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They are both presently working on an Economic and Social Research Council (ESRC) funded project 'Social Capital and the Participation of Marginalized Groups in Government' (Project No. R000239410)

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# Foreword

It gives me great personal pleasure to introduce this report **An Absolute Duty**. It focuses on the effects so far of the clause in the Government of Wales Act that requires the National Assembly for Wales to have "due regard to the principle that there should be equality of opportunity for all people". This is the first published analysis of the impact of this unique legal duty. The scope and potential of the legislation is outlined, its impact so far examined and recommendations are made for increasing its effectiveness. The report also concludes that a duty along these lines could usefully be extended to the rest of the UK.

It is clear that the clause, and the use that Assembly Members have made of it, have made a difference to equality of opportunity in Wales. It is early days, more can be done, and there has been more progress with some equality dimensions than others. Nevertheless, the clause and actions flowing from it have been important to the promotion of equality in Wales.

I have found particular satisfaction in chairing the steering group for this research project because this equality clause has been a continuous theme of my period as Equal Opportunities Commissioner for Wales. In my early days as Commissioner, I was delighted to be one of those, along with the late Val Feld, then Director of EOC Wales, and Helen Mary Jones, then Deputy Director, who campaigned for its inclusion in the legislation. Subsequently I have had the privilege of advising on its implementation. The publication of this initial evaluation of its impact comes right at the end of my six-year term of office.

A distinctive equality agenda is already emerging in Wales. Enormous credit must go to Edwina Hart, the Chair of the National Assembly for Wales Equality of Opportunity Committee, and to her predecessor in this role, Jane Hutt, for the determined and inclusive way that equality initiatives have been pursued. In some initiatives, such as the annual equality audits, the equal pay campaign and the funding of consultative equality networks, Wales can be seen to be leading the way.

What are the reasons for this? At this early stage we must be circumspect, and certainly there are a number of contributory factors, but our research concludes that the statutory duty is the most significant factor driving the equality agenda in Wales. To build on this our report puts forwards some ideas for amending Assembly Standing Orders to focus attention even more sharply on equality and to embed equality considerations more deeply into Assembly policy-making and implementation.

The report concludes that there would be benefits in a positive duty to promote equality across the UK. In framing this legislation it would be useful to build upon the non-prescriptive, all-embracing approach of the Welsh equality duty model as well as the approach of the Race Relations Amendment Act 2000, which places a positive duty on public authorities to promote racial equality and establishes specific enforceable duties.

Chairing the Research Steering Group has not been a hard job because of the enthusiastic and knowledgeable participation of the funders and partners: the Equal Opportunities Commission, the Disability Rights Commission and the Commission for Racial Equality. Our publisher - The Institute for Welsh Affairs - has offered encouragement and support throughout. Dr Paul Chaney, the author of the report, has worked extremely hard, drawing together a mass of information and analysing it with rigour and attention to detail. The project benefited enormously from the insights and good humour he and his colleague Professor Ralph Fevre brought to it. Finally we were fortunate that many people inside and outside the Assembly were willing to talk and share their perspectives with us. My thanks go to everyone concerned.

I hope you will find this a stimulating read, and that progress towards equality will continue apace!

Professor Teresa Rees

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# Introduction

Wales has a poor historical record on equality of opportunity. Women, disabled people, members of ethnic minority communities and other groups have faced longstanding patterns of inequality. These have been compounded by the marginalisation of these groups from formal decision-making structure and, notably, government in Wales.

Equality campaigners sought to address this situation and successfully lobbied for the inclusion of a unique equality clause to be included in the Government of Wales Act (1998), the statute that established the National Assembly for Wales. This legal duty goes beyond the statutory requirements placed upon other UK legislatures for it effectively requires government to be proactive and

"make appropriate arrangements with a view to securing that its functions are exercised with due regard to the principle that there should be equality of opportunity for all people. " (Section 120)

In October 2001 a research team from Cardiff University School of Social Sciences was commissioned by the EOC, CRE, DRC and IWA to examine the impact of the Welsh Assembly's statutory equality duty. The full report, **AN ABSOLUTE DUTY: Equal Opportunities and the National Assembly for Wales - A Study of the Equality Policies of the Welsh Assembly Government and their Implementation: July 1999 to March 2002** by Paul Chaney and Ralph Fevre, was published in June 2002. It is available as hardcopy from the IWA and can be found on the EOC web site (for full publication details see page 24).

The newness of the devolved system of governance in Wales and the fact that many of the Welsh executive's equality reforms are either in the planning stage or currently in the process of implementation means that this report is primarily concerned with outlining the nature and scope of new measures to advance equality. The main findings of the research are presented in this report.

This research, commissioned by the IWA and its partners, addresses the following three aims:

- to establish whether a distinctive equality agenda has emerged over the first two-and-half years of the Assembly's lifetime
- to establish the impact of the Assembly's statutory duties in respect of equality of opportunity
- to learn lessons for the rest of the UK, specifically on the merits of legislation for a public duty to promote equality across the UK.

This study is informed by past and present academic research including a University of Wales funded study into the Welsh executive's promotion of 'inclusiveness' 1999-2001, and an ESRC project examining the participation of marginalized groups in the work of the Assembly.<sup>2</sup> It presents an analysis of

semi-structured interviews with politicians and officials in the National Assembly as well as an examination of the policies and practices of the Government of the National Assembly for Wales.

Interviews have been conducted with managers of Assembly Sponsored Public Bodies, Welsh Local Government, NHS Wales, Assembly sponsored equality organisations, and members of groups representing women, disabled people and people from an ethnic minority background. In addition, a seminar/focus group was held with senior members of the statutory equality commissions in Wales.

## **A Distinctive Equality Agenda**

Recent analysis has concluded that "the political climate for equalities has undoubtedly improved and new structural spaces have opened up, the question is ... about the extent to which there is continuity and to what degree different priorities and agenda can be discerned".<sup>1</sup> The initial actions of the Welsh executive and opposition parties suggest a clear intention to be proactive and, in some areas, go beyond the equality measures thus far seen at Westminster.

Consistent with the Cardiff administration's stated aim of "fresh 'made in Wales' policies", devolution and the Assembly's equality duty have allowed specific equality needs to be addressed in a way that contrasts with the situation prior to 1999 when government policies and practices were largely driven by an 'England and Wales', Great Britain or United Kingdom – based assessment of priorities. Within this revised constitutional framework the singular nature of the duty has allowed elected-representatives greater scope and enabled them to be more innovative in undertaking equality reforms. It is for these reasons that a distinctive equality agenda has started to emerge over the past two and a half years.

Key features of the new approach to equality matters include: ·

- Reforms by the Welsh executive to promote equal pay such as the Assembly's Equal Pay Audits and associated pay settlement 2001-04, the Assembly Workinggroup on Equal Pay, and the promotion of equal pay in the public sector.
- Extensive and far-reaching reforms to promote equality in the Assembly Civil Service. These include: plans for the Assembly bureaucracy to replace the established practice of 'internal' civil service staff recruitment against generic job descriptions with open public recruitment for all posts using specific job descriptions. In addition, mandatory equality awareness training has been introduced for all Assembly Civil Servants as part of a raft of measures that followed the Lifting Every Voice Report. These are aimed at ending institutional racism and other forms of discrimination in the Assembly.

- The effectiveness of the foregoing reforms is assessed through an ongoing programme of annual equality audits of the Assembly Civil Service; these are verified by the statutory equality commissions.
- Assembly funding and support have been given to a number of dedicated consultative equality networks for 'minority' groups. These are designed to promote citizen participation in the work of government. They include LGB Forum Cymru, the first government-sponsored forum for gays, lesbians and bisexuals of its type in the UK.
- Reforms of the policy process have been introduced that are designed to mainstream equality in the work of government. These include the creation of an equality policy unit and the issuing of 'Submission Guidance for Officials' requiring the use of impact assessments and a compliance statement to ensure that policies comply with the Assembly's unique equality duty.
- The participation of the statutory equality commissions in the work of the Assembly is underpinned by law and is a distinctive feature of governance in the post-devolution era.
- The Welsh executive has acted to make financial support to the public sector conditional on the adoption of equality of opportunity policies that must be open to inspection by the Assembly Government.
- Distinctive Welsh constitutional arrangements such as the Assembly's Regional Committees and statutory partnerships with the voluntary sector are being used to promote equality.
- A multi-agency approach is being developed to tackle inequality in NHS Wales and specifically Welsh Health Service plans and human resource strategies are being developed to promote equality of opportunity.
- Changes are proposed in the review of the Best Value indicators to be applied in Welsh local government in order that, in future, local authorities can take into account the ability of contractors to deliver services appropriate to different social groups.
- New arrangements are proposed, to be backed by secondary legislation, to define the content of local government performance plans and the nature of unitary authorities' reviews in order that equality of opportunity is promoted.
- The implementation of European Objective One economic development aid is being progressed in ways that promote equality of opportunity for groups defined by language, ethnicity and disability as well as gender.
- Measures to embed equality of opportunity are set out in the first Wales-specific National Curriculum introduced in September 2000 as well as in the guidance issued to, and strategies of, Assembly-sponsored education agencies.



- The Assembly Government has passed (secondary) legislation to promote equality of opportunity such as The School Government (Terms of Reference) (Wales) Regulations 2000. This new law sets down a number of principles for the operation of school governing bodies
- The Assembly executive has introduced equality reforms to promote diversity in public appointments. These include the early use of independent assessors to scrutinize appointments. Such measures go beyond the Nolan Principles in terms of making transparent and open the procedures of making public appointments.
- The Assembly's equality duty has underpinned an ongoing series of 'round table' meetings between the Assembly minister responsible for equality matters and heads of ASPBs (the former quangos) and other bodies in Wales in order to advance equality reforms in the public sector.
- The National Assembly has developed the use of contract compliance by government in order to promote equality of opportunity in two areas; in respect of the goods and services that the Assembly (and public sector bodies that come under its remit) procure, and in the employment practices of those that the legislature does business with.
- The new post of Children's Commissioner for Wales was created following the Care Standards Bill (2000). The role, remit and functions of the Commissioner include the need to "provide a directly accessible point of contact for children and young people, whose services are bilingual and promote equal opportunities in recognising other individual needs".
- A growing number of Assembly Government policies are being produced to address the specific needs of groups traditionally subject to inequalities, e.g. A Black and Ethnic Minority Housing Strategy in Wales.
- Institutional and procedural measures have been adopted to ensure that equality of opportunity is promoted in the conduct of Assembly Government business. Examples include: a cross-party Standing Committee on Equality of Opportunity charged with ensuring the executive's compliance with the statutory equality imperative; a thoroughgoing bilingual approach to government; and family-friendly working hours.

## Policy Recommendations

The evidence gathered in the course of this study reveals that the Welsh Assembly's equality duty is having a significant impact on the way that government deals with equality matters.

This suggests that:

- There would be benefits in the treatment of employees and in the delivery of public services if such an equality law were to be applied across the UK.



- More effective promotion of equality of opportunity would be achieved if a 'Welsh Model' statutory equality duty were to be applied to the other UK legislatures.

In order to increase the effectiveness of the Welsh Assembly's statutory equality duty and inform its wider application in the UK, the National Assembly for Wales could amend its 'internal law' or 'Standing Orders' to require that:

- The National Assembly's policy- scrutinising subject committees be required to set out in their annual reports how their work programme has complied with the Assembly's statutory equality duty.
- The Assembly Standing Committee on Equality of Opportunity be required to formally approve and 'equality-proof' the work programmes of all subject committees on an annual basis.
- The role and functioning of the new Assembly- sponsored consultative forums such as the Welsh Women's National Coalition, should be formalized and enshrined in Standing Orders.
- When new policies or strategies are introduced to plenary sessions of the Assembly for debate and approval they should contain a detailed statement on how they comply with the statutory equality duty.
- A formal and binding protocol on National Assembly consultations with 'minority' groups should be developed. It will set out minimum standards in respect of consultations (covering areas such as timescales, resources and feedback to participants).
- Wherever possible, specific and measurable equality targets linked to a prescribed timeframe should be set out in Assembly Government policies. This will facilitate future assessment of the effectiveness of the Welsh executive's equality initiatives.

## The Origins and Nature of the Statutory Equality Duty

In the late 1990s key gender equality campaigners, including senior figures in the EOC, successfully lobbied for a unique equality clause to be included in the Government of Wales Act. Whilst equality clauses were also contained in the other devolution statutes, the Welsh duty is unique because of its non-prescriptive phrasing and all- embracing scope.

It is an example of a so-called 'fourth generation' equality law for it is a legal imperative that requires the Welsh Assembly Government to effectively **promote** equality of opportunity.

This type of legal duty is unprecedented in government in the UK. Its origins can be traced back to the 1930s and the US federal government's affirmative action programmes against discrimination.

Law academics have highlighted how this innovation is 'an absolute duty' – there are no derogation clauses that apply to it. They have stated that, in effect, it confers 'positive rights' on the citizens of Wales. It therefore sets out what voters can expect from elected representatives in a way that has the potential to shift power back towards the citizen.

Equality of opportunity is a reserved power and remains at Westminster. The Assembly's equality imperative applies to all devolved functions of government in Wales; these include education, economic development, health, local government, social services, planning, transport, housing, and industry.

Whilst the equality duty is binding upon the National Assembly as a whole - as a 'body corporate' - ultimate responsibility for the equality reforms reported on here lies with the devolved executive or Welsh Assembly Government.

The equality duty represents a significant divergence in the equality law applying in Wales compared to elsewhere in the UK, not least because it modifies all Westminster statutes where the Assembly has powers in their implementation.

Under the Welsh Assembly's equality duty the Assembly can be subject to judicial review in the courts (and, potentially, investigation by the Welsh Administration Ombudsman) if groups or individuals feel that the Assembly has failed to comply with its terms.

In addition, a similar statutory clause requires the Welsh Assembly to adhere to such an equality duty in the conduct of all its business.

Statute requires that the Assembly publish an annual report on its arrangements for promoting equality and their effectiveness. The Assembly's procedural rules or Standing Orders require that a cross-party Standing Committee on Equality of Opportunity, that includes representatives from three of the statutory equality commissions in Wales, oversees the Welsh Assembly's compliance with the duty. The Committee is supported in its work by the Assembly Civil Service Equality Policy Unit (EPU) that itself was set up in response to the new legal requirements.

The Welsh Assembly Government has adopted equality of opportunity as one of its three crosscutting themes in its strategic plan for government (BetterWales.com) and it has stated its aim to mainstream equality into all of its policies.

Analysts have stated how such a duty also has the potential to promote political equality by facilitating greater levels of participation in government by hitherto marginalized groups.

During its first two and a half years the Standing Committee has overseen a raft of equality reforms. It has broadened its scope beyond an initial focus on

disability, race and gender to consider equality of opportunity for groups defined by language, sexuality, age, and faith, as well as in relation to gypsy-travellers.

Devolution has placed equality of opportunity issues higher up the political agenda in Wales than ever before. In the wake of constitutional reform significant progress has been made towards achieving gender balance amongst elected politicians. The Assembly has the second highest proportion of women elected to a national government body in Europe (41.7 per cent). Women are in a majority in the Assembly Government's cabinet and a number have professional equality of opportunity expertise. This move towards greater gender balance has exerted a strong influence on the post-devolution equality agenda examined in this study.

In responding to the equality duty the Welsh executive has prioritised reforms in government and the public sector that comes under its remit. Explaining this approach an Assembly minister said, "only once it gets it's own house in order can the Assembly take the lead in addressing the enduring barriers to equality".

## Lifting Every Voice

In March 2001, the Assembly's Equality Committee endorsed the recommendations of a report entitled *Lifting Every Voice: A Report and Action Programme to address Institutional Racism at the National Assembly for Wales*.<sup>3</sup> This study primarily focused on staff recruitment, promotion and development and it built upon the work of the Stephen Lawrence Inquiry. Although it dealt specifically with the issue of institutional racism it has led to the implementation of an action plan to address all aspects of inequality in the Assembly and its sponsored public bodies.

Referring to the equality reforms in the wake of the *Lifting Every Voice* report, the Assembly Civil Service's Permanent Secretary concluded that

"the statutory duty - coupled with the Assembly Equal Opportunities Committee - is a very, very powerful motivator and driver of change".

By January 2002, 17 of the Report's 43 recommendations had been implemented - including the Assembly's adoption of the Stephen Lawrence Inquiry Report definition of 'institutional racism'. The remaining recommendations are being implemented. In particular, a number of these stand out because of their innovative nature and because of the way that they differ from practices found elsewhere in the British Civil Service. A prominent example is the basic mandatory equality awareness training that is to be delivered to 3,500 Assembly staff by June 2002. Specialist training will also be provided for management grades and personnel staff in the bureaucracy. The training strategy document states:

"the National Assembly for Wales has a statutory duty to promote equality of opportunity in the discharge of its functions ... to assist the staff of the

National Assembly for Wales this Equality Training and Awareness Strategy has been developed to help staff at all levels operate an effective equal opportunities policy" <sup>4</sup>

The UK government has objected to some of the Lifting Every Voice recommendations. This was the case in respect of the recommendation that, in order to promote staff diversity, 'all posts, of whatever grade, should be advertised and open to competition'. This means that internal Civil Service promotion boards will be abolished and the 'traditional' civil service practice of internal recruitment to generic grades will be ended. Instead, open, external public recruitment to specific posts is now underway. By January 2002, 97 new Assembly staff had been recruited by this method. Significantly, of these appointments, 50 were to posts at a senior management level (SCS) or within the top four Civil Service staff grades (D to G).

Concerns expressed by some members of the Assembly's Equality Committee on the proposed manner in which the remaining Lifting Every Voice reforms will be implemented has prompted some re-drafting prior to their submission to the Assembly Government cabinet for approval later in 2002.

Further moves to promote greater diversity amongst Assembly staff include: the appointment of a senior Civil Servant with core responsibility for outreach work to build links with ethnic minority communities, and a series of 'round table' meetings on equality matters held between senior members of ethnic minority communities and the Permanent Secretary. According to the latter this represents a 'top level commitment' in the Assembly Civil Service to the statutory equality imperative.

Ongoing monitoring of equality awareness and mainstreaming procedures in the Assembly bureaucracy is another feature of these reforms. Thus far, two equality audits of the entire Assembly Civil Service have been undertaken. They have examined the prevailing equal opportunities objectives and targets in the bureaucracy and focused on the availability of data to monitor the equality outcomes of policies. Whilst the first audit confirmed the Assembly's 'low starting point' and referred to 'the position of excellence that the Assembly should aspire to', the second showed that only modest progress had been made in respect of equality of opportunity in the Assembly's second year. This led to the official assessment that

"the Assembly is making headway in establishing mechanisms and procedures to promote equality but still falls short of functioning with due regard to the principle that there should be equality of opportunity for all people".<sup>5</sup>

## Equal Pay

The gender pay gap is evident in Wales as elsewhere in the UK; it is a marked form of inequality that in itself underpins and reinforces a range of other types of inequality, such as child poverty. In Wales, over thirty years after the Equal

Pay Act came into force, women's hourly earnings are, on average, only 87% of men's.<sup>6</sup>

Official documents record that,

"the Assembly had a statutory duty to have due regard to equal opportunities. This meant, among other things, reviewing its own pay structure".

An audit of staff remuneration in the Assembly's first year confirmed the existence of a gender pay gap in the Assembly bureaucracy. It revealed that the greatest disparities were at the more senior levels of the organization. For example, it showed that there was an 11% gender pay gap for officials on the highest pay band (Band G). As a result, and in consultation with trade unions, general corrective measures were fed into the Assembly's Pay Award for 2000/1.

The remit of the legislature's second pay audit was broadened to cover gender, ethnicity and disability. It too confirmed inequalities. Whilst it showed that there had been a narrowing of the gender pay gap over the period between the audits, a direct comparison of the two sets of figures was made more complex owing to a high level of recruitment activity in the Assembly bureaucracy.

Following the two audits, in order to address the situation and promote equality, a three-year pay deal has been negotiated. This will add a further 22.3 per cent on to the Assembly's pay bill.

In 2001 the Equal Pay Task Force's UK-wide report to the Equal Opportunities Commission, entitled Just Pay, highlighted the Assembly's equal pay reviews and the encouragement given to Assembly Sponsored Public Bodies (ASPBs) to monitor and reform their pay practices. It concluded, "we commend the good practice shown by the National Assembly for Wales to other devolved administrations".

Further reforms in this area are planned and the Assembly's Equality Committee has established a Joint Working Group on Equal Pay comprised of AMs from each political party, together with representatives from the Wales Trades Unions Congress (WTUC) and the EOC in Wales. It has set out its aims in an action plan entitled Discrimination in Pay Systems.

The Welsh executive has also instituted measures that ensure that the salaries of women taking maternity leave, or staff taking career breaks, progress as if they had not had a break in employment service. These measures have been described by one trade union as a "hugely progressive and helpful step".

In addition, the Assembly's Equality Committee has indicated a willingness to broaden the scope of measures to tackle the pay gap and apply them to Welsh unitary authorities. It has stated that "for local government partnerships and ASPBs, pay reviews could be used as performance indicators".<sup>7</sup> This means that a financial incentive will be attached to addressing the pay gap for the first time.

Elsewhere in the public sector, the Assembly Government's latest education strategy states that "higher education institutions will be encouraged to undertake pilot equal pay reviews in this financial year, following EOC guidelines".<sup>8</sup>

## Contract Compliance

In promoting equality of opportunity, the National Assembly Government is developing the use of contractual terms or 'contract compliance' in relation to its annual budget of £10 billion. These reforms have the potential to impact upon two areas: in respect of the goods and services that the Assembly (including all public sector organisations that come under its remit) procures, and in the employment practices of those that the legislature does business with.

The Assembly's statutory equality duty has underpinned this distinctive approach; it is one that largely differs from government practice elsewhere in the UK. The Assembly's highest legal officer, the Counsel General for Wales, stated

"Section 120 of the Government of Wales Act enabled the Assembly to develop its policy in this area ... it is the peg upon which you can hang a policy which is broader than the policy which we have at the moment."

Under these new arrangements, the Assembly executive has launched a voluntary code of equality practice supported by a dedicated website.<sup>9</sup> In accordance with EC law, most contracts are still awarded on the basis of open competition, but suppliers who support the new voluntary Code will be assisted with positive action such as guidance on ways to improve their practices, and constructive feedback on unsuccessful tenders. In this way they will be able to improve their competitive advantage and be better placed to win future Assembly Government contracts. In the first months following its introduction seventy new suppliers signed-up to the new Voluntary Code.

In addition, a supplier database is presently being compiled that records the 'level of progress' in promoting equality of opportunity attained by those doing business with the Assembly (and its sponsored public bodies).

The use of contract compliance is to be extended to those applying for grants and funding awarded by the National Assembly. As a result, all applicants for social housing maintenance grants are now required to sign a declaration stating both that they are implementing equality of opportunity policies and that these are open to inspection by Assembly officials. The voluntary equality code has also been circulated to ASPBs in order that it will be used in the conduct of their business.

The Assembly Government is considering the use of contract compliance in Welsh local government where consultation is being carried out on a new Best Value Order. This will enable local authorities, when awarding contracts, to take account of contractors' ability to deliver services to different communities and the extent to which they provide equality awareness training to staff.



In relation to its provision of primary healthcare, NHS Wales has set out detailed plans to ensure that independent contractors' employment practices promote equality of opportunity. The Assembly Government's strategic Health Plan aims to ensure that by early 2002 all health organisations will have scrutinised existing and future contracts. They will be held accountable for progress in these areas on an annual basis.

## Diversity in Public Appointments

In Wales, the limited diversity amongst those holding public appointments, particularly in regard to quangos, featured in the arguments of the pro-devolution campaigners. In 2000, just over 30 per cent of appointments were held by women, 1 per cent were held by ethnic minorities, younger candidates were scarce and disabled people were extremely under-represented. Of the 820 public appointments made in 2001, 28 per cent were to women, 2 per cent were to people from an ethnic minority and just four appointees were disabled.<sup>10</sup>

Citing its equality imperative, the Assembly Equality Committee has implemented a range of reforms to promote diversity in the 800 appointments made by the National Assembly to 160 Welsh public bodies each year. Greater diversity amongst public appointees is also a key aim of the Welsh executive's programme for government entitled Better Wales.

Senior participants have described how the Assembly Government has,

"used the legislation, 'to have due regard' - section 120 - as an opportunity for going beyond what is laid down under the Nolan principles in terms of making transparent and open the procedures of making public appointments".

The recommendations of the Assembly Working Group on Diversity in Public Appointments are in the process of being implemented. Information dissemination strategies have been introduced to reach under-represented groups; there has been targeted advertising of posts; training for those in under-represented groups in order that they be suitably skilled for positions in public life; and training in best practice in candidate selection has been given to those involved in interviewing for public appointments.

Independent assessors that are fully trained in equality issues have been involved at a much earlier stage in the appointment process than was the case before devolution. Recruitment exercises, including a round of Welsh Development Agency appointments, have used external consultants to assist with making advertisements more attractive to under-represented groups and in headhunting candidates with an emphasis on increasing diversity of Agency staff.



In January 2002, the Assembly Equality Committee endorsed plans to promote diversity by changing the remuneration and allowances received by public appointees. Under these proposals - set for cabinet approval later in the year - there will be provision for the reimbursement of receipted childcare or carer costs, and any additional costs incurred by disabled people in respect of all public appointments.

A comprehensive review of public appointments in NHS Wales is currently being developed through co-working between the Assembly's Equality Committee and NHS Wales. The new 'Policy for the Appointment of Chairs and Non-Executive Directors to the Boards of Health Authorities and NHS Trusts' states the need to 'reflect the National Assembly's agenda and priorities'. Progress in this area will be monitored by the introduction of performance indicators that show the levels of increase/decrease in appointees from under-represented groups.

## Equality and the Policy Process

The Assembly Equality Committee's initial work plan stated the Welsh executive's aim of mainstreaming equality across all of the Assembly's functions. In the Assembly's first two-and-a-half years action has been taken to meet the basic institutional prerequisites for mainstreaming. These include: equality training, expert involvement and reporting arrangements. Mainstreaming tools are also being developed such as appropriate equality data, auditing mechanisms and greater levels of involvement by marginalized groups in policy-making.

Written guidance, including an equality of opportunity checklist, has been issued to Assembly Civil Service divisions in order that policy submissions to cabinet ministers, cabinet papers involving Assembly committees, and business papers for plenary sessions comply with the legal equality imperative. Under these arrangements officials are instructed to verify each policy document in accordance with the following statement,

"to the best of my knowledge th[is] submission takes account of the Assembly's duties ... under section 120 of the Government of Wales Act to promote equality of opportunity".

Experts acknowledge that mainstreaming in the policy process is a complex and long-term strategy. Much work remains to be done before the executive's aim of thoroughgoing mainstreaming can be fully realized. In contrast to the present situation, there is a particular need to ensure that policy documents make routine use of measurable targets set in specific timeframes in order that the effectiveness of Assembly Government policies can be readily assessed by reference to equality outcomes.

Overall, the present evidence points to a lack of uniformity and a systematic approach to the way equality issues are currently being addressed. In particular, senior officials have referred to 'patchy' adherence to the written guidance instructing civil servants to ensure that policy documents comply with section 120 of the Government of Wales Act.

However, in a notable development, the statutory equality duty has led to the development of four consultative networks designed to promote equality by increasing the participation of hitherto marginalized groups in government. These have been described by the chair of the Assembly Equality Committee as 'our arm in the community'. They include the Assembly sponsored consultative network for lesbian, gay and bisexual people (LGB Forum Cymru); the first government-funded dedicated consultative forum of this type in the UK.

The Assembly Government's second annual report on its equality reforms acknowledged that, '...there is still a long way to go in involving and consulting under-represented groups and doing so at a much earlier stage of the process of policy development'.<sup>11</sup>

Nevertheless, interviewees generally acknowledged that the consultative forums were a useful and positive development. According to one, they were 'highly significant' and a strong 'mechanism for getting equalities work recognized... I think that they've [AMs] done quite a lot of work ... [something] that would otherwise have taken a lot, lot longer'.

Much further work and greater resources will be necessary to achieve the stated aim of mainstreaming equality of opportunity at all stages in the development of Assembly policies and across the range of its functions.

## **Equality Reforms in NHS Wales**

NHS Wales documents and the comments of participants reveal the role of the Assembly's statutory equality duty in driving forward equality reforms in Wales's largest employer. For example, one NHS Wales document states:

"the Assembly, and as a consequence NHS Wales, is obliged under section ... 120 of the Government of Wales Act 1998 to have due regard to equality of opportunity for all in its business functions... Staff should be aware of the importance of the Act and the rights it enshrines. Health Authorities and Trusts should audit current practice and procedures to ensure compliance. Access to advice, guidance and in-depth training on relevant aspects of the Act must also be established within the organisation".<sup>12</sup>

Measures to promote equality are a 'central principle' set out in two recent strategic plans covering Health Service employment practices and service delivery. Greater understanding of the present situation regarding equality of opportunity is the aim of the ongoing NHS Wales Equality Audit commissioned by the Assembly Health Minister. Analysis of the literature of local health trusts and authorities undertaken during this study shows that the Assembly's

equality duty is being cited at a local level and is prompting equality reforms including the creation of new equality forums to achieve "greater equality and diversity for the benefit of [health] Trust[s], patients and staff".<sup>13</sup>

Those interviewed in the course of this research concluded that the Assembly's equality imperative had allowed pre-existing good equality practice in the Welsh Health Service to be extended. In the words of one manager,

"it has made a difference in terms of getting equality onto the agenda of very senior people inside the Health Service ... it has had a major impact on the NHS Wales Human Resources Strategy, it has been a powerful 'lever' to encourage organisations within NHS Wales to demonstrate how you are working positively around equality issues, and strategically it has made a difference in mainstreaming equality into the planning process".

## **Equality Reforms in Welsh Local Government**

'Equalities are now one of the great corporate issues of the day'

– Local Government Manager.

These Assembly-led equality reforms have centred on organisational structures and practices, policy implementation, and issues of representation. The Assembly's statutory equality imperative has been cited in the implementation of a raft of reforms including a Generic Equality Standard for Welsh unitary authorities.<sup>14</sup> This includes checklists for auditing, improving and monitoring practices to promote equality in respect of race, gender, disability and Welsh language. To support this, the Assembly Government is overseeing and part-funding a new local government equalities unit.

Amongst a range of other measures the Assembly Government has set out instructions for unitary authorities in developing their Local Community Strategies. These state that

"Equality of opportunity for all people is a fundamental concern of the Assembly, which has a statutory duty to have regard to that principle... The Assembly's duty, which it is exercising through this guidance... means that councils must ensure that the techniques they employ do not discriminate against particular groups. Specific efforts should be made to involve representatives from under-represented groups such as ethnic minorities, women, faith communities, older people and disabled people".

Interviews with managers working in Welsh local government conducted in the course of this study reveal that the Assembly's equality duty is being effective in promoting change. One stated that

"from [Welsh] local government's point of view the force of statute is very important, sometimes it's a driver [of reform], it does shake inertia where it

occurs ... we've only taken that view within the last 18 months and we've been pushed in that direction by the Assembly ... what we've tried to do in local government is ... use the relevant pieces of legislation as the driver to say "wake-up local authorities, there are statutes out there and you are going to be in trouble if you don't comply with them".

## **Social Inclusion**

Social inclusion is another of the Assembly Government's three strategic cross-cutting themes and is part of a commitment to an 'economic' as well as a 'social' strand to promoting equality of opportunity.

Foremost of the social inclusion initiatives has been the 'Communities First Programme'; described as "a non-prescriptive, community-centred approach to community regeneration, targeted at the most deprived communities in Wales". Equality of opportunity is being promoted in the initial consultations for the Communities First Programme. Groups representing disabled people and members of ethnic minority communities are being asked to forward their views as to whether 'communities of interest or special need merit investigation and/or support beyond the provision made by the Assembly's current programmes and initiatives'.

## **Children and Young People**

The Care Standards Bill (2000) included an amendment to create a Children's Commissioner for Wales. This was referred to by the Assembly Health Minister as 'a unique policy, tailored to Welsh circumstances'. The role, remit and functions of the Commissioner were influenced by the Assembly's statutory equality duty and they include the need to "provide a directly accessible point of contact for children and young people, whose services are bilingual and promote equal opportunities in recognising other individual needs".

## **Equality and European Objective One Structural Fund Aid to West Wales and the Valleys**

In April 2001, the Assembly took over responsibility for implementing the 1.853bn euro European Objective One Structural Fund Aid Programme for West Wales and the Valleys. In contrast to EC rules that only required equality of opportunity in respect of gender, - and anticipating the later impact of the Amsterdam Treaty - Objective One plans for Wales were based on a broader definition encompassing disability, race and Welsh language issues. The

Government of Wales Act and the statutory equality duty were the reason for this development.

The Assembly's executive agency, the Wales European Funding Office (WEFO), has been involved in multi-agency working through the European Equality Partnership (EEP). The latter's detailed targets for the mainstreaming of equality contained in the implementation plans for the Aid Programme<sup>15</sup> received 'international recognition'<sup>16</sup> and were cited by the European Commission (EC) as an example of good practice. At present the Aid Programme is in its early stages, for this reason it is not possible to determine whether these equality targets will be achieved in the Programme, which is set to operate until 2006.

## Equality in Learning

The Assembly Government's 2001 Education Strategy states that "the Government of Wales Act lays a distinct and special responsibility upon the National Assembly over the pursuit of equal opportunities."<sup>17</sup> In response, the Assembly Government has acted to embed equality of opportunity into the first Wales-specific National Curriculum introduced in September 2000.

Other initiatives include the Stephen Lawrence Education Steering Group, established by the Assembly Equality Committee, which has acted to implement change based on the education recommendations of the MacPherson Report. Accordingly, the Qualifications, Curriculum and Assessment Authority for Wales (ACCAC) has developed two frameworks, one on personal and social education (PSE) and one on work-related education. Both were designed to reflect the statutory equality duty.

ACCAC's publications highlight the role of the equality imperative in this work. A prominent example notes that:

'the Assembly's vision is that of a tolerant society in which the needs of all groups, particularly the young, older people, disabled people, black and ethnic minorities are effectively addressed. This vision, and the Assembly's commitment to it, is reinforced by the duty placed on the Assembly in the Government of Wales Act to have due regard to equality of opportunity in the exercise of its functions'.<sup>18</sup>

The Welsh executive has also set out a range of measures to place a greater emphasis on equality of opportunity in schools inspections and teacher training in Wales. In addition, the Assembly has passed legislation to promote equality in the operation of school governing bodies.<sup>19</sup>

## **Equality in Economic Development**

The Assembly's statutory imperative has driven equal opportunity reforms in the devolved matter of economic development. In its Corporate Plan 2001-2004, the Welsh Development Agency has stated its intention, "that all future [WDA] project aspects are completely in line with the Assembly's Equal Opportunities Committee's thinking".

Moreover, the Agency asserts that it, "will work to implement the Assembly's underlying themes of equality of opportunity, sustainable development and social inclusion in everything it does".<sup>20</sup>

However, the WDA's present lack of a central equality unit and the low priority that the Agency has accorded to equality issues in the past suggests that much future work will be necessary in order to effectively mainstream equality in economic development.

## **Equality in the Conduct of Assembly Business**

The Assembly has introduced a range of measures to comply with its statutory duty and ensure that it promotes equality in the conduct of its business. These include: working within family-friendly hours, undertaking a survey on childcare needs, implementing measures to ensure that disabled people will be able to gain access to the legislature's new building, adopting a bilingual approach to the conduct of government, using gender-neutral official titles, and disseminating some of its policies in alternative formats and minority languages.

## **Setting the Assembly's Budget**

In relation to fiscal matters the Assembly Finance Minister has referred to equality and other considerations leading to 'an entirely new and radical way of producing a budget'. Equality of opportunity now features in the planning and setting of the Assembly's annual £10 billion spending plans. In addition to the Equality Committee's own discussions, the Commissioning Paper for the 2001 budget required the views of all Assembly subject committees on ways of mainstreaming equality in the fiscal arrangements that underpinned their work.



# The Equality Imperative: A Driver of Change

Despite ample evidence of the impact of the statutory duty, 'the interviews conducted in the course of this study support the conclusion that "the levels of ignorance concerning section. 120 of the Government of Wales Act are profound. The general public are totally unaware and the same can be said of much of the legal profession".<sup>21</sup>

It appears that only a limited number of equality campaigners and professionals are aware of the statutory duty. The latter group has mostly been engaged in co-working with the Assembly on some aspect of the new equality reforms. The evidence of the Assembly's first thirty months reveals that co-working between such individuals and Assembly Members is beginning to produce a distinctive equality agenda. The statutory equality duty has resulted in reforms being initiated in most areas of the legislature's functioning. As a result, and to varying degrees, practices are beginning to diverge from those found elsewhere in the UK.

The National Assembly's statutory equality imperative has meant that equality of opportunity is beginning to be addressed in a systematic way at an all-Wales level of government for the first time. This means that the Assembly is undertaking a thorough examination of its policies and practices in order to assess whether they cause disadvantage to some groups. Previously equality law across the UK has put the focus on individuals seeking remedy for any discrimination that they believe they may have faced.

The level of financial resources, political will and expertise that key politicians and officials have invested in promoting equality in the process of government is unprecedented in Wales. This marks the end of the pre-existing and largely laissez faire approach that has signally failed to address many enduring forms of inequality.

A crucial factor that will determine whether this new approach will succeed will be the continuation of a political will to effect change. In this sense the 'Welsh model' statutory equality duty is a particularly interesting development, because, unlike the situation in many other polities, the duty sets in place measures that provide for legal redress should future Assembly Government support for mainstreaming falter or be withdrawn.

Interviews conducted for this study, together with the evidence of Assembly policy documents, reveal that the statutory duty has initiated equality reforms that would either not have taken place, or would have taken much longer to be implemented.

Participants have also spoken of the way in which the statutory equality duty has been used to overcome resistance or obstruction to the promotion of equality of opportunity in a way that was not generally possible prior to devolution. They have also stated that the Assembly's clear lead in these



matters has lent 'moral support' and been a boost to equality reformers in the public sector and elsewhere who, in the past, have often felt isolated and unsupported in their work.

In particular, the Assembly's statutory equality duty has prompted change in the following areas:

- The Assembly acting to promote equality in its role as regulator and funder of public services
- Measures to make the National Assembly an exemplar of good equality practice
- A developing role for the Assembly as provider of public information and raiser of awareness on equality matters
- Assembly-led initiatives to improve equality of opportunity data
- New specialist units to promote equality in government and the public sector
- Reforms to promote equality in the conduct of Assembly business
- A developing role for the Assembly in promoting Welsh equality issues to other tiers of government
- A developing role for the Assembly as a co-ordinator of multi-agency working to promote equality
- The Assembly requiring greater monitoring of equality practices in the public sector
- Attempts to mainstream equality in the Assembly's policy process

It is too early to fully assess the overall effectiveness of the policies introduced by the Assembly Government in response to the equality duty. Importantly, the enforceability of the duty is unknown; it is as yet untested in law. Generally, most of the reforms that it has helped to initiate are still at the planning stage or have only just been introduced.

In addition, these developments must also be seen in the context of other factors, such as the commitment to promoting equality shown by a number of key AMs. As one interviewee observed of the post-devolution equality agenda:

"it is a critical mass that is coming together at one time... the economic, the social, the legal, some of the moral issues, the human rights issues... it is all of these things".

However, within this context, the evidence of the Assembly's first two and a half years shows that the statutory equality duty is the most significant factor driving the new equality agenda in Wales. Notwithstanding the foregoing caveats, the present evidence also suggests that a 'Welsh model' equality duty has the potential to rectify the present shortcomings in contemporary equality law applying elsewhere in the UK as identified by a growing body of literature.<sup>22</sup> This assessment of the merits of the 'Welsh model' equality duty

is based on the following factors:

- Its utility lies in its all-embracing scope in that it does not privilege specified groups or apply to prescribed areas of government.
- It requires government to be proactive in all equality matters.
- It conveys legally enforceable rights in regard to the actions that might be expected from elected representatives.
- It has the potential to shift power back towards the citizen.
- It facilitates a holistic approach to the promotion of equality.

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AN ABSOLUTE DUTY: Equal Opportunities and the National Assembly for Wales - A Study of the Equality Policies of the Welsh Assembly Government and their Implementation: July 1999 to March 2002 by Paul Chaney and Ralph Fevre, Cardiff University School of Social Sciences, was published in June 2002. It is available as hardcopy for £20 from the Institute of Welsh Affairs, Tŷ Oldfield, Llantrisant Road, Llandaff, Cardiff CF5 2YQ, Wales. Tel: +44 (0)29 2057 5511 Email: [wales@iwa.org.uk](mailto:wales@iwa.org.uk) and can be found on the EOC web site [www.eoc.org.uk](http://www.eoc.org.uk)