

Human Rights, Equality and Well-being

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The first briefing, *Incorporation of International Human Rights*, discussed how human rights may be incorporated, and demonstrated why this should be the objective in Wales. The second briefing, *Human Rights: Accountability and Enforcement* outlined how accountability and enforcement of human rights may be strengthened through incorporation. This briefing will discuss existing legal frameworks in Wales on equality and well-being, and their relationship with human rights. It will show how equality, well-being and human rights have lots in common, but will also demonstrate how they differ, and why it is important to recognise this in public policy.

Equality as a Principle of Human Rights

There are number of general principles that underpin all human rights.¹ For example, human rights are indivisible, interrelated and universal. This means everyone, everywhere is entitled to all their human rights at all times. Another key principle of human rights is non-discrimination. Human rights treaties invariably include a requirement that rights should be available without discrimination based on race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

Human rights treaties also confirm equality as a fundamental principle. There are frequent references to ‘equality’, ‘equal’ access’ and ‘equality of opportunity’ in the

¹ These are established from the content of human rights treaties, or from guidance issued by UN Treaty Bodies or other authoritative sources, such as the World Congress on Human Rights which published the Vienna Declaration and Programme of Action on Human Rights:
<https://www.ohchr.org/Documents/ProfessionalInterest/vienna.pdf>

preamble to treaties, as well as in treaty articles conferring specific rights. Equality and non-discrimination are therefore essential components of human rights practice.²

The UK and Wales Equality Framework

Equality and non-discrimination are dealt with in the UK and Wales through equality enactments: currently the Equality Act 2010 (EA 2010). Space does not allow for a full account of the EA 2010, but in short it provides protection against discrimination for individuals and groups who share ‘protected characteristics’ of: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.³

The EA 2010 also imposes a Public Sector Equality Duty (PSED) on public authorities requiring them to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their functions.⁴ In Wales, additional duties are imposed on public authorities and others subject to the PSED.⁵ The Wales specific duties do not enlarge the PSED as set out in the EA 2010, rather they create obligations ‘for the purpose of enabling the better performance’ of the PSED.⁶

The EA 2010 includes a duty requiring a public authority, when making decisions of a ‘strategic nature’, to have due regard to the ‘desirability’ of exercising their functions in a way that reduces socio-economic inequality.⁷ This duty is referred to as the ‘socioeconomic duty’, but it is not yet in force in Wales. The Welsh Government is actively considering whether the duty should commence.⁸

² See for example, *The Right Way*, the Children’s Commissioner for Wales guide to children’s rights in practice: <https://www.childcomwales.org.uk/wp-content/uploads/2017/04/The-Right-Way.pdf>

³ Chapter 2, and s.4, EA 2010.

⁴ S.149, EA 2010. This duty also applies to private or third sector organisations where they are carrying out a public function on behalf of a public authority or in their own right. In Wales, as specified by Part 2, Schedule 19, Equality Act 2010 and Equality Act 2010 (Specification of Relevant Welsh Authorities) Order 2011.

⁵ Set out in the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011.

⁶ Above ‘Explanatory Note’.

⁷ S.1, EA 2010.

⁸ The socioeconomic duty has been brought into effect in Scotland, and is known as the Fairer Scotland Duty (since April 2018).

The Equality Framework and Human Rights

There is significant correspondence between human rights and equality, and they can be mutually reinforcing. However, there are a number of areas in which human rights differ from equality, and have a discrete potential to strengthen public policy.

Firstly, the equality framework is not as detailed as human rights in establishing legitimate targets for public policy. The EA 2010 and Welsh PSED set general principles to frame the conduct of public authorities. Human rights, and social rights in particular, speak directly to fundamental human needs as policy objectives, including in areas such as housing, education, social care and health care. Although giving effect to the socioeconomic duty in Wales would require more proactive consideration of how to reduce inequality when policy is decided, as with other equality duties it does not establish particular policy priorities. This contrasts with human rights which have specific objectives to help policy-makers identify priority areas as the focus for public policy.

Secondly, equality tells us very little about the standard of provision which governments are expected to achieve. The equality framework does not necessarily mean progressive policies that improve provision in areas such as education or healthcare. There can be equality where everyone receives the same poor public services. Where human rights are used to establish the priorities for social policy the concept of a 'minimum essential level' of a right applies (see Briefing no.2). This establishes a basic threshold of provision to which everyone is entitled in order to ensure their human dignity. The notion of progressive realisation of social rights ensures that government also focus on how to move beyond minimum provision to better fulfil rights through policy (see Briefing no.2).

Finally, while there are strong connections between equality and human rights, they do not necessarily address the same issues. Equality is concerned with the interests of those with protected characteristics, in the sense of preventing discrimination and promoting equality of opportunity. Human rights include these objectives, but in addition prioritise securing and respecting human dignity and autonomy for all as a core responsibility of government.

Well-being and Human Rights

Human rights treaties do not employ the concept of well-being. The focus on well-being, especially in Wales, may be traced to the global agenda on sustainable development, and the Sustainable Development Goals, which include promoting well-being.⁹ However this does not mean that there is no linkage between sustainable development, well-being and human rights. Quite the reverse. While none of the Sustainable Development Goals are directly based on human rights, international human rights can provide ‘anchorage’ for sustainable development: a point of focus and clarity for action.¹⁰ In addition, it is widely recognised that sustainable development can contribute to the realisation of human rights, especially to benefit disadvantaged communities.¹¹

Well-being and Human Rights in Wales

Wales has a rather patchy approach to well-being. In legislation on children and families in 2010 the concept of ‘the well-being of children’ was used as a rationale for requiring public authorities to take action to reduce poverty and economic inequality in Wales. The *Social Services and Well-being (Wales) Act 2014* (SSWBA) places a duty on authorities exercising functions under the act to promote the well-being of those in need of social care, and their carers.¹² Although the SSWBA attempts to define well-being by listing different examples of how this is achieved, most of these tell us very little about what well-being means, or how it is promoted.¹³

The SSWBA does not refer to human rights as an aspect of well-being, but does confirm that promoting well-being includes ‘securing rights and entitlements’.¹⁴ This could be read to include human rights, which is to some extent confirmed by the duty on relevant authorities exercising functions under the act to have due regard to the UN Convention on the Rights of the Child (UNCRC), and the UN principles on the Rights of Older Persons.¹⁵

⁹ Sustainable Development Goal 3: Ensuring healthy lives and promoting the well-being of all.

¹⁰ For discussion see: <https://www.humanrights.dk/our-work/sustainable-development/human-rights-sdgs>

¹¹ See above.

¹² S.5, SSWBA.

¹³ S.2, SSWBA.

¹⁴ S.2(2)(f), SSWBA.

¹⁵ S.7, SSWBA.

The most significant legislation in Wales to employ the well-being formula is the *Well-being of Future Generations (Wales) Act 2015* (WBFGA). The WBFGA imposes a 'well-being duty' on relevant authorities which include Ministers, local authorities and health boards. The well-being duty requires these authorities to carry out sustainable development in 'pursuit of the economic, social, environmental and cultural well-being of Wales', and to do so in a way that accords with the 'sustainable development principle'.¹⁶ The sustainable development principle requires authorities to seek to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. In order to meet its well-being duty a relevant authority must set and publish 'well-being objectives' designed to 'maximise its contribution' to meeting seven 'well-being goals' established by the WBFGA.¹⁷

Well-being is not defined in the WBFGA, instead it emerges as a holistic concept encapsulated by the seven well-being goals. While these do not include securing human rights, there are some obvious connections with social rights. For example, the first well-being goal under the WBFGA is 'a more prosperous Wales', which is explained as including the development of a well-educated population and an economy which provides employment opportunities. This is consistent with social rights to education and to work.¹⁸ Another well-being goal, that of 'a healthier Wales' includes maximising people's physical and mental well-being. The relationship with the right to the highest attainable standard of health is obvious.¹⁹

Although there are connections between the WBFGA well-being goals and human rights the two concepts should not be seen as interchangeable. And in particular well-being should not be seen as a substitute for human rights. The well-being goals established by the WBFGA seek to encapsulate the Welsh Government's ambition to further the social, economic, environmental and cultural well-being of Wales. As such they are necessarily broad and aspirational. Significantly, human rights are more direct and specific when addressing the responsibilities of government in identified areas of

¹⁶ S.1-5, WBFGA and introductory text.

¹⁷ S.3 and 4, WBFGA. The well-being goals are: a prosperous Wales, a resilient Wales, a healthier Wales, a more equal Wales, a Wales of cohesive communities, a Wales of vibrant culture and thriving Welsh language, a globally responsible Wales.

¹⁸ E.g. Covenant on Economic, Social and Cultural Rights, articles 6 and 13.

¹⁹ E.g. Covenant on Economic, Social and Cultural Rights, article 12.

public policy. In Wales this is of most significance in areas covered by social rights such as housing, healthcare, social care, and education. This means that human rights provide more tangible objectives for public policy, and strong accountability where these are given legal effect.

The WBFGA approach to local planning and objective setting might provide an effective mechanism to embed human rights through local delivery. However, it should be recognised that there is a risk that seeing human rights through the lens of well-being might lead to a dilution of the focus on achieving human rights outcomes as the responsibility of government (see Briefing no.1).

Related to the last point is that human rights require specialised mechanisms for monitoring and enforcement. The UN speaks of the need for independent National Human Rights Institutions (NHRI) to carry out these tasks.²⁰ In the UK the Equality and Human Rights Commission is the NHRI with powers to monitor general human rights compliance, and where necessary take enforcement action. The WBFGA establishes the office of the Future Generations Commissioner. The Commissioner is not an NHRI and the functions and powers of the office do not include protecting or promoting human rights. Retaining a direct focus on human rights through incorporation reduces the risk that there will be confusion (especially amongst the public), about who is responsible for enforcing human rights generally in Wales.

Incorporation of Human Rights and Advancing Well-being

It is clear that human rights and well-being are distinct concepts. But it is equally clear that there are likely to be many overlaps between human rights and the WBFGA well-being goals, as well as well-being objectives set by public authorities. Incorporation of human rights in Wales would underpin progress toward the WBFGA well-being goals by establishing clear priorities for local planning to inform well-being objectives.

With the above in mind, it is worth noting that statutory guidance on the WBFGA expressly encourages public bodies to think about how they can support children to realise their rights when setting well-being objectives, including by taking the UNCRC

²⁰ See: <https://www.ohchr.org/EN/Countries/NHRI/Pages/NHRIMain.aspx>

into account in local well-being plans.²¹ No other human rights treaties are mentioned in the guidance, and it may be reasonably supposed that incorporation of the UNCRC in Wales²² helped ensure that children's rights have received particular attention. In addition, the Future Generations Commissioner and the Children's Commissioner for Wales have shown how children's rights can be supported through the future generations framework. They have jointly produced a toolkit for public authorities to use to improve how they plan and deliver services for children. Importantly this recognises that in so doing public authorities will make a contribution to children's rights.²³

Conclusion

The debate in Wales on incorporation of human rights includes discussion of whether this is necessary given the existing frameworks on equality and well-being. This briefing has shown that while there are certainly synergies between human rights, equality and well-being, the concepts are not interchangeable and should not be conflated.

²¹ SPSF 2: Individual Role (public bodies), paras. 58-60; SPSF 3: Collective role (public services boards), paras. 116-118, and Annex B

²² The UNCRC is the only incorporated treaty in Wales. Incorporated by: The Rights of Children and Young Persons (Wales) Measure 2011.

²³ Available at: http://www.childrensrightsplanning.wales/wp-content/uploads/2018/06/CCFW-FGCW-Report-English_01.pdf

Human rights Briefings

This briefing paper is part one of a series of three briefing papers outlining some fundamentals of incorporation of human rights and is authored by Dr Simon Hoffman, Associate Professor at Swansea University.

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The Bevan Foundation is Wales' most innovative and influential think tank. We develop lasting solutions to Wales' most challenging problems.

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