

# **Equality and Human Rights Commission Wales**

## **Wales Committee**

### **Advice to Jane Hutt AM Equalities Minister Welsh Government**

**November 2012**



**Comisiwn  
Cydraddoldeb a  
Hawliau Dynol**

**Equality and  
Human Rights  
Commission**

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## The Wales Committee

The 2006 Equality Act established the Wales Committee as a decision making body with duties and powers to advise devolved government; develop a work programme and ensure the Commission's work is appropriate to Wales. They set the strategic direction of the Commission's work in Wales.

**Ann Beynon OBE** is the EHRC Commissioner for Wales and the Director for BT in Wales. Ann chairs our Wales Committee, supported by the National Director for Wales.

**Rev Aled Edwards OBE** is Chief Executive of CYTŪN (Churches Together in Wales).

**Karen Dugate** is Chief Executive of Merthyr Tydfil Housing Association.

**Marie Brousseau-Navarro** is a leading expert on Welsh Law and Devolution and is Managing Director of Your Legal Eyes.

**Megan Mathias** is Director and co-founder of Kafka Brigade UK and a former senior civil servant in the Welsh Government working on public service innovation and improvement.

**Meryl Elmusrati** is a programme manager for the Welsh Government's Flying Start programme in Flintshire and has experience of Non-Executive Director roles across the Public Sector in Wales.

**Mona Bayoumi** is a barrister specialising in human rights and asylum and immigration based at the Civitas Law Chambers.

**Saleem Kidwai OBE** is Secretary General for the Muslim Council for Wales, an Honorary Fellow of Cardiff University and a qualified accountant.

**Siân Gale** is a Director of Cwmni Pawb that specialises in training, research and evaluation for the creative industries as well as community organisations and trade unions.

## Summary

The Welsh Government has asked the EHRC for advice on how to achieve its aim of establishing

“stronger Welsh accountability for equality and human rights legislation, including the enforcement of Wales specific duties”

EHRC advice is that to achieve this goal the Welsh Government needs to be able to set the equality and human rights agenda in Wales and regulate delivery by the public sector. This will best be achieved by:

- Full devolution of the Public Sector Equality Duty from the UK Government to the Welsh Government
- Seeking increased powers to build on the Equality Act 2010 and the Human Rights Act 1998
- Strengthening the EHRC relationship with the Welsh Government, including, as appropriate, through funding specific work
- Making stronger links between tackling poverty and reducing inequality

These measures would ensure the Welsh Government would be fully in control of any changes to the PSED for the future – for example changes to its scope, which organisations are covered by it and how it is monitored and regulated. It would not be vulnerable to any changes that a UK Government may wish to introduce. If the Welsh Government secured increased responsibilities for equality and human rights this would require the EHRC to adapt further its approach in Wales, England and Scotland. This would mean building strong and distinctive relationships with the Welsh Government as well as with the UK Government - and with the National Assembly and its Committees as well as with Parliament.

Opportunities will arise over the next year or two to make changes to the Constitutional settlement - including making a submission to the Silk Commission. These should be used to strengthen Welsh accountability for equality and human rights legislation. As a result the distinctive and progressive equality and human rights agenda will be able to flourish and deliver improvements in Welsh public service and for Welsh citizens.

There are steps towards increased accountability and improved delivery that can be taken whilst the more substantial changes are being secured. These are based on:

- Making the most of the Welsh Government’s new strategic approach to equality which is embedded in its 2012 Strategic Equality Plan and Objectives.

## **Advice to the Equalities Minister**

In January 2012 Jane Hutt AM, Equalities Minister, wrote to the EHRC in the following terms:

'You will be aware that the Welsh Government Programme 2011/2016 includes an action to explore how establishing stronger Welsh accountability for equality and human rights legislation, including enforcement of Wales specific duties, can be achieved.

I have been thinking how best to take this forward. Alongside my officials, I feel it would be helpful if the EHRC Wales Committee could advise us on this matter, including the merits, challenges, disadvantages and practical considerations.'

**The EHRC Wales Committee welcomes this opportunity to provide advice to the Equalities Minister.**

**The Wales Committee makes four recommendations, all of which should be taken forward. They are related and will reinforce each other in impact. Together these recommendations enable the Welsh Government to secure increased accountability for equality and human rights and ensure it has control of this important agenda in Wales – and of the Public Sector Equality Duty in particular.**

**Some recommendations can be actioned immediately, others will take some time to action and will have progressive impact over a period of the next few years.**

**The merits, challenges and practical implications of each recommendation are shown at the end of the relevant section.**

**Once the Minister has taken decisions on future action the Wales Committee can assist in developing the advice further.**

## **EHRC Recommendations**

### **1. Seek increased powers from the UK Government, including devolution of the Public Sector Equality Duty**

The Welsh Government could set out the case for devolution of the Public Sector Equality Duty, in its entirety, from the UK Government. This would provide the Welsh Government with assurance of control for the future. It would enable the PSED in Wales to be amended, for example, to introduce a socio-economic duty.

The Welsh Government could go further and request the ability to build on the Equality Act 2010 and the Human Rights Act 1998. This would enable it to introduce Welsh-specific provisions in relation to the public sector should it want to do so in the future.

### **2. Strengthen the EHRC relationship with the Welsh Government**

Steps could be taken by the Welsh Government to strengthen the relationship with the EHRC and, particularly, the Wales Committee and Directorate. The EHRC could undertake additional programmes of work in support of the Welsh Government's priorities under an agreement.

### **3. Make the links between protected groups and socio-economic inequality**

The Welsh Government could build a unified strategic approach, with separate defined actions, to tackle socio-economic disadvantage and redress inequality.

This could be achieved by:

- Securing a version of the Equality Act 2010 socio-economic duty for Wales
- Adding socio-economic disadvantage to a fully devolved PSED for Wales
- Clarifying the purpose of Section 77 Government of Wales Act 2006, giving it substance, and publishing guidance

### **4. Make the most of existing powers**

Continuing to strengthen the focus on the Strategic Equality Objectives will help the Welsh Government to deliver its 2011/2016 Programme. Equality, and performance in relation to the Equality Objectives, could form a more significant part of the dialogue that Ministers have with their sector.

## **Equality and Human Rights Commission**

The Equality and Human Rights Commission (EHRC) is the independent advocate for equality and human rights in Britain. We are an independent statutory body established under the Equality Act 2006 and became operational in October 2007. We are a modern regulator charged with upholding fair treatment and tackling inequality. We are here to ensure everyone is treated with dignity and respect. We believe that the damaging effects of discrimination and prejudice have no place in a modern, open society.

Parliament has set us the tasks of promoting equality, enforcing the law, protecting the human rights of all and bringing people together to build stronger communities. These are ambitious aims that can only be achieved in partnership with others and with the support of the public.

To fulfil these aims we have unique powers. We can take legal cases on behalf of individuals to test and extend the right to equality and human rights; set up inquiries to investigate the behaviour of institutions; promote and enforce the public sector duties; and use our influence to lead new debates based on the evidence we collect and publish.

In 2009 the EHRC joined the family of 66 'A' status accredited National Human Rights Institutions (NHRIs) around the world, becoming Great Britain's first accredited NHRI and the UK's second - joining the Northern Ireland Human Rights Institution which was awarded 'A' status in 2006.

The Equality Act 2006 established the EHRC Wales Committee as a decision making body with duties and powers to:

- Advise devolved government about enactments and the likely effects of legislation (section 11 EA 2006)
- Undertake research; publish and disseminate ideas; give advice and guidance; provide education and training (section 13 EA 2006)
- Advise the EHRC about the exercise of its functions in so far as they affect Wales

In so far as work covered by sections 11 & 13 (above) affects Wales, it can only be taken forward in Wales, by the Wales Committee. The relevant section is set out at Annex 1. The Act specifies that the Wales Committee is chaired by the Wales Commissioner who is a member of the main EHRC Board.

## **UK Government consultation on the future of the EHRC**

In April 2011 the UK Government launched a consultation on the future of the EHRC 'Building a fairer Britain: Reform of the Equality and Human Rights Commission'. The Government response to the consultation was published on 15 May 2012.

The UK Government has decided to make the following changes to the duties and powers of the EHRC:

- Repealing the EHRC's general duty at Section 3 Equality Act 2006
- Amending the Section 12 duty to monitor progress from every 3 years to every 5 years
- Repealing the EHRC's good relations duty
- Repealing the EHRC's power to arrange conciliation

There is little in the UK Government's response that is unexpected or departs significantly from the original consultation document published 14 months earlier. The UK Government notes that the EHRC has improved accountability and value for money and wishes the EHRC to become a valued and respected institution.

In parallel, the UK Government is implementing a number of non-legislative reforms to the EHRC including:

- Bringing the helpline and grants programmes to an end
- Reducing the budget
- Conducting a zero-based review of the EHRC budget
- Reducing the size of the Board
- Reviewing the performance of the EHRC in Autumn 2013

The reductions in EHRC budget and resources that are envisaged will have significant impact. The original budget for the EHRC in 2007 was £70 million with a staffing level of 525. The budget has gradually reduced and staff numbers will be below 200 by April 2013.

## **A strong and distinct EHRC presence in Wales**

The UK Government response to the consultation on the future of the EHRC states that the UK Government attaches

‘importance to the Commission retaining a strong and distinct presence in Wales and Scotland, working closely with the Welsh Government, the Scottish Government and the Scottish Human Rights Commission.’

The references to 'strong and distinct' are a consistent theme throughout the consultation response. This is not a new concept. The Equality Act 2006 specifies a requirement for a Wales Commissioner and Committee as set out at Schedule 1 Part 2.

Since 2007 the EHRC has had:

- A Wales Director who is a Member of the Senior Management Team to ensure GB consistency and Welsh relevance
- A programme of work appropriate to the Welsh context
- An office in Wales with a Staff Team including the experience, skill and capacity to:
  - Gather and analyse data and evidence relating specifically to Wales
  - Promote, guide, monitor and enforce the law, including the new specific duties in Wales
  - Advise Welsh Government across the remit
  - Engage with stakeholders to increase knowledge of rights and responsibilities and to share good practice

It is the EHRC's intention that these principles should continue to apply in Wales. This range of work will still be undertaken – albeit with a smaller team in Wales. This provides the foundation for a strong and distinct EHRC presence in Wales.

## **EHRC Work Programme 2012/13**

The EHRC in Wales has five priorities for 2012/ 2013.

These are to:

- Work with the Welsh Government to establish stronger Welsh accountability for equality and human rights legislation including the enforcement of the Wales specific duties. We will make a submission to the Silk Commission setting out how equality legislation in Wales can be strengthened and made clearer
- Use our evidence base to assist organisations in creating legislation, setting priorities and making policies that address the greatest inequalities in Wales.
- Promote, monitor, and regulate the Public Sector Equality Duty so that the duties and equality impact assessments result in improved decisions and services
- Work closely with employers so that they are more aware of equality and human rights issues. We will encourage public and private sector employers to adopt workplace policies on domestic abuse and mental health
- Provide courses for trade union and other legal advisors so that individuals are better informed on discrimination and human rights issues

## **Part 1: Context**

**In this part we set out the context of equality and human rights developments since 1999, the request from the Minister in January 2012, some thoughts on the meaning and importance of accountability and the way the EHRC has drawn up its advice.**

### **A distinctive Welsh equality and human rights agenda**

A distinctive approach towards equality and human rights has been adopted in Wales since 1999. The political campaign for devolution, including the role of equality activists, influenced the content of the Government of Wales Act 1998. As a result the Act included a clause (Section 120) introducing a unique legal duty to have "due regard to the principle that there should be equality of opportunity for all people." This became Section 77 in the Government of Wales Act (GoWA) 2006.

Independent evaluation demonstrated that Section 120 (and then Section 77) had significant impact. According to Dr Paul Chaney:

'it shifted the emphasis in the way government deals with equality matters from avoiding discrimination to the promotion of equality'

Dr Chaney notes the different approach to equality as a major distinguishing factor between the Welsh and the UK Governments.

In addition, Sections 80 and 81 of the GoWA 2006 prevent Welsh Ministers from doing anything that is incompatible with the Convention rights as defined by the Human Rights Act 1998.

The distinctive approach to equality and human rights has been underpinned by the principle of getting the Welsh Government's own house in order, influencing the devolved public sector and, where possible, reaching further to the non-devolved public and private sectors.

It is significant that promotion of equality has benefitted from a cross party consensus on most issues in both Committees and Plenary sessions.

Drivers for this different approach include the economic imperative of tackling poverty, the political imperative of achieving social inclusion, and the strength of the voluntary sector in assisting delivery.

Results of the different approach during the first Assembly Session included specific funding for voluntary sector organisations to promote equality and a partnership campaign that established Wales as leading the way in promoting equal pay.

The Assembly Equality Committee has undertaken reviews to address human rights issues in relation to Gypsy Travellers and learning disabled young people. It has carried out Inquiries into disability-related harassment and the equality considerations in the Welsh Government's budget.

In 2004 the Equality Committee published a report on mainstreaming equality which included recommendations for the Committee, the Government and the Permanent Secretary – essentially it recommended a more strategic approach.

The Equality Act 2010 introduced a new Public Sector Equality Duty (PSED), and the Welsh Government has defined specific equality duties for Wales to assist the Welsh public sector to comply with the PSED. The specific duties in Wales are significantly different and more far reaching than those in England and Scotland. It is the job of the EHRC to regulate these duties.

The Welsh Government Programme published following the 2011 election includes an equality chapter. The key aim is to:

'Create a fair society free from discrimination, harassment and victimisation with cohesive and inclusive communities'

An action to achieve this aim is to:

'establish stronger Welsh accountability for equality and human rights legislation, including the enforcement of Wales specific duties'

### **The request from the Equalities Minister**

In January 2012 Jane Hutt, the Equalities Minister, wrote to the EHRC indicating that she had been thinking about how best to take forward the aim of establishing stronger accountability. The Minister said it would be helpful if the Wales Committee could advise on this matter including views on the merits, challenges, disadvantages and practical considerations in strengthening accountability.

In responding to this request, the EHRC considered how the Welsh Government could gain more influence over public sector activity on equality and human rights in Wales.

This included consideration of how to achieve a better alignment between this agenda, public service improvement and effective regulation. The Wales Committee advice is that the following issues need to be explored:

- The possibility of greater devolution of equality and human rights to Wales whilst retaining GB consistency where appropriate or desired.
- Ensuring the equality and human rights regulator (EHRC) functions effectively in Wales
- The link between poverty and inequality
- The Welsh Government's ability to hold public authorities to account

### **Relationship between the Welsh Government and the EHRC**

The EHRC and the Welsh Government have a shared goal to promote and regulate the distinctive equality and human rights agenda in Wales to secure outcomes that:

- Reduce inequality and ensure human rights are understood and protected
- Have a positive impact on people's lives
- Lead to greater efficiency and value for money in public service organisations

These outcomes will be secured more effectively if there is stronger accountability for equality and human rights in Wales.

Accountability refers to the process of holding individuals and organisations to account for executing their power according to certain standards, involving a measure of answerability and of enforceability.

Accountability means answering to citizens for the way in which money has been spent, or how power and responsibilities have been exercised in the public interest - fairly and according to the law. It is a mechanism that can drive improvement in the delivery of government objectives in an open way, enabling public scrutiny. As a result it increases the confidence of citizens.

## **EHRC advice on the key areas to address**

In preparing its advice the Committee:

- Commissioned expert advice
- Engaged with stakeholders
- Reviewed the infrastructure and mechanisms required to challenge discrimination and promote equality and human rights

The Wales Committee advice is focussed on four key actions:

- Seek increased powers from the UK Government, including devolution of the Public Sector Equality Duty
- Strengthen the EHRC relationship with the Welsh Government
- Make the links between protected groups and socio-economic inequality
- Make the most of existing powers

## **Part 2. Seek increased powers from the UK Government, including devolution of the Public Sector Equality Duty**

Many of the areas that affect the daily life of citizens in Wales are devolved, including: education; social care; health; housing; leisure; transport and countryside. Public authorities provide services and infrastructure for citizens and are funded by and are accountable to the Welsh Government. Ensuring every citizen benefits from this provision and does not find it disproportionately difficult to access services requires public authorities to pay due regard to equality and human rights considerations – and specifically to compliance with the Public Sector Equality Duty (PSED).

The PSED emanates from UK legislation (Annex 2) and is regulated by the EHRC. There is a strong argument that the Welsh Government should have greater accountability from the public sector in respect of its adherence to equality and human rights requirements. This is not just a simple matter of Welsh Government authority. Early EHRC intelligence arising from monitoring of the PSED across GB suggests there is a correlation between strong performance in respect of PSED and high performing public authorities.

The Silk Commission on Devolution in Wales begins work on constitutional issues late in 2012 and is due to report by the end of 2013. This offers a critical opportunity for the Welsh Government to make the case for devolution of the PSED. This could address the weaknesses in the current arrangements and enable the Welsh Government to gain better control of public sector delivery on equality.

As the Welsh and UK Government equalities and human rights agendas diverge, it would be beneficial for the Welsh Government to be enabled to amend the Equality Act 2010 and the Human Rights Act 1998. Further, this enhancement to the devolution settlement would safeguard the Welsh Government's ability to hold public service to account in the event of the constitutional arrangements moving to a 'reserved' model.

### **A more detailed look**

A close look at the legislative framework covering equality and human rights in Wales reveals a confusing landscape of gaps and inconsistencies.

The gaps and inconsistencies largely arise from the fact that in developing the Equality Act 2006, and the Equality Act 2010, little consideration was given to the Welsh Government and National Assembly for Wales.

Similarly, in developing the Government of Wales Act 2006 the regulation of equality and human rights was given little consideration.

As a result the current position has been described as "messy". Jane Williams of Swansea University comments:

‘The allocation of responsibility for equality and human rights between UK, GB and Welsh devolved governance is messy. The main statutory sources - the Government of Wales Act 2006, the Equality Act 2006 and the Equality Act 2010 - have emerged from different policy streams and may have contributed to areas of contradiction and overlap between the responsibilities of institutions under these statutes.’

### **Public Sector Equality Duty**

The UK Government enacted the Equality Act 2010, including provision for a new Public Sector Equality Duty (PSED). The Act gave the Welsh Government the power to introduce Specific Equality Duties for Wales, to guide authorities on how to comply with the PSED. These duties came into force in April 2011.

The gaps and inconsistencies relating to the Public Sector Equality Duty, and the specific duties, weaken devolution and potentially weaken delivery of the Programme of Government.

### **Specific weaknesses in the current arrangements**

The specific weaknesses relating to the Public Sector Equality Duty in Wales include:

#### **Accountability to the National Assembly**

- The Equality Act 2010 confers powers on Welsh Ministers to enable them to introduce specific duties. **But** the National Assembly does not have the authority to contribute on the content of the duties, it only approves the regulations creating the duties.
- The Welsh Ministers are accountable to the National Assembly in relation to the duties **but** only at a general level - in that they are accountable in the exercise of all their functions.
- Welsh Ministers are obliged to report progress annually on the duties **but** these are not subject to Assembly scrutiny.

#### **Coverage of the duties**

- The Act gives Welsh Ministers the power to draw up the list of public authorities covered by the duties **but** the authorities covered must be agreed with UK Ministers.

- The public authorities list requires UK approval **but** is not subject to Assembly Committee or NAW scrutiny.
- The listed authorities have obligations arising from the specific duties set by Welsh Ministers **but** are not required to report progress back to them.

### **Effective guidance for public authorities**

- The Welsh Government has devoted time and resource to a Code of Practice on the duties as one means of ensuring effective delivery. **But** because of the way the Equality Act 2006 is drafted the publication of this Code can be blocked by UK Ministers - as has recently happened - and any Code would then be laid before the UK Parliament rather than the National Assembly for Wales - avoiding Assembly scrutiny.

### **Possible solutions**

Devolution of the Public Sector Equality Duty to Wales could resolve the inconsistencies that potentially thwart the Welsh Government's ability to drive public service improvement.

This could be achieved by:

- a Transfer of Functions Order

or by:

- a submission to the Silk Commission

## **Recommendation**

### **Seek increased powers from the UK Government, including devolution of the Public Sector Equality Duty**

The Welsh Government could set out the case for devolution of the Public Sector Equality Duty, in its entirety, from the UK Government. This would provide the Welsh Government with assurance of control for the future. It would enable the PSED in Wales to be amended, for example, to introduce a socio-economic duty.

The Welsh Government could go further and request the ability to build on the Equality Act 2010 and the Human Rights Act 1998. This would enable it to introduce Welsh-specific provisions in relation to the public sector should it want to do so in the future.

This could be achieved by:

- A Transfer of Functions Order
- A Silk submission recommendation

#### **Merits:**

A fully devolved PSED offers the clearest solution in terms of both accountability and regulation. It would:

- Enable a coherent articulation of the PSED and specific duties in Wales
- Strengthen the devolution settlement
- Enable a greater prospect of achieving the potential of the PSED to drive public service improvement and improve citizens lives
- Give certainty that, should the equality and human rights objectives of the UK and Welsh Government diverge further, the Welsh Government would be in control of the PSED for Wales

If the Welsh Government secured the ability to amend equality and human rights legislation this would safeguard its ability to hold public service to account in the event of the constitutional arrangements moving to a 'reserved' model.

#### **Challenges:**

Equality issues could get lost in the much bigger Silk Commission agenda. Both options require UK Government decisions and the timetable would be uncertain.

#### **Practical considerations:**

Devolution of the PSED could include a consequential transfer of resource from the UK to the Welsh Government.

## **Part 3. Strengthen the EHRC relationship with the Welsh Government**

There is an increasing divergence between the Welsh Government and UK Government in terms of equality and human rights. The different approach to, and priority given to, the Public Sector Equality Duty (PSED) is the clearest recent example of this.

### **Regulating the PSED**

The purpose of the specific duties is to assist public authorities achieve better performance in implementing the PSED. These duties have the potential to transform people's lives. To fulfil this potential the Welsh Government, and public authorities, require regulation including:

- A robust evidence base
- Clear guidance
- Sharing of effective practice
- Comprehensive monitoring
- Reports on public authority performance to Ministers
- Enforcement

The specific duties offer a unique opportunity to embed equality into public service delivery and they have been introduced at a time when public service budgets are tight and the Commission is facing reduced resources. The EHRC will have less capacity to regulate the specific duties at the point when input is most needed - to assist better outcomes from the duties and achieve Programme of Government commitments.

### **New arrangements between the EHRC and the Welsh Government**

Overall a review of EHRC responsibilities in relation to the Welsh Government is timely. By mutual agreement we could build a stronger relationship and enhance the EHRC's programme of work – especially in relation to PSED – and ensure this is adequately resourced to enable the duties to achieve their potential. This could be secured by providing the EHRC with some Welsh Government funding.

The Welsh Government is dependent on an effective working relationship with the EHRC to hold public authorities to account for delivery of outcomes on the duties. Ministers are obliged to report on how devolved public authorities are meeting their general duty by December 2014 and the EHRC is in a unique position to provide the data for this to occur.

The Equalities Minister has highlighted the importance of close working with the EHRC and welcomed the current partnership approach.

Regulating the duties is a priority for the EHRC but a lack of resources could mean the EHRC is unable to engage as deeply as it would wish. This potentially weakens the Welsh duties and the impact of the PSED on people's lives.

Increasing the strength of the EHRC's relationship with the Welsh Government, through an agreement to fund specific programmes of work, would ensure equality and human rights in Wales are regulated at a level that meets the Welsh Government's requirements.

### **EHRC Wales – part of a GB organisation**

EHRC Wales is part of a GB organisation. This ensures that equality and human rights regulation of the private sector and other non-devolved areas remains consistent across the nations. There is a strong argument for enhancing the EHRC's contribution rather than creating another regulatory body in Wales.

There is significant advantage for the Welsh Government, and other stakeholders in Wales, in being able to access information, research, legal and other expertise held by the EHRC in England and Scotland, alongside that held in Wales.

Infrastructure functions such as risk management, ICT and audit are already in place, ensuring EHRC Wales is efficiently run.

### **A joint agreement**

The basis for a stronger relationship between the EHRC and the Welsh Government could be set out in the form of a Concordat. An 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

Although finances are very tight, resources invested in the regulation of equality and human rights will result in public authorities intervening at an earlier stage to prevent problems escalating and to save money. Health and local government would be major beneficiaries so some consideration could be given to using 'improvement budgets' for EHRC funding.

## **Recommendation**

### **Strengthen the EHRC relationship with the Welsh Government**

Steps could be taken by the Welsh Government to strengthen the relationship with the EHRC and, particularly, the Wales Committee and Directorate. The EHRC could undertake additional programmes of work in support of the Welsh Government's priorities under an agreement.

#### **Merits:**

The EHRC is a robust, audited organisation so the Welsh Government can have confidence in its capacity to deliver. As part of a GB organisation the EHRC can facilitate comparisons between Wales, Scotland and England (and consistency across GB if appropriate).

The Welsh Government benefits from an increased capacity to hold public authorities to account on delivery of the duties in advance of the Ministerial reports due for publication in December 2014.

The Welsh Government has increased access to advice on equality and human rights.

A stronger foundation for regulation will enable the Welsh Government to evaluate the impact of the duties effectively.

#### **Practical considerations:**

An agreement provides a framework for partnership, enabling purpose, deliverables, timelines and resources (based on value for money) to be clearly set out.

The Welsh Government currently has a number of Concordats in operation, for example, the agreement with the Food Standards Agency.

## **Part 4. Make the links between protected groups and socio-economic inequality**

Public service improvement, higher standards and smarter use of resources cannot be achieved without a focus on and “due regard to” equality and human rights. The same applies to socio-economic disadvantage. There is overlap between economic inequality and inequality arising from membership of a protected group – for example many disabled people and Muslim people are amongst the poorest in Wales. But different strategies may be called for to tackle socio-economic disadvantage and to redress inequality.

For example, the Welsh Government is committed to improving educational attainment and achieving higher grades across Wales in order for people to have better life chances. There is plenty of data to show where support and interventions are needed.

As an illustration it is worth looking at GCSE results. A\*-C grades in the core subjects are achieved by:

- 50% of all pupils
- 31% of Black pupils
- 20% of pupils from the poorest households
- 12% of pupils with special educational needs

To improve standards across Wales, targeted interventions are needed to support each group of pupils who are currently not reaching their potential. The implementation will be different for each group but could be assessed as part of a single process as actions are likely to be delivered by the same staff and funded from the same budget. There would be an advantage in having a single strategic approach, but with separate clearly defined actions. This approach would maximise efficiency and effectiveness.

### **A new approach**

To date socio-economic and equality initiatives have been taken forward by different Welsh Government departments and led by separate Welsh Government Ministers.

The Welsh Government has set ambitious targets to eradicate poverty, but progress towards these targets is proving difficult to achieve. It is unlikely that sufficient momentum will be built to deliver the objectives unless a fresh look is taken at the approach that underpins work.

Now that a more strategic approach to the promotion of equality is underway requiring public authorities to pay due regard to equality in setting priorities, making policy and resource allocation, the time may be right to adopt a similar approach in relation to socio-economic disadvantage.

In fact the Equality Act 2010 had envisaged this and the Act contains provisions for a socio-economic duty. The UK Government decided not to “commence” this aspect of the Act and has spoken about repealing this part of the Act. But Legislative Competence Orders would have been required from the Welsh and Scottish Governments and these were not forthcoming. With its different policy priorities and the different demographics in Wales, the Welsh Government is interested in a legal duty to pay due regard to socio-economic disadvantage. It could request commencement for Wales only.

The Welsh Government and the EHRC are committed to understanding the different and overlapping drivers of inequality and socio-economic disadvantage. If this analysis is not done effectively any strategies to address inequality or poverty are unlikely to have the desired impact. To further this work in 2011 EHRC Wales published 'An Anatomy of Economic Inequality in Wales'. This explored the Welsh poverty data through the lens of people's personal characteristics for the first time. It shows the impact of family background on life chances. It demonstrates that poverty can't be effectively addressed if discrimination and inequality are ignored as drivers.

Linking strategies to bring protected characteristics and socio-economic inequality more closely together will strengthen both and deliver greater potential to achieve Welsh Government objectives, while ensuring actions have clear outcomes focussed on specific needs, and that evaluation and measurement are in place.

The Welsh Government has recognised these connections and aims to take forward its Tackling Poverty Action Plan in tandem with its Strategic Equality Plan. From an EHRC perspective it is essential that addressing inequality is not inadvertently overlooked as a result of a strong focus on poverty and socioeconomic disadvantage.

### **EHRC advice**

The EHRC could be asked for advice in mapping the overlaps between equality and socio economic issues including:

- Different kinds of inequality and disadvantage
- The overlaps and differences
- Strategies and co-ordination to address them

From November 2012 the census data will begin to become available at ward level by some of the protected characteristics, and by measures of income and wealth, as well as health information. Together with other sources of data this enables a better picture than has previously been available as a basis for designing interventions and measuring outcomes.

There is a clear role for the EHRC to assist public authorities in bringing equality and socio-economic inequality together. This would enable full advantage to be taken of the EHRC's experience in supporting public service improvement and advising the Welsh government on progress.

There is an important role here for the EHRC. Section 8 of the Equality Act 2006 gives the EHRC wide ranging duties to promote, encourage and enforce in respect of equality and diversity. This role goes beyond EHRC responsibilities in respect of the protected characteristics and could include socio-economic inequality. The EHRC is able to advise the Government and take action as set out in the Equality Act 2006 Section 8 – shown at Annex 3.

### **Next Steps**

There are options. The Welsh Government could request the UK Government to commence the Equality Act socio-economic duty for Wales only. Although the socio-economic duty was envisaged as applying across the board, a socio-economic duty for Wales would, presumably, apply only to the devolved public sector.

A second option would be to add socio-economic disadvantage to a fully devolved PSED for Wales.

If neither of these approaches was successful, a third option would be to give greater purpose and clarity to Section 77 of the Government of Wales Act 2006. This requires Welsh Ministers to 'make appropriate arrangements with a view to securing that their functions are exercised with due regard to the principle that there should be equality of opportunity for all people.'

This could be achieved by clarifying that this clause includes socio-economic equality and by guiding public authorities about how to pay due regard in policy making and resource allocation. This approach would ensure the Welsh Government retains control, and would enable it to build on the equality model.

## **Recommendation**

### **Make the links between protected groups and socio-economic inequality**

The Welsh Government could build a unified strategic approach, with separate defined actions, to tackle socio-economic disadvantage and redress inequality.

This could be achieved by:

- Securing a version of the Equality Act 2010 socio-economic duty for Wales
- Adding socio-economic disadvantage to a fully devolved PSED for Wales.
- Clarifying the purpose of Section 77 Government of Wales Act 2006, giving it substance, and publishing guidance.

#### **Merits:**

The EHRC could take forward both the socio-economic and equality agendas bringing its expertise to the process and improving equality outcomes.

Commencing the socio-economic duty for Wales would ensure clarity and impact.

Adding socio-economic disadvantage to a fully devolved PSED for Wales would ensure a coherent approach to inequality and socio-economic issues.

Section 77 GoWA 2006 has been evaluated by experts as effective in driving change and delivering a distinctive equality agenda in Wales. It could enable more focussed attention on socio-economic disadvantage. This is achievable within the current legislative framework and could be implemented relatively speedily.

#### **Challenges:**

UK Government agreement is required for either of the first two options.

Understanding the precise drivers of inequality and poverty.

Guidance would need to be drafted, consulted on and published.

#### **Practical considerations:**

The EHRC could advise on overlaps between equality and socio-economic inequality.

The EHRC, in conjunction with the EHRC GB and other organisations such as the Wales Institute of Social and Economic Research, Data and Methods, has an authoritative evidence base.

## **Part 5: Make the most of existing powers**

The early years of devolution were characterised by a series of valuable equality initiatives. Initially these were rather piecemeal and disconnected, but gradually a more strategic approach has been developed.

In particular, the creation of specific duties for Wales - which apply to the Welsh Government as well as the rest of the devolved public sector - has resulted in a more evidence based, long term, far reaching strategic approach to equality than has been in place previously.

The equality objectives set out in the Welsh Government 2011 Strategic Equality Plan represent an opportunity to build equality and human rights considerations firmly into the work of the Government and public sector. It is important that the Government makes the most of this new opportunity to hold the public sector to account.

The equality objectives that have been published by all major public authorities in Wales should be drivers of new ways of making policy, different ways of delivering services and smarter ways of using resources. To ensure this happens public authorities need to know that delivering on their equality promises is a priority for their funder - the Welsh Government. They need to know that promises are not enough. There needs to be an appreciation that public service improvement will not happen without addressing the needs of all sections of our community.

### **Public service improvement**

The Public Sector Equality Duty provides a useful opportunity to drive culture change in organisations. Its real potential could be realised by combining it with some support to public sector managers to increase understanding of how to put equality at the heart of planning and decision-making. If needed, high profile enforcement is a possibility.

Tighter public sector budgets mean there is a new urgency to achieve public service improvement and an increased need to focus on meeting the needs of those in protected groups and disadvantaged people – many of whom may have the greatest need for public services.

The EHRC advice to Government is that an important step towards increasing accountability on equality would be to put in place a more visible way of monitoring public service to ensure action follows words and that actions result in outcomes. The Welsh Government equality objectives (set out at the end of this section) are based on the greatest inequalities in Wales and cover the major portfolio areas held by Ministers.

Welsh Government objectives such as improving educational achievement and reducing poor health will not be achieved unless barriers and discrimination are removed.

When Government Ministers talk about equality, and the importance of building equality considerations into services, with leaders of public service it has a significant impact. It is vital that equality is seen as an essential component of public service, not an optional extra, or worse still an additional burden. If authorities know that Ministers receive regular reports on their equality performance this will increase further the priority given to this work and increase accountability to the Welsh Government.

The EHRC has a key role to play as the regulator of the PSED and specific duties. It has already begun the task of monitoring implementation across public service and has found encouraging signs of compliance. The EHRC is not required to report on this to Welsh Ministers, but it will be providing briefings to Ministers with a view to further improvement of services and increasing the accountability of public authorities to the Welsh Government in relation to equality. This has been welcomed by Ministers.

### **Building human rights treaties into policy-making**

The Welsh Government has taken a distinctive approach to human rights.

In practice the most significant development resulting from this relates to children's rights. The first piece of Welsh-only legislation passed by Parliament at the request of the Welsh Government established a Children's Commissioner for Wales with a brief to safeguard and promote the rights and welfare of children. Wales appointed the first Children's Commissioner in the UK, though now there are four, one for each nation.

The distinctive approach to children's human rights continued as the Government took steps to build the principles of the United Nations Convention on the Rights of Children into the principles and practices of the Welsh Government and into public services. The UN appraisal of UK compliance with the UNCRC identified more positive performance in Wales than elsewhere in the UK.

The Welsh Government could extend this approach to other UN conventions. Some scoping has been undertaken in partnership between the Welsh Government and the EHRC to see what this would mean in relation to the United Nations Convention of the Rights of People with Disabilities.

Requiring public service to comply more clearly and explicitly with Convention rights would increase accountability to the Welsh Government in respect of human rights. EHRC recommends this should be a gradual process and suggests that the next area to be addressed should be the human rights of disabled people.

### **Reaching beyond the public sector**

The majority of EHRC advice is focussed on the devolved public sector but procurement offers the Welsh Government and public authorities the opportunity to promote equality amongst private sector businesses. This is facilitated by the specific duty that requires public authorities to give due regard to the Public Sector Equality Duty when awarding, and monitoring performance of, contracts. The Welsh Government may wish to take further steps to ensure the most is made of this opportunity to secure equality advances in organisations providing goods and services to the Welsh Government and the devolved public sector.

## **Recommendation**

### **Make the most of existing powers**

Continuing to strengthen the focus on the Strategic Equality Objectives will help the Welsh Government to deliver its 2011/2016 Programme.

Equality, and performance in relation to the Equality Objectives, could form a more significant part of the dialogue that Ministers have with their sector.

Public authority accountability for addressing human rights could be strengthened either through policy or legislative means.

### **Merits:**

There is no legal or practical obstacle to this recommendation. It could be initiated immediately. There is an evidence base that provides a firm footing for future action. It will assist delivery of the Programme for Government.

### **Challenges:**

Ensuring officials and public authorities understand the objectives as an integral part of the broader strategy to deliver services and allocate resources effectively. They are a means to achieve social inclusion and should not be seen as a bureaucratic burden.

### **Practical considerations:**

The EHRC has a role to play as regulator of the PSED, and specific duties.

Welsh regulators should take account of equality in developing their inspection frameworks.

## Welsh Government Strategic Equality Objectives

The Welsh Government equality objectives are based on the greatest inequalities in Wales. They apply to the Welsh Government and hence to the devolved public sector funded by the Welsh Government. Several of them call for action from across public service. For example a reduction in the number of NEETS calls for work from more than one department in the Welsh Government and for collaboration on the ground from more than one public service. The objectives are:

- Put the needs of service users at the heart of delivery in key public services, in particular health, housing and social services, so that they are responsive to the needs of people with protected characteristics.
- Reduce the number of young people not in education, employment or training (NEET).
- Tackle barriers and support disabled people so that they can live independently and exercise choice and control in their daily lives.
- Work with partners to identify and address the causes of the gender, ethnicity and disability pay and employment differences.
- Create a more inclusive workplace that promotes equality of opportunity for staff with protected characteristics through improved employee engagement and increase awareness of learning and development opportunities that are accessible to staff.
- Reduce the incidence of all forms of violence against women, domestic abuse, 'honour' based violence, hate crime, bullying and elder abuse.
- Improve the engagement and participation of under-represented groups in public appointments.
- Strengthen advice, information and advocacy services to help people with protected characteristics understand and exercise their rights and make informed choices.

# Annex 1

## Equality Act 2006 Schedule 1 Part 2 Setting out the functions of the Wales Committee

### Wales Committee

**24** (1) The Commission shall establish a decision-making committee to be known

as the Wales Committee.

(2) The Commission shall ensure that the Wales Committee is established before any of sections 8 to 12 comes into force (to any extent).

**25** The Commission shall appoint as the Chairman of the Wales Committee a

Commissioner appointed for the purpose of satisfying paragraph 2(3)(c).

**26** The Commission shall appoint each member of the Wales Committee for a period of not less than two years or more than 5 years, subject to the possibilities of—

- a) reappointment, and
- b) dismissal in accordance with the terms of appointment.

**27** The Wales Committee shall advise the Commission about the exercise of its functions in so far as they affect Wales.

**28** Before exercising a function in a manner which in the opinion of the Commission is likely to affect persons in Wales, the Commission shall consult the Wales Committee.

**29** (1) The power under section 13—

- a) shall be treated by virtue of this paragraph as having been delegated by the Commission to the Wales Committee in so far as its exercise, in the opinion of the Commission, affects Wales, and
- b) to that extent shall not be exercisable by the Commission.

(2) Sub-paragraph (1) does not apply to the power under section 13 in so far as

it is treated as delegated to the Disability Committee in accordance with paragraph 52.

(3) Sub-paragraph (1) shall not prevent the Commission from making arrangements under section 13(1)(d) or (e) for the provision of advice or guidance to persons anywhere in Great Britain.

**30** (1) The power under section 11(2)(c)—

- a) shall be treated by virtue of this paragraph as having been delegated by the Commission to the Wales Committee in so far as it concerns the giving of advice to devolved government about enactments which, in the opinion of the Commission, affect only Wales, and
- b) to that extent shall not be exercisable by the Commission.

(2) The power under section 11(2)(d)—

- a) shall be treated by virtue of this paragraph as having been delegated by the Commission to the Wales Committee in so far as it concerns the giving of advice to devolved government about proposed changes in the law which, in the opinion of the Commission, would affect only Wales, and
- b) to that extent shall not be exercisable by the Commission.

(3) Sub-paragraphs (1) and (2) shall not apply to the powers under section 11(2)(c) and (d) in so far as they are treated as delegated to the Disability Committee in accordance with paragraph 52.

**31** In allocating its resources the Commission shall ensure that the Wales Committee receives a share sufficient to enable it to exercise its functions.

## **Relevant sections in Equality Act referred to in Wales Committee schedule**

### **13 Information, advice, & c.**

(1) In pursuance of its duties under sections 8 to 10 the Commission may—

- a) publish or otherwise disseminate ideas or information;
- b) undertake research;
- c) provide education or training;
- d) give advice or guidance (whether about the effect or operation of an enactment or otherwise);
- e) arrange for a person to do anything within paragraphs (a) to (d);
- f) act jointly with, co-operate with or assist a person doing anything
- g) within paragraphs (a) to (d).

### **11 Monitoring the law**

(1) The Commission shall monitor the effectiveness of the equality and human rights enactments.

(2) The Commission may—

- c) advise central or devolved government about the effect of an enactment (including an enactment in or under an Act of the Scottish Parliament);
- d) advise central or devolved government about the likely effect of a proposed change of law.

## **Annex 2**

### **Equality Act 2010**

#### **Public Sector Equality Duty**

149 Public sector equality duty

(1) A public authority must, in the exercise of its functions, have due regard to the need to—

(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

(2) A person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters mentioned in subsection (1).

(3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—

(a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;

(b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;

(c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

(4) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

(5) Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—

(a)tackle prejudice, and

(b)promote understanding.

(6)Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.

(7)The relevant protected characteristics are—

- age;
- disability;
- gender reassignment;
- pregnancy and maternity;
- race;
- religion or belief;
- sex;
- sexual orientation.

(8)A reference to conduct that is prohibited by or under this Act includes a reference to—

(a)a breach of an equality clause or rule;

(b)a breach of a non-discrimination rule.

(9)Schedule 18 (exceptions) has effect.

## **Annex 3**

### **Equality Act 2006**

#### **Section 8**

##### 8 Equality and diversity

(1) The Commission shall, by exercising the powers conferred by this Part—

- (a) promote understanding of the importance of equality and diversity,
- (b) encourage good practice in relation to equality and diversity,
- (c) promote equality of opportunity,
- (d) promote awareness and understanding of rights under the equality enactments,
- (e) enforce the equality enactments,
- (f) work towards the elimination of unlawful discrimination, and
- (g) work towards the elimination of unlawful harassment.

(2) In subsection (1)—

- “diversity” means the fact that individuals are different,
- “equality” means equality between individuals, and
- “unlawful” is to be construed in accordance with section 34.

(3) In promoting equality of opportunity between disabled persons and others, the Commission may, in particular, promote the favourable treatment of disabled persons.

(4) In this Part “disabled person” means a person who—

- (a) is a disabled person within the meaning of the Disability Discrimination Act 1995 (c. 50), or
- (b) has been a disabled person within that meaning (whether or not at a time when that Act had effect).