

Equality and Human Rights Commission

Submission to the Constitutional and Legislative Affairs Committee Inquiry into the Draft Wales Bill

The Equality and Human Rights Commission

The Equality and Human Rights Commission (EHRC) is a statutory body established under the Equality Act 2006. It operates independently to encourage equality and diversity, eliminate unlawful discrimination, and protect and promote human rights. It contributes to making and keeping Britain a fair society in which everyone, regardless of background, has an equal opportunity to fulfil their potential. The Commission enforces equality legislation on age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. It encourages compliance with the Human Rights Act 1998 and is accredited by the UN as an 'A status' National Human Rights Institution.

Principles of our submission

In considering proposed changes to the devolution settlement, the EHRC's guiding principles are that they should:

- maintain, and where possible enhance, the protection of equality and human rights across the UK;
- provide for coherent and workable frameworks of legal and administrative responsibilities and accountability between bodies within Wales and between Wales and the rest of the UK.

This means ensuring that basic protections against discrimination and breaches of human rights are maintained across the UK. However, in our analysis there is scope to take more progressive action to promote equality and human rights where national governments wish to do so. This submission therefore supports the inclusion in the Wales Bill of measures which will enable the National Assembly to permit or require wider or stronger action to protect and promote equality and human rights in Wales, while ensuring that legislative competence to reduce protection is not devolved.

Parliamentary legislation on equality and human rights should provide minimum standards for the UK. Each country - England, Wales, Scotland and Northern Ireland – should have scope to enhance the UK legislation with additional measures that reflect the devolved context, but not to reduce existing levels of protection. There are benefits for all countries in this approach - ensuring common fundamental protections while enabling

legislation to be tailored to the circumstances and demography of each area. This approach provides the most effective way of protecting and promoting equality and human rights across the UK.

The Bill presents an opportunity to bring greater clarity by rectifying gaps and inconsistencies related to equality and human rights in the current devolved settlement, such as relating to the Public Sector Equality Duty and the EHRC's relationship with the National Assembly for Wales.

This written evidence is in line with the EHRC's submission to the Silk Commission on Devolution, and with our briefings on the Scotland Bill, with the aim of securing a coherent framework for equality and human rights legislation across the UK.

Recommendations

Recommendation 1: Care is taken in drafting the Wales Bill to ensure there is no regression with regard the National Assembly's competence for equality and human rights.

There are concerns that the introduction of the reserved model could inadvertently harm the equality and human rights agenda in Wales. Should equality be a reserved matter without the relevant exceptions, this could potentially weaken the National Assembly's current powers for advancing equality and human rights in Wales. To illustrate this point, Elisabeth Jones, Director of Legal Services, National Assembly for Wales, said in August 2014:

"The Scottish settlement is generally considered to be wider than the Welsh one. However, even before 9th July (Supreme Court Judgement on Agricultural Wages Board), the Welsh settlement was in fact wider in some limited respects. For instance, the Assembly has some competence in relation to equality law, whereas the Scottish Parliament has none."

This has enabled the Welsh Government to build equality into regulatory regimes for health and social care, while this has not been an option in Scotland. The National Assembly's competence in relation to equality law has considerable value. It should not be lost.

Since its inception, the National Assembly has had competence over areas of equality. The Government of Wales Act 2006 includes specific reference to the National Assembly's legislative competence over 'equal opportunities public authorities'¹. The draft Wales Bill appears to remove this competence, with equal opportunities defined as a reserved matter with only some, unclear exceptions. This is a retrograde step that would harm the protection and promotion of equality and human rights in Wales. For example, the current

¹ Government of Wales Act 2006, Schedule 7 Part 1, 14 Public Authorities

Wales Bill removes the Assembly's current competence to prohibit and regulate with regard equality and human rights.

The Wales Bill should be amended to ensure that the National Assembly's competence in relation to equality and human rights is at least maintained, and, where possible, enhanced.

Recommendation 2: The National Assembly should be given powers to build on equality and human rights legislation, including the Equality Act 2010 and the Human Rights Act 1998

To reiterate part of our submission to the Silk Commission, the EHRC recommends that the National Assembly be given powers to enhance - but not to detract from - GB and UK-wide equality and human rights legislation. This would enable the National Assembly to introduce some Welsh-specific provisions should it want to do so in the future. For example, it would be able to specify an additional protected characteristic, such as carers, or to introduce new obligations related to the protection of human rights suited to the devolved context.

This increased legislative competence would need to include competence to apply the enforcement and other powers of the Equality and Human Rights Commission to any new equality or human rights requirements.

The health and care sector is a devolved area, and it is one in which there is significant risk of human rights breaches. This highlights the need for, on occasion, a distinct approach to human rights protection to be taken to suit the devolved context. The Wales Bill presents an opportunity to build further on this approach.

This enhancement to the devolution settlement would safeguard the National Assembly's ability to hold devolved public services to account, while maintaining minimum UK-wide standards.

Recommendation 3: The National Assembly should be given legislative competence over the introduction of the socio-economic duty (Equality Act 2010)

The current Wales Bill includes a proposal to devolve powers under the subject-matter of Part 1 of the Equality Act 2010 (socio-economic inequalities).

The EHRC supports the introduction of a duty on public authorities to consider how they can reduce the inequalities that result from socio-economic disadvantage, and we have called for the duty to be implemented across Great Britain. We support plans for power to commence this duty in relation to Welsh public bodies to be transferred to the National Assembly. Should this

happen, we would welcome the opportunity to discuss with the Welsh Government how the duty can be most effective in Wales.

Recommendation 4: The National Assembly should be given full legislative competence in relation to the Public Sector Equality Duty.

Legislative competence over the Public Sector Equality Duty should be clarified by the Wales Bill. Competence over the general duty is currently held by Parliament, with the National Assembly being able to set the specific duties that result from - and are tied to - the general duty.

Giving the National Assembly full legislative competence in relation to the PSED would enable it to be enhanced by the National Assembly. It would give the National Assembly certainty of being in control of any changes to the PSED in the future. This would include changes to its scope, the list of organisations covered by the Duty, and its monitoring and regulation. The PSED would not be subject to any changes that Parliament may wish to introduce. The National Assembly would benefit from this clarity.

The current Wales Bill includes reference to the proposed devolution of powers over the Welsh public sector's promotion of equality. We would welcome this being clarified to include explicit reference to the devolution of the Public Sector Equality Duty.

Recommendation 5: The National Assembly should be given competence to strengthen its relationship with the EHRC.

If the National Assembly is given enhanced powers for equality and human rights legislation this would require the approach of the EHRC to be adapted in Wales. The EHRC would need to undertake different work programmes and tailor its activity still further to the devolved and distinctive context in Wales. The National Assembly would require a greater role in the scrutiny of the EHRC's work in Wales.

The Wales Bill should make provision for the National Assembly to be able to strengthen its relationship with the EHRC to enable greater scrutiny by the Assembly in relation to the EHRC's work in relation to devolved matters. The Bill presents an opportunity to formalise in law existing arrangements between the EHRC and the National Assembly - such as the National Assembly holding a debate on the EHRC Wales Annual Review - and to build on these arrangements further.

Recommendation 6: The National Assembly is given competence in relation to equal opportunities in appointments to Welsh public bodies.

We support the Welsh Government's Silk Commission recommendation that the National Assembly be given explicit competence in relation to public appointments to the boards or governing bodies of devolved public sector

organisations in Wales. The current settlement provides the National Assembly with some powers over this area. The current Wales Bill does not provide clarity on future competence.

This recommendation supports the promotion of equal opportunities in the Welsh public sector, for which the Wales Bill already makes some provision. For clarity, we believe the National Assembly should be given explicit legislative competence over this matter to take forward steps to make Welsh public sector boards more reflective of the communities they serve.