

Equal Opportunities and Human Rights: The First Decade of Devolution in Wales

A Report Commissioned by
the Equality and Human Rights Commission

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1. INTRODUCTION

Prior to the creation of the National Assembly in 1999, Wales had a poor record in relation to equalities. The limited number of studies covering the period¹ revealed deep-set patterns of inequalities experienced by disabled people, women, people from different ethnic backgrounds, Welsh speakers and others. It was an issue that had received comparatively limited attention in the Welsh Office (the pre-existing territorial government ministry for Wales, 1964-1999), the public sector and elsewhere. One explanation for this lies in the fact that equalities were generally not seen as the responsibility of the government ministry for Wales.²

Against this background, it was highly significant that during the 1990s equality activists, most notably feminists and Welsh language campaigners, lobbied for mechanisms to promote equalities to be incorporated into the Government of Wales Act (1998) – and, later, the Standing Orders of the National Assembly – in other words, the ‘institutional blueprints’ of the new Welsh legislature. Such demands were consistent with one of the core themes -or buzzwords - of the devolution¹ campaigns, namely, that constitutional reform should deliver ‘inclusiveness’ – in other words, ‘inclusive governance’. Ultimately, a number of the campaigners’ demands were given formal

¹ Unless otherwise stated, the term ‘devolution’ is used throughout to refer to the period following the creation of the National Assembly in 1999.

legal status. The foremost example is the general equality duty in the devolution statute. A novel legal imperative, it first obliged the National Assembly as a whole – and, following the second devolution statute in 2006, Welsh government ministers – to promote equality for all people in the exercise of all devolved functions of government. Given the administration’s £14.5 billion annual budget, together with its extensive social policy responsibilities (in, for example, health, education, social services, local government and housing), as well as growing lawmaking powers and control over the majority of public service providers – it is clear that constitutional reform in 1999 offered the potential for a significant change in the way that issues of inequality and discrimination were addressed. Written on the tenth anniversary of the creation of the National Assembly, the purpose of this report is to critically evaluate how equality and human rights have fared under devolution.³ Accordingly, it will address the following aims:

- To identify strengths, shortcomings and transferable lessons from the promotion of equalities and human rights during the first decade of devolution
- To inform the work of the All Wales Convention by evaluating the impact of the powers already available to the National Assembly for the promotion of equalities and human rights - and explore

the case for moving towards full lawmaking powers for the National Assembly from an equalities perspective

- To evaluate the effectiveness of institutional features of devolved governance designed to promote equalities (e.g. S.77 Equality duty, Cross-party National Assembly Equality Committee, etc)
- To evaluate the effectiveness of the monitoring and scrutiny of successive devolved governments' response to its equalities duties.

2. EXECUTIVE SUMMARY – KEY FINDINGS

Chapter 4. Equalities and Public Policy

- **The first decade of devolution has seen a plethora of policy initiatives in relation to the promotion of equalities.** This marks a significant discontinuity with public administration before 1999 when, generally, the Welsh Office did not have responsibility for this issue.
- **In any democracy the policy process cannot be separated from its base in party politics. The latter continues to shape policies on equalities and human rights.** Thus, it should be noted that the 'ideological position' of all parties forming devolved governments in the past ten years has been on the left of the political spectrum. Traditionally, when compared to parties on the political right, this is, generally linked to a greater willingness to embrace interventionist measures to promote equality and human rights. Thus, **the gains, issues and challenges of the past decade need to be viewed in this light.** Future governments (in Wales and/or Westminster) may hold a more cautious (or even hostile) view to promoting equality and human rights in policy and law. **Such factors are likely to be significant in influencing the nature and pace of future change in the devolved context.**
- **In the wake of devolution there has been a significant raft of policies on equalities across the breadth of devolved functions.** Notable examples include those to promote the participation of children and young people in public decision-making (at a national level, 'Funky Dragon' – the Children and Young People's Assembly; Children and Young People's Partnerships in each local authority area; and, the introduction of a Statutory requirement for Associate Pupil Governors in schools).
- Further examples are provided by successive **strategy documents and curriculum orders that have allowed devolved administrations to embed equalities aims in education policy.** Thus, the revised National Curriculum Orders 2008-9 refer to a: 'duty on schools in Wales towards present and prospective learners to eliminate discrimination and harassment, to promote positive attitudes and equal opportunities and encourage participation in all areas of school life'. Accordingly, the new curriculum prescribes how equalities should be promoted in each subject area.

- **During the first decade of the National Assembly there has been a significant broadening of the focus on equalities.** The initial Standing Orders of the Assembly relating to the cross-party Committee on Equality of Opportunity emphasised a principal focus on 'race', disability and gender. This has broadened to include a much greater range of interests including: Welsh language, asylum seekers, Gypsy travellers, LGBT people, age, faith, carers etc. **When compared to the first Assembly, today there is more evident competition between equalities interests and a greater breadth of equalities claims/ demands on government. Some equalities 'strands' / interests have not received as much attention by policymakers as others (e.g. faith).**
- Government **policies during the early years of the National Assembly were particularly prone to a 'declaratory approach to equalities'** for limited details were generally provided in policy documents in respect of policy targets and/or implementation methods.
- **Today there is some evidence of a more sophisticated approach to the promotion of equalities** in government policy documents when compared to the rather generalised and undeveloped references to equalities that often featured in policies and strategies in the Assembly's first years. For example, the use of an equalities impact assessment in 'Skills That Work for Wales: A Skills and Employment Strategy and Action Plan' (WAG, 2008) and, equalities targets in the Minority Ethnic Housing Action Plan 2008-2011 (WAG, 2008). However, **there is much work to be done before more sophisticated approaches to promoting equalities are a feature of all policy outputs.**
- **Policy innovation is a feature of some devolved initiatives on equalities:** for example, the creation of the offices of Children's Commissioner for Wales and, Older People's Commissioner for Wales - the first independent statutory Commissioners of their type in the UK. Furthermore, Welsh Assembly Government has introduced a statutory requirement that all primary, secondary and special schools in Wales have a school council so that all children and young people can contribute to decisions that affect them.
- There is some evidence of progressive **devolved policies going beyond the approach to equalities and human rights seen at Westminster.** For example, in 2000 the National Assembly passed secondary legislation⁴ placing a duty on schools governing

bodies and head teachers to exercise their respective functions with due regard to the need to promote equal opportunities and good relations between males and females – several years ahead of the GB gender equality duty.

- There is also some evidence of **co-ordination between devolved government, public sector and unions on equalities**. For example, the three phase 'Close The Pay Gap Campaign' launched in 2001 and undertaken jointly between the Welsh government, EOC Wales and the Wales Trades Unions Congress.
- **Further significant impacts of devolution on equalities are higher levels of women's political representation and changes in the way that politics are conducted at the devolved level.** In part, this is linked to the international first when the Welsh legislature secured gender parity amongst elected representatives (without the use of quotas). **Research shows that the high proportion of women elected to the National Assembly are probabilistically more likely than their male counterparts to advance gender equality issues in political debate and committee work.**⁵ A further dimension to post-devolution governance relates to procedural aspects of the National Assembly: its Standing Orders set out a number of requirements such that **the principal of equality is upheld in all its proceedings.**
- **At present there is variability between government departments/ policy areas regarding the promotion of equalities.** For example, there is evidence of sustained and generally good practice in areas such as education, children, young people and, older people – and shortcomings in others (e.g. the environment and, sustainable development).
- **The promotion of equalities by successive devolved administrations has, to varying extents, been shaped by the actions and commitment of key individuals** - with the attendant result that personnel change may arrest progress. This is a vulnerability that affects organisations where mainstreaming of equalities has yet to be fully achieved.
- In research interviews undertaken over the past decade some policy actors outside of government have **questioned whether the Assembly Government's Equality and Human Rights Division (and, earlier, equivalent WAG Civil Service units) have had sufficient resources, seniority and influence within the devolved**

bureaucracy to secure the full realisation the mainstreaming agenda.

- **To date there has been limited progress in cross-strand (or 'intersectional') approaches to equalities in public policy.** A 'cross- strand approach' is one where policies address inequalities and discrimination relating to two or more characteristics of an individual or group (– such as ethnicity *and* age, or gender *and* disability). It is possible that the government's Single Equality Scheme (2009) and Inclusive Policy Making Tool (2008) will contribute to addressing this issue.
- **Gaps and limitations in official statistics relating to equalities in Wales remain an issue that has yet to be fully addressed** (e.g. Wales-disaggregated statistics of discrimination cases brought to tribunal hearings; LGBT statistics; 'intersectional' statistics with a sufficient sample size for tests of statistical significance to be applied; the absence of an annual statistical bulletin on equalities in Wales by Statistics Wales etc.).
- **Devolution has seen the creation of an extensive range of all-Wales policies on equalities topics – where, before constitutional reform, none existed.** For example: 'Tackling Domestic Abuse: The All Wales National Strategy' and, the 'Forced Marriage and Honour Based Violence Action Plan'.
- **A number of equalities policies set out their aims in terms of universal entitlements/ rights.** For example, the 'All Wales Youth Offending Strategy' states that: 'every young person in Wales aged 11-25 has a basic entitlement to: participate in decision-making on all matters which concern them'. Similarly, 'Fulfilled Lives, Supportive Communities' (WAG, 2007), the Welsh government's ten year strategy for the social services, states: 'our vision is firmly rooted in ... a rights based approach'.⁶
- **Devolution has seen the introduction of state grants and allowances to promote equalities.** For example, the introduction of Special Support Grants via Student Finance Wales to provide funding for assistance with the costs of registered or accredited childcare during term time and short vacations and, the Parents' Learning Allowance that contributes to the support of dependants in a learner's household.
- **There is mixed evidence on the impact of policies designed to promote equalities in terms of policy outcomes.**

- o For example, a review of social landlords' implementation of the government's Black and Minority Ethnic Housing Plan identified a significant implementation gap stating that few social landlords' strategies and action plans were explicitly linked or cross-referenced to the Welsh government's BME Housing Action Plan; and, some did not fully address the government's policy aims – 'having no timescales, no clear actions, no clear allocation of responsibility'.⁷
 - o In contrast, a review of policy on Additional Learning Requirements found that: 'most children and young people with special educational needs [were] receiving good provision and achieving good standards in learning and behaviour in mainstream and special schools; [and that] effective support [was] provided for pupils with severe and complex needs and disabilities'.⁸
- Significantly, **the Welsh government has espoused its adherence to the social model of disability**. This is evident in a number of policies. For example: 'Fulfilled Lives, Supportive Communities' (WAG, 2007), [strategy for the social services]: 'our vision is firmly rooted in both the social model of disability... The social model promotes rights, equality and choice for all disabled people. The real problems for disabled people tend to come from people's attitudes to disability, as well as physical and organisational barriers. Social services must help to tackle these issues through their own actions and by influencing others'. However, the commitment to the social model needs to be weighed against implementation/ delivery issues - including the, (then), government's widely perceived reneging on its 2003 manifesto commitment to introduce free home care in Wales⁹ - as well as the Welsh government's limited ability to influence some non-devolved matters such as policy on social security.
- Particularly evident during the first years of devolution, **the absence of set targets in equalities policies often prevents a quantified assessment of their effectiveness**. For example, 'Climbing Higher', the government's 2005 Sports Strategy lacks detailed equalities targets. Moreover, the Wales Audit Office's 2007 evaluation of the government's Homeless Strategy stated that: 'evaluating the extent to which the Strategy's objectives are being delivered will be difficult, especially where the objectives involve outcomes without quantifiable targets, for example, on better service planning'.¹⁰

- Linked to the foregoing, **the issue of a policy 'implementation gap' continues to be a major concern in some areas of devolved policy making.**
- **A further concern is the general absence of the application of gender – or equalities – budgeting techniques to policy making during the first decade of devolution** (i.e. the technique whereby public funding on policy initiatives is disaggregated by equality 'strand' and, if necessary, remedial measures are taken to address inequalities and ensure equity).
- **Notwithstanding the extensive policy outputs on equalities during the first decade of devolution, major inequalities persist in Welsh society.**
- **Successive governments have extended significant levels of funding to individual equalities-related organisations, projects, policy networks and forums.** This has been evident in regard of faith groups. For example funding has been extended to the All Wales Saheli Association that 'seeks to develop positive futures to enrich and maximise the quality of the lives of Asian and Muslim children and families'.¹¹ A further example is the Muslim Women Talk project that received Welsh government funding (2006-7). Its aims were: 'to establish a valuable communications link between the policy makers and the Muslim community living in Wales that allowed individuals to receive relevant/accurate information, express concerns, raise issues and develop the confidence to positively contribute to community life'.¹²
- **A participatory approach to policy making: a number of equalities policies evidence generally good levels of government consultation with the groups targeted by the policies.** For example, the work of the Advisory Group On The Strategy For Older People In Wales (2007) in developing the Strategy for Older People in Wales 2008-2013 (WAG, 2008).
- **There is scope for broadening the circles of those outside government engaged in equalities policy work.** Notwithstanding new patterns of engagement in the equalities work of government, a minority of equalities-related organisations have thus far lobbied or responded to government policy consultations.
- Existing and future progress on equalities and human rights in Wales depends not only on government but the expertise and engagement of civil and civic society organisations and, the private sector – **the evidence of the past decade suggests that**

there is need for further development of the expertise and participation of civil and civic society organisations/ private sector on equalities and human rights in the devolved context.

Chapter 5. Welsh Law

- **A striking feature of the first decade of devolution has been the increasing use of legal instruments passed by the National Assembly to promote equalities.** This is significant. Particularly so in the wake of the Measure-making powers in the second devolution statute of 2006. It marks the **move towards the increasing use of 'hard policy enforcement mechanisms' in equalities policies.**
- **The Welsh government's general equality duty (S.77, Government of Wales Act, 2006) has had a significant impact on the way that public administration in Wales addresses equalities issues.** It has contributed to the prioritisation of equalities as a key issue for government.
- **Arguably, the S.77 duty has a flawed enforcement mechanism – judicial review.** The latter is likely to be too expensive to undertake for many experiencing inequality or discrimination (– or their representatives) - as a result of Welsh government actions. This may explain why, to date, the duty has not been used to challenge government shortcomings in the arena of equalities. The S.77 duty also sits outside the EHRC's official remit (–except where it overlaps with GB equality statutes) – neither has it been used by the Welsh Language Board.
- The result of the increasing legislative dimension to devolution in Wales is a body of Welsh law. Effectively **constitutional reform has seen the creation of a distinctive legal framework on equalities in Wales.** It is one that supplements GB statutes on equalities and creates Wales-specific duties, regulations, monitoring procedures, funding regimes, and service delivery requirements on devolved public bodies. As a result, different rights, means of redress and welfare entitlements apply in the countries of the UK.
- In some cases, as with the proposed Measure on the Welsh language, **Wales- specific equalities law also applies to parts of the voluntary and private sectors.**

- Given the increasing legislative dimension to devolution in Wales, S.76 is a significant clause in the Government of Wales Act (2006) for it requires **Regulatory Impact Assessments in connection with all Welsh subordinate legislation - including the extent to which Welsh Ministers have exercised due regard to Section 77 of the Act, the general equality of opportunity duty.**
- **The present lawmaking powers and procedures of the National Assembly are limited, cumbersome and preclude the timely and efficient passing of legislation on equalities expected of a modern legislature.** Thus, secondary legislation is shaped by what is permitted in Westminster statutes rather than dictated by first principles from the devolved policy agenda; and, the Legislative Competence Order process is an uncertain one for it is dependent on the approval of Westminster/ Secretary of State.
- **As devolution becomes more established it is likely that the legal framework on equalities in Wales will continue to develop** – and that duties and protections will sometimes contrast with those applying elsewhere in the UK.

Chapter 6. Human Rights

- **Human rights are enshrined in the constitutional law associated with devolution in Wales.** The Welsh administration is bound by the terms of the European Convention on Human Rights. Section 81 of the Government of Wales Act (2006) states: ‘The Welsh Ministers have no power— (a) to make, confirm or approve any subordinate legislation, or (b) to do any other act, so far as the subordinate legislation or act is incompatible with any of the Convention rights’.
- **In contrast to equalities, thus far, the implications of devolution on human rights in Wales have generally been less evident.** One reason for this is the single legal jurisdiction of England and Wales – and the fact that, especially in respect of key non-devolved matters such as criminal justice, many statutes apply uniformly to the two countries.
- Much current academic socio-legal analysis makes little or no distinction between the human rights framework applying to Wales as compared to England.
- However, **there is evidence from the first decade of devolution of policy divergence between Wales and England in relation to**

human rights. The foremost example is policy in relation to children. In 2000, the devolved administration announced its intention to 'driving forward implementation across Wales of the principles of Article 12 of 'the UN Convention on the Rights of the Child' (UNCRC). This has shaped a number of devolved policies and has been welcomed by the UN Committee on The Rights of the Child.

- **A further example of divergence between Wales and England is provided by the extent to which the UN Convention on the Rights of the Child features in the respective legislative frameworks for the Children's Commissioners in each country.**
- As with equalities and public policy, **there is variability between government departments in respect to the extent with which they have engaged with human rights in policymaking.** Overall, most progress has been made in relation to older people and children – less with regard to, for example, 'race', asylum seekers, and mental health issues.
- **Variation also exists in civil society organisations' capacity to lobby, engage and scrutinise government on human rights issues.** NGOs representing older people, children and, young people have, generally, been better resourced and organised than other groups and interests during the first decade of devolution - and this is reflected in policy outcomes.
- **An area where there has been limited progress is in embedding human rights into public procurement and service agreements with agencies outside government.**
- As with equalities, awareness of – and engagement with – human rights and devolved policymaking has, in part, been restricted by **limited media coverage of such issues in Wales.**
- **An issue that emerges from the first decade of devolution is limited policy capacity, advice provision and expertise in Wales relation to human rights.** Specifically, some policy actors point to a dearth of expertise on human rights in government – and the need to address this.
- Some civil society organisations also point to generally good levels of accessibility to ministers in the wake of devolution. Yet there is **much scope for a more systematic approach to human rights that cross- cuts all government departments and devolved public bodies.**

- A further issue that emerges from the past decade is an **implementation gap relating to government policy that impacts on human rights**. Whereas positive strategies and policy objectives can be identified at a national level, some observers point to insufficient attention being paid to monitoring and overseeing the role of local authorities and other agencies in implementing government initiatives.
- As with equalities issues, the complex division of powers between Wales and Westminster requires dual lobbying/ monitoring focus for organisations in Wales interested in human rights – with attendant resource implications.
- **The growing legislative dimension to devolution in Wales is likely to raise future issues relating to the distinctive application of human rights law in Wales** compared to England – with associated implications for legal administration and the monitoring of human rights.

Chapter 7. 'The Inclusive Exercise of Functions'

- 'The inclusive exercise of functions' is the heading relating to Sections 72 to 78 of the Government of Wales Act (2006). These clauses detail a range of channels and procedures designed to foster civic engagement. They are supplemented by a number of the National Assembly's Standing Orders (i.e. the procedural law of the devolved legislature). Taken together, these **legal clauses associated with devolution create institutional mechanisms linked to the aim of political equality – or overturning the longstanding marginalisation and exclusion from public decision making of key social groups – women, disabled people, people of different ethnic backgrounds, LGBT people, older people and so on**. The majority of these inclusive mechanisms have no parallel in the pre-devolution mode of governance.
- **The National Assembly's Standing Committee on Equality of Opportunity has been a key institutional nexus whereby advisors drawn from civil and civic society have lobbied and advised elected representatives on equalities matters.**
- The devolution Acts require the creation of a range of **statutory partnerships between government and local authorities, public sector bodies, the voluntary sector and business organizations.**

Analysis of these partnerships over the past decade reveals the way in which they have generally been effective in facilitating the participation of hitherto marginalized groups –and notably, equalities groups - in the work of government.

- **Procedural aspects of the devolved legislature: the Standing Orders of the National Assembly set out a number of requirements such that the principle of equality is upheld in its proceedings. Analysis reveals that these have generally been effective** in areas such as gender-neutral titles, proscribing discriminatory language in political debate, and equality for the Welsh and English languages.
- As noted, the post-1999 inclusive governance mechanisms have no parallel in the pre-devolution era. As such, they point towards **greater ‘system openness’ to the concerns of those outside government – and have generally facilitated the promotion of equalities in policymaking**. There is, however, much scope to extend the numbers and types of organisations engaged in policy making in relation to equalities and human rights.
- Some organisations point the need for a **more systematic approach to the publication of consultation responses by government and feedback on how their views have been addressed in policy development**.

Chapter 8. Scrutinising the Equalities Agenda

- A major symbolic declaration of political (re-)prioritisation of the promotion of equalities came at the first meeting of the National Assembly’s cross-party Committee on Equality of Opportunity in July 1999 when the minister with responsibility for equalities announced ‘the executive, will need to take equality of opportunity factors into account in every policy decision. **This mainstreaming approach is fundamental**’.
- Against this mainstreaming aim, **most progress has generally been made in securing the institutional prerequisites or ‘building blocks’ necessary for the application of mainstreaming**. These are broad in scope and include: awareness raising, reporting mechanisms, specialist institutional units for equalities, and, incentives to ‘build ownership’ of the promotion of equality.

- **During the first decade of devolution three official reports have highlighted failings in relation to the aim of mainstreaming equalities in the work of government.** In general, the period 1999-2006 can be characterised as one of a 'disconnect' between the aims of mainstreaming and government actions.
- These failings have included: **an emphasis on bureaucratic processes associated with government equalities initiatives rather than the results that they achieve; and, the absence of a systematic and robust process of setting equality targets.**
- **Overall, there have been significant failings in the scrutiny of the Welsh government's equalities agenda during the first decade of devolution. It has not been as robust and rigorous as required to secure sustained equality outcomes in all policy areas.**
- **There is some evidence that the introduction in May 2006 of the Welsh Assembly Government's revised Mainstreaming Strategy has begun to address some of the earlier failings.** Notably, through the development of mainstreaming tools – including new equality impact assessment procedures and improved equalities data-gathering designed to inform both policymaking and policy evaluation. Further time is necessary before their full impact can be determined.
- **One consequence of the creation of the National Assembly has been the significant development of the 'equalities infrastructure' in Wales** (i.e. state bodies that are wholly – or in part- concerned to monitor and uphold the promotion of equalities as part of a public performance review remit) – **this represents a major increase in the potential capacity of the state to monitor equalities.** Such state institutions include the Welsh Commissioners for Children and Older People; pre-existing organisations such as the Welsh Language Board and the education inspectorate, Estyn; and, GB bodies such as the Equality and Human Rights Commission – as well as devolved organisations such as the Wales Audit Office and the Welsh Care Standards Inspectorate. However, **there has been limited strategic direction and co-ordination of devolved inspectorates' and allied bodies' monitoring of equalities, their full potential in monitoring the government's equalities policies has yet to be realised. To date this has been a missed opportunity.**
- **A key factor in the future success or failure of mainstreaming will be the role of opposition parties, backbenchers and external bodies in holding the government to account in relation to its**

statutory equality duty - and delivery of its Mainstreaming Strategy.

Chapter 9. The Case For Moving Towards Full Lawmaking Powers For The National Assembly From An Equalities Perspective

- The executive model of devolution inherited from the 1978 Wales Bill (to varying extents modified by the 1998 and 2006 Government of Wales Acts) is from an earlier era. It offers a cumbersome and inefficient basis for public administration (from an international viewpoint it has no direct parallel). From an equalities perspective, **a responsive, modern, efficient and effective mode of policy- and law making is required to tackle enduring inequality and discrimination. This is best achieved by a devolved legislature with full lawmaking powers.**
- It is also pertinent to question why the people of Wales should be afforded an inferior (when measured against the principles of good governance – see below) model of devolution compared to the citizens of Scotland and Northern Ireland – with the attendant implications this has for the policy tools/ legal means available to government to tackle discrimination and inequality.
- **Evaluating the Success of the Powers already available to the National Assembly to the Promotion of Equalities and Human Rights**
 - During the first decade of devolution there has been a plethora of equality policy initiatives across the breadth of devolved functions. This marks a significant discontinuity with public administration before 1999 when, generally, the Welsh Office did not have responsibility for this issue.
 - Over the past ten years an extensive range of all-Wales policies on equalities topics has emerged - where, before constitutional reform, none existed. For example: 'Tackling Domestic Abuse: The All Wales National Strategy' and, the 'Forced Marriage and Honour Based Violence Action Plan'. There has also been a significant broadening of the policy focus on equalities. The initial Standing Orders of the National Assembly relating to the cross- party Committee on Equality of Opportunity emphasised a principal focus on 'race', disability and gender. This has subsequently been extended to include a greater range of interests

including: Welsh language, asylum seekers, Gypsy travellers, LGBT people, age, faith, carers etc.

- Notwithstanding the aforementioned progress, government policies during the early years of the National Assembly were particularly prone to a 'declaratory approach to equalities' (to some extent this endures in some policy areas)- for limited details were generally provided in policy documents in respect of policy targets and/or implementation methods. Today there is evidence of the beginnings of a more sophisticated approach to the promotion of equalities in government policy documents. However, there is much work to be done before more sophisticated approaches to promoting equalities are a feature of all policy outputs.
- Policy innovation is a further feature of some devolved initiatives on equalities: for example, the creation of the offices of Children's Commissioner for Wales and, Older People's Commissioner for Wales - the first independent statutory Commissioners of their type in the UK. However, underlining the limited legal powers of the National Assembly, the legal standing of these landmark equality policies has come not from instruments passed by the National Assembly - but from Westminster statutes.
- At present there is variability between government departments/ policy areas regarding the promotion of equalities. For example, there is evidence of sustained and generally good practice in areas such as education, children, young people – and shortcomings in others (e.g. the environment and, sustainable development). There is also mixed evidence of the impact of policies designed to promote equalities in terms of policy outcomes. Whilst some have been adjudged to be effective - the absence of targets, timescales and clear allocation of responsibility for implementation has prevented effective evaluation of others.
- During the first years of devolution limited reference was made to human rights in policy documents. One of the first examples is the devolved administration's announcement in 2000 of its intention to 'driving forward implementation across Wales of the principles of Article 12 of 'the UN Convention on the Rights of the Child' (UNCRC).

- o There is limited evidence that human rights are gradually becoming more embedded in government policy. As, for example, in the Strategy for Older People in Wales 2008-2013 which states the need for service delivery to reflecting the United Nations Principles for Older People to tackle discrimination against older people wherever it occurs, promote positive issues of ageing and give older people a stronger voice in society. However, in the absence of full law making powers for the National Assembly, issues and challenges exist in relation to Cardiff and Westminster administrations taking divergent approaches to the application of UN/ European Convention human rights principles in their respective policy programmes. Not least, the UK government's willingness to allow such divergence in the two polities (with the, potentially, constraining influence this may have on devolved policymaking - see below) and, (as with aspects of equalities policies) legal administration of, effectively, two bodies of law (devolved and, Westminster legislation) in a single legal jurisdiction.

- o Overall, the Assembly's existing powers have seen a reprioritisation of equalities and extensive policy making on this issue during the first decade of devolution. Yet, major inequalities persist in Welsh society. It is possible that the absence of full-lawmaking powers has contributed to the failure to make greater progress in tackling inequalities and discrimination in Wales over the past decade – for, crucially, during the early years of the National Assembly, a limited number of equalities policies were backed in law. As the academic literature on public policy attests, this increases the likelihood of an implementation gap for sanctions for non-compliance/ failure to put policies into action - were not generally evident. The lawmaking powers gained in the wake of the Government of Wales Act (2006) have seen the beginnings of a greater legislative approach to promoting equalities that may start to tackle these shortcomings and deliver the means to address such implementation/ enforcement/ compliance issues. Yet, the complex and drawn-out processes that characterise the new Measure-making procedures have compromised this welcome development.

- **Full Lawmaking Powers to Uphold the Principles of Good Governance in Relation to Equalities – and Beyond**

- The European Commission identifies the following principles of 'good governance': openness, participation, accountability, effectiveness and coherence.
- The complexity and opaque nature of the Assembly's powers undermines each of the principles.
- Research shows that uncertainty amongst members of civil society equality organisations over the National Assembly's powers can limit the participation of groups targeted by equalities initiatives.
- A study of the political participation of equalities organisations in the work of government found that the often-opaque, shared nature of policy responsibilities between the National Assembly and Westminster required a dual lobbying/ monitoring focus. This was seen to have major resource implications and was generally a challenge that was not faced by comparable organisations operating in Scotland, Northern Ireland or England.
- Analysis of the transcripts and associated documents of the cross-party Standing Committee on Equality of Opportunity from March 2006 to March 2008 reveals that approximately a half of Committee meetings featured examples of speakers' (AMs and invitees) frustration/ uncertainty stemming from limitations or lack of clarity in relation to Assembly's powers to promote equalities in different policy areas. Such a situation is not conducive to effective government or efficient policy making on equalities.
- An example of the foregoing is the Committee's announcement of its Inquiry into the Accessibility of Polling Stations in Wales. Under the sub-heading 'Scope for law making' the terms of reference paper for the Inquiry provides a good illustration of the complexity facing policy makers in the absence of direct primary legislative powers – and, as such, it is worth reproducing in edited form:
 - The framework around polling station accessibility is essentially provided by primary legislation, for example, the Electoral Administration Act (2006), [...] the Representation of the People Act (1983) as amended and the Political Parties, Elections and Referendums Act (2000). Additionally, the National

Assembly for Wales has previously passed secondary legislation providing for the reimbursement of costs associated with temporary ramps through the National Assembly for Wales (Returning Officers' Charges) Order 2002 which has been amended by the National Assembly for Wales (Returning Officers' Charges) Order 2006. Schedule 7 of the Government of Wales Act 2006 (Acts of the Assembly) refers to electoral matters under Field 12 (Local Government), so Measure making powers could be sought. However, there are exceptions set out in Field 12, including electoral registration and administration, so careful consideration would have to be given to any recommendation that such powers be sought.

- o Further examples of uncertainty over the Assembly's powers hampering the work of the Committee include: 'We cannot get the Dyfarnydd [Office of Welsh Language Commissioner] onto a statutory footing at the moment, *simply because we do not have the statutory powers*' (12.07.2006); '*I would like some clarity on the implications of Acts of Parliament*' (24.01.2007); 'I think that refugees and asylum seekers would be an *awful lot better off if more of those issues were devolved*' (24.01.2007); 'The *trouble is that, as you quite rightly said, most of this is not devolved to us. The major issues are not devolved*' (28.02.2007); '*What powers does the Assembly have to ensure that local development plans pay due regard to the need to have official [Gypsy/ traveller] sites?*' (28.02.2007); '*This is a cause for concern ... I am not sure with whom the responsibility lies for this. Can you help us? What should we encourage the Assembly Government—or the Westminster Government if the Assembly does not have enough powers—to do about this?*' (28.02.2007).

- **Full Lawmaking Powers to limit Westminster Constraints on Devolved Equality Policies**

- o The past decade has seen a number of examples in relation to the promotion of equalities in public policy and law where the absence of full primary law making powers for the National Assembly has meant that Westminster has constrained the policy ambition of the Welsh government.

- For example, in 2000, with regard to age equality/ children's rights, the devolved administration committed itself to upholding the principles of the UN Convention on the Rights of the Child' (UNCRC). In furtherance of Article 19 of the Convention, the Welsh government introduced a ban on smacking in every form of public and regulated care in Wales. In this case Westminster refused to give the Welsh government powers to change the criminal law in Wales to prohibit corporal punishment as initially requested in the Vulnerable Children and Child Poverty Legislative Competence Order (2008).¹³
- A further example is provided the Welsh government's 'All Wales Domestic Abuse Strategy'. Academic analysis reveals how domestic abuse policy in Wales has been subject to a 'Westminster drag' effect. In contrast to more innovative policies seen in Scotland, the Welsh government has been constrained by having to follow the dominant Whitehall policy frame on criminal justice and policing in relation to domestic abuse.
- A further, recent example is The National Assembly for Wales (Legislative Competence) (Housing) Order 2009.¹⁴ In order to safeguard stocks of social housing which are particularly suited to supporting vulnerable people, older people, younger people wishing to remain in local communities etc. The Welsh government requested from Westminster powers to suspend the Right To Buy as set out in the Housing Act (1980). To date Westminster has refused to grant all of the powers originally requested.
- A fundamental concern about the current absence of full lawmaking powers is one that relates to democratic legitimacy. It stems from the subordinate position of the National Assembly in requesting additional legislative powers from Westminster under the Legislative Competence Order process. Increasingly, political parties' election manifestos in all-Wales elections to the National Assembly set out policy commitments in relation to the promotion of equality/ tackling discrimination (See Appendix Two). Parties elected to form a government in the Assembly therefore have a democratic mandate to implement their equality policy commitments – where necessary, through the passing of Wales-only legislation. Yet the current arrangements give the Westminster government and Secretary of State (who may represent a party defeated at the polls in Wales) a potential veto role,

effectively the ability to over-ride the Welsh government's democratic mandate to implement their equality policy commitments as set out in their election manifesto. Full lawmaking powers on the Scottish model would generally eliminate this problem.

- **Primary Powers to Promote Effective Cross-border Working on Equalities Issues**
 - A further case for full lawmaking powers for the National Assembly centres on the devolved administration's, devolved public bodies' and commissioners' limited scope to promote and monitor equalities in relation to the actions of (non- devolved) cross-border agencies. Moreover, this is compounded by the failure of some cross-border bodies to adapt to devolution and, specifically, the distinctive equalities framework applying in Wales.
 - It is an issue highlighted by the Children's Commissioner for Wales. A recent report notes that: 'after seven years' experience it has become clear that there are circumstances when the Children's Commissioner for Wales' powers are insufficient to safeguard some children's rights and welfare. These include the power to take legal proceedings on behalf of a child or intervene in legal proceedings and to require information from devolved bodies outside of a review. Also in areas of policy and legislation that are not devolved to WAG such as youth justice actions, of the police and courts and most functions of the Home Office'.¹⁵
 - In respect of employment matters, enforcement of GB-wide anti-discrimination law is undertaken by Employment Tribunals. As observers note, the Tribunals Service Agency has been slow to adapt to devolution. Fundamental shortcomings exist in the provision of disaggregated Tribunal data on discrimination cases in Wales. Accordingly one study concluded: 'in post-devolution Britain, there is an urgent need to recognise Wales as a distinct administrative entity. Existing arrangements not only add to constitutional and legal uncertainties but also hinder planning on a devolved regional basis'.¹⁶

- In terms of youth justice, research highlights significant shortcomings in meeting the needs of Welsh-speaking young people in custody. It concludes: 'That either the current Youth Justice Board for England and Wales needs to engage more proactively with the bilingual context of Wales, or a new Youth Justice Board for Wales should be constituted. Such a Board, would be specifically concerned and focused on Welsh issues and might therefore be more committed towards making equal opportunities a reality for Welsh speaking young people in custody'.¹⁷
- ***Full Lawmaking Powers to Maximise (i). Equalities Policy Innovation and, (ii). The Political Engagement of hitherto Marginalised Groups***
 - Research shows that a striking feature of devolved governance has been the significant and marked increase in the electoral competition around equalities policies evident in political parties' and NGOs' manifestos in all-Wales national elections to the Assembly.
 - Granting the National Assembly full lawmaking powers will enable parties to maximise policy innovation in electoral competition around equalities – currently, notwithstanding the political will evident in some quarters to tackle discrimination and promote equalities, parties are limited in what they can promise in their manifestos because of the limited nature of the National Assembly's powers (and, the cumbersome process of securing additional legislative competence).
 - Full law making powers may also help to begin to address issues of a limited electoral turnout amongst sections of the population. The latter follows because academic research based upon Wales Election Survey data indicates that post-devolution politics is characterised by subtle yet significant differences in political behaviour between the sexes. One study explored differences in women and men's political behaviour (voting patterns and attitudes to politics and policy) and found that, in the devolved electoral context, women's political priorities on issues such as equalities were different to men. The significance of this is - if replicated across all equalities constituencies (ethnicity, disability, LGBT people, age, etc) - targeted equalities policies are likely to promote the political

engagement/ voting of hitherto marginalized groups in devolved elections.

- ***A Comparative Perspective: Scottish Equalities Legislation post-1999***
 - Reference to the legislative outputs (1999-2009) of the Scottish Parliament reveals the greater scope that the Scotland Act (1998) affords lawmakers to advance the promotion of equalities in law. Of equal importance here are the directness, accountability, clarity and responsiveness of the Scottish lawmaking process compared to the unduly complicated and often protracted procedures for creating and passing Measures of the National Assembly for Wales.

CHAPTER 3. METHODOLOGY

This report draws upon a series of research projects by the author and colleagues on equalities and public policy that span the past decade. The latter have been funded by: the Economic and Social Research Council,¹⁸ the University of Wales,¹⁹ UK Government Department for Communities and Local Government, Welsh Assembly Government,²⁰ the Equal Opportunities Commission Wales, the Wales TUC, Disability Rights Commission, Commission for Racial Equality, and Institute of Welsh Affairs.²¹ Thus, this evaluation draws upon a variety of research methods including: an extensive series of interviews with policy actors (1999-2009 – including: AMs, MPs, officials, public sector managers and, members of civil society organisations); participant observation of plenary and committee sessions of the National Assembly and, the meetings of equalities organisations; document analysis of the public policy outputs of devolved government – as well as the ‘grey literature’ (e.g. annual reports, newsletters etc) of civil society organisations; analysis of legal instruments relating to equalities; and, discourse analysis of the proceedings of the National Assembly.

CHAPTER 4. EQUALITIES AND PUBLIC POLICY

In this section attention is focused on key examples of the promotion of equalities by policy area. Necessarily, given the extensive outputs over a ten-year period, it is not intended to be an exhaustive account of all policies; rather it uses a purposive sample that draws policy examples from each of the Major Expenditure Groups (MEG) in the government's budget.² It is therefore designed to reflect the breadth of devolved policy competencies, areas of shared responsibility with Westminster and the EC/ EU and, examples of issues, progress and shortcomings in the promotion of equalities and human rights.

In terms of the 'political provenance' of the policies analysed here, constitutional reform has seen the rise of coalition government in the devolved countries of the UK. Accordingly, the following administrations are responsible for the policy outputs seen over the past decade: 1999-2000 Welsh Labour; 2000-03, Welsh Labour- Liberal Democrat partnership government; 2004-07 Welsh Labour; 2007-present, Welsh Labour – Plaid Cymru coalition government. It should be noted that the 'ideological position' of all parties forming devolved governments in the past ten years has been on the left of the political spectrum. Traditionally, when compared to parties on the political right, this is generally linked to a greater willingness to embrace

² Henceforth the term 'government' and 'Welsh government' refer to the Welsh Assembly Government (WAG) unless otherwise stated.

interventionist measures by the state – including those to promote equality and human rights. Thus, the gains made over the past decade need to be viewed in this light. Future governments (in Wales or Westminster) may hold a more cautious or even hostile view to promoting equality and human rights. Such a factor is likely to cast significant influence on the nature and pace of future change.

4.1 MEG: Children, Education, Lifelong Learning and Skills

Children, Education, Lifelong Learning and Skills' constitute one of the main policy portfolios in the Welsh Government. The total Departmental Expenditure Limit for 2008-09 under the main expenditure group (MEG) for the portfolio totalled almost £2 billion, the third largest MEG in the government's annual budget.

Against the background of an increasingly distinctive Welsh state education system, equalities policies are evident across compulsory and non-compulsory phases of education, as well as teacher training and schools inspections regimes.

Compulsory Phase Education

Education is one of the key devolved areas of policy making.²² In addition to being covered by the Welsh government's statutory

equality duty, it is significant that education policies need to conform with the commitment made by the devolved administration in 2000,²³ to 'driving forward implementation across Wales of the principles of Article 12 of 'the UN Convention on the Rights of the Child' (UNCRC).²⁴ This aim is restated in WAG's most recent education strategy document (WAG, 2006), which refers to: 'seven core aims for children and young people developed from UNCRC'. It continues, that, 'these will underpin all of the activities of the Department for Children, Education, Lifelong Learning and Skills'.

Compulsory Phase Education

Successive education strategy documents and curriculum orders have allowed devolved administrations to embed equalities aims in policy. The first major example was 'The Learning Country (WAG, 2001) that set out a vision for compulsory phase education over the first decade of devolution. It stated:

'In all, the promotion of lifelong learning is a cardinal priority for the Assembly, and for Wales. It will be actioned with due regard to the Assembly's consistent commitment to ... promote equality of opportunity ... The Government of Wales Act lays a distinct and special responsibility upon the National Assembly over the pursuit of equal opportunities. Unconscious institutional and other barriers to learning must be progressively removed' (WAG, 2001:8-37).

The strategy document outlined plans for the state curriculum authority to, 'provide guidance on the scope within the National Curriculum for Wales for promoting equal opportunities and the understanding of diversity'. This coincided with the implementation in of new National Curriculum Orders (that specify the content of the National Curriculum in Wales), and the Frameworks for Personal and Social Education (PSE) and Work-Related Education (WRE). Accordingly, the resulting policy document 'Equal Opportunities and Diversity in the School Curriculum in Wales' (ACCAC, 2001) stated:

'this guidance underlines the importance that the National Assembly for Wales attaches to education about equal opportunities. It focuses on the opportunities in the school curriculum to teach and learn about issues of equality and diversity relating to disability, gender and race, and to challenge prejudice and stereotyping in schools and in the wider community' (ACCAC, 2001:2).²⁵

Published in late 2006, the successor education strategy, 'The Learning Country: Vision into Action' (WAG, 2006) reaffirmed and updated the commitment to promoting equalities. It is evident in the phased updating (2008-11) of the schools curriculum. For example, in early years education the Foundation Phase curriculum (3-7 year olds) focuses on experiential learning or, 'learning by doing', through 'active involvement and developing each child's skills and understanding; personal, social, emotional, physical and intellectual well being'.²⁶ Examples of the new equalities provisions include the following:

'The Foundation Phase curriculum promotes equality of opportunity and values, and celebrates diversity ... (p.4) ... Settings/schools should plan across the curriculum to develop the knowledge and understanding, skills, values and attitudes that will enable children to participate in our multi-ethnic society in Wales. (p.7)... equal opportunities legislation ... places a duty on settings/schools in Wales towards present and prospective children to eliminate discrimination and harassment, to promote positive attitudes and equal opportunities and encourage participation in all areas of setting/school life' (p.7). ... All settings/schools will implement a Welsh language educational programme in the Foundation Phase for children 3 to 7 years' (p.12). Personal and Social Development, Well-Being and Cultural Diversity: Skills – Social Development- Children should be given opportunities to: develop an awareness of different cultures and the differing needs, views and beliefs of other people in their own and in other cultures. Treat people from all cultural backgrounds in a respectful and tolerant manner. Begin to question stereotyping (p.15). (Department for Children, Education, Lifelong Learning and Skills, WAG, 2008)

In addition, major change at secondary level is ongoing with the introduction (2008- 2010) of a revised curriculum for 11 to 19 year-olds. For all subjects legally binding Curriculum Orders specify the skills, programme of study and outcomes to be adhered to by education providers, the following statement prefaces each:

'The equal opportunities legislation which covers age, disability, gender, race, religion and belief and sexual orientation further places a duty on schools in Wales towards present and prospective learners to eliminate discrimination and harassment, to promote positive attitudes and equal opportunities and encourage participation in all areas of school life... Schools should plan across the curriculum to develop the knowledge and understanding, skills, values and attitudes that will enable learners to participate in our multi-ethnic society in Wales. Schools should develop approaches that support the ethnic and cultural identities of all learners and reflect a range of

perspectives, to engage learners and prepare them for life as global citizens' (WAG, 2008:3).

Analysis of the new curriculum reveals that the policy discourse is one of promoting pupils' understanding of diversity, and challenging prejudice, racism and stereotyping. The associated policy document, 'School Effectiveness Framework: Building effective learning communities together' (WAG: 2008:7), also places new requirements on education providers, asserting that:

'The Welsh Assembly Government is committed to promoting equality of opportunity in all aspects of Welsh life and to addressing discrimination on grounds of race, religion, disability, age, gender and sexual orientation... Core aim 5 (of our seven core aims) requires that children and young people are listened to, treated with respect, and are able to have their race and cultural identity recognised. A key element of this is respect for those children and young people whose first language is neither Welsh nor English' (WAG, 2008: 14).

The transition phase as pupils begin to consider their options after compulsory education is an area where there is also evidence that the promotion of equalities is also beginning to be incorporated into the current policy framework. For example, 'Learning Pathways' is a policy designed to address, 'the need for a more flexible and balanced approach to the education of 14-19 year olds, providing a wider range of experiences which will suit the diverse needs of Wales' young people'.²⁷ It is intended to offer a programme of study tailored to individual needs. A key element is the assignment of a Learning Coach

to each pupil to give personal support, careers advice and guidance.

The remit of each coach includes responsibility:

‘to ensure that all individual learners have equality of opportunity; to be aware of the additional needs of ethnic minority individual learners in relation to language and equal opportunities and those needing additional support; and, to be aware of the need to avoid stereotyping’.²⁸

Additional Learning Needs

Recent figures show that 3.3% of pupils on school rolls in Wales had Statements of Special Educational Needs (SEN). This percentage has remained constant, varying by just 0.1 percentage point over the last seven years. About a quarter of all new Statements are for children under five years old.²⁹ Total Welsh government expenditure on SEN provision in 2008-09 was budgeted at £321M (Statistics Wales, 2008). It should be noted that, in some quarters, the term Additional Learning Needs (ALN) is increasingly favoured in place of ‘SEN’.³⁰ The SEN Code of Practice for Wales (NAfW, 2002) provides advice to Local Education Authorities, maintained schools, others bodies on how to meet their statutory duties to identify, assess and make provision for children’s ALN. The Code is comprehensive and covers the following areas of ALN: communication and interaction difficulties; cognition and learning difficulties; behaviour, emotional and social development; and, sensory, physical and medical needs. It sets out the procedures for

assessing the additional learning needs of children and young people, and creating appropriate interventions to address them. It is founded on a number of core principles:

- All children with special educational needs should have their needs met;
- These special educational needs should normally be met in mainstream early years settings, or schools;
- The views of parents and their children will be listened to and taken into account;
- Parents have a vital role in supporting their child's education; and
- Children with special educational needs should receive a broad, well-balanced and relevant education (NAfW, 2002:6).

The state education inspectorate's reports give an insight into the effectiveness of policy on ALN in Wales. A recent survey concluded that in the additional learning needs services inspected:

'most children and young people with special educational needs [were] receiving good provision and achieving good standards in learning and behaviour in mainstream and special schools; [and that] effective support [was] provided for pupils with severe and complex needs and disabilities'.

However, it also highlighted some shortcomings including the fact that, 'most local authorities: do not monitor the quality of provision well

enough for those pupils educated in other authorities or in independent special schools'.³¹

Following a three-part review of ALN undertaken by the National Assembly's Education, Lifelong Learning and Skills Committee (ELLS, 2007), future policy on additional educational needs is likely to become more distinctive compared to that applying elsewhere in the UK. Through the Additional Learning Needs Legislative Competence Order (LCO) (2008) the National Assembly has secured the powers to pass Wales-only primary legislation, or Assembly Measures, on this topic. The Welsh government has committed itself to producing 'an action plan in response to the recommendations of ELLS Committee Review of SEN'.³² In the meantime, the Committee's recommendations indicate the possible nature of future changes in policy and law on ALN. They include:

- New statutory assessment arrangements based on a continuously assessed record of need. This should be allied closely with arrangements encouraging a whole school improvement approach to meeting additional educational needs
- The Minister consider issuing revised guidance to local authorities aimed at ensuring a more consistent application of the current statementing arrangements across Wales

- LEAs appoint key workers as a way of supporting parents and ensuring a more genuinely multi-disciplinary approach.
- The Assembly Government considers how school clusters can play a greater role in supporting special unit provision within the mainstream
- The Assembly Government considers mechanisms for encouraging the exchange of expertise and knowledge between teachers in mainstream and special education settings (NAfW, 2006:16-22).

Teacher Training

In the wake of devolution new measures have also been implemented to ensure that equality of opportunity is addressed in teacher training programmes. The literature of the General Teaching Council for Wales outlines how this should be achieved (see Figure 4.1.).

Statement of Professional Values and Practice: 'Teachers acknowledge the need for mutual accountability and commitment from all partners in achieving shared aspirations and goals. They are committed to providing equal opportunities to pupils, colleagues and others with whom they come into professional contact, regardless of gender, ethnicity, age, religion and beliefs, special needs, sexual orientation and linguistic background' (p.2).³³

'Purpose of the national programme ... to offer equality of opportunity to teachers in accessing professional development' (p.37).³⁴

The Chartered Teacher standards: Professional knowledge and understanding - Have an up to date knowledge and understanding of the educational and social context in which learning takes place... Have an extensive knowledge and understanding of the

principles and practices of equality and inclusion and strategies to counter discrimination' (p.4)... Demonstrate a commitment to their profession and the wider community - Model the core values of honesty, personal responsibility, equality and inclusion, and promote learners' personal, social, moral and cultural development' (p.7).³⁵

Figure 4.1. Equalities and Teacher Training (General Teaching Council for Wales, 2006).

This policy guidance is complemented by the statutory inspection arrangements covering teacher-training courses. The official inspection framework states:

Does the training promote equality of opportunity and actively address issues of gender? In judging how well the training promotes equal opportunities, you will need to evaluate the extent to which trainees are stimulated to think critically about tackling social disadvantage, extending entitlement and related issues. You should judge the quality of the training by the extent to which trainees can apply their knowledge and understanding of these issues in their planning and teaching. You should pay particular attention to how trainees are prepared to teach particular groups of pupils (Estyn, 2002:28).

Further and Higher Education

The promotion of equalities in higher education in Wales was a key theme in the government's strategy 'Reaching Higher' (WAG, 2002) that asserted:

'we want a sector that takes its rightful place in the delivery of the Assembly's wider priorities and principles, including those of sustainability, social inclusion, equal opportunities and the development of bilingualism'.³⁶

One area where this has been evident is in relation to university tuition fees. The Independent Study into the Devolution of the Student Support System and Tuition Fee Regime in Wales (2005) underlined the need for equalities considerations to be mainstreamed into student support measures. Following the Review, Welsh government grant aid has taken two principal forms - Assembly Learning Grants for Higher Education (ALG) (these provide extra support with the cost of books, equipment and travel) and Tuition Fee Grants. Further associated measures have been introduced through the government agency, Student Finance Wales, to address the Review concerns around the promotion of equality. In particular, Special Support Grants provide funding for assistance with the costs of registered or accredited childcare during term time and short vacations and, the Parents' Learning Allowance contributes to the support of dependants in a learner's household.³⁷ Spring 2009 saw the announcement of proposed revisions in the student finance regime in Wales. Although exact details

are yet to be finalised, a more targeted approach with support focussed on poorer households is a likely outcome of any change.

Major challenges remain in relation to language equality and higher education. As one analyst observed:

‘the revitalization of the Welsh language through the education sector has been widely documented and applauded. This success is limited, however, by the poor provision of Welsh-medium higher education’.³⁸

The current response, one set out in the ‘One Wales’ coalition government policy agenda (WAG, 2007), is to: ‘establish a Welsh-medium Higher Education Network - the Federal College – [by 2011] in order to ensure Welsh-medium provision in our universities’. It remains to be seen whether, when implemented, this proves to be an effective approach in a sector that traditionally lagged behind compulsory phase education in promoting equality for the Welsh language.

In the wake of the Leitch Review into the UK’s long term skills needs (H.M. Treasury, 2006), further education in Wales continues to be the subject of ongoing review and policy development. Amongst the stated ‘guiding principles’ underpinning the Welsh government’s ‘Skills That Work for Wales: A Skills and Employment Strategy and Action Plan’ (WAG, 2008) are equality of opportunity and Welsh language skills. This policy is indicative of a more sophisticated approach to the promotion of equality in government policy documents when compared to the

rather generalised and undeveloped references to equalities that often featured in policies and strategies in the first years of the National Assembly. In this example, a mainstreaming technique, impact assessment, was used in its development:

'equality and diversity are integral to the skills and employment agenda. We conducted a full equality impact assessment for this strategy, and believe that no one should be denied opportunities because of their race, ethnicity, disability, gender, sexual orientation, age or religion. We will expect our partners, providers and stakeholders to recognise this principle in practice, contributing to the Assembly Government's Mainstreaming Equality Strategy' (WAG, 2008:9-10).

A key part of the new strategy is based on reform the education system to promote collaborative working between education providers and promote more choice and personalisation for learners based on the integration of 'the work of schools, Further Education Institutions, Higher Education Institutions and other post -16 providers'.³⁹ In addition to measures to enhance Welsh language provision, the criteria that will be used to evaluate – and approve – future reform of the further education sector include:

'consideration of the impact of the proposed collaborative model to reach under represented groups; improved opportunities available to all young people and adults particularly those under-represented groups; and, management and governance arrangements to promote and sustain equality and diversity' (WAG, 2008:12).⁴⁰

This is a significant part of the emerging equalities agenda, for, on the face of it, it embeds equalities considerations into the future trajectory of FE policy.

Children and Young People

As noted, a year after the founding of the National Assembly, the Welsh government published a strategy document that set out its commitment to applying the United Nations Convention on the Rights of the Child (UNCRC) to its policymaking (WAG, 2000).⁴¹ Implementation details followed in 'Children and Young People: Rights into Action' (WAG, 2004).⁴² The overarching strategy also articulated its aim of 'valuing diversity and promoting equality of opportunity' and stated:

'Children and young people in Wales are not all the same. There is a huge range and diversity of backgrounds, ethnicity, first language, family circumstances, wealth and ability. Our aim is to recognise and value diversity and to tackle inequalities'.⁴³

A raft of policy measures has emerged that link to these aims. An early, prominent example was the creation of the office of Children's Commissioner for Wales. The academic literature⁴⁴ underlines the need for such statutory bodies to safeguard the rights of children on the grounds that they can independently scrutinise government policies and, in contrast to agencies targeted on education or housing for

example, they take a strategic overview of public services emanating from a plethora of public agencies. The Children's Commissioner for Wales, the first independent statutory Children's Commissioner in the UK was appointed in 2001 with powers to review the effect of policies on, and the delivery of services to, children and young people. One analyst points to the progressive stance taken by the devolved administration in going beyond the UK-wide approach, observing that:

'The Welsh Assembly Government also ensured that the UNCRC [United Nations Convention on the Rights of the Child] was enacted into secondary legislation [relating to the creation of the Commissioner's office] whereas the UK government had refused to include it in the primary legislation'.⁴⁵

The powers of the Commissioner are extensive and include complaints, whistle-blowing, advocacy - and reviewing the effect on children of exercise of functions by public bodies in Wales (see Figure 4.2). However, there are limitations in the Commissioner's role relate to her/his powers to take action on cross-border issues.

The role of the Commissioner: to be a 'champion' for the children of Wales 'who will safeguard and promote the interests of its children and young people'.⁴⁶

Advocacy: The Commissioner has the power to review, and monitor the operation of, arrangements for dealing with complaints,⁴⁷ whistle-blowing,⁴⁸ and advocacy,⁴⁹ in order to ascertain the extent to which those arrangements are effective in safeguarding and promoting the rights and welfare of children.

Complaints Procedures: The Commissioner has the power to assist children who are using complaints procedures. The Commissioner may provide assistance to a child, under section 76(1), who is pursuing a complaint or making a representation against a provider of services (including health and education) to children. The form of assistance that may be given includes financial assistance and arranging for representation, advice or assistance to be given by someone other than the Commissioner

Reviewing the effect on children of exercise of functions by public bodies in Wales:

The Commissioner the power to review the effect on children of the exercise or proposed exercise by the Welsh Assembly Government of any function, including the making or proposed making of subordinate legislation. The Commissioner has the power to examine the arrangements for complaints, whistle-blowing and advocacy, she can also assess the effect on children of the failure to make such arrangements.

Legal sanctions and access to papers and people:

To ensure that the Commissioner is able to investigate matters effectively, (s)he has the power to require the provision of information from a range of persons where she considers it necessary, including current or former providers of services, their current or former employees, and current or former members, directors or receivers of such services. The Commissioner has the same powers as the High Court to require the attendance and examination of witnesses and the provision of information. Obstruction of the Commissioner or an act in relation to her/him which would amount to contempt of court may be certified as an offence to be punished by the High Court.

Non- devolved matters: Welsh Commissioner can tackle matters affecting Welsh children which do not come within the remit of the Assembly's devolved powers; (s)he 'may consider, and make representations to the [Welsh] Assembly [Government] about, any matter affecting the rights or welfare of children in Wales'.⁵⁰ Yet, the Commissioner has no power of

enforcement on non-devolved issues.

Figure 4.2. The Powers of the Children’s Commissioner for Wales.⁵¹

Given the short timeframe since the founding of the National Assembly, it is noteworthy that the commitment to article 12 of the UNCRC has led to a plethora of policies to promote the participation of children and young people in public decision-making (see Figure 4.3).⁵² For example, at a national level, ‘Funky Dragon’ – the Children and Young People’s Assembly⁵³ has been developed to give children and young

people the opportunity participate in decision making and meet with government Ministers. Whilst at the local level, the Assembly has passed legislation creating Children and Young People's Partnerships in each local authority area.

Policy	Details
Funky Dragon, the Children and Young People's Assembly for Wales	'Funky Dragon - the Children and Young People's Assembly for Wales - is a peer-led organisation. Our aim is to give 0 – 25 year olds the opportunity to get their voices heard on issues that affect them. The opportunity to participate and be listened to is a fundamental right under the United Nations Convention Rights of the Child. Funky Dragon will try to represent as wide a range as possible and work with decision-makers to achieve change. Funky Dragon's main tasks are to make sure that the views of children and young people are heard, particularly by the Welsh Assembly Government, and to support participation in decision-making at national level'. ⁵⁴
The Children and Young People's Participation Consortium for Wales and, the Participation Unit	'The Participation Consortium is a multi-agency strategic body. It is working at a national level to develop capacity and practice in terms of the participation of children and young people (0-25 years) in decision-making in Wales. A consortium approach to developing participation ensures co-ordination and the sharing of good practice, avoids duplication and acknowledges diversity'. ⁵⁵ 'The Participation Unit's main aim is to help children and young people (0-25) in Wales to participate in issues that directly affect their lives. We also want to change the views of adults to make it easier for children and young people to participate. The Unit is hosted by Save the Children on behalf of the Participation Consortium, is steered by the Consortium, and acts as its delivery 'arm'... We are also funded by the Welsh Assembly Government ...'. ⁵⁶
Youth Forums	'The Welsh Youth Forum on Sustainable Development is a youth led organisation, for youth Empowerment, Education and Action on issues of Sustainable Development'. ⁵⁷ 'The Minority Ethnic Youth Forum (MEYF) is an initiative started by the Welsh Assembly Government in 2005... The main objective is to bridge the gaps in engagement between the Assembly Government and minority ethnic young people in Wales'. ⁵⁸ In addition there are 22 Local Youth Forums, one in each local authority area; 'peer-led representative groups of children and young people'. ⁵⁹
Participation in the children and young people's voluntary sector	'The Voluntary Sector Partnership Council (VSPC) is a key body in maintaining regular dialogue between the voluntary sector and the Welsh Assembly Government. It is always chaired by a Minister and is made up of: The Minister with responsibility for the voluntary sector, Dr Brian Gibbons 24 representatives of voluntary sector networks working across 24 key areas of voluntary sector activity'. ⁶⁰ Two dedicated networks on the VSPC represent Children and Youth organisations, respectively.
Statutory requirement for schools councils in all primary secondary and special schools	'As part of its commitment to ensuring that all children and young people can contribute to decisions that affect them the Welsh Assembly Government has introduced a statutory requirement that all primary, secondary and special schools in Wales have a school council up and running by 1st November 2006. Wales is the only country in the UK where such legislation is currently in place'. ⁶¹
Statutory requirement for Associate Pupil Governors in schools	<u>Associate Pupil Governors</u> 7.-(1) The head teacher of a school must ensure that the school council has the opportunity to nominate up to two pupils from years 11 to 13 (inclusive) from its membership to be associate pupil governors on the school's governing body. (2) The governing body must accept any pupil nominated in accordance with paragraph (1) above, and appoint him or her as an associate pupil governor on the governing body... The School Councils (Wales) Regulations 2005, No. 3200 (W.236). ⁶²
Young People's Plans - Statutory guidance (2007) on partnership, local	Strengthens existing partnership arrangements for services to children and young people and places legal duty on local authorities and their partners to prepare 3-year strategic Children and Young People's Plans. ⁶³

cooperation and lead roles	Statutory guidance requires that children and young people participate in the work of the Children and Young People's Partnership. ⁶⁴ From 2008 each local authority area will be required to have a children and young people's plan covering all services for those aged 0-25 and maternity services. ⁶⁵ The Children and Young People's Plan (Wales) Regulations 2007 No. 2316 (W.187)
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Figure 4.3. Examples of Welsh Government Policies to Promote Children and Young People's Participation in Public Decision-Making (WAG, 2007).⁶⁶

Schools councils are a further development in the 'participation agenda'. These have been introduced to involve pupils in the day-to-day running of all schools including the development of school policies.

Action on child poverty is the shared responsibility of the UK and Welsh governments. Recent research has highlighted that 'the proportion of children in Wales living in low-income households is now the same as the average for Britain as a whole. A decade ago, by contrast, the child poverty rate in Wales was well above average. However, despite this progress, one in every four children in Wales still lives in a low-income household'.⁶⁷ The Welsh government's Child Poverty Strategy was launched in 2005,⁶⁸ and its accompanying Implementation Plan in 2006. The overarching policy aim is to halve child poverty by 2010 and eradicate it by 2020. The Implementation Plan is an example of good practice in equalities policies in that it addresses earlier concerns, for it sets out targets and policy outcomes to be achieved alongside implementation methods. For example, in the case of 'Child Poverty Proofing' government policies, it states: 'all new Assembly Government initiatives and new spending commitments should be subjected to child poverty proofing'. In the case of play provision, it asserts that: 'the

Assembly Government will require local authorities across Wales to provide good quality outdoor play areas, with an immediate emphasis on the most deprived communities'.⁶⁹ More generally, the Strategy articulates the need to promote equalities in the following terms:

'We also recognise that some groups within society can face specific aspects of social exclusion because of discrimination and historical disadvantage. This includes minority groups and disabled children and young people. Simply providing the same service to all does not mean that everyone can have equal access to those services. We are taking forward the equality agenda as a cross cutting theme, informing work across every area of government... The promotion of equality will continue to inform the development of policy and provision'.⁷⁰

The 2007 coalition government policy agenda 'One Wales' reaffirms the aims of the earlier Child Poverty Strategy (WAG, 2005). It also includes additional policies such as: the need to secure access to a credit union for pupils in every secondary school in Wales by 2011, the introduction of a legal duty on public agencies requiring them to demonstrate their contribution to ending child poverty, and the introduction of a Children's Bond for all children entering school. In line with these commitments a Legislative Competence Order is currently being sought in order to introduce the legal duties on local authorities to do more to tackle child poverty and to proof all policies against their impacts on child poverty.⁷¹ Assessing these developments, one study concluded that, 'the Assembly Government's actions to tackle child poverty are laudable in many ways'.⁷² Further research broadly

concurr, stating, 'there has been worthwhile improvements in the depth, nature and distribution of poverty in Wales over the past decade. The Welsh Assembly Government focus on child poverty is useful and is promoting policies which can begin to challenge the grip of poverty on communities throughout Wales'.⁷³ However, it offers a note of caution:

'their eventual success will depend on the long-term determination of government and a commitment to heavy expenditure on programmes targeted at community level. Whether such policies can survive the inevitable political cycle and become embedded elements of a new approach to welfare and poverty eradication remains to be seen'.⁷⁴

In sum, policy on children and young people shows mixed progress. Shared policy responsibility for Westminster on matters such as child poverty (with the latter retaining control of welfare benefits) makes it hard to assess the impact of all devolved policies. Nevertheless, from an international perspective, three aspects of the Welsh government's policies have been welcomed by the UN Committee on The Rights of the Child: 'that the Convention had been used as a basis for the Strategy for Children and Young People; the establishment of an independent Children's Commissioner for Wales; and, the adoption by the Assembly [Government] of regulations prohibiting corporal punishment in all forms of day-care, including childminding'.⁷⁵ To this must be added the broad range of measures to promote children and young people's participation in public decision-making, an agenda

that links equalities with concerns for participatory democracy. In addition, the monitoring and scrutiny role of the Children's Commissioner and the proposed imposition a legal duty on public agencies requiring them to demonstrate their contribution to ending child poverty will mean that the public sector in Wales will operate in an increasingly distinctive environment when compared to elsewhere in the UK.

Asylum Seekers and Refugees

Academic analysis of existing welfare policies⁷⁶ observes how 'far from promoting the integration of refugees, [such...] frameworks may rather perpetuate a condition of institutionalised marginality for refugee groups'. However, there is some evidence that post-devolution policies in Wales have taken a slightly different trajectory. For example, an early initiative to support asylum seekers was the decision taken by the National Assembly in 2000 to use its powers under section 88 of the Local Government Finance Act (1988)⁷⁷ to extend the pre-existing criteria under which local authorities could pay grants to include individuals seeking asylum in Wales.⁷⁸ In 2006, the government published its Refugee Housing Action Plan (WAG, 2006). *Inter alia*, it aims to, 'disseminate good practice guidance on the housing and support needs of asylum seekers and refugees'.⁷⁹ Its policy aims were accompanied by details of existing progress and implementation timescales. The aims included, raising awareness of refugee housing

and support needs; promoting working arrangements which afford local authorities the opportunity to consider refugee housing needs in their strategic planning processes; and, developing effective responses to language and communication barriers.⁸⁰ In response to a commitment in the One Wales policy programme (WAG, 2007)⁸¹ the government has published its Refugee Inclusion Strategy (WAG, 2008).

Citing the government's statutory equality duty it:

'aims to foster cohesive, plural and just communities where people, regardless of physical ability, gender, sexual orientation, race, creed or language, can feel valued'.⁸²

It is a notable document in a number of respects, not least for its use of the language of mainstreaming equalities. For example, it asserts that the government 'will mainstream refugee inclusion across the work of the Welsh Assembly Government'.⁸³ Amongst the Strategy's aims are:

'to increase public understanding of issues relating to refugee inclusion... to ensure refugees and asylum seekers are able to access information and advice about core services ... [and, that] the Welsh Assembly Government will work with the All Wales Police Consortium for Refugees and Asylum Seekers to reflect the needs of new communities in crime and disorder partnerships'.⁸⁴

Overall, these policy developments signal a welcome use of equalities legislation to coordinate services for asylum seekers. Future outcomes will depend on detailed policy development in the wake of the

Refugee Inclusion Strategy such as measurable targets and effective monitoring.

4.2 MEG: Economy and Transport

Economic development and transport are 'devolved' issues with a combined annual spending allocation of £1.2 billion per annum. Yet, reflecting the realities of multilevel governance that face administrations around the world, key parts of these portfolios are shared with other tiers of government – in this case the UK government and European Commission.

Economic development

Equality of opportunity was one of crosscutting themes of the multi-billion pound European Structural Fund economic aid programmes in Wales 2000-06 ('Objective One Aid'). The policy document that set out the targets for the programme stated:

'gender is a major cause of inequality of opportunity in the west Wales and the Valleys region [the area covered by Objective One] and that the labour market is characterised by horizontal, vertical and contractual segregation. A key to addressing this issue is to pursue gender mainstreaming in projects'.⁸⁵

In accordance with EC Directives, the strategy document also made detailed provision for 'race' and disability equality; Welsh language equality was another of the crosscutting themes. The Single Programme

Document was notable for the way in which it set out targets and outcomes in relation to equalities. Whilst some observers question the economic impact of the Objective One Programme⁸⁶ others have highlighted the way in which its partnerships with local communities and the voluntary sector are:

‘starting to bring previously embedded political cultures into wider awareness; opening up and challenging the previously ‘zero-sum’ approach of decision-making hierarchies and public service delivery mechanisms’.⁸⁷

Formal evaluations of the Programme have also generally given a positive assessment of the aid programme in terms of equalities outcomes. For example:

- *Objective 1 target 30% of start up Small Medium Sized Enterprises (SMEs) assisted to be owned by women.* ‘Some indication of progress in this area can be obtained from wider labour market data. For the Objective 1 region in 1999/2000 32.7% of the self-employed were female; this had risen to 34.4% in 2003/04. As a comparator, the all-Wales measure had a larger increase from 32.3% in 1999/2000 to 36% in 2003/04’.
- *Objective 1 target 50% of higher level training places to be taken up by women.* ‘Enrolments in Higher Education Institutions (HEIs) in Wales (undergraduates and postgraduates) in 1998/99 included 51,890 women (52.8%), which in 2002/03 had risen to 65,576 women (56.1%). This represents an increase of 26.4% of women across Wales’.
- *Objective 1 target to increase female participation rates in the labour market to 70%.* ‘The Economic Activity Rate of the Working Age Population of women in the Objective 1 area in 1999/2000 was 67.1%; in 2004/05 this had risen to 71.1%’ (ECOTEC, 2006).

In contrast, launched in 2002, the Welsh government's economic development strategy adopted a declaratory approach to equalities. Limited details are provided in the Strategy document in respect of policy targets or implementation. For example, it states: 'our objectives and priorities remain: supporting businesses ... by extending programmes which provide equality of opportunity for all...'.⁸⁸ In like fashion, the Entrepreneurship Action Plan For Wales (WDA, 2000) makes generalised reference to equalities: 'all people have equal opportunity to become entrepreneurs. In particular women, young people, retired workers, retired corporate executives and minority groups should be participating fully in entrepreneurial activities. This would substantially contribute to wealth generation within Wales'. The latter policy states its aim as:

'to create a greater number of sustainable start up businesses in Wales with potential for further growth, particularly by under-represented groups of society such as women, the young, Welsh language speakers, ethnic minorities and retired workers'.⁸⁹

Similarly, the Welsh government's Action Plan for Innovation (WAG, 2002) asserts that future activities 'will be pursued in full accord with the Assembly's youth policy, equal opportunities and diversity objectives'.⁹⁰

The government's subsequent economic strategy, 'Wales: A Vibrant Economy' (WAG, 2005) addresses some of the earlier shortcomings in

the way that equalities are framed in policy documents and it sets out a framework for future policy development. It states:

'Our principles to guide us in this work will be ... joining up policy agendas across the Assembly Government and meeting our corporate commitments to social justice, sustainable development, equality and the Welsh language ... Ensuring equality of opportunity and promoting openness, partnership and participation are central values to the vision of a sustainable Wales.'⁹¹

The document makes specific reference to the fact that, 'the issues of equal pay and equal opportunities are still of great importance'.⁹² It recognises the need for policy work in relation to 'quality of life' and building strong relationships – both of which have strong connections to the promotion of equalities - yet this aspect is not fully developed in the policy.

Currently, European Structural Funds (ESF - or 'Convergence Funds') are providing further economic aid in Wales 2007–2013. Under these arrangements, the Welsh government is responsible for allocating economic aid amounting to a total investment of £3.2 billion in west Wales and the Valleys. The overall strategy document – or Operational Programme, identifies gender equality as a key part of one of its four main priorities: 'priority 3: Improving skill levels and the adaptability of the workforce, objective ...promote gender equality in employment

document'.⁹³ The document proceeds to set out a detailed series of equality indicators and states:

Equal Opportunities will be integrated as a crosscutting theme into the ESF Convergence programme in order to promote equal access for all to opportunities in the Convergence programme. Assistance will be provided, for example, for actions that enable access to business support measures, including training and targeted interventions for previously excluded groups, particularly Black and Minority Ethnic people and disabled people. The theme of gender equality in the ESF programme, can be supported by activities funded under the ERDF Convergence programme that challenge gender stereotyping, support women and men into non-traditional areas of work, and encourage work life balance'.⁹⁴

Overall, as a recent review concluded, there are some positive aspects attached to economic policy in the wake of devolution; 'at a high level, [there is evidence of...] coherent commitment to equality and recognition of the mutual interdependencies between economic performance/growth and participation/ social justice issues'.⁹⁵ However, with the exception of European aid policy documents, there has been a worrying dearth of equalities indicators and analysis about how different equality strands will be affected by the various policy initiatives. Moreover, equalities targets and outcomes are seldom fully articulated. There is also much scope for qualitative research to underpin policy interventions designed to overcome the barriers that different groups face in participating equally in the economy.

Transport

Post-devolution transport policy has acknowledged the need to promote equalities. An early example is provided by the cross-party Environment, Planning and Transport Committee's Policy Review of Public Transport (2001); this asserted:

'we want public transport to be integrated, accessible, affordable, and a favoured mode of travel of the people of Wales. It should also act as a positive lever in improving equality of opportunity for all ... Public transport should enjoy a good reputation, particularly with young people. It should ...improv[e] equality of opportunity - proportionately public transport serves more children and young adults, women, elderly and unemployed people - and [deliver] significantly improved levels of accessibility for disabled people'.⁹⁶

Subsequently, the promotion of equalities was identified as a priority by the Welsh Labour- Liberal Democrat (2000-03) partnership government's 'Transport Framework for Wales' (NAfW, 2001). It observed:

'Wales has an accessibility problem. This relates not only to remoteness, a key problem in rural areas, but also to transport services which do not offer a reasonable level of service and equal opportunities to all people including the socially disadvantaged'.⁹⁷

Whilst aspects of transport policy are shared with Westminster, the Assembly Government's powers have been enhanced significantly by the Transport (Wales) Act (2006) and the Railways Act (2005). Both have contributed to what one observer refers to as, 'a radical change

process in the governance of transport'.⁹⁸ The latest key policy development, 'Connecting the Nation: The Wales Transport Strategy' (WAG, 2008) 'sets out the long-term outcomes for transport in Wales [based on] strategic priorities [... that] will provide the focus for the national and regional plans which will follow'.⁹⁹ It is notable for its espousal of an holistic approach to equalities and refers 'mainstreaming the commitment to equality' as one of its strategic priorities.¹⁰⁰ It continues:

'we will use the following principles when considering what actions we will take to achieve the outcomes: We will take into account the needs of the six equality strands ... and the potential impacts on them when developing policies and actions. We will also consider our obligations under the Human Rights Act'.¹⁰¹

The strategy also outlines a participatory theme for advancing equalities, saying, 'taking account of the impacts on the six equality strands will require engagement with the different groups who can help us to assess those impacts'.¹⁰² Reflecting on such developments, analysts refer to 'a fundamental distinctiveness of the Welsh approach to transport policy'.¹⁰³ Whilst the government's Transport Strategy embeds the promotion of equalities as one of its strategic priorities and, encouragingly, articulates this using the language of mainstreaming, it remains to be seen whether subsequent policy development will apply equalities indicators, targets and appropriate monitoring mechanisms to secure equalities outcomes.

Gender Pay Gap

In 1975 the full-time gender pay gap in Wales stood at 31.2% and the part-time gender pay gap 43.4%. A third of a century on, the pay gap endures. The respective figures for 2008 were 12.7% and 33.7%.¹⁰⁴ From the outset of devolution the Welsh government has worked closely with (then) Equal Opportunities Commission (EOC) Wales, the statutory commission founded to oversee compliance with gender equality legislation. Initial attention was placed upon the National Assembly's own pay practices. The official minutes from discussions at the Assembly's cross party Equality Committee from 2000 affirmed that, 'the Assembly has a statutory duty to have due regard to equal opportunities. This means, among other things, reviewing its own pay structure'.¹⁰⁵ The subsequent audit¹⁰⁶ was cited as best practice in a report for the EOC. It resulted in the pay structures of the legislature being reformed in a three-year deal to address the gender pay gap that added a further 22.3 per cent (£23M) on to the Assembly's pay bill.¹⁰⁷ Further associated measures were taken to ensure that, 'the salaries of women taking maternity leave or staff taking career breaks do not fall behind'.¹⁰⁸ Following these measures the focus of policies was broadened beyond the National Assembly and a three phase Close The Pay Gap Campaign was launched in 2001. It was undertaken jointly between the Welsh government, EOC Wales and the Wales Trades Unions Congress. Its primary objective was to tackle

discrimination in pay systems, raise awareness of the pay gap and secure commitments from employers to undertake pay reviews.¹⁰⁹ An interim evaluation of the Campaign concluded that:

‘The Close The Pay Gap campaign has been effective ... it shows that a distinctive agenda is developing in Wales. One that contrasts from the approach adopted elsewhere in the UK in terms of government policy, and employer and union activity to narrow the gender pay gap, particularly in relation to the public sector’.¹¹⁰

The evaluation found that ‘a significant number of employers, mainly based in the public sector, are planning or have carried out equal pay reviews [to eliminate any sex discrimination in pay practices]. The present evidence reveals how the Campaign has also led trades unions in Wales to place a renewed focus on discrimination in pay systems, notably through the provision of training for union managers and officials’.¹¹¹ An independent evaluation of the latest phase of the Campaign concluded that:

‘there is real progress and achievement towards the aims of this phase of the campaign. The evidence is there in the high level of activity undertaken by public bodies in respect of pay reviews and reporting on this activity’. However, the evaluation also warns that, ‘the issue of financial support to assist in settlements/back pay will be an important question for the next phase of the campaign and for the Assembly Government... there is considerable work still to be done’.¹¹²

One weakness of the policies adopted to date is their limited impact upon the private sector. To this end, new economic development policies - such as the Strategic Framework document for European

Convergence Funding in Wales - may offer the potential to influence private pay practices. Specifically, Convergence Funding may allow government to encourage fairer pay practices in the context of extending economic aid. Thus, the Strategic Framework refers to: 'promoting gender equality in employment and tackling the causes of the gender pay gap, including segregation the labour market (WAG, 2006:75).¹¹³

4.3 MEG: Social Justice and Local Government

Youth Justice

Youth justice is area where inequalities persist. For example, the Youth Justice Board's research into the treatment of ethnic minority young people in the criminal justice system reveals that 'the chances of a case involving a mixed parentage young male being prosecuted is 2.7 times that of a White young male with similar case characteristics' (Equalities Review, 2007:83). In response to prevailing patterns of inequality, the Welsh government's All Wales Youth Offending Strategy (WAG, 2004) aims to:

'provide a national framework for preventing offending and re-offending among children and young people in Wales... [it] is underpinned by the UN Convention on the Rights of the Child and requires consideration of the rights of the young person. In the long-term, its aim is to make a real and significant reduction in the rates of youth offending in Wales'.¹¹⁴

The Strategy states: 'all strategic planning work concerned with youth offenders and those at risk of offending needs to take full account of

diversity, disability, culture and language issues...'. With regard to the Welsh language it asserts: 'the provision of bi-lingual services, information and advice at all stages of a young person's involvement with the criminal justice system is critical'. On participation, it declares that 'young people should have the opportunity to participate in decision making on all matters that affect them'. The Strategy highlights the monitoring and compliance role of the Children's Commissioner for Wales noting his/ her: 'ability to oversee national policy developments, to make comment and represent the views of children and young people, uphold their rights and to review existing services for children and young people'.¹¹⁵ The policy document is noteworthy in which it articulates equalities aims in terms of universal entitlements. For example, stating that:

'every young person in Wales aged 11-25 has a basic entitlement to: participate in decision-making on all matters which concern them or have an impact on their lives... [and,] education, training and work experience- tailored to their needs...'.¹¹⁶

Notwithstanding the Youth Offending Strategy's espousal of the need for bilingual service delivery, recent research¹¹⁷ highlights significant shortcomings in meeting the needs of Welsh speaking young people in custody. It concludes:

'That either the current Youth Justice Board for England and Wales needs to engage more proactively with the bilingual context of Wales, or a new Youth Justice Board for Wales should

be constituted. Such a Board, would be specifically concerned and focused on Welsh issues and might therefore be more committed towards making equal opportunities a reality for Welsh speaking young people in custody’.

Overall, the emerging evidence suggests that, in the case of youth justice, some cross-border bodies are not responding fully to the increasingly distinctive equalities framework applying in Wales. Arguably, the present situation is untenable, for the Welsh government can institute distinctive policies in Wales yet does not have the powers to ensure compliance from cross-border agencies.

Domestic Abuse

As with policy on asylum seekers and refugees, the government’s ‘Tackling Domestic Abuse: The All Wales National Strategy’ (WAG, 2005:3-9) is a notable example where devolution has resulted in Wales-specific national policy frameworks where previously they did not exist. The aims of the Strategy are threefold, to protect victims, to hold abusers to account and to prevent domestic abuse happening in the first place. It asserts that:

‘the principle of equality is central to this strategy ... It is sometimes claimed that there is a lack of recognition that men can also be victims of domestic abuse. The aim of this strategy is to protect all victims of domestic abuse and the Welsh Assembly Government will be expecting all partners to work towards this aim’.

However, such an equal treatment model may be criticised for it fails to fully address the gendered aspects of domestic abuse, thereby preventing the development of a full range of specialist services for women. Notwithstanding this, a core aspect of the Strategy is the need to develop partnership working to tackle abuse. Notably, the Strategy provides an example of the way in which there is evidence of co-ordination on equalities between different policy areas/ government departments. In this case it stresses the way that various devolved policy areas relate to the Strategy. For example, it highlights the role of state education in preventing abuse:

‘domestic abuse may impact on an individual’s ability to parent. It is important that children/young people are taught parenting skills together with appropriate information on sexual relationships. Children/young people need to know how to form supportive and respectful relationships - they need to be able to identify with basic values: equality, value of cultural diversity, dignity, respect, mutual support and responsibility for actions’.

The policy document also emphasises the need for a co-ordinated network of services related to social diversity, one: ‘that meet the needs of all victims including children and young people, people with disabilities, men, people who live in a rural part of Wales, people who do not speak English and those from BME communities’. The Strategy was developed with engagement from the public and community groups. Policy work in this area is ongoing and the National Assembly’s Communities and Culture Committee is presently conducting an inquiry

into the delivery of the government's Strategy and, to assess the adequacy of support provided to victims, including support provided to witnesses in the criminal justice system.¹¹⁸

Forced Marriage and Honour Based Violence

The Forced Marriage (Civil Protection) Act (2007) has seen the adoption of a regulatory approach that provides civil remedies for those faced with forced marriage - and for victims of forced marriage. Against this background, the Welsh government Forced Marriage and Honour Based Violence Action Plan. (WAG, 2008)¹¹⁹ sets out a series of objectives and related activities with short and long term actions. These are centred on inter-agency coordination, data gathering, raising awareness, challenging attitudes, support and education. Examples include:

- *Objective:* Develop a co-ordinated network of services that meet the needs of all victims including children and young people, people with disabilities, men and people who do not speak English.
 - *Activity:* Create a forced marriage sub group of the All Wales Domestic Violence Working Group.
 - *Short term actions:* e.g. identify and disseminate best practice and areas for further development.
 - *Long term actions:* Identify and develop programmes and initiatives to eradicate Forced Marriage

- *Objective:* To improve the capacity of education, social service and health professionals working in the community to handle

forced marriage cases and the provision of victim centred services.

- *Activity:* Raise awareness of forced marriage amongst professionals and provide guidance and information to assist them.
- *Short Term Actions:* In collaboration with the forced marriage unit produce guidance for professionals dealing with cases of forced marriage.

The Action Plan is a further example of post-devolution policy development in an area previously not covered on an all-Wales basis. It sets out an agenda for future policy work. A key issue will be the extent to which clear policy outcomes are defined – as well as responsibility for implementation and related timescales.

4.4 MEG: Environment, Sustainability and Housing

Housing

The government's Housing Strategy for Wales (WAG, 2001) highlighted:

'equality of opportunity [a]s one of the principal themes that runs through this Strategy. This is reflected in targeted initiatives to help particular disadvantaged groups achieve equality in accessing services and the housing that they need'.

Particular focus was placed on 'ensuring that race equality is promoted as part of the wider agenda to combat racism, and to provide equal rights, opportunities and responsibilities within a stakeholder society'. The Strategy also set out aims for equality for

disabled people, gypsy travellers, older people and those fleeing domestic abuse.

The Housing Strategy Action Plan (WAG, 2006) outlined the progress made against the Strategy's aims. It shows that positive progress has been made in a number of areas including improved data gathering, official guidance on equalities issued to local authorities and, funding of services for targeted groups such as refugees and older people.¹²⁰

In reviewing recent developments in housing policy academic analysis highlights the need for contemporary policies which provide:

'mainstream and specialist BME service provision and multi-agency working; culturally sensitive allocation policies ... and, mechanisms for providing culturally responsive services to diverse communities'.¹²¹

In these regards there is evidence of some progress in the devolved context. 'Race' equality has been the subject of successive government strategies. The overall aim of the first, the Black, Minority Ethnic Housing Action Plan for Wales (WAG, 2002) was:

'to ensure that clear directives and targets are set for social landlords and other providers of housing, to ensure that discrimination and disadvantage is eliminated across Black, Minority Ethnic communities living in Wales'.

It required local authorities to publish their own BME Housing Plans.

Amongst its specific aims were, for:

'all social landlords to understand and articulate local BME housing requirements; all social landlords to be committed to race equality and to preventing unlawful discrimination; and, race equality and discrimination objectives to be central to the work of all social landlords and the Welsh Assembly Government'.¹²²

However, whilst noting some progress, an evaluation of the policy (WAG, 2005) identified a significant implementation gap. It concluded that: few social landlords' strategies and action plans were explicitly linked or cross-referenced to the Welsh government's BME Housing Action Plan; some did not fully address the government's policy aims – 'for example, having no timescales, no clear actions, no clear allocation of responsibility'; and, some 'strategies' were primarily research reports rather than strategies'.¹²³ Addressing some of these concerns, a successor policy, the Minority Ethnic Housing Action Plan 2008-2011 (WAG, 2008) places more emphasis on: 'measures to tackle inconsistent reporting and also identify what we do with monitoring material and where this leads'. Reflecting recent improvements in the Welsh government's approach, the policy document details: 'key issues, desired outcomes, responsibility [for implementation/monitoring], milestones/action, and date of completion'.¹²⁴ Overall, this policy evidences good levels of consultation and engagement with citizens and NGOs - as well as underlining the need for partnership approaches to policy implementation.

In summary, there is evidence of an implementation gap in the way in which equalities issues were addressed in the first wave of devolved housing policies. In part, this was caused by shortcomings in the ongoing monitoring of the policy. It appears that such issues are beginning to be addressed in the latest policies. However, it remains to be seen whether, in terms of policy outcomes, they are more effective than their predecessors.

Homelessness and Rough Sleeping

The devolved government's first Homelessness Strategy was published in 2003. It was superseded by the National Homelessness Strategy For Wales 2006-2008 (WAG, 2005:3). The latter aims to strengthen the focus of homelessness services on prevention, support and access to housing. Accordingly, its aims are:

'to secure services [that] are focused to prevent homelessness wherever possible. [That] more people are able to meet their basic housing need without becoming homeless;¹²⁵ and, people who are homeless, or threatened with homelessness, are provided with the information and advice they need to minimise the risk of losing their home or to secure alternative housing'. It asserts that, 'running through the Strategy are the following fundamental themes; priority should be given to prevention wherever possible; [and,] services must be designed in accordance with the equality and diversity needs of the community'.

Under the heading 'Equality of Access' the Strategy highlights specific issues and measures for targeted groups. For example:

- Refugees: 'The Welsh Assembly Government is funding the Refugee Well- Housing project, an all-Wales scheme run by the Wales Refugee Council to provide advice to refugees to avoid homelessness and assist resettlement'
- Black, and other Minority Ethnic Groups (BME): Local authorities are expected to identify and address the needs of BME homeless people at the local level, which should be reflected in their local homelessness strategies and BME housing strategies.
- Lesbian, Gay and Bisexual People (LGB): The Welsh Assembly Government is funding an all-Wales housing advice service for LGB people ... We are also funding research into housing needs and homelessness amongst this group
- People with Disabilities: The Assembly Government is keen to see the emergence of more databases of accessible housing, which can be matched against registers of disabled people requiring re-housing. We have already agreed to provide funding for a disabled persons housing advice project in south east Wales ... We will review with partners how specialist advice can best be delivered across Wales
- Women: Services for homeless people, particularly rough sleepers, are often focused mainly on men, and women may feel reluctant to use these services. At the same time women can be particularly vulnerable to abuse or exploitation if they become homeless. Local authorities and partners should assess and ensure the availability of services, which homeless women feel able to use. We will review the provision of local authority homeless services to ensure they are appropriate for women as well as men.
- Older Homeless People: The Wales Strategy for Older People provides the framework for development of broader policy in this area, and the Wales Care Strategy Group is leading a review of housing policy for older people
- Gypsies and travellers: are by any measure often of the most excluded group in society. This can lead to homelessness, as there may be no provision to accommodate a transient lifestyle. We will review the housing needs and service provision for gypsies and travellers.¹²⁶

An official evaluation of the Homeless Strategy (WAO, 2007:7) found that 'the downward trend in homelessness¹²⁷ is positive but not conclusive', and that 'the National Homelessness Strategy has encouraged a more joined-up approach to preventing homelessness'. However, it referred to an issue that applies to many other policies in respect of equalities and other matters, namely, 'evaluating the extent to which the Strategy's objectives are being delivered will be difficult, especially where the objectives involve outcomes without quantifiable targets, for example, on better service planning' (WAO, 2007:10). The Review also concluded that further progress is needed to improve co-ordination and local delivery.¹²⁸ In order to address these points a new Homeless Plan is scheduled with the likelihood that it will be backed by legal duties following primary legislation passed by the Assembly.¹²⁹

Environment

The Welsh government's Environment Strategy for Wales (WAG, 2006) espouses the promotion of equality in the following terms:

'These challenges [e.g. climate change, degraded ecosystems, loss of biodiversity etc] will vary in how they impact on different people and in different places... This means ensuring that the response is flexible enough to deliver equality of outcome and reduce inequality ... our vision for improving the environment, and the action we take to deliver it, will reflect our duty to promote equality of opportunity. We have identified a number of areas as having particular relevance to one or more equality strand' (WAG, 2006:7).

The policy details environmental issues with particular relevance to one or more equality strand; for example: 'Pollution – specifically air pollution - Relevant to disability strand due to the potential impact of air pollution on certain long term illnesses' and, 'Contaminated land - Relevant to the race equality strand, specifically in relation to the location of Gypsy and Traveller sites'. However, the Environment Strategy Action Plan 2008-11 (WAG, 2008) lists few actions that could be considered as addressing the equalities issues identified in the earlier Strategy. An isolated example is the action to: 'encourage more use of the countryside by ethnic minority and socially disadvantaged groups on an ongoing basis through a variety of related approaches' (WAG, 2008:31). As such, the Environment Strategy represents an example of a significant disconnect between the espousal of equalities in the overarching strategy document and the detailed action plan that is supposed to implement the Strategy.¹³⁰

Sustainability

The government's Sustainable Development Scheme 'Starting to Live Differently' (WAG, 2004) asserts that, 'the Assembly's vision of sustainable development remains a broad one, embracing commitments to improving quality of life, promoting equality and tackling disadvantage and poverty'. Its 'vision of a sustainable Wales' states that the Assembly Government:

‘will pursue, on an effective partnership basis, a sustainable future for Wales based on: helping to create a bilingual country, while looking confidently outwards and welcoming new cultural influences; supporting people to live healthy and independent lives, irrespective of income, location or disability; and valuing everyone in society and promoting equality of opportunity’.¹³¹

The accompanying Sustainable Development Action Plan (WAG, 2004)¹³² outlines the implementation details related to the Scheme. It too refers to the need for an integrated policy approach to the government’s crosscutting themes of sustainability and equality:

‘Sustainable development as a whole depends on the actions we as a government are taking to promote a strong and prosperous economy and healthy living, to tackle inequality for reasons of race, gender and disability and to address poverty and lack of opportunity through our Social Justice agenda. It also requires actions by all sections of society. We will not succeed in resolving any of these issues if we continue to pretend that they exist as single and unconnected entities. We need to recognise the connections between them and strive collectively to find solutions that address all of them’.

However, despite the references to the promotion of equalities in both the Scheme and Action plan, the policy indicators and implementation details generally fail to cover equalities; a point identified in the statutory Effectiveness Review of the Sustainable Development Scheme:

‘The documentary review and interviews showed a number of patterns emerging from a range of policy and guidance which contributes to confusion and ignorance on how SD [sustainable development] relates to particular policy areas, sectors and partnerships... Use of SD in a standard list of cross-cutting themes.

This confusion is exacerbated by the issue of whether SD should be given 'primacy' over the other issues such as equality, social justice, bilingualism etc as these are obviously important parts of SD.¹³³

Overall, the extent to which policy on the environment and sustainability addresses equalities issues compares poorly with other policy areas and illustrates the variability of approach between government departments.

4.5 MEG: Heritage

Sport

'Climbing Higher', the government's first Sports Strategy asserted that, 'all funded activity must comply with acceptable standards of fairness, transparency, accountability, equality, respect and bilingualism in Wales' (WAG, 2005:2).¹³⁴ In a similar vein, the successor policy refers to the need to:

'address the gender, disability and minority ethnic imbalances in sports participation'; ensure that 'issues of equality will be mainstreamed through all the programmes receiving investment'; and 'mainstream the Welsh language' (WAG, 2006:5).¹³⁵

To this end, ministerial remit letters to the government agency, the Sports Council for Wales, require it to implement these aims. A recent example is unequivocal and states that,

'the Welsh Assembly Government's duties towards ... equality and promoting the Welsh language should be mainstreamed

into the way you do your business, including through your estate management, procurement processes and programme activities'.¹³⁶

The Sports Council summarises key aspects of its equalities work as: 'encouraging female participation in sport; promoting sport amongst disabled people, working extensively with the Federation of Disability Sport Wales, the establishment of Disability Sport Cymru; and ... develop[ing] a network of contacts in BME communities to encourage higher levels of participation in sport.'¹³⁷ There is evidence that such policies are having an impact. For example, Federation of Disability Sport Wales data show an increase in the number of participants in its programme from 14,271 in 2004 to 134,988 in 2007.¹³⁸ There has also been a narrowing of the gender gap in participation in sports. In 1989/90, data on those recording 'any participation in sport in the previous four weeks' showed a 15 percentage point gap between women (46%) and men (61%). By 2004/5 the gap had fallen to six percentage points, with the participation rate for women at 56 per cent and men 62 per cent.¹³⁹ Notwithstanding this progress, a fundamental weakness in the government policy framework for sports is the absence of equality-specific targets in the strategy.¹⁴⁰ Despite this shortcoming, the Sports Council is a notable in contemporary attempts to promote equalities for it is a government agency where a project-based attempt has been made to apply gender budgeting to public administration. The Sports Council project provided clear evidence of

gender inequalities in public spending on sport and raised a number of issues including the need for better communication and accountability between politicians, policymakers and public agencies in promoting equalities in policy and service delivery. It also underlined a key issue, namely that official government data gathering was generally not geared to gender budgeting; for sex disaggregated statistics were often not available. This point is one that has wide resonance in the devolved context and beyond; whilst policies may espouse the promotion of equalities, shortcomings in official statistics and other forms of data may prevent the use of equalities indicators thereby undermining the effectiveness of policies.

Tourism

The government's tourism strategy 'Achieving Our Potential 2006 – 2013' (WAG, 2006) states that its vision is, 'a customer responsive, innovative, sustainable and profitable industry which makes an increasing contribution to the economic, social, cultural and environmental well being of Wales'.¹⁴¹ Under the heading 'Equality' the strategy document rehearses the Welsh government's duties under the various equalities statutes. It proceeds to note that: 'employment in the tourism industry should be open to all regardless of gender ... indeed the tourism industry is well-placed to provide important opportunities for entry-level jobs and offers employment opportunities for many sectors of the working population, such as older people and females who are

not well represented in other industry sectors'. The policy document continues:

'it is also essential that the tourism industry in Wales meets the needs of disabled visitors and other disadvantaged groups in society. Tourism contributes to the Assembly Government's vision regarding the Welsh language. Many Welsh-speaking communities rely heavily on the tourism industry but care must be taken to avoid any potential negative effects of tourism on the Welsh language'.

Yet 'Achieving Our Potential' does little to address the findings of research¹⁴² on the tourism industry in Wales that concluded: 'significant [gender] inequalities still exist in the tourism workplace [... whereby] women are quiescent and feeling powerless to act'. The Strategy does, however, contain an action plan that details 'action', 'lead', and 'timescales' against a range of 'strategic issues' - but those that relate to equalities are limited in number and generalised in nature. In common with a number of earlier Welsh government strategy documents, such an approach fails to detail in precise terms what constitutes a policy success in terms of equality outcomes.

4.6 MEG: Health and Social Services

Older People's Services

Following devolution there has been significant policy development in relation to services for older people. In 2002, an Advisory Committee, comprised of agencies, professionals and NGOs concerned with older people was tasked with producing evidence-based policy

recommendations that would lead to the Welsh government's future Strategy for Older People. Its terms of reference were:

'that older people in Wales should have the right to live independently and with dignity. To support them in achieving this; to promote their health and well being; and, to maximise their independence, potential and participation'. Significantly, one of the advisory group's recommendations was the adoption of the United Nations Principles for Older Persons.¹⁴³

The resulting Advisory Committee report, 'When I'm 64...and more' (WAG, 2002), set out over 100 policy recommendations. Included in these was that, the 'Welsh Assembly Government should consider the case for the appointment of an Older People's Commissioner for Wales'.¹⁴⁴

The subsequent 'Strategy for Older People 2003-2008' (WAG, 2003)¹⁴⁵ articulated its purpose as to: 'challenge and change attitudes to older people. Wherever older people live in Wales or whatever their circumstances, they must get a fair deal and be able to contribute to society as equal citizens'.¹⁴⁶ The Strategy defined 'older people' as those aged 50 years and over and is a framework document and provides the scope for further, more detailed policy development. Local authorities have been designated a key role in the Strategy's implementation. Overall, its five key aims are:

- Reflecting the United Nations Principles for Older People to tackle discrimination against older people wherever it occurs, promote

positive issues of ageing and give older people a stronger voice in society.

- To promote and develop older people's capacity to continue to work and learn for as long as they want and to make an active contribution once they retire.
- To promote and improve the health and well being of older people through integrated planning and delivery frameworks and more responsive diagnostic and support services.
- To promote the provision of high quality services and support, which enable older people to live as independently as possible in a suitable and safe environment and ensure services are organised around and responsive to their needs.
- To implement the Strategy for Older People in Wales with support funding to ensure that it is a catalyst for change and innovation across all sectors, improves services for older people and provides the basis for effective planning for an ageing population.¹⁴⁷

The Strategy is notable for its ambition; it sets out a raft of initiatives for improving public services for older people across the range of devolved policy portfolios. In addition, reflecting the earlier recommendation of the Advisory Committee, in 2004 the government consulted on the creation of the new post of Older Persons Commissioner, the first of its kind in the UK. Following broad support,¹⁴⁸ the Commissioner for Older People (Wales) Act was passed in 2006 and the first Commissioner appointed in January 2008.

The first such post in the UK, the Commissioner is 'a source of information, advocacy and support for older people in Wales and their representatives' and is tasked with 'looking at the interests of older

people as a whole'.¹⁴⁹ The Commissioner's statutory powers a wide-ranging and include: examining the cases of individual older people (particularly when it raises issues that may have a wider impact on older people in general); assessing the effect that public agencies (such as the Assembly Government, local Government, and the NHS Wales) have on older people (the Commissioner may publish reports, making recommendations for change); issuing guidance on best practice in relation to regulated public services to ensure that they safeguard and promote the interests of older people; and, helping individuals should they wish to make a complaint about public services. In addition, 'the Commissioner will be able to look at the way in which a local authority, or health body, implements the policies and procedures that it has put in place for dealing with elder abuse'. If these are not being carried out effectively, the Commissioner can hold the relevant authorities to account.¹⁵⁰

Amongst the outcomes of the Strategy for Older People have been: the introduction of free swimming in public pools; free local bus travel; free access to heritage sites for those aged over 60 years; Link-AGE Wales (- an initiative to ensure that older people claim all their pension and benefit entitlements); the introduction of the National Service Framework for Older People (WAG, 2005) (that established national standards and services in health and social care); and, the Healthy Ageing Action Plan (WAG, 2005) that provides guidance at a local

level on interventions to promote the health and well-being of older people. To date, assessment of the Strategy's effectiveness has been provided by an advisory group report¹⁵¹ and an independent interim¹⁵² review of the Strategy (AWARD, 2007).¹⁵³ These identified mixed progress:

- The Strategy 'is widely recognised for its achievements and progress ... [and] has made considerable progress. It has been delivered in line with the implementation programme and established firm foundations at both a national and local level; [there has been] progress, especially to improve engagement of older people; [further] progress has been made in achieving those [targets] under the Strategy's aim of Valuing Older People; Local authorities are making good progress in engaging more effectively with older people, in many cases through the development of 50+ [years] forums and the appointment of Older Peoples Champions from within their local Cabinet; We recognise that health, well-being and independence is an area where perhaps the most progress has been made to date'.¹⁵⁴
- Putting the Strategy into action: All local authorities had a co-ordinator in place, as well a local Champion. [However,] reports and plans produced by authorities varied greatly in terms of size, detail and terminology used. In addition, there was little consistency between authorities in terms of boundaries of work under the strategy.¹⁵⁵
- Innovative Practices: Several innovative projects were identified across Wales tackling a range of issues including intergenerational activities, increasing police training, health promotion, [and] engaging with minority ethnic groups.
- Support organisations - roles had developed since commissioning, with some potential overlap between services. Some difficulties were identified in allocating resources according to need across Wales; Performance measures: Current use of performance measures in relation to the Strategy is weak; the integration of older people's views into local authority strategic planning; needs to be further embedded and widened.¹⁵⁶

In order to inform the second phase of the Strategy an advisory group was asked to deliver a series of recommendations (AGSFOPW, 2007).¹⁵⁷ The resulting recommendations included that the new Strategy: 'should look to develop an integrated approach to tackling poverty amongst older people, maximising the impact of devolved policies'; and, '...give more emphasis to tackling isolation and loneliness and the impacts of pensioner poverty on mental health'. Thus, the Strategy for Older People in Wales 2008-2013 (WAG, 2008) addresses the foregoing issues and sets out four principal strategic themes: Valuing Older People - maintaining and developing engagement; Changing Society – supporting the economic status and contribution of older people; and, Well being and Independence; and, Making it Happen - the effective implementation of the strategy. The Strategy states that the 'aims within the four themes embody the 'mainstreaming' of older people's concerns across all policy areas'.¹⁵⁸

Reflecting concerns expressed in the earlier evaluation report about a dearth of performance measures, a significant development in terms of assessing equality outcomes is the inclusion of 'indicators of change' in the latest Strategy. According to the government, 'in most instances changes can be charted over the period of the Strategy and beyond'.¹⁵⁹ Further monitoring of the Strategy will be achieved through the submission of annual reports by local authorities as well as other

bodies funded by the Strategy. In addition, the government is to publish an annual 'state of the nation' report on older people's well-being that, 'will provide research evidence on older people's health and reflect the aims and values of the Welsh Assembly Government's Older People's Strategy and the UN Principles for Older Persons'.¹⁶⁰ Importantly, the independent Commissioner for Older People's mandate is to: 'scrutinise the performance of national and local government and act as an advocate for older people, representing their interests'.¹⁶¹ To this end, one of the aims set out in the Commissioner's first Annual report is to: 'raise awareness of the policy implications of an ageing society [... and] inform all activities with high quality and appropriate research' (OPCfW, 2008).

One of the notable commitments in the Strategy for Older People was the future publication of an Intergenerational Strategy. As a result, the Draft Intergenerational Strategy (WAG, 2008) states:

'to achieve this vision we need to move from our current programmatic approach to a strategic approach where we identify where intergenerational considerations can strengthen existing strategies and propose an action plan to translate these opportunities into practice'.¹⁶²

The Draft Strategy sets out proposals for policy development in a range of areas, including: ageism and equality- intergenerational programmes to contribute to the wider development of social and community cohesion; a community-focused schools approach; and,

engagement and participation- the need to develop innovative ways to enable young people and older people to have a greater say in the design and delivery of services.¹⁶³

Overall, post-devolution policy developments on age equality have been characterised by their ambition and, in some respects, pioneering nature (- such as the adoption of the UN Principles for Older People and the creation of the office of Older People's Commissioner). These factors, together with the engagement from older people's organisations – and, detailed monitoring and equalities indicators (now being put in place) – make the Older People's Strategy and example of good practice in equalities policies. The latter assessment does not deny significant and ongoing challenges in securing age equality for older people; a point advanced by the new statutory regulator: 'the [Older People's] Commissioner has already indicated her intention to use her legal powers should she believe that older people are being put at risk ... [sh]e will be examining, among other matters, the services they [public agencies] provide, handling of complaints, whistle-blowing and availability and effectiveness of advocacy services' (OPCfW, 2008:9).

4.7 MEG: Public Services and Performance

Public Appointments

In Wales, the limited diversity of those holding public appointments, particularly in regard to quangos,¹⁶⁴ featured in the arguments of the pro-devolution campaigners. A report of the situation in early 2000 showed the challenging extent of the inequalities: 'just over 30% of appointments [were] held by women and 1% [were] held by ethnic minorities, younger candidates [were] scarce and disabled people [were] extremely under-represented'.¹⁶⁵ There have been a number of policy initiatives to address this issue. Building on the Nolan Committee inquiry into standards in public life,¹⁶⁶ the Assembly Government has used its equality duty to go 'beyond what is laid down under the Nolan principles in terms of making transparent and open the procedures of making public appointments'.¹⁶⁷ A new Code of Practice for Ministerial Appointments to Public Bodies was introduced that led to in a raft of measures including: information dissemination strategies to reach under-represented groups; targeted advertising of posts; training for those in under-represented groups in order that they be suitably skilled for positions in public life; and, training in best practice in candidate selection for those involved in interviewing for public appointments. The Code of Practice also set out how management procedures would be changed to promote gender equality. It stated: the 'Public Appointment Unit [of the Assembly Government] will have discretion to look for the next man or woman on the list [of available assessors] in order to ensure gender balance on a[n appointments] panel'.¹⁶⁸ A

further move designed to increase the representation of women was the requirement that, 'for all posts there should be provision for reimbursement of receipted childcare or carer costs'.¹⁶⁹ Perhaps the most radical step in this area was the decision, taken at the end of 2000, to dismiss all the existing independent assessors involved in making public appointments. As a result of this initiative, 55 new assessors were appointed, thereby signalling a clear break with past practices and putting in place assessors with greater equality competencies. Importantly, fifty-six per cent of the new assessors were women.¹⁷⁰ More recently, a 'communications toolkit' has been developed to ensure effective communication with minority ethnic communities in public appointment campaigns.¹⁷¹ Figures for 2006-07 show that 180 appointments and re-appointments were made and, whilst the diversity of those appointed is gradually improving, the overall rate of progress over the past decade is disappointing. Whilst the percentage of females appointed was 48 per cent, the percentage of people from the minority ethnic communities appointed was just four per cent and the percentage of disabled people appointed was seven per cent. Work is currently ongoing with the Welsh Language Board to implement a strategy on extending access to, and awareness of, the Welsh language amongst ethnic minority groups across Wales. Its purpose is to increase the percentage of Welsh speakers amongst minority ethnic groups in order that public

appointments mirror the percentage of BME Welsh speakers within each local authority area population.¹⁷²

4.8 Summary

As the foregoing analysis indicates, devolution has seen the development of a plethora of policy initiatives in relation to equalities during the first decade of the National Assembly. This marks a significant discontinuity with public administration before 1999.

However, government policies during the early years of the National Assembly were particularly prone to a 'declaratory approach to equalities' for limited – or no - details were provided in policy documents in respect of future equalities impact, policy targets or implementation. Yet, there is growing evidence of a more sophisticated approach to the promotion of equalities in government policy documents when compared to the rather generalised and undeveloped references to equalities that often featured in policies and strategies in the first years of the Assembly. Notably, the policy outputs of the past decade evidence innovation such as the statutory requirement that all primary, secondary and special schools in Wales have a school council so that all children and young people can contribute to decisions that affect them. As noted, there is also evidence of progressive devolved policies going beyond the approach to equalities and human rights seen at Westminster.

However, major challenges remain. For example, there is variability between government departments/ policy areas regarding the promotion of equalities – and the need for a more universal and systematic use of equality impact assessments, targets and monitoring procedures. Moreover, the Welsh government has espoused its adherence to the social model of disability. This is evident in a number of policies – such as ‘Fulfilled Lives, Supportive Communities’ (WAG, 2007), [10- year strategy for the social services]: ‘our vision is firmly rooted in both the social model of disability...’. However, the commitment to the social model needs to be weighed against implementation issues including the, (then), government’s widely perceived renegeing on its 2003 manifesto commitment to introduce free home care in Wales.¹⁷³

Notwithstanding the seriousness of the foregoing concerns, in terms of an *overall* assessment of progress over the past decade it can be concluded that devolution in Wales has been a positive development for the promotion of equalities. This follows because equalities were not generally seen as an issue for the Welsh Office – and, during the era of administrative devolution there was an absence of indigenous, all-Wales equalities policies. As noted, issues remain in relation to aspects of contemporary policy making, yet the extensive and sustained policy focus on tackling inequalities and ending discrimination apparent in the policy programmes of successive administrations over the past

decade underpins the conclusion that constitutional reform has generally had a significant and positive impact upon the promotion of equalities.

CHAPTER 5. WELSH LAW

The literature on policy 'delivery analysis' distinguishes between 'hard' and 'soft' policy enforcement responses. Policies backed by legal duties are characterised as the former type; for, as one academic puts it: 'policy is all very well, but without an enforcement or compliance capability, the delivery of public policy is unlikely and uncertain'.¹⁷⁴ Thus law is a key policy instrument for the promotion of equalities. Whilst the policy discourse around equalities can often be declaratory and lacking in necessary detail, legal instruments can offer more precision and increase the likelihood of equality outcomes. This is because failure to comply with enactments may result in legal proceedings and/or the imposition of sanctions, penalties and criminal charges. Moreover, equality laws may move beyond discrete measures of redress for individuals and impose legal duties that require systemic action on the part of public bodies, including government. In these various ways the law can convey rights to individuals, for 'the counterpart and correlative of a legal right is a legal duty, in that if one person has a legal right of a particular kind some other person or persons must be subject to a legal duty'.¹⁷⁵

In many respects the creation of the National Assembly marks the re-emergence of legal Wales and has seen a developing body of Welsh law – that is, primary and secondary legislation applying solely to Wales – whether passed by Westminster or the National Assembly. Indeed the

2005 White Paper 'Better Governance for Wales' that preceded the Government of Wales Act (2006) concluded that under the post-2007 arrangements *'the role of the Assembly must be primarily legislative'* (p.8, emphasis added).

In contrast to the notion that was particularly prevalent in the early days of the Assembly – namely, that equality is a matter reserved to Westminster,¹⁷⁶ a striking feature of the first decade of devolution has been the increasing use of legal instruments passed by the National Assembly to promote equalities. This is significant; particularly so in the wake of the Measure making powers in the second devolution statute of 2006, because, as noted, it marks the move towards the increasing use of hard policy enforcement mechanisms (whereas, policies during the early years of devolution generally lacked this dimension). Post-devolution legislation in Wales takes a number of forms: including secondary legislation relating to topics drawn from the breadth of devolved competencies that contain explicit equality clauses, instruments that deal with substantive topics that have a strong bearing on issues of equality - such as mental health services or additional learning support, and Measures passed by the National Assembly.

5.1 The Welsh Assembly Government's Statutory Equality Duties

In addition to legal instruments passed by the Assembly, constitutional law, in the form of the Government of Wales Acts (1998, 2006), places equality duties on the devolved administration. Writing at the outset of

devolved governance, one commentator underlined the fact that the National Assembly's principal equality duty has 'no parallel in any other devolution legislation'.¹⁷⁷ It is singular in its non-prescriptive phrasing and all-embracing scope and is an imperative that applies to *all* people and *all* functions of government. Section 120 of the original 1998 Government of Wales Act stated that:

'the Assembly shall make appropriate arrangements with a view to securing that its functions are exercised with due regard to the principle that there should be equality of opportunity for all people'.

Accordingly, the duty applies to all devolved functions of government including education, economic development, health, local government, social services, planning, transport, housing, and industry. The duty marks a significant divergence in the equality law applying in Wales compared to elsewhere in the UK for it modifies all Westminster Acts of Parliament where the Assembly had powers in their exercise and implementation. Writing in the first year of the Assembly analysts stated that:

'the Assembly has a duty to put in place a clear and known process to guarantee due regard to the principle of equality of opportunity, applicable to all of its decisions including the possibility of it having to take positive action to ensure equality, otherwise a legal challenge, via judicial review, is likely to be successful'.¹⁷⁸

The National Assembly's original equality duty was superseded by Section 77 the Government of Wales Act (2006). This reflected the remodelling of the National Assembly such that the original concept of a corporate body as set out in the first devolution statute (whereby responsibility for policy and law was held collectively by all Assembly Members with delegation procedures used to create a *de facto* executive) - was replaced by a more familiar parliamentary model with a clear separation of the legislative (National Assembly for Wales) and executive (Welsh Assembly Government) branches of government. More than a technical development, this restructuring has important implications for the promotion of equalities. It addresses an issue highlighted in an earlier assessment of the devolved arrangements, namely the lack of clear 'ownership' of the equality duty.¹⁷⁹ Hitherto, any legal challenge made in relation to the duty would have been against the Assembly as a single body - making government and opposition AMs jointly responsible for actions which were in reality taken only by the governing party (or parties) (- and which may have been opposed by opposition AMs). Thus Section 77 of the Government of Wales Act (2006) reflects the new (post- May 2007) parliamentary structure and states:

'Welsh Ministers must 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'.

Clause 2 of S.77 sets out the mechanisms by which the duty will be monitored:

(2) After each financial year the Welsh Ministers must publish a report containing—

- (a) a statement of the arrangements made in pursuance of subsection (1) which had effect during that financial year, and
- (b) an assessment of how effective those arrangements were in promoting equality of opportunity, and must lay a copy of the report before the Assembly.

It is likely that legal challenge to the Assembly under Section 77 will be necessary before the exact meanings are attached to the key terms in the equality clauses such as 'due regard', 'principle that there should be equality of opportunity for all people', and 'appropriate arrangements'. Another shortcoming of the duty is that the main enforcement mechanism is judicial review. This is generally an extended and expensive process and one not likely to be viewed as affordable by many individuals and civil society organisations. Another limitation is the lack of a requirement in S.77 for government to publish an anticipatory scheme setting out how it will address the equality duty in the future. Rather, the clause is concerned with government reporting on what it is currently doing – or has *done in the past*. To some extent these issues are dealt with in the Equality Act (2006) which gives to the Equality and Human Rights Commission monitoring and enforcement powers in respect of the Welsh Assembly Government's adherence to Great Britain-wide equality statutes such as those on race, gender and disability. Accordingly, under these statutes it is

required to publish strand-specific – or a single overarching - equalities scheme(s) in relation to its exercise of ‘public functions’. However, S.77 makes no requirement for government to publish an equalities scheme relating to the broader scope of the devolved equality duty, relating as it does to ‘all people’.

However, in one important respect the Government of Wales Act (2006) does require anticipatory action on the part of the Welsh Assembly Government. Section 76 of the Act, entitled Regulatory Impact Assessments (RIA), requires that Welsh Ministers: ‘must make a code of practice setting out their policy on (a) the carrying out of regulatory impact assessments in connection with relevant Welsh subordinate legislation, and (b) the carrying out of consultation in connection with regulatory impact assessments’. Published in 2008, the Code states:

‘Welsh Ministers’ Statutory Functions. (5.2) In compiling any RIA, Welsh Ministers will have due regard to those statutory functions set out below (as provided for in the GOWA 2006). These are: Section 77 – Equality of opportunity (where the Welsh Ministers must ensure that they are exercising their functions with due regard to the principle that there should be equality of opportunity for all people); [and] Section 78 – The Welsh language ... The purpose referred to in subsection (2) is that of giving effect, so far as is both appropriate in the circumstances and reasonably practicable, to the principle that in the conduct of public business in Wales the English and Welsh languages should be treated on a basis of equality’ (WAG, 2008:6).

The regulatory impact assessments are a useful mechanism for anticipating the impact of devolved legislation on equalities, however, it should be noted that they do not apply to general policy outputs, they are restricted to legislation.

The Government of Wales Act (2006) contains a further positive equality duty. Section 78 of the Act asserts that:

‘Welsh Ministers must adopt a strategy (“the Welsh language strategy”) setting out how they propose to promote and facilitate the use of the Welsh language’.

Alongside this provision sits the Welsh Language Act (1993). This statute obliges all public sector bodies providing services to the public in Wales to publish a Welsh language scheme setting out how they propose to treat Welsh and English on an equal basis. As of the end of 2006, the number of approved Schemes in operation totalled 342 public bodies, 50 voluntary sector bodies and three private sector bodies (in relation to privatised services).¹⁸⁰

5.2 Secondary Legislation

Examples of equalities clauses included in Welsh secondary legislation are provided in Figure 5.1. A further example is the statutory guidance issued in 2007 by Welsh ministers under the provisions of the Countryside and Rights of Way Act (2000). Thus, in relation to the estimated 33,000

kilometres of public rights of way in Wales new guidance was issued to local highway authorities and National Park authorities to have regard to the needs of people with mobility problems 'when authorising the erection of stiles, gates or other works on public footpaths and bridleways'.¹⁸¹

POLICY AREA	SCOPE OF LEGAL EQUALITY REQUIREMENTS	DETAILS OF SECONDARY LEGISLATION
Education	Provision of grants to teachers of personal and social education to fulfil curriculum requirements relating to education on equal opportunities	Approval of the Special Educational Needs and Disability Tribunal (General Provisions and Disability Claims Procedure) Regulations (2002)
	Imposition of duties on the National Council for Education and Training for Wales to have due regard to the promotion of equality of opportunity	Statutory Instrument 2000 No. 3230 (W. 213) (C. 103) The Learning and Skills Act 2000 (Commencement No. 2) (Wales) Order 2000
	'To enable persons to undertake courses of further or higher education designated for the purposes of that Scheme, by providing financial assistance in or towards meeting the cost of books, equipment, travel or childcare incurred in consequence of their attending such a course'	2002 No. 2814 (W.271) The Education (Assembly Learning Grant Scheme) (Wales) (Amendment) Regulations 2002
	Places legal duties on governing bodies and head teachers to exercise their respective functions with due regard to the need - (a) to eliminate unlawful discrimination on grounds of race or sex; and (b) to promote equal opportunities and good relations - (i) between persons of different racial groups, and (ii) between males and females'	School Government (Terms of Reference) (Wales) Regulations (2000)
Local Govt. / Public sector	'Section 4. You must — (a) carry out your duties and responsibilities with due regard to the principle that there should be equality of opportunity for all people, regardless of their gender, race, disability, sexual orientation, age or religion;	2008 No. 788 (W.82) The Local Authorities (Model Code of Conduct) (Wales) Order 2008
	Insertion of equality clauses into existing legislation e.g. Section 20, 'Insert... "the Assembly Government remains committed to changing the profile of the workforce in Fire and Rescue Authorities within Wales to reflect the diversity of the communities that Fire and Rescue Authorities serve, and this will be reflected in the Human Resource Strategy currently being developed"'	2007 No. 1075 (W.113) The Fire and Rescue National Framework (Wales) 2005 (Revisions) Order 2007
	The number of domestic violence refuge places per 10,000 population which are provided or supported by the best value authority	The Local Government (Best Value Performance Indicators) (Wales) Order 2001
	'Payment to a member of the authority who is a councillor of an allowance ("care allowance") in respect of such expenses of arranging for the care of children or dependants as are necessarily incurred in the carrying out of that member's duties as a member'.	Local Authorities (Allowances for Members of County and County Borough Councils and National Park Authorities) (Wales) Regulations (2002)
Housing	<i>Inter alia</i> , adds to those Persons with priority need for accommodation: 'a person fleeing domestic violence or threatened domestic violence - A person without dependant children who has been subject to domestic violence or is at risk of such violence, or if he or she returns home is at risk of domestic violence'.	Homeless Persons (Priority Need) Wales Order (2001)
	Enhanced disability premiums in means tests for	Welsh Statutory Instrument

	determining the amount of housing renovation grant and disabled facilities grant	2001 No. 2073 (W.145) The Housing Renewal Grants (Amendment) (Wales) Regulations 2001
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Figure 5.1. Selected Examples of the Promotion of Equalities in Welsh Secondary Legislation.

5.3 Assembly Measures

The potential of the new (post May 2007) lawmaking arrangements to the promotion of equalities can be seen by reference to the Welsh Assembly Government's legislative programme for 2008-9. Each of the first five proposed Assembly Measures¹⁸² deals explicitly with an equality-related topic (that is, an issue where there is a recognised need to adapt service provision, or increase the rights and/ or resource allocation to historically marginalized or discriminated-against groups).

Thus, the proposed Assembly Measures were in the following areas:

- Child poverty (-placing a duty on public agencies to demonstrate their contribution to ending child poverty);
- Additional learning needs (-to extend the range of individuals who may appeal to the Special Educational Needs Tribunal for Wales – see below);

- Charging for non-residential social care (-to establish a fairer and more consistent approach to charging for specified services levied by local authorities across Wales);
- Better local services (-to introduce a Measure for local government which will require local partners to co-operate in effective and joined-up community planning and service delivery);
- Affordable housing (-the introduction of a Measure giving local authorities the power to apply to Welsh Ministers to designate areas of housing pressure where the Right to Buy may be suspended for a limited period).

In addition, the Welsh government asserts that,

‘the proposed 14-19 Learning and Skills (Wales) Measure (2008) sets out to achieve equality of opportunity and experience for 14-19 year old learners across Wales. The Measure will place a duty on head teachers, governing bodies, local authorities and further education institutions to co-operate in securing a minimum learners’ entitlement, so that learners are given a broad range of options to choose from, both vocational and academic’.¹⁸³

Furthermore, published in early 2009, The National Assembly for Wales (Legislative Competence) (Welsh Language) Order 2009 is aimed at giving the National Assembly powers relating to ‘promoting or facilitating the use of the Welsh language; and the treatment of the

Welsh and English languages on the basis of equality'.¹⁸⁴ The LCO will pave the way for the creation of the post of Language Commissioner and allow the Assembly to impose duties on the private, voluntary and public sectors – including the following:

- (a) public authorities;
- (b) persons providing services to the public under an agreement, or in accordance with arrangements, made with a public authority;
- (c) persons providing services to the public who receive public money - amounting to £200,000 or more in a financial year;
- (d) persons providing the public with the following kinds of services or - with other services which relate to any of those services—
 - (i) gas, water or electricity services (including supply, production, transmission or distribution);
 - (ii) sewerage services (including disposal of sewage);
 - (iii) postal services and post offices;
 - (iv) telecommunication services;
 - (v) education, training or career guidance (including services to encourage, enable or assist participation in education, training or career guidance);
 - (vi) railway services;
 - (vii) services to develop or award educational or vocational qualifications

5.4 Summary

The general equality duties (S.120/ S.77) in the Government of Wales Acts (1998, 2006) have had a significant impact on the promotion of equalities in post-devolution. They have led to the political reprioritisation of equalities in public policy and underpinned a raft of sometimes pioneering initiatives. Strikingly, over the past decade no legal challenges have been brought against successive governments in relation to the equality duties (or Human Rights clause) in the devolution Act. As such, the principal equality duty's potential, as a mechanism to compel action from government remains unknown. A series of official reports – including the government's own Annual Equality Reports – have acknowledged failings and shortcomings in relation to the promotion of equalities (indeed the failure by government to apply basic equalities practices such as gender budgeting might be seen as a breach of the duty). Yet no challenges have been forthcoming. This may be as a result of low general public awareness of the duty – and, as noted, the potential expense of judicial review.

In addition to the foregoing equalities duties in constitutional law, the (re-)emergence and comparatively rapid development of a distinctive body of Wales-only – or 'Welsh law' - wholly or in part - relating to equalities is a significant outcome of devolution. Initially this was achieved through secondary legislation relating to Wales – as well as

Wales-only Acts passed by Westminster (e.g. Commissioner for Older People (Wales) Act, 2006). Whilst these two processes continue, since 2007, primary legislation passed by the National Assembly in the form of Measures adds a further, distinctive dimension to the growing body of Welsh law. From an equalities perspective these developments can be seen as positive for they represents the rise of 'hard' policy enforcement mechanisms for, as noted, public policies backed by legal duties are generally viewed as more likely to secure equalities outcomes than 'declaratory' policies that espouse the need to promote equality but lack such enforcement mechanisms. One of the fundamental tenets of devolution is to produce locally made policies tailored to address specific social problems and issues. It is therefore logical that devolved policies on equalities be backed in law to increase the likelihood of effective implementation. It is also significant that the distinctive Wales-only legal framework applies not only to the public sector - but in some areas, the voluntary and private sectors as well (e.g. the inclusion of major private sectors suppliers of public utilities in the current draft Welsh Language LCO). As devolution becomes more established it is likely that the legal framework on equalities in Wales will continue to develop – and that duties and protections will sometimes contrast with those applying elsewhere in the UK.

CHAPTER 6. HUMAN RIGHTS

6.1 Socio-legal Analyses of Human Rights in Wales

Unlike equalities, thus far, the implications of devolution on human rights in Wales have generally been less pronounced. One reason for this is the single legal jurisdiction of England and Wales – and the fact that in respect of non-devolved matters such as criminal justice, many key statutes apply uniformly to the two countries. Thus, much current academic socio-legal analysis makes little or no distinction between the human rights framework applying to Wales as compared to England. Recent examples include analysis of: criminal justice and presumption of innocence;¹⁸⁵ the rights of mentally vulnerable adults;¹⁸⁶ the repeal of Section 28,¹⁸⁷ and, child abuse.¹⁸⁸

6.2 The Constitutional Position of Human Rights in Wales

Human rights are enshrined in the constitutional law associated with devolution in Wales. The Welsh administration is bound by the terms of the European Convention on Human Rights. Section 81 of the Government of Wales Act (2006) states:

Human rights

(1) The Welsh Ministers have no power—

(a) to make, confirm or approve any subordinate legislation, or

(b) to do any other act,
so far as the subordinate legislation or act is incompatible with
any of the Convention rights.

6.3 Post-Devolution Policy Developments in relation to Human Rights

There is limited evidence from the first decade of devolution of some policy divergence in relation to human rights. The foremost example is policy in relation to children. In 2000 the devolved administration announced¹⁸⁹ its intention to 'driving forward implementation across Wales of the principles of Article 12 of 'the UN Convention on the Rights of the Child' (UNCRC).¹⁹⁰ Implementation details followed in the document: 'Children and Young People: Rights into Action' (WAG, 2004).¹⁹¹ The devolved government's espousal of the UNCRC has impacted on a range of policies such as the 'All Wales Youth Offending Strategy' (WAG, 2004) which states its aim as to:

'provide a national framework for preventing offending and re-offending among children and young people in Wales... [it] is underpinned by the UN Convention on the Rights of the Child and requires consideration of the rights of the young person. In the long-term, its aim is to make a real and significant reduction in the rates of youth offending in Wales'.¹⁹²

During the early years of devolution limited reference was made to human rights in policy documents. There is evidence that human rights are gradually becoming more embedded in government policy. For

example, the Strategy for Older People in Wales 2008-2013 (WAG, 2008)

states:

‘Age discrimination and human rights are central themes in this phase of the Strategy for Older People. Equality will be at the heart of all our work from the outset... We have developed a model of policy which takes into account equalities and human rights’.

The Strategy defined ‘older people’ as those aged 50 years and over and is a framework document and provides the scope for further, more detailed policy development. Local authorities have been designated a key role in the Strategy’s implementation. Overall, its key aims

include:

Reflecting the United Nations Principles for Older People to tackle discrimination against older people wherever it occurs, promote positive issues of ageing and give older people a stronger voice in society.¹⁹³

In addition the new Foundation Phase curriculum (WAG, 2008) states:

‘Under the United Nations Convention on the Rights of the Child and the Welsh Assembly Government’s overarching strategy document Rights to Action, all children and young people must be provided with an education that develops their personality and talents to the full. Settings/schools should develop in every child a sense of personal and cultural identity that is receptive and respectful towards others. Settings/schools should plan across the curriculum to develop the knowledge and understanding, skills, values and attitudes that will enable children to participate in our multi-ethnic society in Wales. Settings/schools should develop approaches that support the ethnic and cultural identities of all children and reflect a range of perspectives, to engage children and prepare them for life as global citizen’.¹⁹⁴

The Convention is also cited as an underpinning of Funky Dragon: the Children and Young People's Assembly for Wales.

'Funky Dragon - the Children and Young People's Assembly for Wales - is a peer-led organisation. Our aim is to give 0 – 25 year olds the opportunity to get their voices heard on issues that affect them. The opportunity to participate and be listened to is a fundamental right under the United Nations Convention Rights of the Child. Funky Dragon will try to represent as wide a range as possible and work with decision-makers to achieve change. Funky Dragon's main tasks are to make sure that the views of children and young people are heard, particularly by the Welsh Assembly Government, and to support participation in decision-making at national level'.¹⁹⁵

Further policy developments impacting on human rights have been WAG funding for policy initiatives to prevent human trafficking and prostitution and, provide secondary healthcare for asylum seekers.

The respective legal frameworks for the Children's Commissioners in each country provide a further example of divergence on human rights policy between Wales and England. As recent analysis observes:

'There is a reference to the UNCRC in the legislative framework for the Children's Commissioner for Wales, whose functions include inspection, review and complaints in relation to administrative authorities in Wales: the Commissioner 'must have regard to' the UNCRC in everything he does. In contrast, the Children's Commissioner [for England] established under the Children Act 2004 has a much weaker statutory connection to the UNCRC, being required to refer to it only as an aid to the interpretation of 'children's interests'.¹⁹⁶

From an international perspective, the UN Committee on The Rights of the Child has welcomed these developments. A recent report noted:

‘that the Convention had been used as a basis for the Strategy for Children and Young People; the establishment of an independent Children’s Commissioner for Wales; and, the adoption by the Assembly [Government] of regulations prohibiting corporal punishment in all forms of day-care, including childminding’.¹⁹⁷

Academic analysis has highlighted the different trajectories of policies on children’s rights in Wales and England:

‘In post-devolution public policy, differences have emerged between the governments of England and Wales in the political expression of citizen rights and obligations... in Wales... efforts are being made to internalise international children’s rights obligations within executive and non-governmental policing mechanisms. These efforts are driven by the particular ideological stance of Welsh Labour and arguably are also supported by the scheme of Welsh devolution itself, as set out in the 1998 and 2006 [Government of Wales] Acts. In England there is scant evidence of a similar development and it has been suggested here that this is because of a hardening of political resistance to rights, coupled with the absence of constitutional restraints of the kind engendered by the Welsh settlement’.¹⁹⁸

6.4 Issues and Future Developments

As with equalities and public policy, there is variability between government departments in respect to the extent with which they have engaged with human rights in policymaking. Most progress has been made in relation to older people and children – less with regard to, for example, ‘race’, asylum seekers, and mental health issues. Part

of this variation links to civil society capacity to lobby and engage with government on human rights issues. NGOs representing older people and children have, generally, been better resourced and organised than other groups and communities of interest during the first decade of devolution and this is reflected in policy outcomes. A further area where there has been limited progress is in embedding human rights into public procurement and service agreements with agencies outside government. Again, as with equalities, awareness of – and engagement with – human rights and devolved policymaking has been restricted by limited media coverage of such issues in Wales.

One issue that emerges from the first decade of devolution is limited policy capacity and expertise in Wales relating to human rights. Specifically, some policy actors point to a dearth of expertise on human rights in government – and the need to address this. Civil society organisations also point to generally good levels of accessibility of ministers in the wake of devolution. A further issue that emerges from the past decade is an implementation gap relating to government policy that impacts on human rights. Whereas positive strategies and policy objectives can be identified at a national level, some observers point to insufficient attention being paid to monitoring and overseeing the role of local authorities and other agencies in implementing government initiatives. As with equalities issues, the complex division of powers between Wales and Westminster requires dual lobbying/

monitoring focus for organisations in Wales interested in human rights – with attendant resource implications.

The Measure making powers in the Government of Wales Act (2006) and the growing legislative dimension to devolution in Wales are likely to raise future issues relating to the distinctive application of human rights law in Wales compared to England. Indeed, analysis of the extent to which the UNCRC features in the legislative framework of the respective Children’s Commissioners for Wales and England (see above) makes this point. It states:

‘This particular example of difference between England and Wales points to the need to assess absorption of rights-based reasoning into administrative practice separately, taking into account the effect of legislative and administrative devolution and the nature of the post-devolution divergence between England and Wales’.¹⁹⁹

CHAPTER 7. 'THE INCLUSIVE EXERCISE OF FUNCTIONS'

Under the heading 'The inclusive exercise of functions', sections 72 to 78 of the Government of Wales Act (2006) detail a range of channels and procedures designed to foster civic engagement. These are supplemented by a number of the National Assembly's Standing Orders (i.e. the procedural law of the devolved legislature). Taken together, these legal clauses underpin the aim of political equality – or overturning the longstanding marginalisation and exclusion from public decision making experienced by key social groups – women, disabled people, people of different ethnic backgrounds, LGBT people, older people and so on. The majority of these inclusive mechanisms have no parallel in the pre-devolution mode of governance. As such, they point towards greater system openness to the concerns of those outside government. We now consider their characteristics and impact during the first decade of devolution.

7.1 The National Assembly Committee on Equality of Opportunity

Standing Order 17 of the National Assembly states:

There is to be a Committee on Equality of Opportunity to consider and report on the relevant duties contained in the Act placed on the Assembly, the First Minister, Welsh Ministers or the Commission.

A recent study²⁰⁰ of the operation of the National Assembly's Standing Committee on Equality of Opportunity revealed how, during the first decade of devolution, the Committee has been a key institutional

nexus whereby advisors drawn from civil and civic society have lobbied and advised elected representatives. Discourse analysis of the Committee's proceedings during the second Assembly (2003-07) showed how it was a forum for the advancement of gender equality claims by organisations and individuals outside government. The data revealed that women (both AMs and advisors to the Committee) were probabilistically more likely than men to refer to selected gender equality terms in the Committee's deliberations (and accounted for 78% of such incidences).

7.2 Statutory Partnerships with Government

The devolution Acts require the creation of a range of statutory partnerships between government and local authorities, public sector bodies, the voluntary sector and business organizations. The major significance of these partnerships is the way in which they attempt to institutionalise the participation of hitherto marginalized groups – most notably, equalities groups - in the work of government. They provides procedural channels through which women, disabled people, ethnic minorities, older people and so on can advance their priorities and concerns - and influence the policy process.

One example is the Partnership Council as required by Section 72 of the Government of Wales Act (2006). This forum is comprised of Welsh ministers and representatives from county, county borough and

community councils; national park authorities; and, police, and fire and rescue authorities. Under the terms of the Act, the Partnership Council has a wide brief and may: give advice to the Welsh Ministers about matters affecting the exercise of any of their functions; or give advice and/ or raise any matters affecting, or of concern to member organizations. As part of the Partnership Council arrangements, Welsh Ministers must²⁰¹ publish and lay before the National Assembly a scheme setting out how they propose, in the exercise of their functions, to sustain and promote local government (and, the activities of other member organizations of the Partnership Council). The potential impact of this partnership arrangement on the promotion of equalities is evident in the current Scheme that states:

‘the Partnership Council will provide a forum for collaboration by Welsh Ministers and local government in promoting major cross-cutting themes such as equality of opportunity’ (WAG, 2008, para 3.1).

Statute also specifies that after each financial year Welsh Ministers must publish a report on how the proposals set out in the Local Government Scheme were implemented in that financial year. Allied to the Partnership Council is the partnership agreement for public services in Wales. Entitled ‘Partnership and Managing Change’ (WAG, 2007:2), it too sets out a ‘vision for public services that are ... designed with citizens at the centre and promote social Justice and equality’.

In addition to formalising links between government and public bodies, the devolution statute aims to embed new governance by establishing partnerships with the private and voluntary sectors. Thus, Section 75 of the 2006 Act requires that:

‘Welsh Ministers make a scheme (“the business scheme”) setting out how they propose, in the exercise of their functions, to take account of the interests of business’.

Importantly, Section 74 of the Act is aimed at engaging civil society and requires that Welsh Ministers publish and lay before the National Assembly a Voluntary Sector Scheme setting out how they propose, in the exercise of their functions, to promote the interests of relevant voluntary organisations. The Scheme must also: specify how Ministers propose to provide assistance to relevant voluntary organisations, how they propose to monitor the use made of any assistance provided by them, and, crucially, how Ministers propose to consult relevant voluntary organisations about ‘the exercise of such of their functions as relate to matters affecting, or of concern to, such [voluntary] organisations’. Ministers must keep the Voluntary Sector Scheme under review and must publish a report of how the proposals set out in the Scheme were implemented in each financial year - and lay a copy of the report before the National Assembly. Section 2.7 of the Scheme states:

‘the goal is the creation of a civil society which: has a duty to promote equality of opportunity to all its members regardless of race, colour, sex, sexual orientation, age, marital status, disability, language preference, religion or family/domestic responsibilities’ (NAfW, 2000).

Linked to the Scheme is the Third Sector Partnership Council (TSPC), a collection of twenty-five policy networks organised around policy areas or social groups, including those focussed on equalities constituencies including: gender, older people, ethnic minorities, disabled people, children and, youth. In addition to a range of consultative structures associated with the TSPC, representatives of each network have the right to biannual meetings with government ministers. In respect of Welsh government funding of voluntary organisations, the Voluntary Sector Scheme requires the TSPC to determine ‘how funding streams can be used to promote equal opportunities by grant beneficiaries’. Academic research²⁰² and the latest annual report on the Scheme details how the TSPC is a nexus between government and third sector equalities organisations.²⁰³ Examples of gender equality issues raised via the TSPC biannual meetings with ministers include: lobbying to improving women’s representation in the structures of the Assembly Government’s Communities First and community-led regeneration schemes;²⁰⁴ making representations to the Chairs of the Local Government Partnership Council (LGPC) about gender imbalance in local authorities;²⁰⁵ and, calls for sustained focus on gender equality in WAG’s ‘Mainstreaming Equality in Public Appointments Action Plan’.²⁰⁶

7.3 The Petitions Committee

Dating from the outset of the third Assembly, a further noteworthy institutional development to further inclusive policymaking is the creation of a public petitions procedure. This provides a new means of access to the policy process for individuals and organisations outside of government. Under Standing Order 28, 'the Assembly must consider, in accordance with the provisions of Standing Orders ... any admissible petition'.²⁰⁷ In accordance with the new arrangements the Presiding Officer refers eligible petitions to the cross-party Petitions Committee. In turn 'the Committee may: (i) refer the petition to the government, any other committee of the Assembly or any other person or body for them to take such action as they consider appropriate; (ii) report to the Assembly; or (iii) take any other action which the committee considers appropriate'.²⁰⁸

The National Assembly's Petitions Committee has emerged as a significant conduit for individuals, civil society organisations and others to advance equalities claims on Welsh government. Although it has only been in operation since mid- 2007, seven out of the Committee's first thirteen meetings considered petitions with an equalities dimension. These called on the Welsh Assembly Government to take a range of actions including to: lay specific responsibility upon local authorities to

identify and support young carers; and review screening systems for sex-specific cancers.

7.4 Procedural Aspects of Devolved Policymaking

The Standing Orders (– or procedural law) of the National Assembly set out a number of requirements such that equalities are upheld in the proceedings of the devolved legislature. For example, Standing Order 8.9 states that:

‘The Presiding Officer is to maintain order in plenary meetings and must call to order any Member who: v) is using disorderly, discriminatory or offensive language or language which detracts from the dignity of the Assembly;

More generally, Section 35 of the Government of Wales Act (2006) states:

Equality of treatment

- (1) The Assembly must, in the conduct of Assembly proceedings, give effect, so far as is both appropriate in the circumstances and reasonably practicable, to the principle that the English and Welsh languages should be treated on a basis of equality.
- (2) The Assembly must make appropriate arrangements with a view to securing that Assembly proceedings are conducted with due regard to the principle that there should be equality of opportunity for all people.

As the following extract from the Assembly's Official Record attests, AMs have drawn upon these legal clauses to challenge sexist and discriminatory language in the chamber:

'Point of order. This is in a similar vein, under the Standing Order ... on discourteous and unbecoming conduct. We have returned to this issue several times over recent weeks ... I ask you to take away and consider our statutory obligation to have due regard for equal opportunities in everything that we do, in relation to how this Chamber operates ... This afternoon was another occasion when there was a clear gender divide. Much heckling came from men in the opposition parties. I was sad to hear it also coming from men in my party. That is taking us down a road that is very much akin to Westminster-style politics'.²⁰⁹

In addition, Standing Order 6.2 promotes equality by requiring family-friendly working hours at the National Assembly. It states:

'Motions under Standing Order 6.1 must have regard to the family and constituency or electoral region responsibilities of Members and their likely travel arrangements; and should normally seek to avoid timetabling business before 9.00am or after 5.30pm on any working day'

The Official Record of Assembly proceedings again reveal how AMs are using this (and Section 35 of Government of Wales Act) to promote equality; as evidenced in the following intervention by an AM:

'Point of order. I am not sure whether this is additional. I request that both the Office of the Presiding Officer and the Business Secretary look at the impact on the Assembly's statutory duty to promote equality of opportunity of our regular habits of having our staff working way past 5.30 p.m. We might be subject to a judicial review because that is a breach of our statutory requirement to promote equality of opportunity'.²¹⁰

Furthermore, Standing Order 15.7 promotes equality along the lines of gender and language in legislation. It states that the National Assembly Legislation Committee:

‘must consider all statutory instruments or draft statutory instruments required by any enactment to be laid before the Assembly and report on whether the Assembly should pay special attention to the instrument or draft on any of the following grounds ... (viii) that it uses gender specific language; [and] (ix) that it is not made or to be made in both English and Welsh’.

7.5 Summary

Analysis of a raft of legal clauses designed to promote inclusive policy and practice in the devolved legislature reveals that, over the period 1999-2009, they have had a positive impact on the furtherance of political equality. In other words, they have underpinned institutional mechanisms (e.g. the cross-party Equality Committee, TSPC etc) that facilitated the engagement of equalities interests in the work of the legislative and executive branches of devolved government in Wales. Moreover, S.35 of the Government of Wales Act and a number of Standing Orders require equality of opportunity and bilingualism to be upheld in the conduct of Assembly business. This is a significant discontinuity with the pre-existing mode of governance under the Welsh Office (1964-1999) a period when marginalisation and exclusion from public decision making was experienced by key social groups –

women, disabled people, people of different ethnic backgrounds, LGBT people, older people and so on. The post-1999 inclusive mechanisms have no parallel in the pre-devolution mode of governance. As such, they point towards greater system openness to the concerns of those outside government. Against this positive assessment a number of cautionary notes are necessary. For example, whilst the inclusive governance mechanisms introduced since 1999 have opened up the circles of decision-making, much work remains to engage the thousands of organisations that represent equalities interests in Wales (thus far, a minority of these have lobbied or engaged with the work of the Assembly/ Welsh government). In addition, whilst opportunities to participate in public business have undoubtedly done much to promote political equality and address the exclusive practices seen under the Welsh Office – government may still over-ride, ignore or downplay the policy demands of outside interests (and, in relation to the promotion of equality via Standing Orders on procedural aspects of post-devolution politics, a two-thirds majority vote of the National Assembly can modify/ repeal existing Standing Orders).

CHAPTER 8. SCRUTINISING THE EQUALITIES AGENDA

8.1 Mainstreaming?

In July 1999, at the first meeting of the National Assembly's cross-party Committee on Equality of Opportunity, the minister with responsibility for equalities announced 'the executive, will need to take equality of opportunity factors into account in every policy decision. This *mainstreaming approach is fundamental*'.²¹¹ This announcement was a significant step, mainstreaming is a transformative approach to policymaking, one that challenges traditional practices and puts equalities considerations centre-stage. The Welsh government subsequently adopted the following definition of mainstreaming:

'the integration of respect for diversity and equality of opportunity principles, strategies and practices into the every day work of [government ...] and other public bodies. It means that equality issues should be included from the outset as an integral part of the policy-making and service delivery process and the achievement of equality should inform all aspects of the work of every individual within an organisation. The success of mainstreaming should be measured by evaluating whether inequalities have been reduced'.²¹²

Weighed against such developments, how can the Welsh government's record (1999-2009) in relation to mainstreaming gender and other dimensions of equality be summarised?²¹³ In general, the period 1999-2006 can be characterised as one of an 'institutional disconnect'²¹⁴ - whereby an organisation manages a disjuncture

between formal rules, informal practices and actual activities – such that it espouses one thing but generally practices another. Linked to this there has been an emphasis on bureaucratic processes associated with government equalities initiatives rather than the results that they achieve.

The civil service transferred from the Welsh Office to the National Assembly in 1999 represented a powerful continuity with the earlier approach to public administration –it possessed none of the institutional prerequisites or ‘building blocks’ necessary for the application of mainstreaming. These are broad in scope and include: awareness raising, training, expertise, appropriate staffing, reporting mechanisms, incentives to ‘build ownership’ of the promotion of equality, and the securing of adequate resources. The following measures have been taken to increase the National Assembly and Welsh government’s capacities to mainstream equality in public policy: the creation of a dedicated Equality and Human Rights Division in the Assembly Government civil service²¹⁵ (an administrative department with no parallel in the former Welsh Office) and, as noted, the cross party Standing Committee on Equality of Opportunity. These have been accompanied by mandatory reporting mechanisms to measure progress in relation to the developing equalities agenda. The involvement of experts drawn from outside the civil service has fostered another dimension integral to a mainstreaming approach, namely,

raising awareness of equality issues. In terms of resources, although difficult to quantify (for equality has not generally been listed as a discrete heading in Assembly Government budget data), it is clear that, when compared to the 'zero base' of administration under the Welsh Office, there has been a significant increase in the capital sum and staffing levels allocated to the promotion of equality in policymaking.

Despite the progress made in developing some of the institutional prerequisites for mainstreaming equality into the work of government, three successive official reports into the Welsh Assembly Government's approach to equalities and mainstreaming have highlighted a number of significant shortcomings and have identified areas for improvement.

The beginning of the Assembly's second term saw the commencement of a systematic, cross-party review into 'how equality can be mainstreamed into the work of the National Assembly and the Welsh Assembly Government'.²¹⁶ The Mainstreaming Review was organised around four key themes: strategy and leadership; people; practical action, levers, guidance and advice; and, monitoring and evaluation. It is significant that a systematic review of mainstreaming in government took place at such an early stage in the development of the National Assembly. The Review's conclusions in respect of 'strategy and leadership' concluded that:

'currently the Assembly does not have an overall equality strategy, and in our view there is no doubt that this is hampering the Assembly's efforts in relation to mainstreaming equality'. It continued, '... there is a lot of positive activity going on but with little strategic direction ... there [is] a high level of variation across the organisation' (NAfW, 2004: 31-2).

Further key failings include the absence of a systematic and robust process of setting equality targets and the subsequent monitoring of whether policy goals have been met. In many respects the Mainstreaming Review's conclusions confirmed the findings of an earlier report into the impact of the National Assembly's statutory equality duty commissioned in 2002 by the three statutory equality commissions.²¹⁷ This found that, between 1999 and 2002, the Assembly statutory equality duty had led directly to a reprioritisation of equality in the process of government such that equality of opportunity was beginning to be addressed systematically at an all-Wales level of government for the first time. Yet, as with the subsequent Mainstreaming Review, it also highlighted a number of key failings in the post-devolution equality agenda. These included the fact that the National Assembly's policy committees were generally not overseeing the mainstreaming of equality into their respective policy-making areas. Moreover, it was found that the majority of policies exhibited a 'declaratory' approach to equalities – meaning that they espoused the need for change but were often vague on the means to achieve reform. Crucially, the 2002 report found that in the bulk of cases policies

lacked specific and measurable equality targets linked to a prescribed timeframe. Compounding this problem was the fact that policies generally failed to specify the individuals or organizations responsible for implementing equality reforms. In addition, the report's analysis showed that financial and human resource implications were frequently ignored or not addressed in a comprehensive manner.

In response to the Mainstreaming Review, Cabinet approved the Welsh Assembly Government's new Mainstreaming Strategy in May 2006.²¹⁸ According to the government the Strategy: 'will ensure equality and diversity considerations are integral to the development of all its policies and strategies enabling it to meet and exceed its statutory duties'. The government's 2006 Mainstreaming Strategy was linked to an independent, externally commissioned, equality audit of Assembly Government policies, strategies and programmes.²¹⁹ A 'stocktaking' exercise, its purpose was to provide information on the extent to which equality and diversity were embedded in policy making. As with the two previous reviews, the audit highlighted a number of key shortcomings including that: 'delivering equality as a fundamental theme throughout policy implementation was not always articulated within policy documents'. Reflecting earlier concerns over a 'declaratory' approach to equalities, the equality audit stated that policy documents:

'did not always directly refer to how they would - or direct others to - fulfil and go beyond their legislative obligations in order to eliminate discrimination, promoting equality of opportunity and good relations'.

Moreover, the audit underlined the fact that in the government's policies, 'direct reference to explicit measures for monitoring diversity strands was rarely evident'. Importantly, the study found that, 'the understanding of the purpose and systematic processes of [equalities] impact assessment appeared to be limited' (NAfW, 2007:63-65).

What factors explain the mixed progress that has been made to date? And, what are the future prospects for mainstreaming? In respect of the former question, far from an arcane constitutional concern, the institutional development of the National Assembly is a major factor. The challenges were formidable and included: the creation of a legislature from the introduction of Parliamentary Bill in just 18 months; a subsequent and enduring lack of clarity in the Assembly's powers; the inheritance of a civil service with no equalities training (and issues of institutional resistance to the promotion of equalities in policymaking amongst some officials who cherished 'traditional' modes of public administration); the quirky notion of a 'body corporate' (with all AMs notionally responsible for policy – albeit with novel delegation procedures to produce a form of executive); and, the related issue of accountability (e.g. was the minister - then called 'Assembly Secretary' - or the legislature as whole responsible for equalities policies

and adherence to the Assembly's statutory equality duty? Was the minister sitting on the cross-party Equality Committee as an equal participant in shaping policy – or, there to be scrutinised by opposition AMs and backbenchers? – uncertainties were evident in relation to these questions during the Assembly's early years). To compound this formidable list of issues, from 2001-2 major political energies were also expended on remodelling the National Assembly along parliamentary lines – something finally formalised in the Government of Wales Act (2006). Arguably, when weighed against this background, the adoption of a radical and transformative approach to the promotion of equalities in policy and law – mainstreaming – was always going to be less than straightforward and associated with setbacks.

With regard to the future prospects for mainstreaming, here, the government's 2006 Mainstreaming Strategy is a potentially significant development; one that may offer the means to deliver the original 1999 commitment to mainstreaming. In the post May 2007 period there is some evidence of a more joined up and systematic approach to mainstreaming equalities than seen hitherto.²²⁰ Notably, through the development of mainstreaming tools – including new equality impact assessment procedures and improved equalities data-gathering designed to inform both policymaking and policy evaluation. There is also emerging, albeit limited, evidence that these developments are

beginning to shape the way that new policy documents address equality concerns.²²¹

Notwithstanding these factors, there remain a number of causes for concern. For example, despite the recommendations of the Mainstreaming Review, there is an absence of any reference to gender budgeting in the government's Mainstreaming Strategy.²²² In addition, although the Strategy articulates its aims in relation to seven equality 'strands' (WAG, 2006:3) the new generic equalities impact assessment tool is based upon six strands – for it omits language (see WAG, 2008).²²³

An overriding concern relates to the legislative and policy scrutiny capacity of an undersized 60 member National Assembly. This has particular relevance to the mainstreaming agenda and is one that has international resonance. As analysts observe, accountability and scrutiny issues are pivotal to success: 'lack of ownership ha[s] served to make it easy for governments to embrace the mainstreaming concept and to adopt policy initiatives in its name.'²²⁴ The formalisation of a quasi-parliamentary mode of devolution in 2006-7 finally gives *de jure* 'ownership' of the mainstreaming agenda to the Welsh government.²²⁵ Under the provisions of the Government of Wales Act (2006) responsibility for meeting the statutory duty to promote equality in all devolved policy and lawmaking lies with Welsh government ministers. However, the scrutiny of the Welsh government's equalities agenda

during the first decade of devolution has not been as robust and rigorous as required to secure sustained equality outcomes in all policy areas. As noted, successive reports on the equalities agenda have highlighted failings and shortcomings yet this situation endured through the first two Assemblies. Indeed, as the foregoing analysis of policy developments indicates, superficial and declaratory approaches to promoting equalities still continue in a number of policy documents. The limitations in scrutiny were in part a function of the newness of devolved governance – civil and civic society organisations as well as opposition and backbench AMs had a steep learning curve during the Assembly’s first years (i.e. they were not used to lobbying and scrutiny of equalities policies at an all-Wales level). Post-2007 developments – such as the formal parliamentary mode of working and the introduction of new policy tools and the Single Equality Scheme – suggest that progress is being made to address some of the earlier problems. Thus, it is argued, a key factor in the future success or failure of mainstreaming will be the role of opposition parties and external bodies in holding the government to account in relation to its statutory equality duty and delivery of its Mainstreaming Strategy. This scrutiny role should be made easier by the government Mainstreaming Strategy’s promise to deliver ‘a clear equality and diversity baseline and monitor[ing] targets... [in order to] evaluate how effective policy is in achieving its aims’ (WAG, 2006:19). Yet, it will require vigilance and

sustained critical monitoring of the equalities and human rights agenda by those outside government.

8.2 The 'Equalities Infrastructure' in Post- devolution Wales.

One consequence of the creation of the National Assembly has been the significant development of the 'equalities infrastructure' in Wales. This term denotes state bodies that are wholly – or in part- concerned to monitor and uphold the promotion of equalities (as part of a public performance review –remit). Such state institutions include new dedicated Wales-only bodies, such as the Welsh Commissioners for Children and Older People; pre-existing organisations that, to varying extents, have reconfigured to adapt to devolution, for example, the Welsh Language Board and the education inspectorate, Estyn; and, GB bodies that have quasi-federal structures such as the Equality and Human Rights Commission. Whilst several of these state bodies are principally concerned with the promotion of equalities, others – such as the Wales Audit Office and the Welsh Care Standards Inspectorate have equalities-related functions. A limited number of these bodies have undertaken comprehensive monitoring of equalities in their respective areas (e.g. Estyn – the education inspectorate). In addition, a Wales-only enforcement body – the Special Educational Needs Tribunal for Wales – has been created and provides a model for future development of specialised Wales-only compliance bodies.

However, notwithstanding these positive developments there has been limited co-ordination of devolved inspectorates' and allied bodies' monitoring of equalities. There is much scope for a more systematic and quantified monitoring of the promotion of equalities by public bodies in Wales in order to deliver effective scrutiny of the promotion of equalities in public policy and service delivery.

CHAPTER 9. THE CASE FOR MOVING TOWARDS FULL LAWMAKING POWERS FOR THE NATIONAL ASSEMBLY FROM AN EQUALITIES PERSPECTIVE

As the following discussion outlines, the promotion of equalities in policy has advanced in the wake of devolution. Yet many challenges remain. Overall, the executive model of devolution inherited from the 1978 Wales Bill (to varying extents modified by the 1998 and 2006 Government of Wales Acts) is from an earlier era. It offers a cumbersome and inefficient basis for public administration. From an equalities perspective, a responsive, modern, efficient and effective mode of policy and law making is required to tackle enduring inequality and discrimination, one that is accountable and open. This is best achieved by a devolved legislature with full lawmaking powers. In terms of equality, it is also pertinent to question why the people of Wales should be afforded an inferior (when measured against the principles of good governance – see below) model of devolution compared to the citizens of Scotland and Northern Ireland. Following a summary of the promotion of equality and human rights over the past decade, attention is placed on the grounds for granting the National Assembly full lawmaking powers.

9.1 An Evaluation of the impact of Powers already available to the National Assembly to the Promotion of Equalities and Human Rights

During the first decade of devolution there has been a plethora of equality policy initiatives across the breadth of devolved functions. This marks a significant discontinuity with public administration before 1999 when, generally, the Welsh Office did not have responsibility for this issue. Over the past ten years an extensive range of all-Wales policies on equalities topics has emerged - where, before constitutional reform, none existed. For example: 'Tackling Domestic Abuse: The All Wales National Strategy' and, the 'Forced Marriage and Honour Based Violence Action Plan'. There has also been a significant broadening of the policy focus on equalities. The initial Standing Orders of the National Assembly relating to the cross- party Committee on Equality of Opportunity emphasised a principal focus on 'race', disability and gender. This has subsequently been extended to include a greater range of interests including: Welsh language, asylum seekers, Gypsy travellers, LGBT people, age, faith, carers etc.

Notwithstanding this progress, government policies during the early years of the National Assembly were particularly prone to a 'declaratory approach to equalities' (to some extent this endures in some policy areas)- for limited details were generally provided in policy documents in respect of policy targets and/or implementation methods. Today there is evidence of the beginnings of a more sophisticated approach to the promotion of equalities in government

policy documents. However, there is much work to be done before more sophisticated approaches to promoting equalities are a feature of all policy outputs.

Policy innovation is a further feature of some devolved initiatives on equalities: for example, the creation of the offices of Children's Commissioner for Wales and, Older People's Commissioner for Wales - the first independent statutory Commissioners of their type in the UK. However, underlining the limited legal powers of the National Assembly, the legal standing of these landmark equality policies has come not from instruments passed by the National Assembly - but from Westminster statutes.

At present there is variability between government departments/ policy areas regarding the promotion of equalities. For example, there is evidence of sustained and generally good practice in areas such as education, children, young people - and shortcomings in others (e.g. the environment and, sustainable development). There is also mixed evidence of the impact of policies designed to promote equalities in terms of policy outcomes. Whilst some have been adjudged to be effective - the absence of targets, timescales and clear allocation of responsibility for implementation has prevented effective evaluation of others.

During the first years of devolution limited reference was made to human rights in policy documents. An early example is the devolved administration's announcement in 2000 of its intention to 'driving forward implementation across Wales of the principles of Article 12 of 'the UN Convention on the Rights of the Child' (UNCRC).²²⁶ There is limited evidence that human rights are gradually becoming more embedded in government policy. As, for example, in the Strategy for Older People in Wales 2008-2013 which states the need for service delivery to reflecting the United Nations Principles for Older People to tackle discrimination against older people wherever it occurs, promote positive issues of ageing and give older people a stronger voice in society. However, in the absence of full law making powers for the National Assembly, issues and challenges exist in relation to the Cardiff and Westminster administrations taking divergent approaches to the application of UN/ European Convention human rights principles in their respective policy programmes. Not least, the UK government's willingness to allow such divergence in the two polities (with the, potentially, constraining influence this may have on devolved policymaking - see Section 9.3 - below) and, (as with aspects of equalities policies) legal administration of, effectively, two bodies of law (devolved and, Westminster legislation) in a single legal jurisdiction.

Overall, the Assembly's existing powers have seen a reprioritisation of equalities and extensive policy making on this issue during the first

decade of devolution. Yet, major inequalities persist in Welsh society. It is possible that the absence of full-lawmaking powers has contributed to the failure to make greater progress in tackling inequalities and discrimination in Wales over the past decade – for, crucially, during the early years of the National Assembly, a limited number of equalities policies were backed in law. As the academic literature on public policy attests,²²⁷ this increases the likelihood of an implementation gap for sanctions for non-compliance/ failure to put policies into action - were not generally present. The lawmaking powers gained in the wake of the Government of Wales Act (2006) have seen the beginnings of a greater legislative approach to promoting equalities that may start to tackle these shortcomings and deliver the means to address such implementation/ enforcement/ compliance issues. Yet, the complex and drawn-out processes that characterise the new Measure-making procedures have compromised this welcome development.

9.2 Full Lawmaking Powers to Uphold the Principles of Good

Governance in Relation to Equalities – and Beyond

The European Commission identifies the following principles of 'good governance': openness, participation, accountability, effectiveness and coherence.²²⁸ These were also at the heart of the devolution campaign in Wales.²²⁹ The convoluted and opaque nature of the Assembly's powers undermines each of these principles. The complexity of the division of powers between the UK parliament and

the National Assembly, the way that powers have been incrementally transferred from Westminster (via Transfer of Functions Orders and Legislative Competence Orders) and, the protracted and cumbersome nature of the LCO process (with associated uncertainties related to the input/ potential veto of the Secretary of State and both Houses at Westminster) – present major challenges for equalities organisations in both monitoring and engaging with the process of creating secondary legislation and Assembly Measures.

Research shows that uncertainty amongst members of civil society organisations over the National Assembly's powers can limit the participation of groups targeted by equalities initiatives. From an equalities perspective, the results of an academic study²³⁰ of the political participation of women's organisations in post-devolution Wales found that the opaque nature of the Welsh devolution settlement was operating as a 'brake' on active participation in the policy process. This follows, the study argued, for if citizens do not know whether the National Assembly/ Welsh government is responsible for a given policy area then they are unlikely to lobby and engage in policy consultations. Thus, only just over a half of the 900 women NGO members surveyed correctly identified that the Assembly was responsible for education (56%) and health (58%). Just under a third incorrectly felt that it was responsible for criminal justice/ policing matters (29%) and, significant minorities felt it was responsible for

defence (14%) and railways (19%).²³¹ In reality the National Assembly shares responsibility for disability issues with Westminster, yet just under a half (44%) of respondents thought the Assembly had any competence in this area.²³² Such uncertainty also undermines accountability for it is clear that amongst the women's groups surveyed significant numbers did not know if it was MPs at Westminster or AMs in Cardiff that should be held to account on key policy issues.

Moreover, the study of the political participation of equalities organisations in the work of government²³³ found that the often-opaque, shared nature of policy responsibilities between the National Assembly and Westminster required a dual lobbying/ monitoring focus. This was seen to have major resource implications and was generally a challenge that was not faced by comparable organisations operating in Scotland, Northern Ireland or England. As the manager of one voluntary organisation said when interviewed: 'we recognise that we need to continue to build relationships with AMs and civil servants in the Bay [Cardiff Bay] because of all that is happening there, but we can't ignore what's happening in London because a lot of health policy is still decided there ... [this is] a challenge to us, after all we're just a small organisation'.

Analysis of the transcripts and associated documents of the cross-party Standing Committee on Equality of Opportunity from March 2006

(when transcripts first became available on a systematic basis) to March 2008 reveals that approximately a half of the Committee meetings studied featured examples of speakers' (AMs' and invitees') frustration/ uncertainty stemming from limitations / lack of clarity in Assembly's powers in relation to equalities in different policy areas (see Appendix One). A prominent example is from the Committee's meeting in September 2007, when it announced its Inquiry into the Accessibility of Polling Stations in Wales. Under the sub-heading 'Scope for law making' the terms of reference paper for the Inquiry provides a good illustration of the complexity facing policy makers in the absence of direct primary legislative powers – and, as such, it is worth reproducing in some detail, albeit in edited form:

The framework around polling station accessibility is essentially provided by primary legislation, for example, the Electoral Administration Act (2006), [...] the Representation of the People Act (1983) as amended and the Political Parties, Elections and Referendums Act (2000). Additionally, the National Assembly for Wales has previously passed secondary legislation providing for the reimbursement of costs associated with temporary ramps through the National Assembly for Wales (Returning Officers' Charges) Order 2002 which has been amended by the National Assembly for Wales (Returning Officers' Charges) Order 2006. Schedule 7 of the Government of Wales Act 2006 (Acts of the Assembly) refers to electoral matters under Field 12 (Local Government), so measure making powers could be sought. However, there are exceptions set out in Field 12, including electoral registration and administration, so careful consideration would have to be given to any recommendation that such powers be sought.

As the foregoing analysis indicates (see Section 4. 'Equalities and Public Policy' - above), it is generally evident that the policy areas where greatest progress has been made in promoting equalities are those where the Welsh government has greatest autonomy (e.g. education) compared to those with complex overlapping responsibility with Westminster (e.g. economic development, the environment, transport etc.). From an equalities viewpoint this suggests that giving the National Assembly primary legislative powers will give the devolved government/legislature greater scope to embed equalities across the breadth of devolved policy responsibilities.

9.3 Full Lawmaking Powers to limit Westminster Constraints on Devolved Equalities Policies

The past decade has seen a number of examples in relation to the promotion of equalities in public policy and law where the absence of full primary law making powers for the National Assembly has meant that Westminster has constrained the policy ambition of the Welsh government. For example, in 2000, with regard to age equality/ children's rights, the devolved administration committed itself to upholding the principles of the UN Convention on the Rights of the Child' (UNCRC).²³⁴ In furtherance of Article 19 of the UNCRC that states that children should be properly protected from violence, abuse and neglect, the Welsh government introduced a ban on smacking in every form of public and regulated care in Wales. In this case

Westminster refused to give the Welsh government powers to change the criminal law in Wales to prohibit corporal punishment as initially requested in the Vulnerable Children and Child Poverty Legislative Competence Order (2008).

A further example is provided the Welsh government's 'All Wales Domestic Abuse Strategy'. Academic analysis revealed how domestic abuse policy in Wales has been subject to a 'Westminster drag' effect.²³⁵ In contrast to more innovative policies seen in Scotland, the Welsh government has been constrained by having to follow the dominant Whitehall policy frame on criminal justice and policing in relation to domestic abuse.

Another, recent example is The National Assembly for Wales (Legislative Competence) (Housing) Order 2009. In order to safeguard stocks of social housing which are particularly suited to supporting vulnerable people, older people, younger people wishing to remain in local communities etc. The Welsh government requested from Westminster powers to suspend the Right To Buy as set out in the Housing Act (1980). To date Westminster has frustrated this ambition.

Related to the foregoing, a fundamental concern about the current absence of full lawmaking powers is one that relates to democratic legitimacy. It stems from the subordinate position of the National

Assembly in requesting additional legislative powers from Westminster under the Legislative Competence Order process. Increasingly, political parties' election manifestos in all- Wales elections to the National Assembly set out policy commitments in relation to the promotion of equality/ tackling discrimination (See Appendix Two). Parties elected to form a government in the Assembly therefore have a democratic mandate to implement their equality policy commitments – where necessary, through the passing of Wales-only legislation. Yet the current arrangements give the Westminster government and Secretary of State (who may represent a party defeated at the polls in Wales) a potential veto role, effectively over-riding the Welsh government's democratic mandate to implement their equality policy commitments as set out in their election manifesto. Full lawmaking powers on the Scottish model would eliminate this problem.

9.4 Primary Powers to Promote Effective Cross-border Working on Equalities Issues

A further case for full lawmaking powers for the National Assembly centres on the devolved administration and devolved public bodies' and commissioners' limited scope to promote and monitor equalities in relation to the actions of (non- devolved) cross-border agencies.

Moreover, this is compounded by the failure of some cross-border bodies to adapt to devolution and the distinctive equalities framework applying in Wales. For example, with regard to youth justice in Wales

the comments of the Welsh Social Justice minister indicate that cross border bodies used to pre-1999 practices have been slow to respond to the realities of devolution:

‘in recent years, in my present and previous ministerial roles, I have taken every opportunity to make the Youth Justice Board fully aware of the differing perspectives taken in Wales on many aspects of child welfare and education’.²³⁶

It is also an issue highlighted by the Children’s Commissioner for Wales.

A recent report notes that:

‘after seven years’ experience it has become clear that there are circumstances when the Children’s Commissioner for Wales’ powers are insufficient to safeguard some children’s rights and welfare. These include the power to take legal proceedings on behalf of a child or intervene in legal proceedings and to require information from devolved bodies outside of a review. Also in areas of policy and legislation that are not devolved to WAG such as youth justice actions, of the police and courts and most functions of the Home Office’.²³⁷

In respect of employment matters, enforcement of GB-wide anti-discrimination law is undertaken by Employment Tribunals (part of the Tribunals Service Agency, Department for Constitutional Affairs) covering Wales, Scotland and England. As observers note, the Tribunals Service Agency has been slow to adapt to devolution.²³⁸ Indeed, it only recognised Wales as a single administrative region in 1987. Unlike other cross-border agencies, the Tribunals Service has not fully developed its structures and practices to adapt to the distinctive policy

context in Wales. Fundamental shortcomings exist in the provision of disaggregated Tribunal data on discrimination cases in Wales. Accordingly, one study²³⁹ concluded:

‘in post-devolution Britain, there is an urgent need to recognise Wales as a distinct administrative entity. Existing arrangements not only add to constitutional and legal uncertainties but also hinder planning on a devolved regional basis’.

In terms of youth justice, recent research highlights significant shortcomings in meeting the needs of Welsh speaking young people in custody. It concludes:

‘That either the current Youth Justice Board for England and Wales needs to engage more proactively with the bilingual context of Wales, or a new Youth Justice Board for Wales should be constituted. Such a Board, would be specifically concerned and focused on Welsh issues and might therefore be more committed towards making equal opportunities a reality for Welsh speaking young people in custody’²⁴⁰

9.5 Full Lawmaking Powers to Maximise (i). Equalities Policy Innovation and, (ii). the Political Engagement of hitherto Marginalised Groups

Research shows that a striking feature of devolved governance has been the significant and marked increase in the electoral competition around equalities policies evident in the political parties’ manifestos in all-Wales national elections to the Assembly;²⁴¹ it is a trend also evident in Scotland and Northern Ireland (see Appendix Two.). Granting the

National Assembly full lawmaking powers will enable parties to maximise policy innovation in electoral competition around equalities – currently, notwithstanding political will to tackle discrimination and promote equalities, parties are limited in what they can promise in their election manifestos because of the cumbersome and limited nature of the National Assembly’s powers. Full law making powers will facilitate greater policy innovation – and may, to some extent, also address issues of a limited electoral turnout. The latter follows because academic research based upon Wales Election Survey data²⁴² indicates that post-devolution politics is characterised by subtle yet significant differences in political behaviour between the sexes. The study explored differences in women and men’s political behaviour (voting patterns and attitudes to politics and policy) and found that, in the devolved electoral context, women’s political priorities were sometimes different to men. The significance of this is, if replicated across all equalities constituencies (ethnicity, disability, LGBT people, age, etc) targeted equalities policies are likely to promote the voting of hitherto marginalized groups in devolved elections – and, may boost other modes of political engagement.

9.6 A Comparative Perspective: Scottish Equalities Legislation post-1999

Reference to the legislative outputs (1999-2009) of the Scottish Parliament reveals the greater scope that the Scotland Act (1998) affords lawmakers to advance the promotion of equalities in law. Of

equal importance here are the directness, accountability, clarity and responsiveness of the Scottish lawmaking process compared to the complicated and extended procedures for creating and passing Measures of the National Assembly for Wales.

Examples of post-devolution Scottish equalities enactments include:

- Adult Support and Protection (Scotland) Act (2007) (- contains provisions in relation to elder abuse).
- Prostitution (Public Places) (Scotland) Act (2007) (- for the first time, has created offences which target those who purchase sex on the streets)
- Education (Additional Support for Learning) (Scotland) Act (2004) (Sets out support measures and duties on education providers that are broader in scope than previous 'Special Educational Needs' legislation).
- Local Government in Scotland Act (2003) Section 59 - Equal Opportunities (Places a duty – inter alia - on local authorities mentioned in section 16(1) and any other person discharging a function under the Act to carry out their functions in a way which

encourages equal opportunities and observes equal opportunity requirements.

- Transport (Scotland) Act (2005), Section 5. Formulation and content of regional transport strategies (2) Its transport strategy shall include provision about each of the following matters ...
how transport in the region will be provided, developed, improved and operated so as ... to encourage equal opportunities and, in particular, the observance of the equal opportunities requirements.
- Sexual Offences (Proceedings and Evidence) (Scotland) Act (2002). (The Act has two main purposes: to prevent the accused in a sexual offence case from personally cross-examining the complainer; and, to strengthen the existing provisions restricting the extent to which evidence can be led regarding the character and sexual history of the complainer).
- Protection of Abuse (Scotland) Act (2001). (This Act extended the legal powers open to police and addressed an earlier shortcoming in the law that meant that unless a criminal offence had been committed, the police had no power to arrest an abusive person (including domestic abuse), who was in breach of an interdict).

- Standards in Scotland's Schools etc. Act (2000), S.5 Education authority's annual statement of improvement objectives. The statement so prepared and published shall be known as the authority's "annual statement of education improvement objectives" and shall include an account ... of the ways in which they will, in providing school education, encourage equal opportunities and in particular the observance of the equal opportunity requirements.

CHAPTER 10. SUMMARY OF FINDINGS

10.1 The Promotion of Equality in Public Policy and Law

Devolution in Wales has had a significant and positive impact on the promotion of equalities in public policy and law. The impact of constitutional reform on human rights has been less pronounced, yet here too there is some evidence of the emergence of a distinctive approach. Under the terms of section 77 of the Government of Wales Act (2006) (and, the equivalent clause in the earlier, 1998, devolution statute) the Welsh government is statutorily obliged to promote equality for all people in the exercise of all of its functions. This has led to the prioritisation of equalities as a key issue for government as reflected in the declaration at the first meeting of the National Assembly's cross-party Committee on Equality of Opportunity in July 1999 when the minister with responsibility for equalities stated: 'the executive, will need to take equality of opportunity factors into account in every policy decision. This mainstreaming approach is fundamental'. Thus, over the past decade there has been a plethora of public policy initiatives in relation to equalities. This marks a major discontinuity with public administration before 1999 when equalities were generally not seen as an issue for the Welsh Office. Examples of post-devolution equality policies include those aimed at promoting the participation of children and young people in public decision-making (for example: 'Funky Dragon' – the Children and Young People's Assembly, Children and

Young People's Partnerships in each local authority area, and the introduction of a Statutory requirement for Associate Pupil Governors in schools). Education policy has also seen a range of initiatives. Recent examples include the revised National Curriculum Orders 2008-9 that refer to a: 'duty on schools in Wales towards present and prospective learners to eliminate discrimination and harassment, to promote positive attitudes and equal opportunities and encourage participation in all areas of school life'.

The first decade has also seen policy innovation in relation to the promotion of equalities. For example, the creation of the offices of Children's Commissioner for Wales and, Older People's Commissioner for Wales - the first independent statutory Commissioners of their type in the UK. A further example is the introduction of a statutory requirement that all primary, secondary and special schools in Wales have a school council so that all children and young people can contribute to decisions that affect them. In some areas there is evidence of progressive devolved policies going beyond the approach to equalities and human rights seen at Westminster - as in the case whereby the Welsh Assembly Government ensured that the United Nations Convention on the Rights of the Child was enacted into secondary legislation relating to the creation of the Children's Commissioner for Wales's office ('whereas the UK government had refused to include it in the primary legislation'²⁴³). Co-ordination

between devolved government, public sector and unions on equalities matters is another feature of post -1999 developments. For example, the three-phase 'Close The Pay Gap Campaign' launched in 2001 was undertaken jointly between the Welsh government, EOC Wales and the Wales Trades Unions Congress. A further result of devolution is the creation of an extensive range of all-Wales policies on equalities topics – where, before constitutional reform, none existed. For example: 'Tackling Domestic Abuse: The All Wales National Strategy', and the 'Forced Marriage and Honour Based Violence Action Plan'.

Post-devolution policies use a variety of approaches to promoting equality. Some set out their aims in terms of universal entitlements. For example, the 'All Wales Youth Offending Strategy' states that: 'every young person in Wales aged 11-25 has a basic entitlement to: participate in decision-making on all matters which concern them'. Others have seen the introduction of state grants and allowances. For example, the introduction of Special Support Grants via Student Finance Wales to provide funding for assistance with the costs of registered or accredited childcare during term time and short vacations and, the Parents' Learning Allowance that contributes to the support of dependants in a learner's household.

In order to engage targeted groups in the formulation of policy successive governments have extended funding to individual

equalities-related organisations, projects, policy networks and forums. For example, this has been evident in regard of faith groups. Thus, funding has been extended to the All Wales Saheli Association that 'seeks to develop positive futures to enrich and maximise the quality of the lives of Asian and Muslim children and families'.²⁴⁴ A further example is the Muslim Women Talk project that received Welsh government funding (2006-7). Its aims were: 'to establish a valuable communications link between the policy makers and the Muslim community living in Wales that allowed individuals to receive relevant/accurate information, express concerns, raise issues and develop the confidence to positively contribute to community life'.²⁴⁵ Such a participatory approach to policy making is evident in a range of equalities policies. For example, the work of the Advisory Group on The Strategy for Older People in Wales (2007) in developing the Strategy for Older People in Wales 2008-2013 (WAG, 2008).

Against the background of these positive developments must be weighed a number of shortcomings (particularly in the early years of the National Assembly) and ongoing challenges. Foremost is the fact that notwithstanding the extensive policy outputs on equalities during the first decade of devolution, major inequalities persist in Welsh society. These are evident in relation to all equality 'strands' (i.e. ethnicity, gender, disability, sexual orientation, age, faith, language and so on) and in respect of many areas of social, economic and

political life. Whilst, as noted, progress has undoubtedly been made over the past decade, government policies during the early years of the National Assembly were particularly prone to a 'declaratory approach to equalities'. In other words, they contained limited – or no – details in respect of intended future equalities impact, policy targets or implementation methods. This problem has yet to be fully addressed. At present there is significant variability between government departments/ policy areas regarding the promotion of equalities. For example, there is some evidence of sustained and good practice in areas such as education, children, and young people – and shortcomings in others (e.g. the environment and, sustainable development).

As the GB single – equalities Bill passes through the UK parliament and increasing attention is placed upon 'cross- strand' approaches to equalities whereby policies address inequalities and discrimination relating to two or more characteristics of an individual or groups (– such as ethnicity and age, or gender and disability), it must be noted that to date there has been limited progress in cross-strand (or 'intersectional') approaches to equalities in devolved public policy. It is likely that developments such as the government's Single Equality Scheme (2009) and Inclusive Policy Making Tool (2008) will begin to address this issue. Problems also remain in relation to gaps and limitations in official

statistics relating to equalities in Wales; a concern that has yet to be fully addressed.

In terms of scrutinising and monitoring progress in relation to the promotion of equalities, over the past ten years three official reports have highlighted significant shortcomings in relation to the aim of mainstreaming equalities in the work of government. The endurance of this situation, as identified in the reports, underlines the fact that over the period 1999-09 there have been significant failings in the scrutiny of the Welsh government's equalities programme. In general, the period 1999-2006 can be characterised as one of 'disconnect' between the aim of mainstreaming and government actions. The failings have included: an emphasis on bureaucratic processes associated with government equalities initiatives rather than the results that they achieve; and, the absence of a systematic and robust process of setting equality targets accompanied by rigorous scrutiny and monitoring of whether policy goals have been met. However, there is some evidence that the introduction of the Welsh Assembly Government's new Mainstreaming Strategy in May 2006 has begun to address these earlier failings. Notably, through the development of mainstreaming tools – including new equality impact assessment procedures and improved equalities data-gathering designed to inform both policymaking and policy evaluation. Overall, there is mixed evidence on the impact of policies designed to promote equalities. For

example, a review of social landlords' implementation of the government's Black and Minority Ethnic Housing Plan identified a significant implementation gap.²⁴⁶ In contrast, a review of policy on Additional Learning Requirements found that: 'most children and young people with special educational needs [were] receiving good provision and achieving good standards in learning and behaviour in mainstream and special schools; [and that] effective support [was] provided for pupils with severe and complex needs and disabilities'.²⁴⁷

It should be noted that in recent years there is some evidence of a more sophisticated approach to the promotion of equalities in government policy documents when compared to the rather generalised and undeveloped references to equalities that often featured in policies and strategies in the first years of the National Assembly. For example, the use of an equalities impact assessment in 'Skills That Work for Wales: A Skills and Employment Strategy and Action Plan' (WAG, 2008) and, equalities targets in the Minority Ethnic Housing Action Plan 2008-2011 (WAG, 2008).

A further striking feature of the first decade of devolution has been the increasing use of legal instruments passed by the National Assembly to promote equalities. This is significant, particularly so in the wake of the Measure-making powers in the second devolution statute of 2006 for it marks the move towards the increasing use of 'hard policy

enforcement mechanisms' in equalities policies - and beyond. The result of the increasing legislative dimension to devolution in Wales is the creation of a distinctive legal framework on equalities. It is one that supplements GB statutes and places Wales-specific duties, regulations, monitoring procedures, funding regimes and service delivery requirements on devolved public bodies. As a result, different rights, means of redress and welfare entitlements have begun to apply in the countries of the UK. In some cases, as with the proposed Measure on the Welsh language, albeit to a limited extent, Wales-specific equalities law also applies to parts of the voluntary and private sectors.

10.2 Human Rights

Human rights are enshrined in the constitutional law associated with devolution in Wales. The Welsh administration is bound by the terms of the European Convention on Human Rights. Section 81 of the Government of Wales Act (2006) states: 'The Welsh Ministers have no power— (a) to make, confirm or approve any subordinate legislation, or (b) to do any other act, so far as the subordinate legislation or act is incompatible with any of the Convention rights'. In contrast to equalities matters, thus far, the impact of devolution on human rights in Wales has been less. One reason for this is the single legal jurisdiction of England and Wales – and the fact that, in respect of non-devolved matters such as criminal justice, many key statutes apply uniformly to the two countries. However, there is limited evidence from the first

decade of devolution of some policy divergence between Wales and England in relation to human rights. The foremost example is policy in relation to children. In 2000 the devolved administration announced its intention to: 'driving forward implementation across Wales of the principles of Article 12 of 'the UN Convention on the Rights of the Child' (UNCRC). This has shaped a number of devolved policies and has been welcomed by the UN Committee on The Rights of the Child. A key point identified by a number of policy actors is the need to increase the capacity and expertise on human rights present not only in government but also civil and civic society.

An example of significant divergence between Wales and England is provided by the extent to which the UN Convention on the Rights of the Child' features in the respective legislative frameworks for the Children's Commissioners in each country. Overall, the growing legislative dimension to devolution in Wales is likely to raise future issues relating to the distinctive application of human rights law in Wales compared to England – with associated implications for legal administration and the monitoring of human rights.

10.3 Inclusive Governance?

A further striking aspect of the impact of devolution on the promotion of equality relates to the notion of political equality - or overturning the longstanding marginalisation and exclusion from public decision

making of key social groups – women, disabled people, people of different ethnic backgrounds, LGBT people, older people and so on. This was the goal of equality activists (notably feminists and members of the Welsh language movement) who lobbied during the lead-up to devolution for inclusive mechanisms in the institutional blueprint of the National Assembly. As a result, under the heading ‘The inclusive exercise of functions’: sections 72 to 78 of the Government of Wales Act (2006) detail a range of channels and procedures designed to foster civic engagement (these were also present in the original 1998 devolution Act). They are supplemented by a number of the National Assembly’s Standing Orders (i.e. the procedural law of the devolved legislature). Taken together, these legal clauses associated with devolution create institutional mechanisms linked to the aim of political equality. The majority of these inclusive mechanisms have no parallel in the pre-devolution mode of governance. Examples include: The National Assembly’s Standing Committee on Equality of Opportunity; a range of statutory partnerships between government and local authorities, public sector bodies, the voluntary sector and business organizations.

Examination of the workings of these ‘inclusive’ features of devolved governance over the past decade shows that they have generally been effective in advancing political equality. For example, the National Assembly’s cross-party Equality Committee has been a key

institutional nexus whereby advisors drawn from civil and civic society have lobbied and advised elected representatives on equalities matters. In similar fashion, analysis of the working of the various partnerships with devolved government reveal that they have mostly been effective in facilitating the participation of hitherto marginalized groups – most notably, equalities interests - in the work of government. Further significant impacts of devolution on equalities relate to new forms of representation and the way that politics are conducted at the devolved level. In part, this is linked to the international first when the Welsh legislature became the first to secure gender parity amongst representatives (without the use of quotas). Research shows that the high proportion of women elected to the National Assembly are probabilistically more likely than their male counterparts to advance gender equality issues in political debate and committee work.²⁴⁸ Another dimension relates to procedural aspects of the National Assembly: its Standing Orders set out a number of requirements such that the principal of equality is upheld in its proceedings. Analysis reveals that these have been effective in areas such as gender-neutral titles, proscribing discriminatory language in political debate, and equality for the Welsh and English languages in legislative functions. Overall, it can be concluded that in the wake of constitutional reform there is greater 'system openness' to the concerns of those outside government – and this has facilitated the promotion of equalities in policymaking.

From an institutional perspective a further significant consequence of the creation of the National Assembly has been the development of the 'equalities infrastructure' in Wales (i.e. state bodies that are wholly – or in part- concerned to monitor and uphold the promotion of equalities as part of a public performance review remit) – this represents a major increase in the capacity of the state to monitor equalities. Such state institutions include the Welsh Commissioners for Children and Older People; pre-existing organisations such as the Welsh Language Board and the education inspectorate, Estyn; and, GB bodies that have quasi-federal structures such as the Equality and Human Rights Commission – as well as devolved bodies such as the Wales Audit Office and the Welsh Care Standards Inspectorate. However, there has been limited co-ordination of devolved inspectorates' and allied bodies' monitoring of equalities, this suggests that their full potential in monitoring the government's equalities policies has yet to be realised.

10.4 Transferable Lessons

Transferable lessons from the first decade of devolution in Wales in relation to the promotion of equalities in policy and law are outlined throughout this report. The following are key examples that may inform practice in other polities.

- The prioritisation of equalities as a key issue for government witnessed during the first decade of devolution indicates that there is merit in placing government under an all-embracing statutory duty for promoting equality for all people in the exercise of all public functions.
 - It can lead to extensive policy outputs in relation to the promotion of equalities.
 - It can result in the increasing use of legal instruments to underpin government equality policies.
 - However, adequate resources and effective scrutiny are also central to securing effective equalities outcomes.
 - Importantly, equality policies need to set clear equalities targets, use impact assessment techniques, be based upon appropriate evidence/ research, establish clear lines of responsibility for implementation and, contain feedback mechanisms to inform future policy making.
- Government subscription to mainstreaming can result in significant institutional developments designed to promote equalities in public policy.

- It can result in the adoption of policy tools and procedures (e.g. equality impact assessments, participatory approaches to policymaking etc).
- However, it too requires effective scrutiny and monitoring – as well as expertise, training, the application of mainstreaming tools and principles – and, must be seen as a long-term project – not a ‘quick fix’.
- There is merit in enshrining mechanisms in the constitutional law that shapes the functioning of legislatures to promote equalities and foster inclusive governance.
 - Cross-party forums – such as the National Assembly’s Equality Committee can act as a key nexus for equalities organisations in shaping government equalities policies.
 - In like fashion, statutory partnerships between government and the public, private and voluntary sectors can foster a participatory dimension to policymaking as outlined in the literature on mainstreaming.

- o The inclusion of legal clauses requiring that the principle of equality be upheld in the functioning of legislatures can secure the use of gender neutral official titles, equality between languages, family friendly working hours – and, proscribe discriminatory language in political debate.

10.5 Future Progress?

A key factor determining whether the second decade of the National Assembly will continue to see the progress of the first ten years is the effectiveness of opposition parties and backbench AMs – as well as external bodies - in holding the Welsh government to account in relation to its statutory equality duty. Future progress in relation to equalities will also depend upon the powers available to the devolved administration to tackle deep-set and enduring patterns and processes of inequality and discrimination. In this regard, from an equalities perspective, there are a number of arguments that underpin the case for moving towards full lawmaking powers for the Welsh legislature.

The European Commission identifies the following principles of ‘good governance’: openness, participation, accountability, effectiveness and coherence. Yet, the complexity and opaque nature of the Assembly’s powers undermines each principle. Research shows that uncertainty amongst members of civil society organisations over the National Assembly’s powers can limit the participation of groups

targeted by equalities initiatives. Moreover, a study of the political participation of equalities organisations in the work of government found that the often-opaque, shared nature of policy responsibilities between the National Assembly and Westminster required a dual lobbying/ monitoring focus. This was seen to have major resource implications and was generally a challenge that was not faced by comparable organisations operating in Scotland, Northern Ireland or England. In addition, analysis of the transcripts and associated documents of the cross-party Standing Committee on Equality of Opportunity reveals that, in approximately a half of the Committee meetings studied, speakers' (AMs and invitees) were frustrated and/ or uncertain owing to limitations / lack of clarity in Assembly's powers in relation to the promotion of equalities in different policy areas.

Granting full Lawmaking Powers to the Assembly would also limit Westminster constraints on devolved equalities policies. The past decade has seen a number of examples in relation to the promotion of equalities in public policy and law where the absence of full law making powers has meant that Westminster has constrained the policy ambition of the Welsh government. For example, academic analysis of the Welsh government's 'All Wales Domestic Abuse Strategy' revealed how domestic abuse policy in Wales has been subject to a 'Westminster drag' effect.²⁴⁹ In contrast to more innovative policies seen in Scotland, the Welsh government has been constrained by

having to follow the dominant Whitehall policy frame on criminal justice and policing in relation to domestic abuse.

A further argument for primary powers is to promote effective cross-border working on equalities issues. In the past decade a number of cases have surfaced where the devolved administration has limited powers to make cross border agencies comply with the distinctive equalities framework in Wales – and, where devolved agencies have limited scope to influence cross-border, non-devolved bodies operating in Wales.

A further striking feature of the first decade of devolution is the increasing attention placed on equalities issues in the manifestos of the main political parties in elections to the National Assembly. Accordingly, granting the National Assembly full lawmaking powers will enable parties to maximise policy innovation in electoral competition around equalities – currently, notwithstanding political will to tackle discrimination and promote equalities, parties are limited in what they can promise in their election manifestos because of the cumbersome and limited nature of the National Assembly's powers. Lastly, from a comparative perspective, the evidence the legislative outputs (1999-2009) of the Scottish Parliament reveals the greater scope that the Scotland Act (1998) affords lawmakers to advance the promotion of equalities. Of equal importance here are the directness,

accountability, clarity and responsiveness of the Scottish lawmaking process compared to the current, somewhat, Byzantine procedure for creating and passing Measures of the National Assembly for Wales.

APPENDIX ONE

Deliberations of the National Assembly for Wales cross-party Standing Committee on Equality of Opportunity: Examples of Speakers' frustration/ uncertainty stemming from limitations / lack of clarity in the National Assembly's powers (2006-8).³

18.01.2006

Leanne Wood AM (Plaid Cymru): 'I know that *this is a non-devolved matter* [scope disability equality law], *but there is a huge amount of concern out there* about the changes coming through'.

14.06.2006

Helen Mary Jones AM (Plaid Cymru): 'I have some points to put to the Minister. First, the draft guidance [re. Delivering Services in British Sign Language] makes it clear that it *does not apply to non-devolved services in Wales. However, what can the Minister and the Government do to influence those services?* I am particularly concerned about experiences that I know that BSL users have had in dealing with the police, in reporting crimes or, indeed, when being accused or arrested. That can be very difficult, *so can the Minister tell us how she can influence those non-devolved services?* I fully understand that *she cannot make them do anything*'.

12.07.2006

'Jenny Randerson AM (Welsh Liberal Democrats): 'It did strike me that the issue of giving *fewer powers to the Assembly than were given to the Scottish Parliament to scrutinise new legislation could have equal opportunities implications*'.

Alun Pugh AM (Welsh Labour): 'We cannot get the dyfarnydd [Welsh Language Commissioner] onto a statutory footing at the moment, *simply because we do not have the statutory powers*'.

22.03.2006

Gwenda Thomas AM (Welsh Labour): '*I have written to the Business Minister to ask how the Assembly Government will be responding to recommendations in the 'Improving the Life Chances of Disabled People' report in devolved areas*'.

³ Equality Committee proceedings were not officially transcribed prior to 2006 – hence the selections in this submission are taken from 2006-08. NB: Emphasis added to quotations.

24.01.2007

Gwenda Thomas AM (Welsh Labour): 'I would like to ask a question on what is *probably a non-devolved issue* [i.e. It might be argued that the Chair of the Equality Committee is placed in a position whereby she does not know in certain terms the scope of the National Assembly's legal competence in the matter under consideration]. There is a reference to the Children Act 1989 and the fact that young people are unable to claim after-care support. How is it that we can supersede the requirements of an Act of Parliament, such as the Children Act 1989 or the Children Act 2004? Why are such young children exempted from the requirements of that Act if it is not amended to allow that to happen? *I would like some clarity* on the implications of Acts of Parliament'.

08.03.2007

Jane Hutt AM, (Welsh Labour) Welsh Equalities Minister: 'In accepting 35 of the 40 recommendations, I just want to say that we *would like the other five to be implemented, but some of them fall outside our powers*. However, we will ensure that those national and local organisations deliver and report back progress on those recommendations... If we deliver this, we will make a huge difference to Wales, particularly to the lives of disabled young people'.

Helen Mary Jones AM (Plaid Cymru): 'Many areas that affect housing are devolved: for example, public housing policy and planning policy are devolved, so many of the issues that this code [Draft Code of Practice on Housing] most directly addresses are completely devolved matters. It seems to me to be *borderline perverse* that it will be laid before Parliament *but not here*. It is not statutorily required to be debated here...'

Mr C. Myant (Commission for Racial Equality): '*The difficulty* there is that the procedure that would have to be followed through takes some time. You as Members need to discuss this with all of us, particularly in preparation for the future equality body, because *there are more devolved areas where you have the authority over the area of work, but where Westminster retains the authority for setting the equality Guidelines*'.

Jane Hutt AM, (Welsh Labour) Welsh Equalities Minister: 'Helen Mary picked up on the *key point about non-devolved services*, which Rosemary [Butler AM] and Lorraine [Barrett AM] also mentioned. We particularly think about the police and crime, but, as you say, Lorraine, employment services are also crucial. It seems to me that *not only do we have to be held to account as the Welsh Assembly Government,*

but the UK Government also has to be held to account. My interactions would be ministerial, within the Welsh Assembly Government, but I will also undertake to inform Ministers in the UK Government of, and liaise with them on, what we are doing in terms of the consultation, and tell them that this is an opportunity for us all to put our houses right in terms of taking this forward'.

12.07.2006

Jenny Randerson AM (Welsh Liberal Democrats): *'It did strike me that the issue of giving fewer powers to the Assembly than were given to the Scottish Parliament to scrutinise new legislation could have equal opportunities implications'.*

Alun Pugh AM (Welsh Labour) *'We cannot get the dyfarnydd [Office of Welsh Language Commissioner] onto a statutory footing at the moment, simply because we do not have the statutory powers'*

24.01.2007

Helen Mary Jones AM (Plaid Cymru): *'We all appreciate what the Minister does in relation to the Home Office. In this particular case, I think that refugees and asylum seekers would be an awful lot better off if more of those issues were devolved'.*

*'Gwenda Thomas AM (Welsh Labour): 'I would like to ask a question on what is probably a non-devolved issue. There is a reference to the Children Act 1989 and the fact that young people are unable to claim after-care support. How is it that we can supersede the requirements of an Act of Parliament, such as the Children Act 1989 or the Children Act 2004? Why are such young children exempted from the requirements of that Act if it is not amended to allow that to happen? I would like some clarity on the implications of Acts of Parliament'. [In response:] Edwina Hart (Welsh Labour, Minister): 'Although you have your own legal adviser here, I am happy to take this point back to my officials. We understand that this is the position, because it has been discussed before' ... [in response] Edwina Hart AM (Welsh Labour, Minister) 'The trouble is that, as you quite rightly said, *most of this is not devolved to us. The major issues are not devolved*, and we are dealing with the problems that follow those What we are trying to do with the strategy is make Wales a welcoming place, but also deal with practical issues of housing, health, education and so on as *they impact on Wales*. When certain things come from the Home Office, *we find a problem* with how they impact directly on issues that we might like to deal with slightly differently in Wales'.*

28.02.2007

Jenny Randerson AM (Welsh Liberal Democrats): '*What powers does the Assembly have to ensure that local development plans pay due regard to the need to have official [Gypsy/ traveller] sites?*'

Eleanor Burnham AM (Welsh Liberal Democrats): 'This is a cause for concern, and we talked about it this morning ... *I am not sure with whom the responsibility lies for this.* Can you help us? What should we encourage the Assembly Government—or the Westminster Government if the Assembly does not have enough powers—to do about this?

13.03.2008

[Committee Inquiry into Migrant Workers] Ann Jones AM (Welsh Labour): 'How does your voluntary code of practice help with that? Should it not be firmer, so that any employer who refuses to sign up to it is prevented from practising?

Mr Walker [Head of Policy and Campaigns, Wales TUC]: Absolutely. That is what we would like, in an ideal world. However, *it is voluntary because of the Assembly's powers*'.

17.04.2008

Bethan Jenkins AM (Plaid Cymru): 'specific duties under gender equality ... Would that be something that would be coming through from a ministerial level to the Assembly? *I just wanted clarification on that process*'.

16.07.2008

Ann Jones AM (Welsh Labour): 'We also have to decide the topic for our next [cross -party Equality Committee] review. We have had three suggestions and we have looked at one, which I was keen to do, namely to look at carers' allowances ... However, apparently we cannot tackle that because social security issues are not devolved; they remain matters for the Department for Work and Pensions, so it would be a pointless exercise. *Therefore, that has been ruled out, as we do not have the relevant powers*'.

Country/ Province	Party ⁴	Incidence of 'equality' / 'equal opportunities'		Incidence of 'women' / 'gender' ²⁵⁰		Examples of Gender Equality Policy Statements
		1998/9	2003	1998/ 9	2003	
SCOTLAND	Scottish National Party †	4	15	3	3	'Housing: We will meet the needs of women and families seeking refuge from violence, and the needs of ethnic minorities' (p.23).
	Scottish Conservative and Unionist Party	0	1	0	0	-
	Scottish Liberal Democrat‡	6	3	1	3	'We will build smaller prison units, particularly for women' (p.5).
	Scottish Labour*	12	2	7	4	'Children and families are important to Labour. That is why we want to end the violence that too many women still face in their own home'.
NORTHERN IRELAND	Sinn Féin*†	21	102	11	48	'A multi-faceted approach to eradicate violence against women, including counselling services, education projects and community initiatives ...Support of educational initiatives that combat sexism and sex stereotyping in our society' (p.8).
	Northern Ireland Women's Coalition*	24	5	7	8	'a commitment to the full and equal participation of women in society... a strong commitment to gender equality' (p.14); 'prioritise women's needs for housing and social services' (p.21); 'We will work for policies aimed at producing a police service that reflects the population in terms of religion and gender' (p.7).
	Democratic Unionist Party	9	15	0	4	-
	Ulster Unionist Party*	7	2	5	1	(5) 'We believe that women are entitled to have equal access to the employment market and to opportunities to pursue chosen careers. There should be equal pay for equal work' (p.5).
	Social Democratic and Labour Party (SDLP)	13	68	7	2	(7) 'independent legal status for women married to working men and the end to inequalities experienced by women in the social security system' (p.9)

⁴ Manifesto has dedicated section on equality and/or women 1999 *; 2003 †; or, separate, dedicated 'mini-manifesto' on equalities issued ‡.

WALES	Plaid Cymru- the Party of Wales*†	10	23	4	5	(4) 'encourage a greater range of members of society to be represented in local council chambers – particularly younger people and women' (p.12).
	Welsh Conservatives	0	2	1	1	'working for businessmen and women' (p.2).
	Welsh Labour*†‡	6	24	6	19	'the Assembly will work to increase further the representation of women and ethnic minorities within those public bodies to which it has power of appointment'
	Welsh Liberal Democrats*†	7	11	0	5	'Consider the diverse needs of men and women in providing public services'.

APPENDIX 2. Content Analysis of Party Manifestos in the Devolved Elections 1998/9 and 2003²⁵¹

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³ ‘Devolution’ here is used as a shorthand term to refer to the creation of the National Assembly for Wales in 1999. It is acknowledged that various modes of administrative devolution have existed since the nineteenth century (and on some readings, even earlier).

⁴ School Government (Terms of Reference) (Wales) Regulations (2000)

⁵ Chaney, P. (2008) *Devolved Governance and the Substantive Representation of Women: The Second Term of the National Assembly for Wales, 2003-07*. Paper accepted for publication in the journal *Parliamentary Affairs*, Volume 61, 2; Chaney P, (2006) *Critical Mass, Deliberation and the Substantive Representation of Women: Evidence from the UK’s Devolution Programme*, *Political Studies*, 54, 4. 671-91.

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⁷ Welsh Assembly Government (2005) *Review of Social Landlords’ Implementation of the Black, Minority Ethnic (BME) Housing Action Plan for Wales*, Cardiff, WAG.

⁸ NAFW (2006) *Equality Audit*, Cardiff, NAFW, para.17.24, ‘A baseline review has been completed by the Wales Audit Office which identified good practices in place. Reference is also made to a national mental health profile, which will collate data on mental health service usage, identify gaps and provide an analysis’.

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¹⁰ Wales Audit Office (2007) Tackling Homelessness in Wales: A Review of the Effectiveness of the National Homelessness Strategy, Cardiff, WAO.

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¹² <http://new.wales.gov.uk/topics/equality/rightsequality/faith/engagement/?lang=en> accessed September 29, 2008.

¹³ Specifically, the request to confer legislative competence on the Assembly to enable the removal of the defence of reasonable punishment in relation to the physical punishment of children. See <http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-vc-home/bus-committees-third-vc-agendas.htm?act=dis&id=81617&ds=4/2008>

¹⁴ <http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-legislative-competence-orders/bus-legislation-lco-2007-5-2.htm>

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²⁰ 2007) Advice and Guidance to Public Service Providers: Promoting Multi-Strand Equality in the Welsh legislative Context and Beyond, Welsh Assembly Government / UK Govt Department for Communities and Local Government

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- ⁴⁸ s 73(3). Specifically, the arrangements for ensuring that proper action is taken in response to any disclosure of information which may tend to show (a) that a criminal offence has been committed; (b) that a person has failed to comply with any legal obligation to which he is subject; (c) that the health and safety of any person has been endangered; or (d) that information tending to show that any matter falling within one of the preceding paragraphs has been deliberately concealed.
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'Where a person lacks accommodation or where their tenure is not secure'.

¹²⁶ WAG (2005) National Homelessness Strategy For Wales 2006 – 2008, Cardiff, WAG, pp. 26-50.

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¹²⁸ Wales Audit Office (WAO) Tackling Homelessness in Wales: A Review of the Effectiveness of the National Homelessness Strategy, Cardiff, WAO.

¹²⁹ WAG (2008) Wales Assembly Government One Wales Delivery Plan 2007-2011, Cardiff, WAG, p.27.

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¹³³ Flynn, A., Marsden, T., Netherwood, A. and Pitts, R. (2008) The Sustainable Development Effectiveness Report For The Welsh Assembly Government, Cardiff, WAG, p.37.

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- ¹⁵³ All-Wales Alliance for Research and Development in Health and Social Care (AWARD) (2007) Strategy for Older People in Wales: An Interim Review, Swansea, AWARD.
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- ¹⁵⁶ Inter alia, the evaluation report stated: 'findings from case studies representing just four of the 22 local authority areas in Wales ...it was not possible to include all possible variations in the nature of areas, local authority structures, or approaches to implementation of the Strategy. Areas where there are known to be contentious issues relating to implementation of the Older People Strategy were also excluded...' (AWARD, 2007: 121).
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- ²⁰⁴ Papers of VSPC Meeting 27 May 2004
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- ²⁰⁷ Standing Order 28.4, 'A petition is not admissible if it:
- (i) contains fewer than 10 signatures;
 - (ii) fails to comply with Standing Order 28.2 or is otherwise not in proper form;
 - (iii) contains language which is offensive;
 - (iv) requests the Assembly to do anything which the Assembly clearly has no power to do; or
 - (v) is the same as, or in substantially similar terms to, a petition which was: (a) presented by or on behalf of the same person, body corporate or unincorporated association during the same Assembly; and (b) closed less than a year earlier'.
- ²⁰⁸ Standing Order 28.9
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- ²¹⁴ Chaney P, (2006) *A Case of Institutional Decoupling: Equality and Public Policy in Post Devolution Wales*, *Scottish Affairs*, 56, 22-34. ISSN 0966 0356
- ²¹⁵ Hitherto known as the Equality Policy Unit and, The Strategic Equality and Diversity Unit
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- ²²¹ See for e.g. *Environment Strategy for Wales (2006)* "Reducing greenhouse gas emissions / Pollution – specifically any future actions to reduce emissions - Relevant to race, gender and disability equality strands due to differing emission patterns, for example as a result of different patterns of car ownership' (p.67). And, *The Social Services Strategy for Wales "Fulfilled Lives, Supportive Communities (2007)* 'It is important that the principles of quality, responsiveness and equality will become core features of social care in Wales. In tailoring services to the needs of individuals and their carers, social services need to take account of religious, cultural, and ethnic needs as well as age, gender and sexual orientation' (p.20). For a further discussion see Chaney (2008).
- ²²² NAFW (2004:64) 'Recommendation 20: We recommend that the Assembly Government pilots gender budgeting in a policy area to assess the level of equity in financial allocations, with a view to expanding its use across the Assembly'. *The Welsh government's Annual*

Equality Report (2007) notes: 'the Finance Department is providing support to policy colleagues on gender budgeting. These are the tools and processes designed to facilitate a gender analysis in the formulation of budgets and the allocation of resources. This will enable understanding of the differential impact of spending on the two genders' (WAG, 2007:18).

²²³ WAG (2008) *Inclusive Policy Making: Full Impact Assessment*, Cardiff, WAG. See especially the pro forma for policy officials on page 7. There are no incidences of the word 'language' or 'Welsh' in the document.

²²⁴ Beveridge, F. and Nott, S. (2002). Mainstreaming: A Case for Optimism and Cynicism, *Feminist Legal Studies*, 10, 299–311.

²²⁵ In legal terms, under s.120 of the Government of Wales Act (1998) the Welsh statutory duty to have due regard to equalities applied to the National Assembly as a whole up until May 2007. Subsequently, the Government of Wales Act (2006) separated the executive and legislative branches and placed the duty on Welsh ministers (see s.77).

²²⁶ NAFW (2000) *Children and Young People: A Framework for Partnership*, Cardiff, NAFW.

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²³² Chaney, P., Fevre, R., and Stephens, N. (2003) Findings from the Economic and Social Research Council funded project: 'Social Capital and the Participation of Marginalized Groups in Government' (R000239410), Paper presented at the Engendering Democracy - Women's Organisations and their Influence on Policy Making Conference, Friday, 5 December 2003, Queen's University Belfast

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²³⁵ Charles, N. and Mackay, F. (2008) *Developing Domestic Abuse Strategies in Devolved Legislature: Scotland and Wales Compared*, Paper Presented to the Engendering Devolution Conference, University of Warwick, November 21, 2008.

²³⁶ WAG (2007) *Welsh Assembly Government Statement, Youth Justice System in Wales*, 20 November 2007, By Edwina Hart, Minister for Health and Social Services, Cardiff, WAG.

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²⁴⁷ NAFW (2006) Equality Audit, Cardiff, NAFW, para.17.24, 'A baseline review has been completed by the Wales Audit Office which identified good practices in place. Reference is also made to a national mental health profile, which will collate data on mental health service usage, identify gaps and provide an analysis'.

²⁴⁸ Chaney, P. (2008) Devolved Governance and the Substantive Representation of Women: The Second Term of the National Assembly for Wales, 2003-07. Paper accepted for publication in the journal *Parliamentary Affairs*, Volume 61, 2; Chaney P, (2006) Critical Mass, Deliberation and the Substantive Representation of Women: Evidence from the UK's Devolution Programme, *Political Studies*, 54, 4. 671-91.

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²⁵⁰ As identified by the search terms 'women' and 'gender' (excludes incidence of 'women' in reference to the party name Northern Ireland Women's Coalition)

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