

Dadansoddi ar gyfer Polisi



Analysis for Policy



SOCIAL RESEARCH NUMBER:

54/2021

PUBLICATION DATE:

26/08/2021

Summary report: Strengthening and advancing equality and human rights in Wales

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.

This document is also available in Welsh.

© Crown Copyright Digital ISBN 978-1-80195-802-8

Strengthening and advancing equality and human rights in Wales

Summary report

Authors: Simon Hoffman, Sarah Nason, Rosie Beacock, Ele Hicks (with contribution by Rhian Croke)

Full Research Report: Hoffman, S.; Nason, S.; Beacock, R.; Hicks, E. (with contribution by Croke, R.) (2021). *Strengthening and advancing equality and human rights in Wales*. Cardiff: Welsh Government, GSR report number 54/2021
Available at: <https://gov.wales/strengthening-and-advancing-equality-and-human-rights-wales>

Views expressed in this report are those of the researchers and not necessarily those of the Welsh Government.

For further information please contact:

Steven Macey

Communities Division

Welsh Government

Cathays Park

Cardiff

CF10 3NQ

Email: SocialJusticeResearch@gov.wales

Content

Glossary	2
<i>UK/Welsh legislation</i>	2
Context.....	3
Methodology.....	4
Findings: Legislation.....	4
Findings: Human rights incorporation.....	6
Findings: The implementation gap; Addressing the implementation gap	8
Findings: Impact assessment.....	9
Findings: Monitoring	10
Findings: Accountability and enforcement.....	11
Findings: Raising awareness	12
Findings: Covid-19	13
Recommendations	13
<i>Table 1: Recommendations, and how they relate to sections in this report.....</i>	<i>14</i>
<i>Table 2: Recommendations and who they are aimed at</i>	<i>15</i>

Glossary

CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CRPD	Convention on the Rights of Persons with Disabilities
EHRC	Equality and Human Rights Commission
EIA	Equality Impact Assessment
FGC	Future Generations Commissioner
GER	Gender Equality Review
GER/WG	Well-being and Equality Working Group
HRIA	Human Rights Impact Assessment
PSED	Public Sector Equality Duty
WSED	Wales Specific Equality Duties

UK/Welsh legislation

ALNA 2018	Additional Learning Needs and Educational Tribunal (Wales) Act 2018
EA 2010	Equality Act 2010
HRA 1998	Human Rights Act 1998
RCYPM 2011	Rights of Children and young Persons (Wales) Measure 2011
SSWA 2014	Social Services and Well-being (Wales) Act 2014
WFGA 2015	Well-being of Future Generations (Wales) Act 2015

Context

1. In January 2020 the Welsh Government commissioned research to examine options to strengthen and advance equality and human rights in Wales. The research was led by Swansea University, Bangor University, and Diverse Cymru with input from Young Wales, and is set against the backdrop of a distinctive legal and policy framework in Wales.
2. A number of enactments incorporate international human rights into Welsh law, imposing human rights obligations on Welsh Ministers and some public authorities. Welsh regulations establish Wales Specific Equality Duties (WSEDs) on Welsh Ministers and listed public authorities in order to promote equality objectives. Wales has also taken a lead in legislating for well-being and sustainable development.
3. In addition to a distinctively Welsh regulatory and policy landscape there are a number of developments with the potential to have an impact on equality and human rights in Wales:
 - The Welsh Government commenced the socio-economic duty under Part 1, section 1 of the Equality Act 2010 (EA 2010) on 31 March 2021.
 - In 2018, the Welsh Government commissioned a Gender Equality Review (GER) to explore how Ministers might ensure gender equality. The GER recommendations have been accepted by Ministers.
 - As part of the GER, in 2019 a Well-being and Equality Working Group (GER/WG) made a number of recommendations aimed at strengthening the WSEDs.
 - The Equality and Human Rights Commission's (EHRC) 'Is Wales Fairer?' report in 2018 recommended a review of the WSEDs.
4. Developments outside Wales that could have an impact on equality and human rights in Wales include a review of the Human Rights Act 1998 (HRA 1998), and the UK's exit from the European Union. In addition, the Covid-19

pandemic has highlighted and exacerbated a number of weaknesses in equality and human rights protections.

Methodology

5. In carrying out this research we selected a mixed-methods approach to secure a range of data from different sources. Our methods were:
 - A comprehensive literature review.
 - An online survey, interviews and workshops with professional stakeholders (undertaken by Swansea and Bangor universities, 169 participants).
 - A survey, interviews and engagement events with people with lived experience (undertaken by Diverse Cymru, 69 participants).
 - Focus groups with children and young people (undertaken by Young Wales, 30 participants).
 - Evidence from standing forums convened by the Welsh Government on race, disability, older people, and faith.

Findings: Legislation

6. Welsh Ministers are able to direct and influence equality and human rights through legislation, guidance, and policy. However, the powers available to Welsh Ministers and the Senedd in these areas are asymmetrical. Competence over equalities legislation is largely a matter reserved to the UK Parliament, while (in contrast) observing and implementing the UK's human rights obligations is a matter expressly within devolved legislative competence.
7. The EA 2010 imposes duties on Welsh Ministers and public authorities in Wales (i.e. 'listed authorities'), to promote 'equality of opportunity' by requiring 'due regard' to prescribed equality objectives. The WSEDs are intended to

promote the better performance of the Public Sector Equality Duty (PSED) under section 149 of the EA 2010 by Welsh Ministers and public authorities.

8. From 31 March 2021, the socio-economic duty under Part 1, section 1, EA 2010, requires Welsh Ministers and listed public authorities in Wales to have 'due regard' to the desirability of exercising their functions in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage.
9. Welsh legislation makes select human rights relevant in certain areas of public policy in Wales. The Rights of Children and Young Persons (Wales) Measure 2011 (RCYPM 2011), the Social Services and Well-being (Wales) Act 2014 (SSWA 2014), and the Additional Learning Needs and Educational Tribunal (Wales) Act 2018 (ALNA 2018), embed human rights in different areas of public policy by requiring duty-bearers to have 'due regard' to specific human rights treaties and principles.
10. There are strong connections between equality and human rights. Non-discrimination is a principle of international human rights, and it is well-established (from the literature) that inequality is both a cause and result of failures in human rights protection. Human rights treaties specifically recognise discrimination and disadvantage experienced by different social groups, for example women, disabled people, and groups subject to racial discrimination. Despite these connections, our research on the legislative and policy framework in Wales shows that equality and human rights are dealt with as discrete aspects of public policy. There is little attention given to the inter-relationship between equality and human rights, or between these policy areas and well-being.
11. The Well-being of Future Generations (Wales) Act 2015 (WFGA 2015) establishes seven well-being goals for Wales to promote sustainable development. Our research establishes that well-being and sustainable development provide an opportunity to make connections with equality and

human rights. The UN '2030 Agenda for Sustainable Development' describes a relationship between equality, human rights and well-being based around the UN sustainable development goals. Human rights are described as a 'fundamental pillar' of the 2030 Agenda. However, our research shows the WFGA 2015 and its associated guidance delivers only limited alignment between equality and human rights, and well-being in Wales. The evidence we received from research participants suggests there is a lack of clarity about priorities and responsibilities under the current legislative framework, especially on equality and human rights objectives and how these relate to action on well-being. There is also misalignment of timescales for planning and reporting on equality and well-being duties. A particular issue raised by the evidence is that well-being legislation 'lacks teeth' and therefore is ineffective to protect equality and human rights.

12. Our research suggests that human rights are an opportunity to address the challenges identified above, and in particular to establish connections and clear objectives for action on equality and to support well-being. This arises because of the recognised relationship between equality and human rights, and between human rights, sustainable development and well-being. Socio-economic rights in particular establish outcome targets for public policy and action on equality and well-being.

13. Our conclusions under this heading are reflected primarily in our recommendations 'Legislation and leadership', 'Guidance' and 'Process alignment' (see Table 1 and recommendations below).

Findings: Human rights incorporation

14. The way in which international human rights have been embedded in Welsh law is through 'indirect incorporation' using the 'due regard' mechanism to impose a duty on relevant authorities to take specified human rights into account when exercising certain functions. This approach to incorporation

does not provide individuals with enforceable rights, but instead focuses on how human rights are taken into account in policy development processes. The limitations of this approach are well established in the literature, including research in Wales on the RCYPM 2011. While the literature identifies positive aspects of the 'due regard' approach, in particular that it leads to close attention to specified human rights 'upstream' in policy development, it also confirms that 'due regard' fails to provide strong accountability or legal enforcement of rights.

15. The evidence we received from research participants suggests dissatisfaction with the piecemeal incorporation of human rights in Wales which to date has been limited to indirect incorporation of international children and disabled people's rights, and UN principles which promote the interests of older people. The evidence indicates support for incorporation of more human rights into Welsh law, to extend protections to more groups. It also suggests strong support for greater legal accountability and enforceable human rights through direct incorporation (i.e. incorporation in a manner which provides individuals with a judicial remedy for breach of their rights).
16. The current 'due regard' model of indirect incorporation has the advantage that it has emerged as the Welsh approach to incorporation, and is familiar to public authorities and non-governmental stakeholders from existing Welsh legislation. However, the evidence from our research suggests support for more 'direct' incorporation of international human rights treaties in Welsh law along the lines of the HRA 1998. Although the evidence also suggests that 'due regard' has some strengths, including that it leads to close attention to human rights in policy development, and that these should be retained in any future legislation to incorporate human rights in Welsh law.
17. Our research raises the issue of how to select which human rights are incorporated, and how to ensure incorporation consistent with legislative competence in Wales. The evidence from participants is mixed, with a number

of suggestions for human rights to be incorporated, but with no majority in support of incorporation of specific human rights treaties.

18. Overall, we have concluded that while there is support for further and stronger incorporation of human rights in Wales, there is no consistent evidence to confirm the precise manner of incorporation or the rights which should be prioritised for embedding in Welsh law. In Scotland, where human rights incorporation is being actively pursued, these issues have been addressed by establishing a national taskforce to examine options for legislation. The taskforce took an inclusive approach to determining the priorities for human rights incorporation. This has resulted in a bespoke set of human rights identified for recognition in Scots law. We see this approach as the way forward in Wales (see recommendations 1 and 25 below).

Findings: The implementation gap; Addressing the implementation gap

19. It is well-established from the literature that there is a persistent 'implementation gap' between the aspirations of policy in Wales on equality and human rights, and people's lived experience. The evidence suggests stronger leadership is needed from the Welsh Government, including clear direction and guidance to public authorities to take action to implement equality and human rights objectives, but also from public authorities themselves. In this respect, incorporation of human rights would send a strong signal about the importance of human rights in public policy in Wales.

20. The WSEDs, as well as statutory and non-statutory guidance and other frameworks (action plans), are opportunities to focus on processes, actions, and outcomes, and to 'mainstream' equality and human rights. Mainstreaming is key to implementing equality and human rights. The GER/WG recommends strengthening the WSEDs to promote equality mainstreaming. This is consistent with the findings from our research and we endorse those recommendations.

21. We also see guidance on equality and on well-being as an opportunity to promote equality and human rights mainstreaming by establishing clear priorities for action, focusing on outcomes, but also on policy processes to take account of equality and human rights, and by involving people. However, the evidence reveals a clear tendency in existing guidance and strategic documents, to refer to human rights at a general level without explanation of how they should be taken into account in planning and delivery, or processes through which this might be achieved.

22. In our view, human rights standards should be clearly identified and embedded in strategic planning as outcomes for public policy and should be used to establish national priorities for action. These should be prioritised in strategic documents including the Welsh Government's Strategic Equality Plan, and confirmed as objectives for public authorities in statutory and non-statutory guidance. We have made a number of recommendations to strengthen leadership, promote mainstreaming, and encourage ambition on equality and human rights in public policy in Wales: in particular under 'Involving people with an interest' and 'Guidance' (see Table 1 and recommendations below).

Findings: Impact assessment

23. The literature establishes that Equality Impact Assessment (EIA) and Human Rights Impact Assessment (HRIA) are key mechanisms to support progressive policy development on equality and human rights. The WSEDs introduce a requirement for EIA by Ministers and listed public authorities, but there is no similar mandatory requirement for HRIA at any level of policy decision-making in Wales. We see the need to introduce HRIA to support implementation of human rights and our recommendations reflect this. The evidence suggests stakeholders support impact assessment as a policy tool, although doubts are raised about the quality of impact assessment, including

that it is seen as a 'tick-box' exercise, and that it takes place too late in the policy process and fails to involve people in the assessment.

24. The GER/WG recommended strengthening EIA by amending the WSEDs. Based on our research, we endorse this recommendation and the changes recommended by the GER/WG to improve EIA. We also see the need for comprehensive guidance on impact assessment procedure and good practice, drawing on learning from research which identifies 'core elements' for effective and meaningful assessment. We have made recommendations to strengthen impact assessment (see recommendations 17-22 below).

Findings: Monitoring

25. The evidence shows a lack of confidence in current monitoring mechanisms to properly reflect progress, or lack of progress on equality and human rights in Wales. There is clear support for improving indicators to measure compliance with equality and human rights, and for these to include indicators to capture people's lived experience, with a focus on outcomes and the difference made to people's lives, including the experience of diverse and under-represented communities. The evidence also highlights that monitoring needs to lead to action, and therefore for indicators to be developed that ensure compliance and support accountability.

26. The GER/WG made a number of recommendations to improve data collection and to analysis, as well as on aligning monitoring and reporting processes. We endorse those recommendations as consistent with our research. We have also recommended the development of bespoke equality and human rights indicators (see recommendation 24 below). Monitoring is also addressed by recommendations under 'Accountability and enforcement' (see Table 1 below).

Findings: Accountability and enforcement

27. Our literature review highlighted the potential of administrative justice (referring to how government and public bodies treat people, the correctness of their decisions, the fairness of their procedures and the opportunities people have to question and challenge decisions made about them) to support 'upstream' accountability early in policy development, including through audit and inspection. The evidence from research participants also confirmed the need for 'downstream' accountability, or accountability at the point where equality and human rights are implemented and are experienced in people's lives. The evidence received demonstrates a strong desire to strengthen legal accountability for equality and human rights, including through incorporation as discussed above, but also by 'firming up' the 'due regard' duty. The evidence from research participants further highlights the need to ensure people have access to advice services, up to and including legal aid funded advice services. It points at significant gaps in existing advice services, especially in the provision of legal aid funded advice, highlighting the need for the Welsh Government to continue to fund research into legal needs in Wales, and to provide leadership and co-ordination including through national and regional networks.
28. Our research draws attention to the difficulties for individuals of navigating the administrative justice system, especially as concerns accountability for equality and human rights. In this area we note the recommendations made by the Commission on Justice in Wales and in recent research funded by the Nuffield Foundation. We urge that these recommendations are fully implemented (so far as possible within current competence).
29. The evidence from research participants supports improving people's access to existing redress, in particular complaint mechanisms, and for improving the efficiency and effectiveness of at least some of the Welsh commissioners' operations. Suggestions here include that the EHRC could work more regionally/locally within Wales, and more closely with the third sector. The

evidence also suggests the need for the EHRC and the Welsh commissioners to continue to communicate and share intelligence on issues relating to equality and human rights, and to coordinate actions using existing powers to hold the Welsh Government and public authorities to account, and for audit, inspection, and regulatory bodies to have a more explicit role in relation to accountability for equality and human rights. We have made recommendations to strengthen accountability and enforcement of equality and human rights in Wales (see recommendation 1, but primarily recommendations 25-33).

Findings: Raising awareness

30. Raising awareness and developing understanding is identified in the literature as a key aspect of building support for equality and human rights. It can bring about improvements through better observance and cultural change. The importance of education on equality and human rights is also key to implementation as it supports capacity building and empowerment of individuals to take advantage of their rights. The evidence from research participants shows clear support for improving education on equality and human rights, and for Welsh Ministers and public authorities to do more to promote public awareness of equality and human rights. There was also strong support to focus on these topics in the curriculum, and through Public Legal Education. Suggestions for improvement included public information campaigns and wider equality and human rights education, including in the workplace. It was also felt important to counter misunderstandings about human rights in particular. A number of these suggestions are reflected in our recommendations, including under 'Accountability and enforcement' (see Table 1 below, but primarily recommendations 34-39).

Findings: Covid-19

31. The evidence received shows that the Covid-19 pandemic has exacerbated existing inequalities, and some gaps in human rights protection in Wales. It has shone a spotlight on underlying weaknesses, many relating to the broader issues raised in this research, including gaps in legal protections, how equality and human rights are implemented, capacity issues, leadership and management of human rights, and resource issues. The pandemic has however also led to examples of good practice, and specifically to extensive engagement between the Welsh Government, representative organisations, commissioners, regulators and other interested stakeholders.

32. There are lessons to be learned from the pandemic, including that more needs to be done to ensure that the legal and guidance architecture is strengthened to ensure close attention to equality and human rights not only in times of crisis, but at all times; and, from good practice which has emerged in response to the crisis in Wales. These issues are dealt with in our recommendations (generally, and in particular recommendation 40).

Recommendations

33. Our recommendations are aimed at the Welsh Government, public authorities in Wales, the EHRC, the FGC, the Welsh Commissioners, the Public Services Ombudsman for Wales, regulators and inspectorates (defined below), the Law Society and any future Law Council for Wales. Table 2 shows which recommendations are aimed at which body.

Table 1: Recommendations, and how they relate to sections in this report

Recommendations	Grouping	Most relevant section(s) in the report
1-5	Legislation and leadership	Legislation Human rights incorporation The implementation gap Accountability and enforcement
6-8	Involving people with an interest	The implementation gap Impact assessment
9-16	Guidance	Legislation The implementation gap Impact assessment
17-22	Impact assessment	The implementation gap Impact assessment
23	Process alignment	Legislation The implementation gap Monitoring
24	Monitoring	The implementation gap Monitoring
25-33	Accountability and enforcement	Legislation Human rights incorporation The implementation gap Impact assessment Monitoring Accountability and enforcement Raising awareness
34-39	Raising awareness	Human rights incorporation The implementation gap Accountability and enforcement Raising awareness
40	Covid-19	Covid-19

Table 2: Recommendations and who they are aimed at

Aimed at	Recommendations
Welsh Government only	1, 6-13, 16-19, 22-30, 34-38, 40
Welsh Government and public authorities	2-5
The Welsh Government and Public Services Ombudsman for Wales	31
Public authorities only	20
The EHRC only	14, 15, 21
The FGC, the EHRC and the Welsh Commissioners	32
Regulators and inspectorates	33
The Law Society and any future Law Council for Wales	39

Recommendations start on the next page.

The legal framework and leadership

1. The Welsh Government should introduce primary legislation to give effect to international human rights in Welsh law through a Human Rights (Wales) Act to make select international human rights part of Welsh law so that they are binding on Welsh Ministers and public authorities in the exercise of devolved functions and may be enforced by a court or tribunal.

To progress the above the Welsh Government should establish a human rights taskforce to examine options and bring forward detailed proposals for incorporation of human rights in Wales. The taskforce should be independent of the Welsh Government and adopt a participatory approach to involving people with an interest.

The taskforce should consider stronger forms of incorporation than that introduced to Welsh law by the 'due regard' approach. In particular, the Taskforce should consider options that would lead to stronger legal accountability for non-compliance with incorporated human rights than is available when adopting a 'due regard' approach.

The taskforce should complete its work so that legislation can be introduced and enacted before the dissolution of the Senedd.

The Welsh Government should continue to examine options for incorporation of international human rights through sectoral legislation, with a particular focus on the human right to adequate housing, the UNCRPD, CEDAW, CERD, and on older persons, as well as to strengthen the legal duty under the Rights of Children and Young Persons (Wales) Measure 2011. The pursuit of general human rights legislation should not serve to undermine or postpone these efforts.

2. The Welsh Government and public authorities in Wales should develop a common, single, clear and consistent statement setting out a commitment to respect, protect and fulfil human rights and equality, and to take steps to prevent discrimination and advance equality and human rights:

- a. The Welsh Government should include the statement prominently in its national strategy, programme for government, strategic equality plan, and

well-being statement and all policy documents across all areas and prominently on its website.

b. A public authority should include the statement in its corporate plan, strategic equality plan, well-being plan and all policy documents across all areas of planning and service delivery and prominently on its website.

The policy documents referred to in this recommendation are all policies subject to an Integrated Impact Assessment (Welsh Government) or Equality Impact Assessment (public authorities).

3. The Welsh Government and public authorities in Wales should integrate human rights as standards for policy-making to provide a stronger vision to advance equality and well-being. Human rights should be embedded in all policy and strategic planning processes.

Strategic planning processes include: setting strategic equality objectives, well-being objectives, and strategic decisions to which the socio-economic duty will apply.

4. The Welsh Government and public authorities in Wales should embed human rights through human rights action planning.

Human rights action planning should include:

- Taking steps to identify specific human rights as priorities for action.
- Involving people with an interest to prioritise the most relevant human rights and in particular to establish outcome targets and indicators to assess progress.
- Applying Human Rights Impact Assessment.
- Monitoring implementation using indicators.
- Reporting on progress against outcome targets and indicators.
- In relation to the Welsh Government only, a cross government mechanism for monitoring and reporting on the implementation of recommendations relevant to Wales arising from periodic review of the UK undertaken by UN Treaty Bodies and the Universal Periodic Review.

5. The Welsh Government and public authorities in Wales should require business or organisations funded in full or in part by public funds to clearly demonstrate how they will promote equality and human rights through their work (not limited to work for the Welsh Government or public authorities); and, take full account of how the allocation of public funds advances equality and human rights during the procurement and commissioning processes, giving priority to advancing equality and human rights as a factor relevant to the allocation of public funds.

Regulation 18 of the 2011 Regulations should be amended to embed this recommendation insofar as it applies to equality objectives.

The Welsh Government and public authorities should provide information for those applying for public funds to support their business activities in full or in part, on the key priorities for equality and human rights when inviting invitations to tender. Businesses or organisations applying for funding should be signposted to information on equality and human rights aimed at the business and non-governmental sectors. See below, 'Knowledge, Awareness and Understanding'.

Businesses or organisations applying for public funds should be required to provide the following advance information:

- A statement on how they will promote equality and human rights through their work and in the workplace (employers).
- An equality and human rights impact assessment.

The above advance information should be in the public domain once funding is allocated and should be incorporated into the contract with the business or organisation concerned, and should be used to assess compliance with the contract.

Involving people with an interest

6. Section 30(e) of the WFGA 2015 should be amended, or revised statutory guidance should be issued, to require PSBs to invite people with an interest to participate in the activities of the board, and to demonstrate what action it has taken

to encourage the involvement of people with an interest when reporting under s.45 of the WFGA 2015.

Participate has the meaning given by s.30(3) and (4) of the WFGA 2015.

7. Section 38 of the WFGA 2015 should be amended, or revised statutory guidance should be issued, to require PSBs to involve people with an interest in determining how equality and human rights may be relevant to setting and meeting well-being objectives.

8. The Welsh Government should review and as necessary revise regulatory requirements and statutory and non-statutory guidance to align requirements and processes for public consultation and involvement contributing to planning to set strategic equality objectives and well-being objectives.

In particular, by implementing the recommendations of the GER Well-being and Equality Working Group.

Guidance

A number of the recommendations in this section on guidance feature as aspects of current statutory or non-statutory guidance (included here for completeness), to this extent current guidance should be continued, or strengthened as appropriate.

9. The Welsh Government should revise statutory guidance under s.14 of the WFGA 2015 to ensure that equality and human rights are taken into account by defined public bodies (s.6 and s.52 of the WFGA 2015) and PSBs when discharging their obligations under the WFGA 2015.

Revised guidance should:

- Include a strong statement to confirm that equality and human rights are integral to well-being objectives.
- Emphasise that human rights, and in particular socio-economic human rights, provide a strong foundation for sustainable development.

- Recommend that public bodies undertake and publish an Equality Impact Assessment and a Human Rights Impact Assessment on their well-being plan and any policy likely to have an impact on equality or human rights in the area, and to publish their assessments.

10. The Welsh Government should require PSBs to establish an ‘Equality and Human Rights’ sub-group to involve people with an interest in determining how actions identified in the well-being plan contribute toward meeting the commitment to respect, protect and fulfil equality and human rights and steps to meet this objective.

Reports published under s.45 of the WFGA 2015 should include a summary of how involvement has been facilitated, and outcomes from this process, including any recommendations to strengthen actions in the local well-being plan, and actions taken to implement those recommendations.

11. The Welsh Government should revise the WSEDs to strengthen the specific duties on (listed) public authorities in order to ensure better performance of the PSEDs under s.149 of the Equality Act 2010.

The Welsh Government should use the WSEDs to identify clear national priorities for action on equality, including by:

- Using human rights standards to establish clear outcome targets.
- Identifying indicators to confirm outcomes.
- Clearly state national priorities for action on equality in its Strategic Equality Plan.

Revised regulations should require a relevant authority to:

- Identify strategic equality objectives which contribute to advancing the national priorities for action.
- Explain how its strategic equality objectives contribute to advancing the national priorities for action.
- Identify indicators to confirm outcomes to accompany its equality objectives accompanied by an explanation of why those indicators were selected.

- Demonstrate how it has taken account of statutory and non-statutory guidance when setting equality objectives.
- Demonstrate how it has taken account of multiple forms of discrimination and disadvantage experienced by people with multiple protected characteristics when setting equality objectives.
- Demonstrate how it has involved people with an interest and taken account of their views, wishes and feelings.
- Carry out an Equality Impact Assessment on all policy documents and use impact assessment to address issues of intersectionality.
- Demonstrate how it has taken account of human rights when setting equality objectives, including the evidence relied on.
- Report on action it has taken to perform the PSED with a focus on outcome indicators.
- Place all strategic documents online and in a location which is fully accessible and searchable, accompanied by all relevant Equality Impact Assessments.

12. The Welsh Government should publish non-statutory guidance on the procedural steps and substantive requirements of due regard. This should emphasise the importance of impact assessment as a procedure to help ensure that due regard is had in the exercise of functions.

13. The Welsh Government should revise statutory guidance to ensure human rights are taken into account when a public authority is having due regard to how strategic decision-making and the exercise of functions help to reduce socio-economic inequality.

(Statutory guidance under s.1(2A) of the Equality Act 2010. Relevant authority under s.1 of the Equality Act 2010.)

Statutory guidance should:

- Describe socio-economic disadvantage to include the impact of relative low income on individuals and groups leading to inequality of outcome and inequality of access to 'goods and services fundamental to well-being'.

- Emphasize that ‘goods and services fundamental to well-being’ refers to rights guaranteed by human rights.
- Include a statement promoting positive action to support equality of outcomes to reflect the adoption of progressive human rights.
- Require a relevant authority to take account of multiple forms of discrimination and disadvantage experienced by people with multiple different characteristics, when making decisions of a strategic nature.
- Require a relevant authority to take account of human rights when making decisions of strategic nature and when exercising its functions.
- Require a relevant authority to identify indicators to confirm outcomes accompanied by an explanation of why those indicators were selected.
- Require a relevant authority to place all strategic documents online and in a location which is fully accessible and searchable, accompanied by all relevant Equality Impact
- Require a relevant authority to report on action it has taken to reduce socio-economic disadvantage with a focus on outcomes measured against identified indicators.

14. The EHRC should revise, and re-issue guidance published under s.13 of the Equality Act 2006, including its ‘Technical Guidance on the PSED: Wales’ (last revised 2014) to provide stronger guidance on the relationship between equality and human rights.

Revised guidance should:

- Promote an expansive and inclusive approach to interpretation and application of the protected characteristics under s.4 of the Equality Act 2010 to ensure that all groups that meet the definitions in ss.5-12 of the Act are taken into account when a relevant authority is setting objectives to enable it to better perform the PSED in Wales.
- Include stronger and more detailed guidance on intersectionality.
- Include stronger and more detailed guidance on the need to take account of human rights, in particular as minimum and increasingly progressive standards to advance equality.

- Explain how public authorities can embed the social model of disability and ensure that the guidance explains that the definition of disability explicitly includes all health conditions, learning disability, neurodiversity, and dementia.

15. The EHRC should introduce guidance for public authorities in Wales on a bespoke 'Human Rights Approach' to support implementation of human rights.

Drawing on the exemplars of the Children's Commissioner 'Child Rights Approach' and the Older People's Commissioner 'Older People's Rights Approach'.

The model should be kept under review and updated as necessary.

16. Prior to issuing further or updated statutory or non-statutory guidance on the relationship between equality and human rights, and well-being (see recommendations 9, 11, 12 and 13), including on how public authorities can use equality and human rights to inform and help to set well-being objectives and steps to be taken to meet those objectives, the Welsh Government should consult with the EHRC and the Future Generations Commissioner and take full account of any advice, guidance or recommendations.

Guidance should:

- Build on 'A More Equal Wales: A Mapping Guide'.
- Confirm that human rights provide the foundation for 'improving the social economic, environmental and cultural well-being of Wales' and make a strong contribution toward well-being in Wales.
- Confirm that equality and human rights are integral to setting well-being objectives to meet all of the well-being goals for Wales.
- Confirm that human rights, and in particular socio-economic human rights, provide a strong foundation for sustainable development and an underpinning for the sustainable development principle.
- Include examples of how human rights, in particular socio-economic rights, may be used to establish strong and aspirational well-being objectives.

- Provide detailed guidance on how human rights might be embedded in processes to develop well-being objectives with a focus on human rights as outcome targets to be met through delivery and action.

Impact assessment

NB: a number of these recommendations in this section on Impact Assessment feature as aspects of current guidance and are included here for completeness, to this extent current guidance should be continued, or strengthened as appropriate.

17. The Welsh Government should introduce Human Rights Impact Assessment as part of its Integrated Impact Assessment.

18. The Welsh Government should take steps to ensure effective and meaningful Integrated Impact Assessment, and in particular to strengthen assessment of proposals which are likely to impact on equality and human rights.

To increase capacity for effective and meaningful impact assessment the Welsh Government should:

- Provide mandatory training on equality and human rights for all officials responsible for completing EIA or HRIA.
 - Make training available for officials leading on Integrated Impact Assessment on impact assessment procedural good practice.
 - Provide opportunities for enhanced training, especially for officials undertaking human rights impact assessment, equality impact assessment and child rights impact assessment (to include thematic issues, as well as research and analysis skills).
 - Encourage those undertaking Integrated Impact Analysis to draw on external expertise.
 - Encourage those undertaking Integrated Impact Analysis to draw on KAS at an early stage in the procedure to ensure relevant evidence is available for analysis.
- To ensure the proper prioritisation of assessment of policy which is likely to have an impact on equality and human rights:

- Clarify the responsibility of individual Ministers to ensure effective and meaningful Integrated Impact Assessment (i.e. in compliance with good practice/guidance published by the EHRC), including as required by the Ministerial Code, in particular Part 1, section 1 and 1.3.
- Make senior civil servants responsible for ensuring effective and meaningful Integrated Impact Assessment.
- Introduce a process for systematic audit of Integrated Impact Assessments from across all departments to assess quality and compliance with good practice/guidance published by the EHRC.
- The above audit process should engage with stakeholders, the EHRC and the Welsh commissioners.

19. The Welsh Government should strengthen internal guidance on the processes and substantive requirements for effective and meaningful equality, human rights and children's rights Integrated Impact Assessment.

Guidance should require:

- Early commencement, at the outset of the policy-development cycle.
- Equality and human rights to be taken into account from inception of the assessment.
- Equality and human rights to be at the core of assessment, including any assessment of well-being.
- Ministerial Advice to expressly address how equality and human rights will be affected by the proposal, and in particular the outcomes anticipated from the proposal.
- Consideration of intersectional impacts.
- Senior officials to ensure the assessment is undertaken in compliance with impact assessment good practice/guidance published by the EHRC.

20. Public authorities should introduce human rights as a consideration during Equality Impact Assessment and ensure that a senior officer(s) is responsible for ensuring that the assessment is undertaken in compliance with impact assessment good practice/guidance published by the EHRC.

To include a requirement that a senior officer should:

- Prepare a summary of the Equality Impact Assessment for consideration by the public services board and the Equality and Human Rights sub-group.
- Confirm to the public services board that the assessment complies with impact assessment good practice/guidance published by the EHRC.
- Summarising the actions taken in response to the impact assessment.

21. The EHRC should revise guidance on impact assessment and ensure this is applicable to EIA and HRIA. To ensure consistency this should include a 'model' impact assessment template to be used for all impact assessments which engage equality or human rights issues, together with detailed guidance on action to be taken at each stage in the procedure to reflect established good practice on impact assessment.

22. The Welsh Government should undertake Integrated Impact Assessment on budgetary and funding decisions which are likely to have an impact on individual organisations that rely on public funds to support activities which support or represent the interests of disadvantaged communities.

Process alignment

23. The Welsh Government should take all necessary steps to give effect to the recommendations made by the Well-being and Equality Working Group on process alignment, in particular, to require stakeholders to determine timescales and points of alignment for objective-setting and planning.

Monitoring

24. The Welsh Government should ensure that all indicators used to measure progress on equality, human rights and well-being in Wales, or any of these:

- Embed human rights as outcome targets.
- Include qualitative indicators to take account of people's lived experiences.
- Include indicators directly relevant to diverse and under-represented communities.

When developing indicators to measure progress on equality, human rights and well-being in Wales the Welsh Government should make use of (as appropriate) indicators set out in the EHRC Measurement Framework for Equality and Human Rights, and in particular the qualitative and quantitative indicators used by the EHRC in the preparation of 'Is Wales Fairer'.

Accountability and enforcement

25. The Welsh Government should introduce primary legislation to enable individuals to bring an action before a court or tribunal to enforce their (incorporated) human rights.

See recommendation [1].

26. The Welsh Government should progress the recommendations of the Commission on Justice in Wales (CoJ) as regards the co-ordination and promotion of administrative justice which supports accountability for equality and human rights within the Welsh legal framework, taking into account the 36 recommendations of Nuffield Foundation funded research undertaken by Bangor University (and partners) (Public Administration and a Just Wales 2020). The Welsh Government should also progress, and where necessary liaise with UK Government to progress, the CoJ recommendations relating to access to justice and advice services.

In particular:

- CoJ recommendation 2: 'Support Through Court' should be expanded so that there is availability at courts and tribunals across Wales.
- CoJ recommendation 20: digital court services and other dispute resolution services that are being developed and introduced must be fully accessible to people throughout Wales and free assistance must be available to help individuals use them.
- CoJ recommendation 21: dispute resolution before courts, tribunals, alternative dispute resolution and ombudsmen, as well as dispute resolution in respect of administrative law, should be promoted and co-ordinated in Wales through a body chaired by a senior judge.

- CoJ recommendation 27: the Welsh Tribunals Unit should have structural independence and the Welsh tribunals should be used for dispute resolution relating to future Welsh legislation.
- CoJ recommendation 39: a strategy for Wales for provision of proper physical and digital access to justice before the courts, tribunals and other forms of dispute resolution should be drawn up and determined in Wales based on the needs of the people of Wales.

27. The Welsh Government should prioritise support, including the continuation of funding, for advocacy and advice services in Wales and examine ways to increase advice and advocacy services to disadvantaged and discriminated against communities.

More independent advocacy in equality and human rights should be provided in Wales across all areas, not just health and social care. This should include advocates from diverse communities in Wales. There should be a mix of professional expert independent advocacy and more support for peer advocacy and self-advocacy is needed.

Advocacy means:

- Supporting individuals to understand and access information and services, and to express their views, wishes and feelings.
- Support for individuals to bring a complaint, including a complaint before a court or tribunal, but also to take advantage of available informal or formal complaint or redress mechanisms.
- Action on behalf of individuals or groups to influence or change policy or action taken by public bodies or organisations which affects those individuals or groups.

28. The Welsh Government should work with the National Advice Network and Regional Advice Networks on strategies to raise awareness of equality and human rights, including legally enforceable rights and duties, and to raise awareness of, and

access to, advice services, ensuring that the needs of disadvantaged and discriminated against groups are taken into account.

29. The Welsh Government should review funding and support for ‘grassroots’ community organisations in Wales representing disadvantaged communities and ensure that the application process to apply for funding is accessible and straightforward to use.

30. The Welsh Government should consult with the Senedd Business Committee with a view to establishing a Justice Committee in the Senedd.

31. The Welsh Government and Public Services Ombudsman for Wales should develop an agreed set of principles to be applied by the Welsh Ministers and public authorities when dealing with complaints which engage equality or human rights issues.

The Welsh Government and Public Services Ombudsman for Wales should consult with the EHRC.

Principles should include:

- A complaints mechanism should be fully and easily accessible.
- Complaints systems should place the complainant, as well as equality and human rights at the heart of the process.
- Complaints should be dealt with by a person with appropriate expertise.
- Effective remedies should be available where a complaint is upheld (options include: sanctions within the powers of relevant regulators; publication of findings; enhanced monitoring and reporting requirements).
- A focus on ‘restorative justice’ approaches.
- How to ensure that those with lived experience are directly involved in the assessment and management of complaints.

32. The FGC, the EHRC and the Welsh Commissioners should examine opportunities to enhance communication and share intelligence on issues relating to

equality and human rights, including protocols for data sharing, and to coordinate actions using existing powers to hold the Welsh Government and public authorities to account.

33. Regulators and inspectorates should integrate equality and human rights into inspection and regulatory frameworks, including by focusing on outcomes in these areas.

Regulators and inspectorates includes (but is not necessarily limited to):

- ESTYN
- Healthcare Inspectorate Wales
- Care Inspectorate Wales
- Natural Resources Wales
- Audit Wales

Raising awareness

34. The Welsh Government should introduce key principles of equality and human rights as mandatory requirements at all stages of the curriculum and for all age groups. The ‘What Matters Code’ should require equality and human rights education at all stages of the curriculum and for all age groups across all subjects.

In particular:

- Statutory consultation on the ‘What Matters Code’ should include representatives from protected groups.
- The curriculum should integrate ‘key concepts’ of equality and human rights into the areas of ‘learning and experience’.
- Education in Wales should promote the benefit of equality and human rights for society, and should develop an understanding of diversity within society, and address misconceptions, prejudice, unconscious bias, and offensive labelling.

35. The Welsh Government should promote Public Legal Education (PLE) on equality and human rights, including the Welsh legal framework, through community

based training developed in partnership with organisations representing protected groups.

In particular:

- Provide funding for organisations to undertake PLE.
- Encourage Welsh law schools, especially those delivering clinical and outreach programmes, to undertake PLE as an aspect of public engagement and community mission activities (see also CoJ recommendation 51).
- Commission experts representing a range of protected groups to develop and support delivery of community based services.
- PLE providers should engage with different communities in Wales to reflect their experiences and to involve them in planning and delivery of education and training.

36. The Welsh Government should take the lead to deliver a national public awareness campaign to raise the profile of equality and human rights, in particular to tackle public misconceptions about these concepts.

A public awareness campaign might include:

- A factsheet on key principles of equality and human rights, as well as the benefits of these concepts to society (including highlighting positive stories), to be sent to every household in Wales.
- Campaigns in a range of media.
- A poster campaign targeted at relevant public spaces (for example, sports centres, GP practices).
- Public declarations by Ministers, including the First Minister.
- Working with stakeholders to support and publicise events celebrating equality and human rights.
- Best practice examples should be shared publicly and across sectors in Wales to showcase ways organisations could improve equality and human rights (identified by people with lived experiences).

37. The Welsh Government should encourage the Higher Education Funding Council for Wales (as an aspect of assessing the quality of education) and Higher Education institutions in Wales to ensure that legal education in Wales includes education on the Welsh legal framework, and in particular the legal framework on equality and human rights.

38. The Welsh Government should publish, on the Welsh Government website, a dedicated webpage to disseminate information for individuals, businesses and non-governmental sectors on equality and human rights.

To include:

- Information for businesses etc applying for WG or other public funds
- Link to other resources (EHRC, the Welsh Commissioners, legislation, policy, published Integrated Impact Assessment, external resources).

39. The Law Society for Wales and any Law Council for Wales that is established should take an active role in promoting awareness of equality and human rights legislation amongst the legal professions in Wales, and in particular to raise awareness of the legal frameworks that are unique to Wales.

Covid-19

40. The Welsh Government should support advisory groups to input expertise and experience to influence its policy responses in areas of national priority for equality and human rights, including by learning from the experience of the pandemic.

This should include:

- Establishing advisory groups drawing together expertise expressly authorised to provide advice and guidance in specific areas.

Ensuring that the terms of reference for these groups make clear reference to equality and human rights, including the commitment mentioned in recommendation [2] above.