



Comisiwn
Cydraddoldeb a
Hawliau Dynol

Equality and
Human Rights
Commission

Briefing Paper 1

Rebuilding a more equal and fairer Wales: Focus on the unequal impact of the coronavirus pandemic

May 2020

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Introduction

About the Equality and Human Rights Commission

The Equality and Human Rights Commission is Great Britain's national equality body and has been awarded an 'A' status as a National Human Rights Institution (NHRI) by the United Nations.

Our job is to help make Wales, Scotland and England fairer. We do this by safeguarding and enforcing the laws that protect people's rights to fairness, dignity and respect.

As a statutory non-departmental public body established by the Equality Act 2006, the Commission operates independently. We aim to be an expert and authoritative organisation that is a centre of excellence for evidence, analysis and equality and human rights law. We also aspire to be an essential point of contact for policy makers, public bodies and business.

We use our unique powers to challenge discrimination, promote equality of opportunity and protect human rights. We work with other organisations and individuals to achieve our aims, but are ready to take tough action against those who abuse the rights of others.

About this briefing

The Equality and Human Rights Commission in Wales want to work together with Welsh Government, public bodies, organisations and people across Wales to rebuild a more equal and fairer Wales.

This briefing offers initial observations on the unequal impact of the coronavirus pandemic on older and disabled people, some ethnic minorities, some women and people living in socio-economic disadvantage, and recommendations to strengthen the consideration of equality and human rights in policy and legislation in Wales. It is essential that the response to the coronavirus pandemic and the road to recovery fully considers equality and human rights. We need an ambitious action plan focused on addressing the unequal impact of the coronavirus pandemic and rebuilding a fairer and more equal Wales.

Recommendations

Unequal impact on older and disabled people, some ethnic minorities, some women and people living in socio-economic disadvantage.

- Recommendation 1: Welsh Government and public bodies in Wales to continue to listen and understand the key inequalities and human rights issues arising from the coronavirus pandemic and responses to it. This should then inform decision making and action plans.
- Recommendation 2: Welsh Government must ensure that any restrictions on people's freedoms in response to the pandemic comply with equality and human rights laws and standards and are necessary, proportionate, time-bound and are properly scrutinised.
- Recommendation 3: Welsh Government and public bodies responsible for data collection should assess, monitor and report on the impact, including the health and other effects, of coronavirus and the legislative and policy response on human rights and equality. Where normal data gathering methods are disrupted or inadequate, they should use new sources and alternative methods to gain insight into potential impacts for different protected characteristics.

Addressing deepened inequalities through an ambitious action plan to rebuild a more equal and fairer Wales.

- Recommendation 4: Welsh Government should create an ambitious action plan to rebuild a more equal and fairer Wales. This should address key inequalities and human rights issues that have been exacerbated through the impact of the coronavirus pandemic.
- Recommendation 5: Welsh Government and public bodies should review their Strategic Equality Plans to identify the key inequalities exacerbated by the coronavirus pandemic and create a clear action plan with equality outcomes to build a more equal and fair Wales as we recover from this crisis.

Continued compliance with the PSED in Wales.

- Recommendation 6: Welsh Government, public bodies in Wales and those carrying out public functions must comply with the Public Sector Equality Duty in developing and implementing responses to the coronavirus pandemic, ensuring they are informed by evidence and engagement with representative groups, that they evidence consideration of equality through an equality impact assessment and embed learning from different approaches across Wales and the UK.
- Recommendation 7: Welsh Government should ensure that Child Rights Impact Assessments (CRIA) are applied to all measures taken in response to COVID-19. In carrying out the CRIA, Welsh Government can consider the recent guidance¹ issued by the UN Committee on the Rights of the Child.
- Recommendation 8: Welsh Government and public bodies should ensure that equality impact assessments of new or changed policies or processes are undertaken and published.

Equality and human rights at the heart of the framework for recovery.

- Recommendation 9: Welsh Government should strengthen the framework for recovery with questions on the consideration and measurement of the impact on protected characteristics, the reduction of inequalities of outcome resulting from socio-economic disadvantage and human rights. The legal requirements within the Equality Act and the socio-economic duty need to be clarified in this framework. There needs to be a transparent decision-making process for the framework to recovery and evidenced consideration of equality and human rights. EHRC Wales can advise the Welsh Government on the framework.
- Recommendation 10: Welsh Government should add the following questions to the framework for recovery:
 - Is the purpose of the policy change/decision clearly set out?
 - Have we used all available relevant information / evidence?
 - Have those affected by the policy/decision been involved in decision making?
 - Have potential positive and negative impacts been identified?
 - Are there plans to alleviate any negative impact?
 - Are there plans to monitor the actual impact of the proposal?

¹ See UN document on website [The Committee on the Rights of the Child warns of the grave physical, emotional and psychological effect of the COVID-19 pandemic on children and calls on States to protect the rights of children](#)

Commencement of the socio-economic duty as a tool for response and recovery.

- Recommendation 11: Welsh Government should commence the socio-economic duty by the end of the year and take into account the principles of the duty in its current strategic decision-making. The formal commencement of the duty should include clear articulation of the inequalities of outcome resulting from socio-economic disadvantage that Welsh Government and public bodies across Wales must focus on reducing to rebuild a more equal and fairer Wales.
- Recommendation 12: To begin to implement the socio-economic duty Welsh Government should consider the reduction of health inequalities resulting from socio-economic disadvantage in its strategic decision-making. NHS Wales and Public Health Wales should ensure collection and publication of disaggregated data on COVID-19 cases in Wales – including by area of deprivation, sex, ethnicity, nationality and disability – in order to better understand the differential health impact of the virus, inform decision-making and assist compliance with the PSED. Welsh Government, NHS Wales and Public Health Wales should ensure this data is collected, published and reviewed where disproportionality in health outcomes is identified.

Unequal impact of the coronavirus pandemic

Unequal impact on older and disabled people, some ethnic minorities, some women and people living in socio-economic disadvantage.

Older and disabled people: Older and disabled people face life-threatening concerns about access to health and social care. We were concerned about inappropriate application and communication of Do Not Attempt Resuscitation (DNAR) notices that put disabled and older people at risk. The Coronavirus Act 2020 rolled back provisions within the Social Services and Wellbeing Act resulting in confusion and concern on access to vital care and carers assessments. There continue to be grave concerns regarding safety in care settings with a lack of virus testing and personal protective equipment (PPE).

Older people: The impact of the coronavirus pandemic on older people is of great concern both for the Commission and stakeholders, particularly the situation in care homes including lack of testing in Wales; and hospital discharge to care homes. Older people have reported feeling discriminated upon, and are also digitally excluded. We have concerns that excluding any section of the population from lockdown easing based solely on age could be discriminatory².

² Guardian article [‘Elderly must not be left out of lockdown easing.’](#)

Disabled people: Disabled people face further barriers to accessing justice and education. The rapid expansion of video and telephone hearings across courts and tribunals risks increasing barriers to effective participation for some disabled people and undermining the right to a fair trial if their specific needs are not recognised and met. The changes made to Mental Health Tribunals put disabled people in Wales at greater disadvantage than those in England³. There are concerns that disabled children and children with additional learning needs in Wales may not be accessing the support that they need for their education⁴ and predicted grades could impact on their achievements.

People living in poverty: Socio-economic disadvantage impacts on people's life chances and intersects across other forms of discrimination. The Office for National Statistics has published a study showing that the rate of deaths in the most deprived areas of Wales is significantly higher than in wealthier parts of the nation⁵. The most deprived areas in Wales had a mortality rate for deaths involving COVID-19, almost twice as high as the least deprived areas⁶. Food insecurity has increased for some children, some ethnic minorities, disabled and older people. It appears that we are entering a recession that could further entrench socio-economic disadvantage and have far reaching consequences for people in Wales.

Ethnic minorities: A report from the Office for National Statistics⁷ found that Black people are four times more likely to die from coronavirus, the reasons for this are likely to be multiple potential factors. Predicted grades could have a lasting effect on young people from certain ethnic minority backgrounds who are already disproportionately disadvantaged. Ethnic minorities are over-represented in low-paid and gig economy employment, and so will be disproportionately impacted by the lack of financial support packages for workers in this sector. Gypsy, Roma and Traveller communities face limited access to water and sanitation, and the risk of eviction.

³ [The Coronavirus Act 2020 \(Commencement No. 1\) \(Wales\) Regulations 2020](#)

⁴ [Snap Cymru Coronavirus update 3rd April 2020](#)

⁵ [Wales online report on ONS study 'Higher coronavirus death rates in Wales' poorest communities'](#)

⁶ [Office for National Statistics Report, April 2020 'Deaths involving COVID-19 by local area and socioeconomic deprivation: deaths occurring between 1 March and 17 April 2020'](#)

⁷ [ONS Report May 2020 'Coronavirus \(COVID-19\) related deaths by ethnic group, England and Wales: 2 March 2020 to 10 April'](#)

Gender equality: Evidence suggests that domestic abuse is increasing during the crisis, with reports that domestic homicides have doubled. Disabled women and ethnic minority women are at greater risk of domestic abuse. There are serious concerns that survivors might not be reaching out for the support and protection they need during lockdown. Welsh Women's Aid have raised concerns that there will be an even greater demand for all violence against women and girls services as lockdown is eased and survivors reach out for support⁸. Concerns have been raised by Tonia Antoniazzi MP for Gower that pregnant women have been sent home on sick pay or unpaid leave during the coronavirus crisis⁹. Caring responsibilities are increasing for many having a disproportionate impact on the one in four women aged 50-64 who have caring responsibilities, compared to one in six men¹⁰. Ethnic minority women are more likely to be in precarious employment and could therefore feel the brunt of any economic recession.

Human Rights: There are a number of human rights issues arising from the coronavirus pandemic and responses to it. There is growing concern about the potential challenge to the right to private life and civil liberties by Welsh Government plans for digital contact tracing and immunity passports¹¹. Data will need to be handled lawfully, temporarily and privacy risks properly evaluated and accounted for. This may have a particular impact on migrants, particularly in the context of the hostile environment, and people may be digitally excluded.

Recommendation 1: Welsh Government and public bodies in Wales to continue to listen and understand the key inequalities and human rights issues arising from the coronavirus pandemic and responses to it. This should then inform decision making and action plans.

Recommendation 2: Welsh Government must ensure that any restrictions on people's freedoms in response to the pandemic comply with equality and human rights laws and standards and are necessary, proportionate, time-bound and are properly scrutinised.

⁸ [Welsh Women's Aid Press Release 24th April 2020](#)

⁹ [BBC Online article 'Coronavirus: Claim pregnant women put on sick pay'](#)

¹⁰ [Carers UK, August 2019 policy briefing](#)

¹¹ [BBC News 4th May 2020 Coronavirus: NHS virus tracing app could be used in Wales](#)

Recommendation 3: Welsh Government and public bodies responsible for data collection should assess, monitor and report on the impact, including the health and other effects, of coronavirus and the legislative and policy response on human rights and equality. Where normal data gathering methods are disrupted or inadequate, they should use new sources and alternative methods to gain insight into potential impacts for different protected characteristics.

Addressing deepened inequalities through an ambitious action plan to rebuild a more equal and fairer Wales.

Existing inequalities are being laid bare, intensified and deepened through the impact of the coronavirus pandemic. In our *Is Wales Fairer? 2018 Report*¹² we documented how disabled people are being left even further behind, socio-economic disadvantage is leading to a stark gap in life experiences, violence against women and girls is a reality for many, and race inequality persists in Wales.

From early evidence it appears that the coronavirus pandemic, and responses to it, may be exacerbating these existing inequalities across all areas of life. Responses to coronavirus and the road to recovery must be focused on addressing the unequal impact and deepened inequalities, as well as promoting and protecting human rights.

Disabled people, older people, socio-economically disadvantaged people, some ethnic minorities and some women are at the sharp end of the impact of the coronavirus pandemic and the measures being taken to respond to it. It is clear that Welsh Government is listening to stakeholders from these groups of people about the disproportionate impact on their experiences and taking some steps to address the issues raised. We want to ensure that the voices and needs of people experiencing inequality continue to inform consideration of policy and that this ultimately results in action to save and improve lives in Wales.

Recommendation 4: Welsh Government should create an ambitious action plan to rebuild a more equal and fairer Wales. This should address key inequalities and human rights issues that have been exacerbated through the impact of the coronavirus pandemic.

¹² Report available on our website [Is Wales Fairer? 2018](#)

Recommendation 5: Welsh Government and public bodies should review their Strategic Equality Plans to identify the key inequalities exacerbated by the coronavirus pandemic and create a clear action plan with equality outcomes to build a more equal and fair Wales as we recover from this crisis.

Strengthening consideration of equality and human rights in decision-making

Continued compliance with the PSED in Wales.

Recognising the pressures facing public bodies due to the coronavirus pandemic, we have reviewed and, where appropriate, postponed our approach to ensuring compliance with the reporting requirements in the PSED specific duties.¹³ In Wales, we have told public bodies that they can delay the publication of their Strategic Equality Plans and Annual Equality Reports for six months. We will review the position in October 2020. However, we have encouraged listed public bodies in Wales to continue to meet these obligations where possible.

The Equality Act 2010 ('the Act') provides a legal framework that protects individuals from discrimination, promoting a more equal and fair society. Continued compliance with the Act, by Welsh Government and other public bodies, is essential in the current crisis and beyond. We are reminding Welsh Government and listed public bodies in Wales of their obligation to comply with Section 149(1) of the Equality Act 2010, the public sector equality duty¹⁴. Equality Impact Assessments (EIAs) are a legal requirement under the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 and a useful tool to ensure the consideration of the likely impact of proposed policies using available evidence before any decision to implement a policy is made.

In Wales there is also the legal requirement for Ministers to ensure consideration is given to the interests of children; this is particularly important in responses to the coronavirus pandemic. Under Section 1 of the Rights of Children and Young Persons (Wales) Measure 2011, Ministers have a duty to have due regard to the

¹³ See more information on our compliance activity available on our website: [Equality and Human Rights Commission, 'Advice and Guidance on the Public Sector Equality Duty'](#)

¹⁴ Resources are available on our website, ['Guides to the PSED in Wales'](#)

UNCRC. This includes the requirement to undertake a Child Rights Impact Assessment (CRIA) of any legislation or policy that will have a direct or indirect impact on children as set out in the Children's Scheme 2014.

Recommendation 6: Welsh Government, public bodies in Wales and those carrying out public functions must comply with the Public Sector Equality Duty in developing and implementing responses to the coronavirus pandemic, ensuring they are informed by evidence and engagement with representative groups, that they evidence consideration of equality through an equality impact assessment and embed learning from different approaches across Wales and the UK.

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Recommendation 8: Welsh Government and public bodies should ensure that equality impact assessments of new or changed policies or processes are undertaken and published.

¹⁵ See UN document on website [The Committee on the Rights of the Child warns of the grave physical, emotional and psychological effect of the COVID-19 pandemic on children and calls on States to protect the rights of children](#)

Equality and human rights at the heart of the framework for recovery.

We are pleased to see that equality is within Welsh Government's 'Leading Wales out of the coronavirus pandemic: a framework for recovery'¹⁶. This can be strengthened to reconfirm the consideration of equality and human rights in decision-making in Wales. The Scottish Government has produced a 'Coronavirus (COVID-19): framework for decision making'¹⁷ that includes clearer commitment to equality and human rights.

We are also encouraged by Welsh Government approach to human rights, and note that both European and UN Convention rights are referenced in the recent guidance for social services. However, this approach needs to be embedded into the framework for recovery. This will involve careful consideration of how each policy decision affects individual's human rights across Wales. For example the rights to liberty and privacy will need to be considered alongside children's rights.

Recommendation 9: Welsh Government should strengthen the framework for recovery with questions on the consideration and measurement of the impact on protected characteristics, the reduction of inequalities of outcome resulting from socio-economic disadvantage and human rights. The legal requirements within the Equality Act and the socio-economic duty need to be clarified in this framework. There needs to be a transparent decision-making process for the framework to recovery and evidenced consideration of equality and human rights. EHRC Wales can advise the Welsh Government on the framework.

Recommendation 10: Welsh Government should add the following questions to the framework to lead Wales out of the coronavirus pandemic:

- Is the purpose of the policy change/decision clearly set out?
- Have we used all available relevant information/evidence?
- Have those affected by the policy/decision been involved in decision making?
- Have potential positive and negative impacts been identified?
- Are there plans to alleviate any negative impact?
- Are there plans to monitor the actual impact of the proposal?

¹⁶ [Welsh Government document 'Leading Wales out of the coronavirus pandemic: a framework for recovery'](#)

¹⁷ [Scottish government document 'Coronavirus \(COVID-19\): framework for decision making'](#)

Commencement of the socio-economic duty as a tool for response and recovery.

The current crisis is likely to increase levels of poverty in Wales with reduced incomes and a potential economic downturn. This will have a greater impact on people already living in socio-economic disadvantage and intersect across other forms of inequality.

The socio-economic duty provides a tool for Welsh Government and public bodies to reduce the inequalities of outcome resulting from socio-economic disadvantage through strategic decision-making. To do that, there needs to be clarity on what the most pressing inequalities of outcome are so that there is a clear vision and ambition to drive forward the response in Wales in a strategic way. We would highlight the importance of taking an intersectional approach when working to achieve your aims.

We are pleased that Welsh Government continues to prioritise the commencement of the socio-economic duty. We will continue to work closely with officials to prepare guidance and information to ensure the successful implementation of the duty.

Recommendation 11: Welsh Government should commence the socio-economic duty by the end of the year and take into account the principles of the duty in its current strategic decision-making. The formal commencement of the duty should include clear articulation of the inequalities of outcome resulting from socio-economic disadvantage that Welsh Government and public bodies across Wales must focus on reducing to rebuild a more equal and fairer Wales.

Recommendation 12: To begin to implement the socio-economic duty Welsh Government should consider the reduction of health inequalities resulting from socio-economic disadvantage in its strategic decision-making. NHS Wales and Public Health Wales should ensure collection and publication of disaggregated data on COVID-19 cases in Wales – including by area of deprivation, sex, ethnicity, nationality and disability – in order to better understand the differential health impact of the virus, inform decision-making and assist compliance with the PSED. Welsh Government, NHS Wales and Public Health Wales should ensure this data is collected, published and reviewed where disproportionality in health outcomes is identified.

Contacts

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EASS

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