensure close attention to the manner in which human rights are already articulated in CEDAW and the CRDP, as well as other human rights instruments to ensure that any bespoke rights properly encapsulate the fundamental purpose of rights already established. But we see the bespoke approach as an opportunity to ensure that express rights speak clearly and directly to the needs of women and disabled people in Wales. We also feel that the involvement of HRAG would help ensure close attention to all relevant international human rights to be rationalised to bespoke rights.

### *Divergence from the international framework*

- 7.42 There is a risk of diverging from the interpretive framework of the international human rights law mechanisms. For example, guidance issued by UNTBs. This could be addressed by allowing duty-bearers and the courts when interpreting and enforcing any bespoke rights to refer to international human rights frameworks, including general recommendations, general comments and concluding observations for guidance. It may be suggested that this guidance is only relevant to internationally recognised rights, and it may be difficult or confusing to seek to apply it to bespoke rights. However, we do not see this as problematic as is often suggested. International human rights and accompanying undertakings or actions are often differently worded in different treaties, and UNTBs themselves have no difficulty in drawing on a range of guidance as aids to interpretation. It may also be said that the UK courts and tribunals are adept at drawing on guidance from different sources, some more directly relevant than others, and are expert in determining the appropriate weight to be given to guidance as an aid to interpretation.

## 8. PART 2: IMPLEMENTATION

- 8.1 The work for Part 2 has examined how rights contained in CEDAW and the CRDP are being advanced in Wales through governmental action, focussing on the everyday processes through which international human rights standards are translated into Welsh Government policy, programmes and delivery. This has been a substantial, time-consuming exercise. It has required detailed scoping of human rights standards, and a further mapping of how these standards are being addressed in the context of Welsh law and policy. How we approached this challenging task is described in the methodology section below. However, for brevity and presentational reasons it has not been possible to include a full account of the assessment in this report. Instead, we have sought to capture the main themes, and our conclusions.
- 8.2 In summary, we have found that the Welsh Government has taken substantive action across many relevant policy areas. However, the relationship between those actions and specific UN treaty standards is not always clearly articulated, tracked, or coordinated. We have also found an emerging theme: while substantial information exists across government and civil society, there is limited data to evidence a systematic approach that links action to international human rights standards.

### **Implementation: Welsh Context**

- 8.3 This section clarifies what we mean by “implementation” in the Welsh context. Implementation is not limited to formal incorporation of treaties into domestic law. It encompasses the full range of governmental levers, legislation, policy, guidance, funding, training, delivery mechanisms and review processes, through which rights become operational in practice. Implementation refers to the processes through which international human rights norms are embedded into domestic law. There are several ways this can be done. It may be via legislative or policy measures that embed treaties directly into national law or via action taken in response to reviews or recommendations resulting from

examination by UN mechanisms such as UNTBs.<sup>65</sup> It can be by embedding general comments published by UNTBs into local policy or practice. Implementation may occur alongside incorporation, or as a consequence of it, and represents the everyday operationalisation of human rights.<sup>66</sup>

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<sup>65</sup> See for example: CEDAW/C/GBR/CO/8: [Concluding observations on the eighth periodic report of the United Kingdom of Great Britain and Northern Ireland - Advance unedited version](#) (2019).

<sup>66</sup> Boyle, K. (2024), [Human Rights Incorporation in Scotland: Keynote Speech](#).

## 9. METHODOLOGY (PART 2)

- 9.1 We examined Welsh Government action against treaty body recommendations and assessed the action taken. For the purposes of this assessment, “action” is understood broadly and is not limited to legislation. It includes the range of steps the Welsh Government can take in practice through its devolved functions and levers, for example policy, guidance, administrative practice, funding and commissioning decisions, training and delivery activity. This is important because we chose to map Welsh Government actions against recommendations set out in Concluding Observations following examination of the UK State party by CommEDAW and CommCRDP, and those recommendations often contain multiple elements; and, the Welsh Government’s ability to respond does not always map onto devolved legislative competence.
- 9.2 CommEDAW and CommCRDP recommendations provide insights into steps to be taken through legislation, policy and delivery toward better realisation of women’s rights and disabled people’s rights in the UK, including Wales. As noted in the Methodology under Part 1, we applied a template to enable us to identify, categorise and assess Welsh Government actions against recommendations. The template also helped us to identify which recommendations are relevant to Wales, and which might be advanced through Welsh Government action. To inform this mapping exercise, and in addition to Concluding Observations where CommEDAW and CommCRDP set out their recommendations, we consulted a range of source materials. The principal sources are:
- 9.3 Publicly available Welsh Government documentation: primarily via the Welsh Government website, including legislation, strategies, guidance, codes of practice and action plans.
- 9.4 The Human Rights Tracker: an online tool created by the Equality and Human Rights Commission (EHRC) that consolidates concluding observations from across Treaty bodies and provides assessments of progress for selected recommendations.

- 9.5 Civil society and NHRI evidence: including shadow reports submitted to the UN treaty bodies and more recent Welsh civil society reporting relevant to the rights areas analysed.
- 9.6 Welsh Government Policy lead feedback: coordinated by the Welsh Government Human Rights team. This feedback was used to inform our assessment of progress and gaps. While this provided useful insight into intent and activity, it also revealed variability in how policy areas understand and evidence implementation of UN recommendations.
- 9.7 Taken together, these sources provided us with both documentary evidence and internal (from within government) insight. We reviewed the documents and applying our experience and expertise, we sought to examine and reflect on whether the identifiable actions are meeting the recommendations.

### **The scope of our work**

- 9.8 Given the range and scope of human rights in CEDAW and CRDP, and the range and array of levers available to government to implement rights, it has not been possible – given our limited capacity – to undertake a full and comprehensive review of all treaty rights or all Welsh policy areas. Instead, it provides an overview designed to:
- Make visible the relationship between treaty standards and Welsh action where possible.
  - Identify implementation gaps.
  - Highlight where Wales’ existing legal and policy architecture could support more systematic implementation.
- 9.9 With the above in mind, our work is intended as a starting point for understanding the extent to which Welsh Government is giving effect, in Wales, to the rights set out in CEDAW and the CRDP. Given time constraints, our analysis focused on Welsh Government action in relation to recommendations set out in the most recent Concluding Observations of the

CommEDAW (UK examined 2019) and the CRDP Committee (CommCRDP, following the UK examined 2017).

## **Limitations on Implementation**

9.10 We note two limitations to the Welsh Government's capacity to implement recommendations from UNTBs on implementation of CEDAW and/or the CRDP.

- First, some recommendations engage reserved matters. In such cases, Welsh Government may have limited or no legal competence to implement certain elements, though may still be able to act through devolved service delivery and administrative levers (for example, aspects of equality law or discrimination remedies). In such cases, the analysis focuses on actions Wales can take, while acknowledging the constraints of competence.
- Second, this analysis examines the existence and nature of Welsh Government action, not impact or outcomes. Further evaluative work would be required to assess effectiveness and real-world change but this is beyond the scope of this project.

## **Welsh Frameworks Supporting Implementation**

9.11 Wales possesses a substantial equality and well-being infrastructure that could support more systematic implementation, including by providing evidence during planning, monitoring and reporting cycles. The issue identified in Part 2 is less the absence of frameworks, and more the absence of consistent alignment between these frameworks and treaty standards. Our review considered the equality, well-being and other Wales-specific legislative and/or policy frameworks that could be utilised to address the implementation gaps.

### *Equality Enabling Frameworks*

9.12 The EA 2010 provides key duties, including the Socio-Economic Duty (in force in Wales since 2021) and the Public Sector Equality Duty (PSED). WSEDs

require listed public bodies to take concrete steps to meet the PSED, including by setting equality objectives and Strategic Equality Plans.

- 9.13 Welsh Government's National Equality Objectives (2024–2028)<sup>67</sup> include goals to reduce poverty, a Wales where everyone can be aware of and has equitable access to high quality public services and participation in public life and a Wales with fair and equal opportunities to gain employment and for fair and equal treatment in the workplace, including fair pay and conditions. There is also a standalone goal for a Wales where everyone can be aware of their human rights, and where those rights are protected, promoted, and underpin all public policy. These objectives could function as a bridge between treaty standards and measurable delivery commitments.
- 9.14 In addition, Welsh Government has developed multiple equality-focused action plans (including anti-racist, disability, gender equality, LGBTQ+, child poverty, and sanctuary-related plans). These plans are potential implementation vehicles. However, as later sections illustrate, action plans are not consistently aligned with concluding observations, and renewal and continuity are uneven.

### *Well-being Enabling Frameworks*

- 9.15 Welsh Government can also utilise well-being-enabling frameworks. The GoWA 2006 provides broad powers to promote economic, social and environmental well-being, and section 62 enables representations about matters affecting Wales.
- 9.16 The WFA 2015 establishes seven well-being goals, including “a more equal Wales” and “a globally responsible Wales”. Welsh Ministers and other public bodies must set well-being objectives designed to maximise contribution to those goals and take reasonable steps to achieve them. The Programme for Government sets out objectives intended to support these goals, including

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<sup>67</sup> See the National Equality Objectives 2024-2028: Welsh Government, [Written Statement: Achieving an Equitable Wales: The National Equality Objectives 2024-28](#); See also the Welsh Government, [Strategic Equality and Human Rights Plan 2025-2029](#).

objectives relevant to education reform, tackling inequality and protecting vulnerable groups. Taken together, these frameworks provide a governance architecture capable of supporting treaty implementation, particularly if treaty standards are explicitly mapped onto wellbeing objectives and reporting systems.

### *Other (Wales only) Frameworks*

9.17 Wales also has sector-specific legislation that could support implementation, including:

- SSWBA 2014 - imposes duties on local authorities, health boards and Welsh Ministers that require them to work to promote the well-being of those who need care and support, or carers who need support.
- The Child Rights Measure - places a duty on the Welsh Ministers to have due regard to the rights and obligations in the UN Convention on the Rights of the Child (UNCRC) when making decisions of a strategic nature.
- Additional Learning Needs and Education Tribunal (Wales) Act 2018 (ALNETA 2018) - developed to support children with additional needs in education and resulted in the development of the Additional Learning Needs System for children and young people aged 0-25 years.
- Curriculum and Assessment (Wales) Act 2021 (CAA 2021) - establishes the statutory framework for a curriculum for 3- to 16-year-olds – the Curriculum for Wales.

## 10. AN OVERVIEW OF WELSH GOVERNMENT ACTION

- 10.1 This section draws out the principal patterns emerging from our systematic mapping of Concluding Observations and recommendations against publicly available Welsh Government evidence of policy, legislative and programme action. In practice, this involved reviewing relevant recommendations on an article-by-article basis and identifying examples of devolved action that speak to the issues raised.
- 10.2 Given the scale of that exercise, it is not possible to reproduce the underlying mapping in full within this report. Instead, for brevity and clarity, we focus on eight cross-cutting themes and system-level features that emerged most consistently across three thematic pillars.
- 10.3 Overall, the mapping suggests that the central challenge is less the absence of relevant action, and more the absence of a consistently visible, rights-led approach to implementation. While many initiatives align with the subject matter of committee recommendations, they are not always framed, coordinated or evidenced as a coherent response to treaty standards. This helps explain why system-level gaps persist, including around mainstreaming, intersectional delivery, continuity of action plans, and mechanisms for tracking and accountability across government.

### **Pillar 1: Implementation Activity**

#### *Theme 1: Substantial policy, legislative and programme activity*

- 10.4 Our mapping identified a wide range of Welsh Government activity that aligns with the subject matter of the Concluding Observations and recommendations reviewed. This includes legislation, strategies and action plans, programme funding, guidance, and commissioned reviews. Across several areas, the volume and breadth of this activity indicates that Welsh Government has developed substantial policy infrastructure and a range of devolved levers that are capable of advancing human rights. Some examples below:

## Participation in political and public life

- 10.5 For example: Welsh Government has introduced significant reforms through the **Elections and Elected Bodies (Wales) Act 2024**. The Act includes a statutory duty on Welsh Ministers to provide services to promote diversity among candidates for Senedd and local elections, financial assistance schemes to reduce barriers faced by disabled candidates and provisions encouraging political parties to collect and publish diversity data and develop inclusion strategies. These measures are directly relevant to the obligations in Article 29 of the CRDP concerning accessible political participation and removal of structural barriers for disabled people.

## Education

- 10.6 For example: ALNETA 2018 introduced a reformed framework for supporting learners with additional learning needs. Key elements include: a duty favouring mainstream education, appointment of Additional Learning Needs Coordinators in mainstream schools and a statutory code of practice supporting inclusive education. These measures are relevant to the obligations in Article 24 of the CRDP regarding inclusive education.
- 10.7 For example: the CAA 2021 made Relationships and Sexuality Education mandatory in Wales. This responds to CEDAW concerns regarding compulsory, age-appropriate education on sexual and reproductive rights.
- 10.8 These are examples of actions taken which relate to specific aspects of women's and disabled people's rights in Wales. Our examination found numerous examples of planning and action which similarly relate to human rights. However, whilst our work on activity and delivery outputs provided a context for the themes that follow, we have observed that the implementation challenge is not best understood as an absence of work, but as a question of how far this activity coheres into a consistent and demonstrable implementation picture when viewed through the lens of the CRDP and CEDAW, and their respective committees (CommEDAW or CommCRDP).

## **Pillar 2: Operationalisation**

### *Theme 2: Weak transposition from UN Standards into Welsh policy architecture*

- 10.9 A consistent finding from our mapping of activity was that, even where Welsh Government action aligns with the broad subject matter of committee recommendations (as it often does), it is not always framed or evidenced as a direct response to relevant treaty standards or to specific Concluding Observations and recommendations.
- 10.10 Despite substantive relevance, policy documentation often does not explicitly link action to specific treaty provisions, Concluding Observations, or interpretive guidance. References to human rights may be general (for example “rights-based approach”) without specifying which standards (rights), which recommendations, or what implementation indicators will or have been used to evidence progress.
- 10.11 This has practical consequences. Where the link between identified UN concerns and Welsh policy action is not explicit, it becomes difficult to trace how particular actions are intended to meet particular standards, which elements of a recommendation are being addressed, and what evidence would demonstrate progress over time.
- 10.12 This weakens accountability: it becomes difficult to demonstrate that Welsh Government is systematically responding to UN concerns, rather than undertaking relevant activity which happens to correspond with the treaty rights or treaty implementation frameworks.
- 10.13 In the materials we examined, the Concluding Observations of the CommEDAW and CommCRDP were not typically used as an explicit organising reference point for Welsh policy design or delivery. Nor did we generally find explicit links to relevant General Comments or other interpretive guidance.
- 10.14 For example: in relation to Inclusive Education, whilst Welsh Government have introduced ALNETA 2018, they have not adopted a comprehensive

inclusive education strategy with measurable targets and timeframes as recommended by CommCRDP in its 2017 Concluding Observations.

- 10.15 The lack of explicit linkage is also apparent within key equality action plans. For example: there is no reference to CEDAW in the Advancing Gender Equality Action Plan; and, whilst the Disability Rights Action Plan aligns proposed work with some CRDP treaty articles, we see very little evidence that the CRDP was explicitly used as a framework to guide the formulation of the overall aims and actions in the plan. There are no actions in the disability action plan that reference addressing the gaps raised in the Concluding Observations following the last examination of the UK.

### *Theme 3: Limited mainstreaming of human rights as an organising framework*

- 10.16 Beyond the question of traceability to specific treaty standards, our mapping also suggests that human rights are not consistently mainstreamed as an organising framework across Welsh Government policy design, delivery and review. In practice, this means that while rights-based language may be present in some strategies and statements, this does not consistently translate into routine processes that shape objectives, commissioning decisions, delivery expectations, monitoring arrangements, and the evaluation of outcomes.
- 10.17 A related feature of the evidence we reviewed is that much of the material provided or cited tends to describe government intent (what Welsh Government aims to do) rather than setting out a clear account of what has been done, what has changed, and how progress will be evidenced over time.
- 10.18 This matters because mainstreaming is a practical capability, not a statement of intent. Where human rights are not embedded as a routine implementation lens, delivery risks becoming uneven: strong in some areas where there is established leadership and expertise, but weaker where rights considerations are treated as discretionary or implicit. It also makes it harder to sustain a consistent approach across portfolios and over time, including when staff and priorities change.

10.19 For example: Welsh Government’s Strategic Equality and Human Rights Plan 2025-2029 states:

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*“Additionally, as required by the United Nations and the Council of Europe, Welsh Government updates on progress (via the UK Government, as State Party) on delivering against compliance with the Human Rights treaties that have been ratified by the UK Government, in respect of matters for which the Welsh Government has devolved competence. Updates are made by both written report and by attendance at the UN examination sessions held in Geneva. The timetables for reporting progress to both the UN and the Council of Europe are set by those organisations and are mandatory”.*<sup>68</sup>

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10.20 A requirement of “compliance with human rights treaties” would include addressing the gaps raised by a committee in Concluding observations, however this overarching statement only sets out the obligation on the Government to report via written reports and attendance at the State party examination. There does not appear to be an action plan that sets out the objectives, indicators or monitoring framework by which compliance will be achieved.

*Theme 4: Awareness, understanding and coordination are uneven*

10.21 Our mapping suggests that awareness and understanding of treaty obligations, committee recommendations and associated interpretative guidance is uneven across policy areas, with no systematic process of coordination. This does not preclude pockets of strong practice, however it contributes to an overall picture in which the treatment of international human right standards is variable, and where responses to committee

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<sup>68</sup> See Fn 67.

recommendations are often not consistently approached as a cross-governmental implementation task.

10.22 This was reflected in the information provided to us by Welsh Government policy teams, which varied considerably in the extent to which it engaged with the substance of the relevant treaty provisions and Concluding Observations, and in the clarity with which it set out what action had been taken.

10.23 For example: CommEDAW recommendation 54 (a) relating to article 14 (Rural Women) recommends the State party:

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*Adopt inclusive and accessible measures to facilitate access for women and girls to education, employment, healthcare services and support services in rural areas, including by ensuring their access to transportation and the Internet and their participation in decision-making processes regarding rural development;*

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10.24 The information provided by Welsh Government (policy leads) provided examples of education measures aimed at widening access to Higher Education<sup>69</sup> including in rural areas along with funding for adult learning in the community. However, it did not address other aspects of the recommendation (access to employment, healthcare, support services, transport or the internet) nor did it set out actions to address access to services in rural areas for women and girls specifically.

10.25 This unevenness matters because effective implementation depends on action being understood and delivered as part of a coherent cross-government picture, rather than as a series of separate initiatives. In our work, it was often difficult to see how different action plans, strategies and policy programmes fitted together into an overall implementation approach, or how they collectively addressed the specific patterns and breadth of concern raised by CommEDAW or CommCRDP.

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<sup>69</sup> <https://reachingwider.ac.uk/>

*Theme 5: Intersectionality is routinely acknowledged but rarely operationalised*

- 10.26 Across the strategies and action plans reviewed intersectionality is frequently recognised. However, our mapping suggests that this recognition is not consistently translated into tangible implementation measures. In practice, groups who are visible in problem statements and narrative commitments can remain less visible within delivery frameworks, including in targeted actions, defined ownership, measurable outcomes, and disaggregated monitoring capable of evidencing differential impact.
- 10.27 This matters because intersectionality is central to understanding how rights are experienced in practice, and to ensuring that implementation reaches those facing compounded disadvantage. Without targeted measures and evidence arrangements that make specific groups visible in delivery, there is a risk that universal commitments improve outcomes while leaving entrenched inequalities unchanged.
- 10.28 Whilst there are many references in government statements and action plans on the need to take an intersectional approach, which in our view is helpful, there are no detailed actions to demonstrate *how* this will be taken forward.
- 10.29 For example: the Advancing Gender Equality Action plan 2020-2023 states:

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*“Welsh Government aims to advance gender equality to the point where women, men and non-binary people are treated equally and fairly in all aspects of their lives with a focus on equality of outcome. This also applies to women who may experience intersecting inequalities such as disability, race, LGBT+, age, marital status, pregnancy and maternity considerations, religion or belief, which can create new or compound inequalities. Welsh Government recognises that people are not defined by single issues or barriers but are complex and require different things to enable them to participate fully in Welsh life”*

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- 10.30 However there are no actions in the plan that address, for example, intersectional human rights issues raised by the CommEDAW such as the need to prioritise healthcare for asylum seeker women, women who have been trafficked or women from Gypsy and Roma communities.
- 10.31 A further example: the Welsh Government's 'A Healthier Wales - Health and Social care plan includes an action to 'reduce health inequalities by ensuring equality of access to the health and social care system to achieve equity of outcomes'.<sup>70</sup> However, the plan does not contain any actions that address specific issues that impact access to healthcare for asylum-seeker women, Gypsy and Roma women, or trafficked women. Rather, it set out high-level, universal commitments to equity, but without targeted or tailored actions for these groups.
- 10.32 A further example: the Welsh Government's Anti-racist Wales Action Plan aims to address racial inequalities across public services in Wales, including access to healthcare for ethnic minority people. The plan recognises the discrimination experienced by Roma and Traveller communities is accessing healthcare and also states, "We know there are significant specific challenges for women from ethnic minority backgrounds, and measurable adverse differences in health outcomes, in particular for maternity services. Ensuring services are delivered in an accessible, culturally sensitive way for all, including women, is a priority for us".<sup>71</sup> Actions include a dedicated working group to identify barriers faced by ethnic minority people in accessing health services and to recommend how to remove them and action to improve maternity and women's health outcomes. The plan does not contain specific actions relating to policies that target access to healthcare for women seeking sanctuary or Roma and Traveller women. As a result, these women are visible in the problem statement but largely invisible in the action framework.

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<sup>70</sup> Welsh Government, [A healthier Wales: long term plan for health and social care - 2024 Plan for Health and Social Care](#).

<sup>71</sup> Welsh Government (2022), [Anti-Racist Wales Action Plan](#).

### **Pillar 3: Implementation infrastructure**

#### *Theme 6: No visible cross-government mechanism to track, coordinate and evidence implementation*

10.33 Our review highlights a lack of visible cross-government mechanisms for translating Concluding Observations into coordinated implementation planning, monitoring, and reporting within devolved competence. While relevant actions are being taken across portfolios, the documentation we reviewed did not generally evidence a structured approach that:

- Allocates ownership and coordinates delivery: assigns responsibility for responding to specific recommendations and ensures cross-portfolio coordination.
- Links actions to recommendations: explains how specific actions respond to particular Concluding Observations and recommendations.
- Maintains a live implementation record: a tracker or action plan linking recommendations to actions, responsible teams and delivery milestones.
- Sets measurable expectations: establishes indicators, timelines and reporting requirements to enable cumulative assessment and evidence gathering over time.
- Supports follow-up and corrective action: structured engagement with civil society and National Human Rights Institutions (NHRIs), and a process for acting on recommendations and addressing persistent gaps.
- Provides transparency: periodic public reporting to show what has been done, what remains outstanding, and progress over time.

10.34 In practice, the evidence available is often descriptive (plans, intentions and isolated actions) rather than structured implementation evidence that is explicitly linked to particular recommendations, indicators and outcomes. This limits the ability to build a cumulative, comparable evidence base over time, including through disaggregated data where this is necessary to evidence differential impact.

- 10.35 A practical consequence is that it can be difficult to identify where, and how, Welsh Government is tracking progress against the issues raised by the committees. The link between published delivery plans and measurable follow-through is not always clear, and it can be challenging to assess how learning is being embedded across government, or what difference any action has made.
- 10.36 This matters because, without a visible mechanism to track, coordinate and evidence implementation, it is difficult to demonstrate progress, coordinate action across portfolios, or respond systematically to recurring committee concerns. A mechanism of this kind would support consistent delivery by maintaining a live overview of the issues raised by committees, what action has been taken using devolved levers, what remains outstanding, and how further progress will be evidenced.
- 10.37 In the absence of such a mechanism, action can appear fragmented, intersectional delivery can be inconsistent, action plans can lapse without clear successor arrangements, and accountability is harder to evidence over time.
- 10.38 Welsh Government does not have a human rights action plan that brings together priorities for action from across human rights concerns, similar to Scotland's National Action Plan for Human Rights.<sup>72</sup> The Disabled People's Rights Plan is the only plan that is framed as a human rights action plan. Generally, actions that address committee recommendations are fragmented across different equality focussed plans or in activities across policy areas.

*Theme 7: Wales enabling frameworks are not aligned with human rights*

- 10.39 Welsh Government has developed a rich equality and well-being infrastructure and has taken numerous actions within this which are relevant to CEDAW and CRDP rights. Existing duties, planning and reporting cycles, and equality and

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<sup>72</sup> [Scotland's Second National Human Rights Action Plan](#).

well-being frameworks could, in principle, provide a credible platform for more systematic implementation of international human rights standards within devolved competence: whether these relate to CEDAW and/or the CRDP, or other treaties.

10.40 For example: this is particularly relevant when considering implementation of the sustainable development goals (SDGs) in the Welsh context. UNTB recommendations are often aligned to the SDGs yet it is unclear where some SDGs are being actioned through Welsh enabling frameworks. In this respect, CommEDAW:

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*7. The Committee calls for the realization of de jure (legal) and de facto (substantive) gender equality, in accordance with the provisions of the Convention, throughout the process of implementing the 2030 Agenda for Sustainable Development. The Committee recalls the importance of Goal 5 and of the mainstreaming of the principles of equality and non-discrimination throughout all 17 Goals.<sup>73</sup>*

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10.41 SDG Goal 5 aims to achieve gender equality, and the 2030 Agenda embeds human rights as a fundamental pillar to achieve the SDGs by 2030.<sup>74</sup> The WFA 2015 includes a wellbeing goal of ‘a more equal Wales’, and the WFA 2015 itself seeks to promote sustainable development through the Sustainable Development Principle.<sup>75</sup> Whilst there is no well-being goal that addresses gender equality specifically, the link between the 2030 Agenda and SDGs suggest an opportunity to connect human rights in Wales to well-being goals, including promoting gender equality by taking forward CommEDAW recommendations through the WFA 2015 framework. However, our

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<sup>73</sup> CEDAW/C/GBR/CO/8, [Concluding observations on the eighth periodic report of the United Kingdom of Great Britain and Northern Ireland - Advance unedited version \(2019\)](#).

<sup>74</sup> Committee on Economic Social and Cultural Rights, [The pledge to leave no one behind : \(un.org\)](#) 2019, see Part II. .

<sup>75</sup> Section 2 of the Well-being of Future Generations (Wales) Act 2015.

examination could not establish any visible articulation of the link between human rights and WFA 2015 implementation in policy or planning.

### *Theme 8: Implementation and renewal over time is uneven*

- 10.42 Our review suggests that enabling frameworks are not consistently used to structure a coherent response to committee recommendations, and that continuity over time can be uneven. In particular, strategies and action plans do not always provide a clear and up-to-date implementation picture over time, including where plans expire without clear successor arrangements or where renewal does not visibly connect to the concerns raised by the committees.
- 10.43 For example: Welsh Government sets out how it intends to address systematic gender inequality in the Advancing Gender Equality in Wales Plan<sup>76</sup>. However, the plan expired in 2023 and has not yet been renewed.
- 10.44 This matters because stable, coherent implementation depends not only on individual initiatives, but also on continuity: clear renewal cycles, transparent successor arrangements, and routine opportunities to assess what has been achieved and what remains outstanding.
- 10.45 Where action plans lapse, or where the relationship between plans and treaty standards is not explicit, it becomes harder to evidence progress, sustain focus on recurrent concerns, and maintain accountability over time. This points to a practical route forward: strengthening alignment and continuity may be as important as developing new policy commitments.

### **Summary**

- 10.46 Taken together, these themes suggest that the principal challenge is not a lack of activity, but gaps in transposition, mainstreaming, intersectional operationalisation, and visible implementation infrastructure.

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<sup>76</sup> Welsh Government (2020) [Advancing Gender Equality Action Plan](#).

- 10.47 Our analysis identifies a persistent structural weakness: implementation is not currently systematised around treaty standards. International obligations are rarely operationalised through explicit alignment with Concluding Observations, relevant interpretive guidance, or measurable indicators. Where action is taken that aligns with treaty recommendations, the connection to those standards is often not explicit, which makes implementation difficult to evidence and monitor over time.
- 10.48 The implication is not that Wales lacks activity, but that existing activity is not consistently embedded in a transparent framework capable of showing what UN standards require, what Wales has done, what remains outstanding, and how progress will be monitored. This gap is particularly significant for intersectionality: while intersectionality is routinely acknowledged, there is limited evidence of consistent targeted measures and systematic mechanisms to ensure that specific intersectional concerns remain visible within action frameworks and reporting.
- 10.49 Our findings indicate that Wales has developed important institutional tools capable of supporting the more systematic embedding of international human rights standards. However, while existing frameworks provide a foundation, they lack the coherence, legal force and structured accountability necessary to secure consistent implementation. Strengthening delivery is therefore likely to require both dedicated human rights legislation and a structured mechanism to connect existing frameworks to treaty standards, coordinate action across government, and monitor and report on progress - potentially through a national mechanism, which we explore in our recommendations below.

## 11. RECOMMENDATIONS

### **Recommendation 1: Establish a national mechanism for implementation, reporting and follow-up (NMIRF)**

- 11.1 A central recommendation emerging from our work is the development of a visible cross-government mechanism for implementation, reporting and follow-up in relation to UN treaty obligations within devolved competence. Recommended by UN treaty bodies,<sup>77</sup> NMIRFs are national government structures mandated to coordinate the preparation of reports to, and engage with, international and regional human rights mechanisms; to facilitate national follow-up and implementation of human rights obligations including any recommendations emanating from those mechanisms.
- 11.2 A NMIRF for Wales would address the core gap identified throughout Part 2: the absence of a structured mechanism to translate concluding observations into Welsh policy architecture, coordinate cross-government responses, and track progress over time. Its establishment strengthens coherence across government, improves the quality and timeliness of reporting, and enhances accountability for human rights obligations.
- 11.3 A Welsh NMIRF should perform four functions:<sup>78</sup>
- Mapping and allocation: maintain a live register of Concluding Observations relevant to devolved matters; allocate responsible portfolios; distinguish devolved and reserved elements; identify relevant Welsh enabling frameworks.
  - Implementation planning: translate committee recommendations into actions using devolved levers; set timelines, indicators and responsibilities; identify where competence prevents action and where representations should be made to UK Government.

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<sup>77</sup> See for example [CommsEDAW \(2019\) recommendation 26\(b\)](#).

<sup>78</sup> See: Office of the High Commissioner for Human Rights: [National Mechanisms for Implementation, Reporting and Follow-up](#).

- Monitoring and reporting: publish periodic progress updates; integrate treaty implementation reporting into existing Welsh equality and wellbeing reporting systems; provide a structured evidence base for UK treaty reporting.
- Participation and follow-up: formalise engagement with civil society, NHRIs and representative organisations, including structured opportunities to review progress and identify gaps.

11.4 For effectiveness and sustainability, a NMIRF should:

- Be established through a clear legal or formal mandate to ensure institutional continuity.
- Be positioned at a high level within government to enable cross-ministerial coordination and political authority.
- Include participation from all relevant Ministerial portfolios, supported by designated political and technical focal points.
- Be adequately resourced to maintain institutional memory and manage reporting cycles.
- Operate a structured system for tracking recommendations and monitoring implementation progress.
- Facilitate engagement with national stakeholders, including national human rights institutions and civil society.

11.5 A well-designed NMIRF contributes not only to improved reporting performance but also to the systematic integration of international human rights obligations into national policy and governance processes.

### **Recommendation 2: Strengthen human rights action planning**

11.6 Welsh Government and public authorities in Wales should embed treaty implementation through structured human rights action planning, including:

- Explicit mapping between actions and relevant Concluding Observations.
- Outcome targets and indicators to assess progress.
- Application of human rights impact assessment.

- Monitoring using indicators (including disaggregated data where required).
- Regular reporting on progress against targets and indicators.
- Action plans should include transparent mapping between actions and relevant Concluding Observations, clarifying what each action seeks to address and what evidence will demonstrate progress.

### **Recommendation 3: Embed Human Rights Mainstreaming**

11.7 Mainstreaming is the process of embedding human rights into every aspect of an organisation's work. Rather than treating rights as optional or additional considerations, mainstreaming places human rights at the core of everyday activities. Instead of handling human rights as separate responsibilities, a mainstreaming approach integrates them into how an organisation thinks, plans, and delivers its functions. It recognises that human rights influence all areas of organisational practice. In practical terms, this means ensuring that human rights are built into how:

- Decisions are taken.
- Policies are developed and implemented.
- Services are provided.
- Budgets and resources are allocated.

### **Recommendation 4: Strengthen intersectional implementation**

11.8 When considering intersectional inequalities, action plans should include targeted measures, not just universal commitments. This requires measurable actions that make groups visible in delivery frameworks, not only in problem statements.

### **Recommendation 5: Ensure periodic renewal and continuity of equality action plans**

11.9 Welsh Government should ensure equality action plans do not lapse without replacement, and that successor plans explicitly connect to treaty obligations where relevant.

**Recommendation 6: Build awareness and capacity across government**

- 11.10 Welsh Government should strengthen awareness, understanding and practical capacity across departments through training and guidance on human rights standards, treaty obligations, Concluding Observations, and implementation responsibilities.

## 12. ACCESS TO JUSTICE AND AN EFFECTIVE REMEDY

- 12.1 In this part we focus on access to justice. In the context of our work on incorporation and implementation we see this as a significant area for discussion as effective remedies help ensure that human rights are practical and effective.<sup>79</sup> It is important that any framework of bespoke rights for women and disabled people in Wales includes clear provision for accessible remedies. The right to an effective remedy ensures that individuals whose rights have been violated can seek justice and redress through accessible mechanisms.
- 12.2 As we were asked to examine options and make recommendations in relation to incorporation and implementation, this was the main focus of our Methodology and presentation. This part differs, as we have not been asked to make recommendations. Our approach to Part 3 has been to draw on our collective expertise and experience, and on available literature to develop ideas and suggestions relating to access to justice in Wales, and how this might be strengthened in relation to human rights, including any bespoke human rights introduced through a Human Rights Wales Bill. We do not present these ideas and suggestions as recommendations, rather they are offered as possible ways forward for consideration by the Welsh Government to improve access to justice in Wales.
- 12.3 To ensure access to justice under international human rights law, routes to remedy must be accessible, affordable, timely and effective.<sup>80</sup>

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<sup>79</sup> See e.g. European Court of Human Rights, *Soering v. the United Kingdom*, 7 July 1989, (Application no. [14038/88](#)).

<sup>80</sup> UN General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law: resolution / adopted by the General Assembly, 21 March 2006, A/ RES/60/147 - [Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law | OHCHR](#)

- Accessible - routes to remedy must be transparent, simple, ensure access to legal advice, and ensure the potential for public interest litigation.
- Affordable - routes to remedy should not be excessively costly (where possible they should be free), and legal aid must be available.
- Timely - routes to remedy must ensure no unwarranted delays and incorporate mechanisms to urgently prevent irreparable harm.
- Effective - routes to remedy must generally guarantee the existence of both administrative and judicial procedures, with routes to further challenge.

12.4 Access to justice includes effective access to legal and other processes that result in effective outcomes. Both processes and outcomes are important.

### **A Multi-Institutional Approach and SAEHR**

12.5 The SAEHR sets out a multi-institutional approach to access to justice.<sup>81</sup> This includes: access to judicial remedies; mechanisms to ensure high quality 'right first time' initial decisions; provision of several routes to redress and accountability; access to justice including through advocacy, legal aid funded advice; and public awareness and legal education. We believe that a multi-institutional approach is required to ensure access to justice and that the right to an effective remedy is operationalised. The SAEHR noted that whilst courts are a key venue for accountability, this may also be achieved in a complementary way through other aspects of the 'administrative justice system' in Wales.<sup>82</sup> This focuses not only on legal correctness, but also on the fairness of public policy decisions, the procedures adopted, and the opportunities to seek various forms of redress.

12.6 The SAEHR makes 14 recommendations under the heading 'Accountability and Enforcement'.<sup>83</sup> We support the continued implementation of these

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<sup>81</sup> Particularly discussed in Chapter 9 on accountability and enforcement, but also in chapters on the implementation gap, monitoring and raising awareness.

<sup>82</sup> See e.g. SAEHR Fn 1 paragraph 9.6 to 9.14.

<sup>83</sup> Ibid, Recommendations 25 to 33.

recommendations. This section of our report outlines some key access to justice matters that could be addressed as part of developing a legislative framework of bespoke rights setting out clear guarantees for women and disabled people in areas of policy and service delivery devolved to Wales (or in relation to other human rights that may be added to the Welsh legal framework in the future).

## **Enforcement and Remedies**

12.7 Remedies can only be effective if the obligations imposed on duty-bearers are sufficiently clear. The courts have found some aspects of duties under Welsh public law to be expressed in language that lacks clarity to be judicially enforced.<sup>84</sup> The bespoke approach we recommend has potential to address these types of concerns. In our view, to ensure maximal respect for human rights there needs to be judicial enforcement. Whilst Welsh Government Drafting guidance notes that judicial review may sometimes be ‘sufficient’ and that creating new appeal rights has ‘wider impacts on the justice system’,<sup>85</sup> we believe that an express approach to judicial remedies on the face of the legislation is beneficial for those seeking access to justice (see for example, ‘proceedings’ under section 7 and ‘judicial remedies’ under section 8 of the HRA 1998). Whilst we believe that Welsh legislation can create appeal rights, we acknowledge that there are reservations around the jurisdictions and procedures of the courts and non-devolved tribunals.

## **Judicial Review**

12.8 Our understanding is that there are significant barriers for individuals seeking to enforce their rights through judicial review. In Wales, the number of

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<sup>84</sup> Lord Thomas of Cwmgiedd, ‘[Thinking Policy through before Legislating: Aspirational Legislation](#)’, Statute Law Society, The Lord Renton Lecture, Institute of Advanced Legal Studies, 21 Nov. 2019; and Lord Thomas of Cwmgiedd, HL Deb 25 June 2021, vol. 813, col. 479. See also Commission on Justice in Wales, paragraph 12.21.

<sup>85</sup> Welsh Government, (May 2022), [The future of Welsh law: Common legislative Solutions: a guide to tackling recurring policy issues in legislation](#).

substantive judicial review judgments is small (especially when compared to other UK jurisdictions), and success at the permission stage has been consistently lower in the Administrative Court in Cardiff than the average for the Administrative Court as a whole.<sup>86</sup> Practitioners have expressed concerns that this is related to a lack of judicial expertise as concerns Welsh public administrative law,<sup>87</sup> perhaps indicative of some of the challenges of the many ‘justice’ reservations in the GoWA 2006. However, barriers to judicial review start before the court process.<sup>88</sup> Access to justice journeys involve obstacles including limited awareness of human rights and more general lack of ‘legal consciousness’ and ‘legal capabilities’.<sup>89</sup> The impact of major cuts to legal aid funded advice has been disproportionately felt in Wales as compared to England.<sup>90</sup> Judicial review is too expensive for most ordinary people.<sup>91</sup> The judicial review procedure has also grown more complex and limited over time.<sup>92</sup>

- 12.9 We believe that legislating for bespoke Welsh rights should include a clear route to judicial enforcement of human rights duties. We feel that this should be express rather than through an implied ‘back stop’ of judicial review. If it is felt that judicial review (in the Administrative Court in Wales) is the appropriate means of judicial enforcement, this should be set out clearly within the primary legislation, including timescales, standing, and remedies (as is done in the

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<sup>86</sup> As determined by analysing data from the [Civil Justice Statistics Quarterly](#).

<sup>87</sup> Nason, S. and Edwards, L. [Reviewing Judicial Review in Wales](#) (Bangor University / British Academy 2021); Katie Boyle et. al, [Access to Social Justice: Effective Remedies for Social Rights](#) (Bristol University Press 2025) Welsh case-study section.

<sup>88</sup> See e.g: Boyle, K., [‘The access to justice journey’](#) (Nuffield Foundation 2022); and Aidan Flegg and Katie Boyle, [‘The UK’s unmet legal needs: a comparative study of legal aid and the social rights gap’](#) (Nuffield Foundation 2022).

<sup>89</sup> See e.g: Pleasence, P. and Balmer, N. J. ‘Justice & the Capability to Function in Society’ (2019) 148(1) *Daedalus* 140; and the England and Wales Legal Services Board approach to ‘legal capabilities’, [Reshaping legal Services to Meet People’s Needs: An Analysis of Legal Capability](#) (Legal Services Board 2020).

<sup>90</sup> See e.g. Commission on Justice in Wales, Chapter 3: Part 2: ‘Legal aid and advice for civil, family and other problems’ and the [Law Society’s work on legal aid deserts](#).

<sup>91</sup> See e.g. Hickman, T., [‘Public Law’s Disgrace’](#), U.K. Const. L. Blog (9th Feb 2017).

<sup>92</sup> Particularly with procedural and remedial reforms introduced under the Criminal Justice and Courts Act 2015 and Judicial Review and Courts Act 2022.

HRA 1998, Senior Courts Act 1981 and Tribunals, Courts and Enforcement Act 2007).

### *The reservation of 'judicial review of administrative action'*

12.10 Welsh legislation could expressly set out what the appropriate 'proceedings' and 'remedies' would be in relation to alleged breaches of bespoke Welsh human rights. However, this would need to be within the limitations of the reservation, 'judicial review of administrative action' (Schedule 7A paragraph 8(1)(f)). For example, if the relevant proceedings are to be judicial review proceedings, the timescales, standing requirements, and remedies, would need to be the same as those set out in the Senior Courts Act 1981 and/or HRA 1998 and/or Tribunals Courts and Enforcement Act 2007, as appropriate. This can be compared with the current Scottish thinking which is looking to improve access to effective remedies by enacting longer time limits, broader standing requirements, and a wider suite of remedies (extending to structural remedies), which is highly likely to be beyond Welsh competence.<sup>93</sup>

## **Other Judicial Enforcement Options**

12.11 As judicial review may be a challenge for many who seek access to justice, we have given consideration to other possible routes to a remedy.

### *A right of appeal to a court or courts*

12.12 A potentially stronger approach than judicial review would be to create a right of appeal against a breach of a duty to comply with bespoke Welsh human rights. Welsh Government drafting guidance acknowledges the power to

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<sup>93</sup> See Scottish Government, [A Human Rights Bill for Scotland: Discussion Paper](#) (2025), paragraphs 2.6.1 to 2.6.3. The Scottish approach also goes further and proposes to address some concerns about judicial deference in the realm of economic and social rights, by legislating for a standard of judicial review to be applied by the courts. Specifically, 'proportionality' as opposed to the more deferential irrationality (Wednesbury unreasonableness) standard. This is highly likely to be beyond Welsh legislative competence. See also paragraph 2.6.4 of the same document.

legislate for new appeal rights and that appeals may cover a wider range of grounds than can be raised in judicial review proceedings.<sup>94</sup> Creating an appeal right raises the potential for a more intensive and structured approach to legal review by the courts and/or tribunals. It would also leave it open to the bespoke Welsh rights legislation to specify matters such as time limits, standing requirements, and remedies, that could potentially be different to those that apply under the England and Wales laws on judicial review. The right of appeal need not necessarily be to the High Court (Administrative Court in Wales); it could be to the County Courts, creating a more accessible appeal right. The question of additional training for County court judges, which would require resources, would need to be addressed. There is precedent: as County Courts already determine human rights matters where they arise in relation to causes of action (a common example being a potential breach of Article 8 ECHR being argued in a housing possession claim).

### *A right of appeal to a Devolved Welsh Tribunal*

12.13 An option would be to create a right of appeal to the Devolved Welsh Tribunals. The White Paper on *A New Tribunals System for Wales*,<sup>95</sup> proposes the ‘guiding principle that disputes deriving from Welsh law should ... be heard in a Welsh judicial institution, unless there are circumstances that dictate otherwise’.<sup>96</sup> This follows a similar recommendation of the Commission on Justice in Wales.<sup>97</sup> This option would bring accountability for bespoke Welsh human rights closer to the people of Wales through determination in a Welsh

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<sup>94</sup> Welsh Government, [The future of Welsh law: Common legislative Solutions: a guide to tackling recurring policy issues in legislation](#) (May 2022), at p.91.

<sup>95</sup> Welsh Government, [A New Tribunal System for Wales: White Paper](#) (June 2023).

<sup>96</sup> Ibid, paragraph 72.

<sup>97</sup> [Commission on Justice in Wales](#), Recommendation 27: ‘The Welsh Tribunals Unit should have structural independence, and the Welsh tribunals should be used for dispute resolution relating to future Welsh legislation’. The Commission stated that: ‘Welsh tribunals should be used for dispute resolution relating to future Welsh legislation. There has been a tendency in the legislation passed by the Assembly for it to specify that dispute resolution should take place in the County Court or in the non-devolved courts and tribunals. We regard this as anomalous when specialist Welsh tribunals exist that have the competence and capability to determine disputes’ (paragraph 6.59.2.)

judicial institution and could mitigate some of the concerns identified above in relation to the limited accessibility of judicial review.<sup>98</sup>

### *Judicial remedies*

12.14 Current judicial remedies available for human rights breaches in the law of England and Wales are limited, including quashing orders, declarations, and damages (in limited circumstances). Consideration could be given to a broader range of remedies aligned to international human rights law principles with respect to social rights especially. This includes, for example, restitution (placing the right holder back in the position they were before the rights breach); equilibration (ensuring ongoing compliance with the right); and non-repetition (ensuring the human rights breach is not repeated).<sup>99</sup> Bespoke Welsh human rights legislation may not be able to provide significant additional remedial powers to courts and tribunals (given the reservations of ‘judicial review of administrative action’ and the reservation of most courts and tribunals). But in our assessment, it seems likely that bespoke Welsh human rights legislation could at least be drafted so as to encourage more systematic use of existing remedies and could provide additional remedial powers to the Devolved Welsh Tribunals.<sup>100</sup>

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<sup>98</sup> There would be matters to consider around judicial expertise, and which ‘chamber’ of the new tribunals structure would hear such claims at first instance. This could involve the creation of a new chamber, with both the Law Commission and Welsh Government having proposed that new chambers could be created within the First-tier Tribunal for Wales and in the Appeal Tribunal for Wales, based on growing justice needs and the expansion in devolved law. See e.g., Law Commission, *Devolved Tribunals in Wales Report* (Law Com 403, 2021).

<sup>99</sup> See e.g. Guarav Mukherjee, ‘[Effective remedies and structural orders for social rights violations](#)’ (Nuffield Foundation 2022).

<sup>100</sup> Since tribunals are generally closer to the areas of public policy over which they adjudicate, they may be better placed to issue effective structural remedies. See e.g. Stephen Thomson, Matthew Groves and Greg Weeks (eds), *Administrative Tribunals in the Common Law World* (Bloomsbury 2024).

## Other Bodies in the Welsh Administrative Justice System

- 12.15 The SAEHR findings and recommendations seek to ensure that compliance with incorporated human rights obligations is largely inseparable from the everyday issues dealt with by administrative justice bodies. Recommendations were made to strengthen the integration of equality and human rights considerations into the work of administrative justice bodies in Wales, including regulators and inspectorates as well as the Public Services Ombudsman for Wales (PSOW) and the Welsh Commissioners (Children's Commissioner for Wales, Older People's Commissioner for Wales, Welsh Language Commissioner and Future Generations Commissioner). The current Scottish thinking goes somewhat further, seeking to impose a 'human rights oversight duty' on relevant oversight bodies.<sup>101</sup> This approach could be taken in relation to legislation setting out bespoke Welsh human rights.
- 12.16 An oversight duty should be designed in a way that provides appropriate flexibility and discretion to administrative justice bodies as to how exactly it would be exercised. An oversight duty itself would be mandatory, but the legislation need not mandate a particular approach to compliance (Welsh Government could issue additional guidance on meeting the duty). The duty would be placed on oversight bodies with strategic responsibilities, enabling them to focus on the bespoke Welsh human rights most relevant to their areas of expertise, and in line with their other statutory responsibilities. Oversight bodies could target the oversight duty in the most appropriate and proportionate way.<sup>102</sup>
- 12.17 The SAEHR distinguished between 'upstream' oversight roles of administrative justice bodies (supporting and promoting good practice in policy development, including through audit and inspection) and 'downstream' oversight (in terms of administrative justice bodies that can receive complaints directly from the public and/or can conduct casework).<sup>103</sup> The duty to oversee

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<sup>101</sup> See Scottish Government, [Human Rights Bill for Scotland: Discussion Paper](#), paragraph 2.8.1.

<sup>102</sup> The current Scottish thinking provides examples of what approaches could be taken, distinguishing, for example, between oversight/administrative justice bodies and their various powers of 'accountability' and 'support'. See *Ibid.* p.42.

<sup>103</sup> See the [SAEHR report](#), paragraphs 9.10-9.11.

bespoke Welsh human rights upstream could involve making recommendations to the bodies overseen in terms of how they can improve their rights compliance, making suggestions about how rights can be built into daily decision-making, making suggestions about how overseen bodies can build rights into their complaints processes.

12.18 The downstream element of the duty to oversee bespoke Welsh human rights could include assessing whether overseen bodies have complied with their duties, whether they are at risk of not complying with duties, making determinations on breach, and issuing remedies.<sup>104</sup> The SAEHR noted that Welsh audit, inspection and regulatory bodies could have a more explicit role in relation to accountability for equality and human rights.<sup>105</sup> We propose that this could be through an express bespoke Welsh human rights oversight duty, the exact form of which would depend on the rights included and their framing.

### *Public Services Ombudsman for Wales (PSOW)*

12.19 The PSOW has powers in relation to administrative justice in Wales, including 'own initiative' powers of investigation in circumstances where evidence suggests there may be systematic service failure or maladministration.<sup>106</sup> One way for the PSOW to implement a bespoke Welsh human rights oversight duty could be to include examination of potential breaches of such rights within its own initiative investigations. In our view, the PSOW likely already has the powers to do this,<sup>107</sup> though it is worth considering whether such

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<sup>104</sup> The Scottish approach seeks to distinguish between 'escalated complaints bodies' as those which would regularly deal with the substance of complaints against proposed human rights duty-bearers, and 'scrutiny bodies' that look more holistically at the policies/practices of duty-bearers and can make some recommendations to improve policies and practices. Scottish Discussion Paper, section 2.8.

<sup>105</sup> See the [SAEHR report](#) Recommendation 33.

<sup>106</sup> The PSOW also publishes an annual [Equality and Human Rights Casebook](#) including cases received by it where equality and human rights are the primary focus of a complaint.

<sup>107</sup> For example, both of the PSOW's own initiative investigations so far conducted involved considerations of human rights incorporated under the HRA 1998, as well as Equality 2010 provisions where relevant, and duties to have 'due regard' to international human rights under Welsh law such as the Social Services and Well-being (Wales) Act 2014. PSOW, *Homelessness Reviewed: an open door to positive change* (2021): <https://www.ombudsman.wales/wp->

powers should be expressly stated, including for the avoidance of doubt, in legislation setting out bespoke Welsh human rights. This would follow our generally recommended approach that, where possible, routes to remedies and other forms of oversight, should be expressly stated in legislation rather than implied. Legislative amendments could further streamline the process required for the PSOW to launch an own initiative investigation and enable the office to issue sector-wide statutory recommendations following an investigation.<sup>108</sup> Other process reforms could potentially be achieved to streamline investigations without the need for legislative amendments, to support the right to an effective remedy for alleged human rights breaches.<sup>109</sup>

12.20 Since the SAEHR, the PSOW has also established a statutory Complaints Standards Authority which aims to work with public bodies within the PSOW's jurisdiction to support effective complaints handling, collect and publish data, and deliver training. In relation to the bespoke Welsh human rights protected in legislation, the PSOW could seek to update model complaints handling standards and procedures to reflect any new obligations imposed on public bodies in Wales to comply with these rights.

12.21 Access to an effective remedy could also be improved by removing the statutory bar preventing the PSOW from considering a complaint when it could be considered by the courts.<sup>110</sup> Removing the bar has been supported

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[content/uploads/2021/10/Homelessness-Reviewed-an-open-door-to-positive-change.pdf](https://www.ombudsman.wales/wp-content/uploads/2021/10/Homelessness-Reviewed-an-open-door-to-positive-change.pdf) and PSOW, *Are we caring for our carers? An Own Initiative investigation into the administration of carers' needs assessments in Wales* (2024): <https://www.ombudsman.wales/wp-content/uploads/2024/10/Are-we-caring-for-our-carers-An-Own-Initiative-investigation-into-the-administration-of-carers-needs-assessments-in-Wales.pdf>

<sup>108</sup> See the PSOW's [response](#) to a recent Senedd Finance Committee consultation on its powers.

<sup>109</sup> The Senedd Finance Committee recommended that the PSOW reviews its processes for undertaking own initiative investigations to see if these could be more streamlined and agile: Welsh Parliament, *Finance Committee, Post-legislative review of the Public Services Ombudsman (Wales) Act 2019* (October 2025).

<sup>110</sup> Under the current statutory bar, even where the PSOW decides the complaint has merit and meets the threshold for investigation, the office must usually decline to accept a case for investigation if it appears that the complainant has, or had, a legal remedy available to them. Public Services Ombudsman (Wales) Act 2019, section 13.

by the England and Wales Law Commission.<sup>111</sup> The Commission on Justice in Wales recommended that the Administrative Court should have the power to stay court proceedings whilst the PSOW investigates a complaint and that the PSOW should have the power to refer a point of law to the courts.<sup>112</sup> These recommendations seek to improve ‘interoperability’ between courts and ombuds in the interests of providing effective remedies. The UK Ministry of Justice has indicated its support for these recommendations, which it considers could be implemented by Welsh Government submitting a rule change application to the Civil Procedure Rules Committee, with Ministry of Justice support.<sup>113</sup>

### *The Welsh Commissioners*

12.22 Each of the Welsh commissioners has different powers, and different routes to accountability. A first step to enhancing the role of the commissioners with respect to bespoke Welsh human rights could be the imposition of the ‘oversight duty’ explained above, where each would apply a further bespoke human rights lens to their oversight duties. They would focus on the bespoke Welsh human rights most relevant to their areas of expertise, and in line with their other statutory responsibilities. The commissioners could target the oversight duty in the most appropriate and proportionate way.

12.23 A dedicated Disabled People’s Commissioner for Wales has been proposed,<sup>114</sup> and we note that there is a strong case for such a commissioner to ensure that disabled people do not fall through any gaps in existing rights advocacy and accountability. We note, Welsh Government appears to have

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<sup>111</sup> Law Commission, *Public Services Ombudsmen* (Law Com 329, 2011) see recommendations 3, 4 and 7 in particular. Senedd Committees have raised some concerns as to whether removal of the statutory bar would be within legislative competence, although Welsh Government [has indicated](#) that no discussions have taken place with UK Government on the devolution issues raised.

<sup>112</sup> [Commission on Justice in Wales](#), Recommendation 26.

<sup>113</sup> In a letter to the Senedd’s Legislation, Justice and Constitution Committee in 2023, the UK Government’s Parliamentary Under-Secretary of State for Justice, Lord Bellamy, [confirmed](#) the UK Government’s support for this recommendation by way of a change to the Civil Procedure Rules.

<sup>114</sup> See e.g., [Recommendations of the Disability Rights Taskforce](#) (15 May 2025).

implicitly rejected the creation of a new commissioner.<sup>115</sup> Our proposed human rights ‘oversight duty’ on administrative justice bodies in Wales, including existing commissioners, would go some way to ensuring accountability for compliance with bespoke Welsh rights of disabled persons by relevant duty-bearers, however, we still consider there is a strong case for establishing a Disabled People’s Rights Commissioner. Given Welsh Government’s expressed commitment to incorporation of CRDP rights, and the growing proportion of young people living with a disability, the existing accountability bodies alone may not be sufficient to ensure the right to an effective remedy.

## Co-ordination of Redress

12.24 Gaps, overlaps, and complexities within the administrative justice landscape as concerns accountability for human rights, and any new legislation for bespoke Welsh human rights, must continue to be addressed.<sup>116</sup> The SAEHR research drew attention to the difficulties for individuals seeking to navigate the administrative justice system and highlighted recommendations for co-ordination and oversight made by the Commission on Justice in Wales.<sup>117</sup> The Commission on Justice in Wales found a lack of information and much misunderstanding about Alternative Dispute Resolution (ADR) in Wales, that little is done to promote it, and that the lack of proper coordination between courts, tribunals and providers of ADR needs to be resolved.<sup>118</sup>

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<sup>115</sup> As its [Disabled People’s Rights Plan 2025 to 2035](#) focuses on enhancing accountability through existing institutions (such as the EHRC, Older People’s Commissioner for Wales, and various inspectorates) and through creating an External Advisory Board to monitor and evaluate progress against the Plan.

<sup>116</sup> See e.g., earlier recommendations of the Committee for Administrative Justice and Tribunals in Wales, [Administrative Justice A Cornerstone of Social Justice in Wales Reform priorities for the Fifth Assembly](#) (2016); [Commission on Justice in Wales](#), Chapter 6 on ‘Administrative justice and coroners’.

<sup>117</sup> The [Commission on Justice in Wales](#) noted that: ‘The system of administrative justice is undoubtedly difficult for individuals to understand and use. The complex relationship between the courts, tribunals and other means of redress is the result of piecemeal historical development... As a short term measure there is a need for better coordination in relation to administrative justice so that the public have a clear understanding on where to go to have their disputes resolved’. (paragraph 6.60).

<sup>118</sup> [Commission on Justice in Wales](#), paragraphs 5.53-5.55.

12.25 At the instigation of the Law Council of Wales the Dispute Resolution Centre Wales (DRC Wales) was set up.<sup>119</sup> DRC Wales is committed to the promotion and co-ordination of ADR throughout Wales. DRC Wales is made up of volunteers with wide ranging expertise, but time is given on a voluntary basis, and there is, at present, no longer-term source of sustainable funding. DRC Wales has developed a Wales Dispute Resolution Pledge (WDRP) aimed at promoting and encouraging diversity and awareness of constructive approaches to dispute resolution in Wales. The WDRP includes that public bodies approach dispute avoidance, the management of potential disputes, and dispute resolution, with respect for human rights, equality, restorative justice principles, and in accordance with the sustainable development principle and Five Ways of Working under the WFA 2015 (namely: long-term, prevention, integration, collaboration and involvement). Welsh Government could endorse the WDRP to show its commitment to effective, proportionate and human rights respecting dispute resolution.

### *Imposing coordination*

12.26 Potentially, concerns over gaps and overlaps could be addressed by imposing a new duty to collaborate on administrative justice bodies in Wales when they are exercising oversight functions under bespoke Welsh human rights law.<sup>120</sup> There are already precedents for collaboration in Wales. For example, if it appears to the PSOW that there is a matter which the office is entitled to investigate, and that matter could also be investigated by another specified person, the PSOW must generally inform and consult that person, and may co-operate on the matter (extending to joint investigations and reports). Specific persons include the Welsh commissioners.<sup>121</sup>

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<sup>119</sup> See [this](#) launch piece on Legal News Wales.

<sup>120</sup> The current Scottish thinking on human rights incorporation proposes to confer a power on statutorily listed oversight bodies to collaborate in the exercise of their human rights oversight duty, as well as a statutory power to collaborate with such other bodies as each body considers appropriate. [Scottish Discussion Paper](#), paragraph 2.8.3.

<sup>121</sup> PSOW Act 2019, section 66 and see also section 67 on Working collaboratively with Commissioners.

12.27 In addition to statutory consultation duties, memoranda of understanding between Welsh devolved administrative justice/oversight bodies could be updated to make specific reference to coordination and collaboration around the proposed duty to oversee compliance with bespoke Welsh human rights.<sup>122</sup> Reporting on the human rights oversight duty could be aligned with existing reporting duties.

## Advocacy

12.28 The different possible meanings of *advocacy* and its centrality to access to justice and the right to an effective remedy are discussed in the SAEHR, with a key recommendation that Welsh Government should prioritise support, including funding, for advocacy and advice services in Wales and examine ways to increase advice and advocacy services to disadvantaged and discriminated against communities.<sup>123</sup> In some contexts, provision for advocacy is made in statute. For example, under the SSWBA 2014.

12.29 However, there are gaps in statutory provision for advocacy, especially where it is not required by legislation.<sup>124</sup> LOWG considers there is a continued need to properly fund existing advocacy services, and to improve training and awareness of such services across public bodies in Wales. We also propose that consideration should be given to the inclusion of a statutory right to independent advocacy in appropriate circumstances to be expressly included in a bill legislating for bespoke Welsh human rights.<sup>125</sup>

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<sup>122</sup> The [central memorandum between the PSOW and four Welsh Commissioners](#) already expressly references human rights: “The overarching aim of our five bodies is to contribute to the development of excellent and sustainable public services in Wales that respect and promote the human rights of citizens in Wales and are sensitive to the needs of the most disadvantaged and vulnerable members of society”.

<sup>123</sup> [SAEHR report](#) Recommendation 27.

<sup>124</sup> *Ibid*, paragraph 9.18.

<sup>125</sup> The Human Rights Consortium Scotland and the Scottish Independent Advocacy Alliance have jointly proposed a more general right to independent advocacy should be included within a Scottish Human Rights Bill. Scottish Independent Advocacy Alliance, [Independent Advocacy and the Human Rights Bill](#) (January 2023).

## Advice and Legal Aid

- 12.30 It is clear from the SAEHR,<sup>126</sup> and other research and evidence,<sup>127</sup> that people in Wales are being let down as concerns access to legal aid funded advice. Legal aid is a reserved matter (Schedule 7A, paragraph 166). Given this limitation, LOWG has discussed the development of the Single Advice Fund for Wales, and the prospects for coordination, raising awareness, and sharing good practice through the National Advice Network Wales (NAN) and related Regional Advice Networks (RANs). There is considerable scope for raising awareness of bespoke Welsh human rights and the need to ensure that appropriate, accessible advice is available, through the NAN and RANs. Access to early advice can be most successful when advice is embedded in day-to-day community settings across a range of informal local and more formal advice providers.<sup>128</sup>
- 12.31 As with advocacy, a further consideration for legislation on bespoke Welsh human rights, is whether (and how) legislation might also include a statutory right to advice on the face of the bill.
- 12.32 A distinction could be made between social welfare rights advice (which can be provided by organisations such as Citizens Advice, and local council welfare rights advisors), and legal aid funded legal advice. In our view, Wales likely has competence to introduce a statutory duty to provide social welfare advice.<sup>129</sup> This could build on the work of the NAN and RANs and could involve developing and funding a statutory advice network for Wales. Such a duty could have significant impacts on access to justice and effective remedies, especially for social and economic rights violations.

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<sup>126</sup> Especially in chapter 9 on Accountability and enforcement.

<sup>127</sup> See e.g., [evidence to the UK Parliament Justice Committee](#), Inquiry into Access to Justice and [Commission on Justice in Wales](#), Chapter 3, 'Information, advice and assistance'.

<sup>128</sup> See e.g., S. Nason et. al, [The role of communities and connections in social welfare legal advice](#), (2024).

<sup>129</sup> The National Association of Welfare Rights Advisers (NAWRA) (a membership-based organisation for social welfare advice providers across the UK) [has launched](#) a campaign calling on all UK governments to introduce such a statutory duty.

## Legal Education and Public Legal Education

12.33 The SAEHR made several key recommendations to improve legal education and training around equality and human rights, and broader public legal education.<sup>130</sup> Education and awareness in relation to Welsh law is an area where the Law Council for Wales has made recent contributions. The Law Council's Working Group on Education and Training continues to consider the curriculum for Welsh law at university, and public and professional understanding of Welsh law. A Law Council Working Group has produced recommendations for the improved teaching of the law uniquely applicable to Wales, to which bespoke Welsh human rights could be added. In our view, there should be an extensive public information campaign around the introduction of bespoke Welsh human rights into law, which could be supported by administrative justice bodies in Wales, and by the NAN and RANs.

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<sup>130</sup> [SAEHR report](#), Chapter 10, Raising Awareness.

## 13. PART 4: FUTURE ACTION

- 13.1 We recognise that our recommendation for a Human Rights Bill will require further action to develop rights. We also note that any work to develop legislation to enshrine women's rights, and disabled people's rights in Welsh law will provide an opportunity to consider other actions which might complement any future enactment. We have identified several areas for possible future action.
- 13.2 As for Part 3, our approach to Part 4 has been to draw on our collective expertise and experience, and on available literature to develop ideas and suggestions for future actions which might complement Wales-only legislation to strengthen human rights. We do not present these ideas and suggestions as recommendations, rather they are offered as possible ways forward for consideration by the Welsh Government to strengthen human rights in Wales.

### **Reform of the devolution settlement**

- 13.3 It has been noted several times in this report that the current devolution settlement places limitations on Senedd legislative competence to directly incorporate CEDAW or the CRDP. Whilst we feel strongly that our recommended bespoke approach to develop a Human Rights Bill would be a positive and progressive step forward for Wales, we nonetheless see the limitations on devolved competence in areas which engage human rights as a brake on the ambition to move toward stronger and more comprehensive legal protection of rights. The EO reservation in particular is a challenge to future progress on embedding rights which address historical and continuing forms of discrimination not only in relation to treaties which Wales may wish to incorporate (CEDAW and the CRDP as discussed in this report and possibly the [Convention on the Elimination of All Forms of Racial Discrimination](#) (CERD)), but also in relation to rights or actions which may be deemed desirable for a bespoke Human Rights Bill (although we see greater scope to navigate around the EO reservation through the bespoke approach to incorporation). In our view, the EO reservation, but also other reservations

place limits (and uncertain limits), on provisions that may be enacted by the Senedd to give legal effect to human rights and to require action to promote and implement rights.

- 13.4 With the above in mind and having regard solely to the objective of furthering human rights in Wales, we feel it would be desirable to enlarge the powers of the Senedd, in particular in relation to equality and non-discrimination but also in other discrete areas (e.g. work and employment rights, social security, the justice system, and aspects of participation in public life). Whilst the nature of CEDAW and the CRDP meant our focus for this report was often on actions and outcomes relating to socioeconomic rights (which feature heavily in those treaties), we have also noted in the course of our work the potential of reservations and restrictions to block or impede any progress a future Welsh Government might wish to make on protecting or realising civil and political rights in Wales (especially in relation to the criminal law, the justice system, asylum, and rights and freedoms set out in the HRA 1998). Once again, if progress is to be made on civil and political rights in Wales attention would need to be given to possible reform of the devolution settlement to enable this to happen in select areas.

### **Going further to incorporate other treaties**

- 13.5 LOWG was asked to consider options for incorporation of international human rights, and as explained above, our focus necessarily narrowed to incorporation of CEDAW and the CRDP. Our recommendations therefore reflect our findings in relation to CEDAW and the CRDP. However, in the course of our work we were conscious, on many occasions, that our work on CEDAW and the CRDP might be relevant to other treaties. We see potential to apply our Methodology (Part 1) to assess the scope to incorporate CERD in Wales, either directly or adopting a bespoke approach; and to examine the possibility of developing bespoke rights to reflect the UN Principles for Older Persons.
- 13.6 We also see potential to undertake work to assess the potential to incorporate or develop bespoke rights which are of general application, to underpin

human rights protections for everyone in Wales, drawing in particular on the guarantees set out in ICESCR. Our understanding of ICESCR is that it is not expressly geared toward tackling specific instances of historical and ongoing discrimination against identified groups - as are CEDAW and the CRDP. With this in mind we see less risk that the EO reservation would apply generally to ICESCR (as we found to be the case for CEDAW and CRDP), and therefore greater opportunity for incorporation of the text (articles) of ICESCR directly into Welsh law. This would need to be confirmed by application of our methodology in Part 1 to assess the individual articles of ICESCR, but at this time we see no reason why a number of its articles might not be capable of direct incorporation using Senedd legislative competence. For example, Article 11(1) of ICESCR, the right to an adequate standard of living, including the right to adequate food, clothing and housing.

- 13.7 We also take the view that our approach could be used to examine how to give stronger effect to children's rights, drawing on the CRC. However, we note that the children of Wales have already achieved great success in securing indirect incorporation of the CRC under the Child Rights Measure. Research on the Child Rights Measure has noted that a primary concern of stakeholders is to enhance accountability through court-based enforcement.<sup>131</sup> With this in mind, we see potential to examine options to identify articles from the CRC which are currently indirectly incorporated by the Child Rights Measure that may be made subject to the compliance duty we propose for any future Human Rights Bill. An additional future action on children's rights might be to enlarge the coverage of the Child Rights Measure (or any future compliance duty) to all public authorities in Wales.

### **Establishing minimum standards and monitoring**

- 13.8 The introduction of a Human Rights Bill could, and in our view should be accompanied by the development of indicators to measure compliance against any agreed minimum standards but also progress toward more

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<sup>131</sup> O'Neil, S. and Hoffman, S., [\*The Impact of Legal Integration of the UN Convention on the Rights of the Child in Wales\*](#), EHCR, 2018.

ambitious standards (progressive realisation), and to embed human rights as outcome targets. This could make use of (as appropriate) indicators set out in the EHRC Measurement Framework for Equality and Human Rights.<sup>132</sup> The participatory process to develop bespoke rights could be extended to inform national minimum standards for action and delivery, taking into account already existing international standards.

- 13.9 In addition, the SAEHR provides comprehensive recommendations on human rights monitoring, including on intersectionality, all of which would be relevant to future actions to monitor progress on rights enshrined in a Human Rights Act for Wales.

### **Guidance, a human rights scheme, a human rights approach**

- 13.10 To support understanding and implementation of any future enshrined human rights a Human Rights Bill could include a requirement on the Welsh government to provide guidance, and to establish a Human Rights Scheme. Guidance would support public authorities to discharge their responsibilities under any enactment, and a Scheme would provide clarity as to how the Welsh Government itself would give effect to its obligations for enacted rights. Guidance could include a Human Rights Approach to service delivery for public authorities (drawing on already available guidance on a Children's Rights Approach and an Older People's Rights Approach developed by the respective commissioners in Wales).
- 13.11 The SAEHR provides comprehensive recommendations on human rights planning, guidance, monitoring and leadership, all of which would be relevant to future actions to progress and implement rights enshrined in Welsh legislation. We note that with the support of HRAG, the Welsh Government is already taking action to move forward with many of the SAEHR recommendations in this area, and we see no reason why this work should not continue, as complementary to any future human rights enactment.

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<sup>132</sup> Equality and Human Rights Commission, [Measurement framework for equality and human rights](#).

## Strengthening institutions: A Human Rights Commission

- 13.12 In our discussion of the Welsh Commissioners in Part 3 we noted that each of the Welsh commissioners has different powers, and different routes to accountability. Our suggestions to enhance the role of the Welsh commissioners with respect to bespoke Welsh human rights has potential to strengthen the institutional architecture to support human rights in Wales.
- 13.13 Another step forward for Wales might be a dedicated Human Rights Commission. In our view, if Wales introduces its own human rights legislation a logical next step would be to authorise a commission to monitor and support implementation, and enforce compliance in relation to human rights embedded in Welsh law. Under current arrangements, these responsibilities would fall to the EHRC, which is a UK-wide institution. However, in our view, Wales is developing a unique Wales-only human rights framework, which should be accompanied by appropriate Wales-only institutions to monitor and support implementation and enforce (within appropriate limits) Welsh human rights law. A possibility might be a separate Welsh commission to promote and enforce human rights in Wales. In this respect Scotland provides a helpful comparator. Scotland has an independent Human Rights Commission to “promote awareness, understanding and respect for all human rights to everyone, everywhere in Scotland, and to encourage best practice in relation to human rights.”<sup>133</sup> The EHRC shares its human rights remit in Scotland with the Scottish Commission.<sup>134</sup> We see scope to pursue a similar arrangement for Wales.

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<sup>133</sup> Generally, see the [Scottish Human Rights Commission website here](#).

<sup>134</sup> Generally, see the [EHRC’s Scotland page](#).