

National Assembly for Wales
Communities, Equality and
Local Government Committee

The future of equality and human rights in Wales

August 2013



Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales

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The Committee was established on 22 June 2011 with a remit to examine legislation and hold the Welsh Government to account by scrutinising expenditure, administration and policy matters encompassing: Wales's culture; languages; communities and heritage, including sport and the arts; local government in Wales, including all housing matters; and equality of opportunity for all.

Current Committee membership



Christine Chapman (Chair)
Welsh Labour
Cynon Valley



Leighton Andrews
Welsh Labour
Rhondda



Peter Black
Welsh Liberal Democrats
South Wales West



Janet Finch-Saunders
Welsh Conservatives
Aberconwy



Mike Hedges
Welsh Labour
Swansea East



Mark Isherwood
Welsh Conservatives
North Wales



Gwyn R Price
Welsh Labour
Islwyn



Jenny Rathbone
Welsh Labour
Cardiff Central



Rhodri Glyn Thomas
Plaid Cymru
Carmarthen East and Dinefwr



Lindsay Whittle
Plaid Cymru
South Wales East

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List of Recommendations

Recommendation 1. The Welsh Government should seek primary legislative competence for the National Assembly in relation to the general public sector equality duty, so that if the UK Government ever repeals it, the Welsh specific public sector equality duties would not automatically fall. (Page 12)

Recommendation 2. The Welsh Government should explore the potential for establishing a more explicit link between the specific public sector equality duties and the Government of Wales Act 2006's inclusivity clause. (Page 12)

Recommendation 3. The Welsh Government and Equality and Human Rights Commission in Wales should establish a Concordat or agreement to formalise their relationship on devolved policy areas. (Page 15)

Recommendation 4. The Welsh Government should consider funding specific Equality and Human Rights Commission work, especially around the monitoring and enforcement of the equality duties in Wales. (Page 15)

Recommendation 5. The Welsh Government should request a report from or consider the advice of the expert group of lawyers, convened by Simon Hoffman of Swansea University, looking into the practicalities of commencing the socio-economic duty. Similarly, the Welsh Government should request a report from or consider the advice of the policy group, convened by Professor Teresa Rees of Cardiff University, looking at how the duty can best contribute to addressing the causes of persistent poverty. (Page 18)

Recommendation 6. Within this research, consideration should be given to re-drafting the socio-economic duty from how it currently stands in the Equality Act 2010, and whether such a duty could be integrated into the existing specific duties or as a standalone duty. (Page 18)

Recommendation 7. The Welsh Government should clearly align its anti-poverty and equality strategies ahead of the introduction of any new socio-economic duty. (Page 18)

Recommendation 8. The Welsh Government should seek further powers in the field of equality and human rights to build on the Equality Act 2010 and the Human Rights Act 1998. (Page 20)

1. Introduction

1. On 13 March 2013 the Committee agreed to undertake a short inquiry on the future of equality and human rights in Wales.

Terms of reference

2. The Committee agreed the following terms of reference for its inquiry:

To consider:

- how well the specific public sector equality duties are functioning in Wales;
- the future of the Equality and Human Rights Commission in Wales;
- the link between poverty and equality, and the socio-economic duty; and
- accountability for equality and human rights legislation in Wales.

Background

General public sector equality duty

3. Section 149 of the Equality Act 2010 creates a single equality duty for the public sector in England, Wales and Scotland. The general equality duty came into force on 5 April 2011 and requires public authorities, and any organisation carrying out functions of a public nature, to consider the needs of protected groups, for example, when delivering services and in employment practices. The general duty requires public authorities to have due regard to the need to:

- eliminate discrimination, harassment and victimisation;
- advance equality of opportunity between different groups; and
- foster good relations between different groups.

Specific public sector equality duties

4. Section 153 of the Act gives Ministers in England, Wales and Scotland the power to impose specific duties through regulations. The specific duties are legal requirements designed to help public authorities meet the general duty.

5. The specific duties for Wales have been in force since 6 April 2011, and include obligations such as producing equality objectives, producing Strategic Equality Plans and collecting equality information (among others).

Method

6. The Committee issue a call for written evidence and received 28 responses from a diverse group including academics, equality practitioners, third sector organisations, the Children's and Older People's Commissioner and health boards.

7. The Committee held two oral evidence sessions on April 25 and June 5. During these sessions, the Committee heard evidence from:

- Kate Bennett and Marie Navarro, The Equality and Human Rights Commission in Wales;
- Dr Simon Hoffman, Wales Observatory on Human Rights of Children and Young People, Swansea University School of Law;
- Dr Alison Parken, Women Adding Value to the Economy, Cardiff University;
- Victoria Winckler, The Bevan Foundation;
- Andrew White and Dean Lloyd, Stonewall Cymru;
- Rhian Davies and Miranda French, Disability Wales;
- Emma Reeves and Mair Thomas, Tai Pawb.

2. Background

8. Approaches to equality and human rights policy and legislation in England and Wales have become increasingly divergent. Equality issues are not fully devolved. Certain elements such as the specific public sector equality duties are the responsibility of the Welsh Government, but the overall general public sector equality duty, along with the rest of the *Equality Act 2010*, is not devolved and is the responsibility of the UK Government. Therefore, the assumption is that if the general duty was ever repealed, the specific duties would fall.

9. The UK Government conducted a review of the general public sector equality duty as a result of the Red Tape Challenge focus on equality.

10. The Welsh Government's recent submission to the Silk Commission highlighted equality as a potential area for further devolution, with specific reference to the public sector equality duty, and the socio-economic duty¹ (which has not been commenced by the UK Government), and this was echoed by the Equality and Human Rights Commission's submission. The Welsh Government also committed to 'strengthening accountability for equality and human rights legislation' in its Programme for Government.

11. Throughout the inquiry, it was repeatedly acknowledged that Wales has a distinctive equality agenda, which is increasingly divergent from the rest of the UK, beginning with the 'inclusivity' clause in both *Government of Wales Acts*.

12. Many witnesses commented on the timeliness of this inquiry, stating that there was a general consensus that a number of opportunities exist at the present time to secure the strong and distinct equality and human rights agenda in Wales.

¹ The socio-economic duty is an obligation on public bodies to consider the impact of their decisions on social class.

3. Public Sector Equality Duties

13. The overwhelming majority of responses described the specific Welsh public sector equality duties as effective, practical, useful and important tools for government, especially in times of austerity. Many acknowledged that while the duties are not a panacea for the complex and long-established inequalities in society, they are an important tool in understanding and tackling them.

14. The Wales Council for Voluntary Action (WCVA) summarised the sentiments of many respondents:

“The duties can be an effective and efficient way of operating that allows public bodies to recognise people’s different needs, make the best use of limited resources and achieve better outcomes for all their users. The duties should work as a tool that helps public bodies to deliver their services fairly and more accurately.”²

15. The WCVA also noted that the duties were created with input from a large number of organisations, and “there were very robust and valid reasons behind each of the specific duties based on what works from years of experience of supporting and enabling equality.”

16. The EHRC’s evidence highlighted positive outcomes that have resulted from the duties across the four key areas that the EHRC’s initial Public Sector Equality Duties monitoring focused on: engagement in health, disability issues in fire and rescue, Equality Impact Assessments in public authorities, and gender pay gaps at universities.

17. Many respondents noted that the duties help to ensure consistency (especially where authorities have collaborated), aid scrutiny and provide public accountability on embedded inequalities through tangible outcomes. Organisations such as Citizens Advice Cymru highlighted that they were using the duties even they are not bound by them, as they “provide a sound and useful framework for [their] work progressing equality”.³

² EHR 15- WCVA

³ EHR 14- Citizens Advice Cymru

18. The consensus in the evidence submitted to this inquiry was that it was still too early to properly evaluate the impact of the duties, but many people highlighted examples of good practice and positive outcomes, as well as problems.

19. Some witnesses raised concerns about the robustness of the monitoring and enforcement arrangements for the duties. Adele Baumgardt stated that it was notable that “while there have been a number of judicial reviews of the operation of the duty in England there do not appear to have been any in Scotland or Wales since their new specific duties were implemented.”⁴ One witness pointed out that this may be attributable to the more comprehensive list of specific duties that enable organisations to meet and demonstrate they are meeting the Public Sector Equality Duties.⁵

20. A number of people highlighted that the duties are still not fully understood, and that better training, promotion and information distribution was needed to make them more effective. Other suggestions for improvements to the duties included: a stronger focus on religion and faith; the inclusion of the Welsh language; improving Equality Impact Assessments; clarifying the general and specific duties, and to improve evaluation and scrutiny of the duties.

21. Dr Simon Hoffman noted that there should be a stronger link between the public sector equality duties and the Government of Wales Act’s ‘inclusivity’ clause.

Our view

22. We note that the Welsh Government is following an increasingly divergent approach in comparison to England in relation to equality issues. We also note that the Welsh Government’s recent submission to the Silk Commission highlighted equality as a potential area for further devolution, particularly in relation to the public sector equality duties. We also acknowledge the early indications that the public sector equality duties have had a positive effect in a number of areas.

23. The Welsh Government should seek legislative competence in relation to those duties so that, in the event of them being repealed by the UK Government, they could continue in Wales.

⁴ EHR 6- Adele Baumgardt

⁵ EHR 23- WLGA and NHS CEHR

24. We also feel that the Welsh Government should explore the potential for establishing a more explicit link between the specific public sector equality duties and the Government of Wales Act 2006 inclusivity clause.

Recommendations

The Welsh Government should seek primary legislative competence for the National Assembly in relation to the general public sector equality duty, so that if the UK Government ever repeals it, the Welsh specific public sector equality duties would not automatically fall.

The Welsh Government should explore the potential for establishing a more explicit link between the specific public sector equality duties and the Government of Wales Act 2006's inclusivity clause.

4. The Equality and Human Rights Commission in Wales

25. The majority of respondents praised the work of the Equality and Human Rights Commission (EHRC) in Wales. Professor Robert Moore said that the Commission had played an “invaluable” role in launching the *Equality Act 2010*; the North Wales Public Sector Equality Network (NWPSSEN) noted that the Commission is “well-regarded” and has played a key role in the development of equality objectives. The Commission’s Equality Exchange network was also highlighted as being particularly valued by respondents.

26. Several organisations raised concerns about reductions in the EHRC’s budget, specifically around its diminished capacity to monitor, evaluate and enforce equality legislation as a regulator. Adele Baumgardt noted that:

“The practical monitoring and measuring of the duty in Wales cannot be done without sufficient resources and the cuts to the EHRC in Wales have significantly impacted on their ability to work on this agenda.”⁶

27. Similarly, the UK-wide National AIDS Trust (NAT) stated that they were “concerned that there have been significant cuts to the EHRC that will reduce its ability to monitor and enforce the specific duties and general duty of the PSED in Wales.”⁷

28. Diverse Cymru recommended that:

“If the Commission is intended to focus on being a “modern Regulator” then there is a need to ensure that enforcement action is undertaken. This should focus on compliance notices, which give public sector organisations clear actions which they need to undertake to improve compliance with timescales and a requirement to publish clear evidence of progress in meeting compliance actions.”⁸

29. A common suggestion among respondents was the creation of a strengthened, independent EHRC in Wales, underpinned by statute,

⁶ EHR 6- Adele Baumgardt

⁷ EHR 11- NAT

⁸ EHR 16- Diverse Cymru

with strong links to the Welsh Government and National Assembly for Wales. The rationale behind this was the increasingly divergent approaches to equality and human rights policy and legislation in England and Wales, and the need for an independent Welsh EHRC to reflect this. Citizens Advice Cymru stated that:

“We believe that its core functions should be laid down in statute and it become independent within a Welsh context. This is because the statutory obligations laid down under the Government of Wales Acts have a clear focus on equality. In addition there is broader cross party support for the development of a rights-based agenda in Wales and again this could be built into the statutory functions of the new organisation.”⁹

30. However, witnesses had mixed views on whether or not the EHRC should be fully independent of the UK EHRC and funded by the Welsh Government and not the UK Government (through the Great Britain EHRC). The EHRC itself was of the opinion that it is beneficial for the organisation to remain part of the Great Britain EHRC.

31. The importance of a stronger formal relationship between the EHRC and Welsh Government was explored by the EHRC’s submission, and they noted that a ‘Concordat’ or agreement would be a clear and transparent way to:

- enable the Welsh Government to access the regulatory activity required to achieve Programme of Government objectives;
- provide resource to ensure the EHRC is an effective promoter and regulator of equality and human rights in Wales;
- strengthen the relationship between the EHRC and the Welsh Government;
- protect the independence of the EHRC.¹⁰

Our view

32. We were pleased to hear the positive response to the work of the EHRC. However, we were concerned to hear suggestions that reductions in the EHRC’s budget could be having a negative impact on its capacity to monitor, evaluate and enforce equality legislation.

⁹ EHR 14- Citizens Advice Cymru

¹⁰ EHR 2- EHRC

33. We feel that the Welsh Government should consider ways to support the EHRC in Wales to undertake specific duties relating to Wales, for example, around the monitoring and enforcement of the equality duties in Wales. We also felt that the relationships between the Welsh Government, the Assembly and the EHRC in Wales should be strengthened. We see the benefits in the EHRC's proposal relating to a concordat with the Welsh Government.

34. In terms of formalising the relationship with the Assembly, we will ensure that the EHRC attends a meeting of this Committee on an annual basis to report and answer questions on their work.

Recommendations

The Welsh Government and Equality and Human Rights Commission in Wales should establish a Concordat or agreement to formalise their relationship on devolved policy areas.

The Welsh Government should consider funding specific Equality and Human Rights Commission work, especially around the monitoring and enforcement of the equality duties in Wales.

5. Poverty and inequality and the socio-economic duty

35. Respondents agreed that there was a clear and long-established link between poverty and inequality. The Bevan Foundation provided research showing that in the UK all protected groups except pensioners were more likely to live in low income households than the population as a whole. The written evidence notes that:

“Relative income poverty is twice as high amongst lone parents and people from Pakistani/ Bangladeshi and Black Non-Caribbean ethnic groups than amongst the rest of the population. [...] Recent reports for the EHRC show that in Wales socio-economic status sometimes has more impact on outcomes than protected characteristics, e.g. in educational attainment, life expectancy.”¹¹

36. There were numerous calls for a Welsh socio-economic duty to be introduced. Some witnesses thought that a socio-economic element could be integrated into the existing duties, and some thought that it should be a standalone duty. The advantages of such a duty were that the legal obligation would ensure clarity and consistency, but the drawbacks could be that it could be overly burdensome on authorities

37. However, a number of witnesses highlighted that it would be difficult to identify appropriate local performance measures relating to the socio-economic duty. Betsi Cadwaladr Local Health Board stated that they:

“[...] remain un-convinced of the need to legislate on this specific issue through a further public sector (socio-economic) duty as the link is well understood and believe existing specific equality duties already capture information and objectives aimed at reducing inequalities arising from socio-economic deprivation.”¹²

38. In contrast, Dr Simon Hoffman indicated that:

“The introduction of a socio-economic duty in Wales requiring Welsh Ministers to have due regard to specified socio-economic

¹¹ EHR 5- Bevan Foundation

¹² EHR 21- Betsi Cadwaladr LHB

objectives would be a significant contribution to the advancement of equality and human rights [...]

“The introduction of a socio-economic duty incumbent on the Welsh Ministers would contribute toward efforts to achieve a fairer and more inclusive Wales.”¹³

39. Dr Alison Parken highlighted that a socio-economic element could be integrated into the existing duties:

“[...] there may be no need for a separate socio-economic duty - the material dimension of inequality could be woven into the existing Welsh specific equality duties under the Public Sector Equality Duty (PSED).”¹⁴

40. The Bevan Foundation also stressed that the basis for such a duty already exists in Welsh law:

“The National Assembly for Wales already has legislation on an aspect of socio-economic inequality, in the form of the provisions on child poverty in the Children and Families (Wales) Measure 2010. However the socio-economic duty is both broader in scope and arguably more powerful than this Measure in that it applies to the whole population not just children, it refers to inequality rather than just income poverty, and would require public bodies to have ‘due regard’ to reducing inequality in their policies and decisions rather than publish a strategy.”¹⁵

41. Many witnesses agreed that more research is needed before a socio-economic duty was introduced to avoid it being meaningless.

Our View

42. We note the evidence of the links between inequality and poverty and the calls for the introduction of a socio-economic duty. However, we also note that a number of witnesses agreed that further work needed to be done on this issue. We have therefore recommended that further research should be undertaken, to examine the practicalities of introducing a socio-economic duty. In addition, we have recommended

¹³ EHR 3- Dr Simon Hoffman

¹⁴ EHR 4- Dr Alison Parken

¹⁵ EHR 3- Bevan Foundation

that further work be undertaken to assess how such a duty can be used to address causes of poverty.

Recommendations

The Welsh Government should request a report from or consider the advice of the expert group of lawyers, convened by Simon Hoffman of Swansea University, looking into the practicalities of commencing the socio-economic duty. Similarly, the Welsh Government should request a report from or consider the advice of the policy group, convened by Professor Teresa Rees of Cardiff University, looking at how the duty can best contribute to addressing the causes of persistent poverty.

Within this research, consideration should be given to re-drafting the socio-economic duty from how it currently stands in the Equality Act 2010, and whether such a duty could be integrated into the existing specific duties or as a standalone duty.

The Welsh Government should clearly align its anti-poverty and equality strategies ahead of the introduction of any new socio-economic duty.

6. Accountability for equality and human rights

43. There was a strong consensus among respondents about the need for stronger accountability for equality and human rights legislation in Wales. The Older People’s Commissioner summarised the rationale for this as ensuring that legislation is tailored to the values, policy context and demography of Wales. The Commissioner also noted that:

“However, the Government of Wales Act 2006 does not explicitly include equality and human rights in the twenty broad devolved areas and competence in this area needs to be increased so that Wales can continue to develop its distinctive approach to equality and human rights.

“It is also crucial that Welsh public bodies are accountable to the Welsh Government and the elected representatives of the Welsh people in the National Assembly for their delivery on equality and human rights objectives.”¹⁶

44. Concerns about the UK Government’s review of the general public sector equality duty and its potential repeal (and consequently the fall of the specific Welsh equality duties), were highlighted by several respondents.

45. Citizens Advice Cymru consider that:

“[...] the current oversight arrangements (with a named Minister having responsibility, with a Directorate within Welsh Government to deliver on this (are effective. We believe however that a committee from within the Assembly needs to focus only on equality and human rights as otherwise they can be subsumed into other agendas. Whilst the strategic direction in Wales is a positive one, we see less evidence that equality and human rights is a cross cutting theme in policy making and this needs to be addressed.”¹⁷

46. A number of witnesses called for increased scrutiny of equality issues in the Assembly; Chwarae Teg called for a dedicated equality committee in the Assembly to be re-introduced.

¹⁶ EHR 12- Older People’s Commissioner for Wales

¹⁷ EHR 14- Citizens Advice

47. Dr Simon Hoffman explored the issue of human rights accountability in his evidence, stating that:

“‘Welsh Human Rights Law’ is an emergent possibility. Section 81 of the Government of Wales Act 2006 (GWA 2006) provides that the Welsh Ministers have no power to do anything which is incompatible with the European Convention on Human Rights (ECHR); similarly, ECHR incompatible legislation is beyond the competence of the NAW. Human rights compliance therefore goes to the legality of action by WG and the NAW in a way that does not apply to the UK Government or UK Parliament.”¹⁸

Our View

48. We note the evidence from witnesses that accountability for equality and human rights in Wales should be strengthened. We also note the views of witnesses that a committee should be established to focus on equality issues.

49. The number and remit of committees in the Assembly is not a matter for this Committee. However, we share some sympathy with the view that the Assembly could do more to ensure that equality issues are scrutinised. As described in a previous chapter, we have given a commitment that we will ensure that the EHRC attends a meeting of this Committee on an annual basis to report on its work and associated issues. This Committee will also, as it has done throughout this Assembly, continue to undertake regular scrutiny work on issues relating to equality.

50. We also note the views that the Welsh Government should seek to build on equality legislation to ensure that such legislation in Wales is tailored to the values, policy context and demography of Wales.

Recommendations

The Welsh Government should seek further powers in the field of equality and human rights to build on the Equality Act 2010 and the Human Rights Act 1998.

¹⁸ EHR 3- Simon Hoffman

Witnesses

The following witnesses provided oral evidence to the Committee on the dates noted below. Transcripts of all oral evidence sessions can be viewed in full at:

<http://www.senedd.assemblywales.org/ielIssueDetails.aspx?IId=5136&Opt=3>

25 April 2013

Kate Bennett	Equality and Human Rights Commission (EHRC)
Marie Navarro	Equality and Human Rights Commission (EHRC)
Dr Alison Parken	Cardiff University
Dr Simon Hoffman	Swansea University
Dr Victoria Winckler	Bevan Foundation

5 June 2013

Andrew White	Stonewall Cymru
Dean Lloyd	Stonewall Cymru
Mair Thomas	Tai Pawb
Emma Reeves	Tai Pawb
Rhian Davies	Disability Wales
Miranda French	Disability Wales

List of written evidence

The following people and organisations provided written evidence to the Committee. All written evidence can be viewed in full at:

<http://www.senedd.assemblywales.org/mglIssueHistoryHome.aspx?Ild=6256>

Organisation	Reference
Race Council Cymru	EHR 01
Equality and Human Rights Commission	EHR 02
Dr Simon Hoffman	EHR 03
Dr Alison Parken	EHR 04
Bevan Foundation	EHR 05
Adele Baumgardt	EHR 06
Professor Robert Moore	EHR 07
The Higher Education Funding Council for Wales (HEFCW)	EHR 08
Hawliau	EHR 09
North Wales Public Sector Equality Network	EHR 10
National AIDS Trust (NAT)	EHR 11
Older People's Commissioner for Wales	EHR 12
Barrie Ledbury, Equality Practitioner	EHR 13
Citizens Advice Cymru	EHR 14
Wales Council for Voluntary Action	EHR 15
Diverse Cymru	EHR 16
The Wales UNCRC Monitoring Group	EHR 17
Christian Action Research and Education (CARE)	EHR 18
Public and Commercial Services Union	EHR 19
Chwarae Teg	EHR 20

Betsi Cadwalader University Health Board	EHR 21
Tai Pawb	EHR 22
The WLGA and the NHS Centre for Equality and Human Rights (NHS CEHR)	EHR 23
Children’s Commissioner for Wales	EHR 24
Age Cymru	EHR 25
RCN Wales	EHR 26
Disability Wales	EHR 27
Stonewall Cymru	EHR 28