

# Consultation response from the Equality and Human Rights Commission:

## Consultation details

Title: Scrutiny of the Welsh Government's impact assessments for its draft budget
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Source of consultation: the National Assembly's Finance Committee, Equality, Local Government and Communities Committee, and Children Young People and Education Committee
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Date: Monday 5 November
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## For more information please contact

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## About the Equality and Human Rights Commission

The Equality and Human Rights Commission (the Commission) is a statutory body established under the Equality Act 2006. It operates independently to encourage equality and diversity, eliminate unlawful discrimination, and protect and promote human rights. The Commission enforces equality legislation on age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. It encourages compliance with the Human Rights Act 1998 and is accredited at UN level as an 'A status' National Human Rights Institution, in recognition of its independence, powers and performance.

## Summary

**In setting its budget, the Welsh Government should:**

- Fully comply with the Public Sector Equality Duty (PSED) in a timely manner, with particular reference to the specific duties on assessing impact and engagement.
- Build further on the recommendations of the 'Appreciative Inquiry into the Welsh Government's approach to assessing equality impacts of its budget' report, including a review of the new strategic integrated impact assessment process to ensure that it complies with the PSED.
- Target its tax and spending decisions on minimising and reducing disadvantage experienced by different groups, and should conduct and publish a Cumulative Impact Assessment of the varied impact on people with different protected characteristics alongside all national fiscal events.
- Use budgetary opportunities to take forward priorities and recommendations identified in the Commission's *Is Wales Fairer?* report and its own PSED equality objectives.

**Questions for consideration:**

We would welcome the Committees exploring the following questions with Welsh Government:

1. How has the Welsh Government complied with the PSED specific duties, particularly the requirements to engage with stakeholders and to analyse impact?
2. How does the Welsh Government ensure that the equality impact assessment of its budget is integral to the budget-setting process from the outset?
3. Has the Welsh Government developed a Cumulative Impact Assessment to understand the overarching impact of all spending decisions?
4. How is the Welsh Government using its budget-setting to consider the delivery of its strategic equality plan objectives and the key findings within *Is Wales Fairer?*

**Public Sector Equality Duty and assessing impact**

This year, the Welsh Government produced a Strategic Integrated Impact Assessment (Annex D of the draft budget 2019-20). The Welsh Government must comply with the duties outlined within the PSED when conducting its strategic integrated assessment.

The Equality Act 2010 public sector equality duty (PSED) is intended to ensure equality considerations are built into the design of policies and the delivery of public services. Under the duty, public bodies, including the Welsh Government, are required to have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct that is prohibited by the Act
- advance equality of opportunity between people who share a relevant protected characteristic<sup>i</sup> and those who do not
- foster good relations between people who share a protected characteristic and those who do not.

The specific duties<sup>ii</sup>, passed by the National Assembly, set out the steps that listed bodies in Wales must take in order to demonstrate that they are paying due regard to the general duty. Assessing the equality impact of proposed policies and practices is one of the specific duties.

Budget-allocation is a fundamental practice for which the Welsh Government is required to demonstrate it has assessed the equality impacts and, having considered this, have 'due regard' (i.e. give appropriate weight) to the results of the assessments. This requires the Welsh Government to consider taking action to address any issues identified, such as addressing negative impacts within the budget setting process.

### **What the duty requires on assessing impact**

- assess the likely impact of proposed policies and practices on its ability to comply with the general duty
- assess the impact of any policy which is being reviewed and of any proposed revision
- publish reports of the assessments where they show a substantial impact (or likely impact) on the Welsh Government's ability to meet the general duty
- monitor the impact of policies and practices on its ability to meet that duty.

Reports on assessments must set out in particular:

- the purpose of the policy or practice (or revision) that has been assessed
- a summary of the steps the Welsh Government has taken to carry out the assessment (including relevant engagement)
- a summary of the information the Welsh Government has taken into account in the assessment
- the results of the assessment
- any decisions taken in relation to those results.

In addition, when assessing for impact of policies and practices on its ability to comply with the general equality duty, the Welsh Government must:

- comply with the engagement provisions
- have due regard to the relevant information the authority holds.

Assessing the equality impact of its budget should be integral to the Welsh Government's budget-setting process from the outset. Whoever is carrying out an assessment of impact should:

- have a detailed understanding of the policy area
- be in a position to ensure that changes can be made where required
- have the support and leadership of senior management.

The specific duties require the Welsh Government to meet the engagement provisions as part of assessing the impact on people with protected characteristics. Therefore, in setting its budget, the Welsh Government must involve people who it considers are representative of one or more of the protected groups and who have an interest in how it sets its budget.

In assessing equality impacts, it is important that the Welsh Government has as much up-to-date and reliable evidence as possible about the needs and experiences of the different groups the budget is likely to affect. Where there is insufficient information appropriate action should be taken to fill these gaps, such as involving relevant people or groups. A lack of evidence should never be used as a reason for inaction.

The 'assessing impact' duty involves considering whether the evidence indicates that there is a different impact on people with particular characteristics, and whether this impact is disproportionately negative. It is seldom acceptable to state simply that a policy or practice (such as a

budget) will universally benefit/disadvantage everyone, and therefore individuals will be affected equally whatever their characteristics. The analysis should be more robust than this.

It is important to ensure that the conclusions reached can be explained, particularly where the evidence can be interpreted in different ways. Documenting the budget assessment is important to ensure that the general and specific duties are being met. It is important that the Welsh Government makes its assessment public, in the interests of transparency and accountability. The report should highlight 'impacts', rather than be a commentary on budget allocation.

### **Appreciative Inquiry into the Welsh Government's approach to assessing equality impacts of its budget**

The Equality and Human Rights Commission previously commissioned an appreciative inquiry<sup>iii</sup> into the Welsh Government's approach to assessing equality impacts of its budget. The report identified how equality issues could be appropriately identified and used to inform decision making in the future. The Welsh Government's approach to equality impact assessment has developed since this report, but its key findings and recommendations remain relevant, although a further review of the process will be beneficial. The findings included:

- Welsh Government departments should take responsibility for conducting EIAs and ensure they have clearly defined and appropriately resourced roles for carrying out and quality assuring EIA. Equalities considerations should become part of the day to day activity of departments and need to be embedded into day to day roles.
- It is recommended that targeted training is provided to enable officials to carry out robust EIAs.
- It is recommended that the Welsh Government develops and sets in place mechanisms for assessing the cumulative effects of budgetary decisions. Cumulative effects should include the impacts of UK Government decisions and how they affect decisions subsequently made by the Welsh Government as well as decisions made by the Welsh Government in its own right.
- It is recommended that the Welsh Government more clearly sets out how strategically significant decisions impact on people with protected characteristics as well as, but distinct from, setting out how decisions impact on groups facing socio economic disadvantage.

- It is recommended that the Welsh Government makes clearer the evidence and engagement activity used to inform strategically important decisions and how this information was used. This information should be presented in a clear way to enable effective decision making and scrutiny.
- The EIA process should be ongoing and not a one off intervention. Individual departments should not necessarily be starting from the beginning when budgetary equalities assessment commences but should be building on ongoing and continuous equalities analysis. This should also mean that EIAs are developed throughout the policy making process. Cabinet and ministerial level decisions need to be informed by EIA as part of this iterative process.

### **The cumulative impact of tax and welfare reforms**

In March 2018, the Equality and Human Rights Commission published a report (commissioned from Landman Economics and Aubergine Analysis) looking at the cumulative impact of the UK Government's tax, welfare, social security and public spending from 2010 to 2017<sup>iv</sup>. The report sets out recommendations to UK Government for evaluating financial decisions resulting from this analysis. This was a ground-breaking report, with its model offering huge potential for the development of robust cumulative impact assessments. The recommendations are relevant to the Welsh Government as it develops its approach to assessing the cumulative impact of spending decisions. It would be welcome if the Welsh Government takes forward opportunities that the model presents. The report's recommendations include:

- more ongoing and collaborative preparation in advance of budget-setting
- a clearer decision-making process, with respective responsibilities across departments understood throughout the budget-setting process
- ongoing monitoring and evaluation of the impact of spending measures on people sharing different protected characteristics both during and after implementation.

The report recommended that, to assist in future assessment of the impact of tax and welfare reforms, the Welsh Government allocate additional resources to enable a boost sample for the Family Resources Survey (FRS) and Living Costs and Food Survey (LCF). The current

sample size of the FRS and LCF is too small to allow robust analysis of some of the protected characteristics (in particular, ethnicity).

## **Is Wales Fairer? 2018**

In October 2018, the Commission published *Is Wales Fairer?*<sup>v</sup> This report is a comprehensive state-of-the-nation report that brings together evidence to assess levels of inequality in Wales. The report highlights key findings and recommendations across all areas of life, including health, housing, education, participation, justice and work. The Commission has called on the Welsh Government to act on the report's findings and recommendations. Key findings include:

### **Socio-economic disadvantage**

A continuing increase in rough sleeping, increased poverty rates and the adverse effects of UK-wide social security reforms on the poorest groups have contributed to an overall fall in living standards in Wales since our last review.

### **Disabled people falling further behind**

Disabled people are being denied their right to independent living and in many cases are not experiencing the progress seen for other groups, with gaps in educational attainment and employment widening rather than narrowing.

### **Challenges to women's safety and career progression**

While women have some of the most equal outcomes they have ever had, the prevalence of societal gender norms in education and employment, and experiences of harassment and violence, obstruct this progress.

### **Race inequality persists in Wales**

Some ethnic minority people are experiencing improvement but deep inequalities remain, and hate crime motivated by race is still far too prevalent in Wales

*Is Wales Fairer?* includes a specific recommendations that the Welsh Government should target its tax and spending decisions on minimising and reducing disadvantage experienced by different groups, and should conduct and publish a Cumulative Impact Assessment of the varied impact on people with different protected characteristics alongside all national fiscal events.

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<sup>i</sup> The protected characteristics for the purposes of the public sector equality duty are: age; disability; gender reassignment; pregnancy and maternity; race; religion and belief; sex; and sexual orientation.

<sup>ii</sup> Guides to the PSED in Wales <https://www.equalityhumanrights.com/en/advice-and-guidance/guides-psed-wales>

<sup>iii</sup> Welsh Government's approach to assessing equality impacts of its budget <https://www.equalityhumanrights.com/en/publication-download/appreciative-inquiry-report>

<sup>iv</sup> 'The cumulative impact of tax and welfare reforms' <https://www.equalityhumanrights.com/en/publication-download/cumulative-impact-tax-and-welfare-reforms>

<sup>v</sup> Is Wales Fairer? <https://www.equalityhumanrights.com/sites/default/files/is-britain-fairer-2018-is-wales-fairer.pdf>