

Cyflwynwyd yr ymateb hwn i ymchwiliad y [Pwyllgor Plant, Pobl Ifanc ac Addysg](#) i egwyddorion cyffredinol y [Bil Addysg Drydyddol ac Ymchwil \(Cymru\)](#)

This response was submitted to the [Children, Young People and Education Committee](#) inquiry into the general principles of the [Tertiary Education and Research \(Wales\) Bill](#)

TER 24

Ymateb gan: Comisiwn Cydraddoldeb a Hawliau Dynol

Response from: Equality and Human Rights Commission

Contents

About the Equality and Human Rights Commission.....	2
The Legal Framework:	
The Equality Act	Error! Bookmark not defined. -4
Equality Impact Assessment	4-6
Engagement and Equality Objectives.....	6
Socio economic duty.....	7
Vision and Strategic Duties.....	7-8
Oversight and Regulation:	
Registration conditions; Opportunity and Access Plans.....	9
Outcome agreements; Learner protections, complaints and learner voice.....	10
Quality.....	11
Apprenticeships.....	12-14
Data.....	15

About the Equality and Human Rights Commission

The Equality and Human Rights Commission (EHRC) is a statutory body established under the Equality Act 2006. It operates independently to encourage equality and diversity, eliminate unlawful discrimination, and protect and promote human rights. 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 the UN level as an 'A status' National Human Rights Institution in recognition of its independence, powers and performance. The Commission in Wales works to ensure that the Commission's strategy and work programme reflect the needs of Wales and leads delivery of our work in Wales.

The Legal Framework

The Equality Act

The Equality Act 2010 ('the Act') provides a legal framework that protects individuals from discrimination, promoting a more equal and fair society.

The new Commission on Tertiary Education and Research, and all the education institutes that it regulates and oversees, must comply with the Equality Act.

As a public body, the Commission must comply with the general equality duty, which is set out in section 149 of the Equality Act. In summary, those subject to the general equality duty must have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation
- Advance equality of opportunity between different groups

- Foster good relations between different groups¹

The Public Sector Equality Duty (PSED), Section 149(1) of the Equality Act, and the Specific Duties for Wales under the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011, include obligations on all sectors that if embraced by organisations, could lead to significantly improved equality and diversity outcomes for the people of Wales across all areas of life, including post 16 education.

The specific duties apply to listed bodies in Wales. A listed public authority in Wales (or 'listed body') is one contained in Part 2 of Schedule 19 of the Act as supplemented and amended by the Equality Act 2010 (Specification of Relevant Welsh Authorities) Order 2011. This includes, for example, local authorities, education bodies (including Estyn, HEFCW, HEIs, FE and schools), health bodies and the Welsh Government.

The Welsh Government should ensure the new Commission on Tertiary Education and Research is a 'listed body' and subject to the Welsh specific duties under the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011.

The new Commission on Tertiary Education and Research should use levers available to it to ensure that listed bodies within its regulatory remit comply with their obligations under the Equality Act including the PSED.

Equality Impact Assessment

The Welsh Government and listed public bodies in Wales must comply with the Welsh specific duties within the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011, including the engagement provisions and requirement to assess the equality implications of proposed and ongoing policies.

¹ <https://www.equalityhumanrights.com/en/advice-and-guidance-faq/general-duty-faqs-gb>

The PSED ensures that equality considerations are built into the design of policies and the delivery of services and that they are kept under review. The Specific Duties, amongst other provisions include the requirement to consider the impact of policy decisions on people with protected characteristics². Equality Impact Assessments (EIAs) are more than a legal obligation, they are practical tools to ensure the consideration of the likely impact of proposed policies using available evidence before any decision to implement a policy is made.

We note that an EIA of the proposed legislation has been published. However, we have concerns that the EIA may not meet the requirements of the regulations nor does it provide adequate information on the potential impact on people across protected groups of the whole of the proposed changes.

There appears to be a lack of evidence supporting the equality impact assessment. Most sections contain little or no supporting evidence referencing only legal equality duties that the new Commission will be subject to. Sections on Sex/Gender, Race, Pregnancy and Maternity and Age provide a little more detail albeit that it is not clear how the information will support the new legislation or Commission in meeting the aims of the general duty.

With such a complex and wide ranging piece of legislation, covering, further education, higher education, adult education and apprenticeships, it is unclear how and whether the EIA relates to the breadth of the Bill and the scope of its measures.

The published EIAⁱ appears to focus on not discriminating, and not having a detrimental impact on those with the protected characteristics. In most cases it is stated that the Bill will have 'neither a positive nor negative impact' and for others it says there is no evidence to suggest an impact or that the Bill will 'impact directly' on protected characteristic groups. The EIA appears to almost omit any consideration of how the proposed changes will meet the aims of the general duty i.e. to a) eliminate unlawful discrimination, harassment and victimisation; b) advance equality of opportunity between different groups and c) foster good relations between different groups.

This lack of evidence or emphasis on the aims of the general duty seems incongruent with the Bill's strategic duty on promoting equality of opportunity.

The Welsh Government should review the EIA to ensure it complies with the PSED and is informed by evidence and engagement with representative groups. The EIA should be used to help meet the aims of the general duty and to support the delivery of the strategic duties on promoting equality of opportunity and encouraging access.

Engagement

Under the PSED, listed bodies are required to engage with people with protected characteristics when making policy decisions. There is evidence in the EIA that some consultation has taken place although it is not clear as to which aspects of the changes have been covered.

The Welsh Government and new Commission for Tertiary Education and Research should ensure that engagement is ongoing to ensure effective decision making throughout policy and strategy development.

Equality Objectives

Under the PSED a listed body must publish equality objectives to meet the general duty.

Listed public body's equality objectives can be used to focus effort to help address the most persistent and entrenched inequalities across protected groups, as set out in *Is Wales Fairer? 2018*.

The new Commission for Tertiary Education and Research should provide leadership on tackling the greatest and most persistent inequalities across protected groups where within its remit to do so. For example, by setting clear SMART outcome focused equality objectives.

Doing so will support the new Commission to best demonstrate how it is meeting the PSED and its strategic duty on promoting equality of opportunity.

Information on the PSED can be found [here](#) and [here](#), including equality impact assessments. The EHRC would be pleased to offer advice on compliance with the PSED.

Socio economic duty

The EHRC's 2018 report 'Is Wales Fairer?' found that there is a clear association between socio-economic status and educational attainment.³

The new Commission on Tertiary Education and Research will not be covered by the statutory, socio economic duty, but in the explanatory memorandum⁴ it states '...the Commission for Tertiary Education and Research (the Commission) is not captured under the Duty, although the Welsh Government would like to see all public bodies working in the spirit of the Duty'. We welcome this expectation and intention.

Vision and Strategic Duties

The Welsh Government will work with the new Commission on Tertiary Education and Research to realise a vision for a sector that 'Enables lifelong learning, accessible to all who can benefit'.

The EHRC welcomes the inclusion of 'promoting equality of opportunity' and 'encouraging participation' as two of the nine Strategic Duties of the new Commission on Tertiary Education and Research. These Strategic Duties should support the achievement of the vision.

However, it is not clear how these will be achieved.

For example, it is surprising that given the vision and strategic duties, the equality impact assessment of the new legislation concludes that in most cases the Bill will have "neither a positive nor negative impact" or says there is no evidence to suggest an impact or that the Bill will 'impact directly' on protected characteristic groups.

We would expect to see a positive impact if the vision and strategic duties are to be achieved.

³ <https://www.equalityhumanrights.com/en/publication-download/wales-fairer-2018>

⁴ <https://senedd.wales/media/jvhdz42j/pri-ld14625-em-e.pdf> (p.196)

The new Commission on Tertiary Education and Research's Statement of Priorities and Strategic Plan need to explicitly reflect the vision and strategic commitment to promoting equality and encouraging participation. Mechanisms for achieving this need to be clear, robust and monitored.

Under the PSED the new Commission on Tertiary Education and Research will be required to set equality objectives. These should support and be complementary to the Strategic Plan and Statement of Priorities and seek to address the most persistent inequalities facing the sector.

The new Commission on Tertiary Education and Research's equality objectives should support and be complementary to the strategic plan and statement of priorities and seek to address the most persistent inequalities facing the sector.

Our, Is Wales Fairer? 2018 research may help inform the new Commission on Tertiary Education and Research's priorities and equality objectives. For example, the report recommended that 'To address attainment gaps for children and young people and provide support to overcome the barriers to them reaching their full potential, at all levels of education, the Welsh Government, local authorities, schools, universities and Higher Education Funding Council for Wales should monitor and evaluate programmes aimed at addressing attainment gaps, and how effectively these address attainment gaps in relation to socio-economic disadvantage, disability, sex, race and other protected characteristics, in line with their responsibilities under the Public Sector Equality Duty.'⁵

⁵ And the forthcoming Commission on Tertiary Education and Research

Oversight and regulation

The new Commission on Tertiary Education and Research's oversight role will be key in holding providers to account on their actions to meet both their legal duties under the Equality Act and PSED, and also in helping meet its Strategic Duties on equality of opportunity and encouraging participation.

Registration conditions

The EHRC welcomes the high level registration condition for providers on 'equality of opportunity' (Clause 31) which sets out mandatory ongoing registration conditions on equal opportunity, and the associated aims: (a) increasing participation in relevant tertiary education provided in Wales by persons who are members of under-represented groups; (b) retention of students who are members of under-represented groups to the end of courses of relevant tertiary education provided in Wales; (c) reduction of any gaps in attainment in relevant tertiary education provided in Wales between different groups of students specified in the conditions, where the differences arise from social, cultural, economic or organisational factors; 5 (d) provision of support for students finishing courses of tertiary education provided in Wales who are members of under-represented groups to continue their tertiary education, find employment or start a business.

These registration conditions will help the Commission for Tertiary Education and Research to ensure that providers are working towards the Commission's Strategic Duties and in meeting its obligations under the PSED.

It will be essential when setting registration conditions, that emphasis is given to ensuring equality of opportunity and widening access.

Access and opportunity plans

We note the decision to omit proposals for access and opportunity plans, following consultation on the draft Bill. Access and opportunity plans were proposed as a replacement for the current fee and access plans which were seen as an important lever for widening access and ensuring equality of opportunity.

We are therefore concerned to understand how this aspect of promoting equality and encouraging participation will be ensured under the arrangements outlined by the Bill.

The new Commission on Tertiary Education and Research should consider the impact of this decision and implement alternative arrangements to ensure that providers are held to account for widening access and ensuring equality of opportunity.

This will support the achievement of the new Commission on Tertiary Education and Research's vision and Strategic Duties.

Outcome agreements

The Bill provides for the new Commission for Tertiary Education and Research to set outcome agreements with providers, linking funding to the delivery of the Commission's Strategic Duties.

It is important that when designing the process for creating outcome agreements with providers, the Commission ensures a focus on the Strategic Duties of promoting equality of opportunity and encouraging participation.

Learner protections, complaints and learner voice

The EHRC published a report in 2019 looking at racism in Higher Education. 'Tackling Racial Harassment: Universities Challenged' report ⁶ found that racism in higher education is a significant problem, affecting both staff and students. Racial harassment can have a profound impact on an individual's mental health, educational outcomes and career and therefore effective measures to prevent and tackle it, across the PCET sector are required.

⁶ <https://www.equalityhumanrights.com/en/publication-download/tackling-racial-harassment-universities-challenged>

The report's recommendations centre on the following themes:

1. Protections, transparency and scrutiny
2. Effective redress
3. A change in university culture

The new Commission for Tertiary Education and Research should consider and take action on the recommendations of the 'Tackling Racial Harassment: Universities Challenged' report where relevant to its remit.

The new Commission for Tertiary Education and Research, should ensure that institutions have processes and policies in place which mean that learners and staff can feel confident to report incidences of racism and other identity based harassment.

The new Commission on Tertiary Education and Research should also collect disaggregated data from institutions on incidences of racism and identity based harassment reported to them.

Quality

The EHRC published research in 2018 on the effectiveness of the PSED looked at the role of enforcement bodies. It found that, in small number of sectors, the influence of a sectoral regulator was seen as a key driver for setting equality objectives. For example, the research highlighted one education authority that identified annual reporting to the Higher Education Funding Council for England, combined with the prospect of two inspections from UK regulators – Ofsted and the Quality Assurance Agency for Higher Education – as a key reason for setting objectives.⁷

⁷ EHRC (2018), ['Reviewing the aims and effectiveness of the PSED in Great Britain'](#), page 39.

Following an exercise to monitor compliance with the PSED, in 2019 we issued a briefing to the higher education sector in Wales. The purpose of this briefing was to set out key opportunities for improvement in discharging the PSED and opportunities for using the PSED to drive change by tackling key inequalities specifically in relation to the higher education sector in Wales. The briefing reported that 'the importance of regulators and umbrella bodies e.g. HEFCW, was emphasised by many organisations.' We are aware and welcome that HEFCW has conducted its own monitoring into the compliance of higher education institutions with the PSED.

Is Wales Fairer? 2018 recommends:

'To focus public bodies in Wales on addressing key inequalities, regulatory bodies, including education and training inspectorate Estyn, Healthcare Inspectorate Wales, Wales Audit Office and the Care Inspectorate Wales should inspect for action and progress on those inequalities.'

The new Commission on Tertiary Education and Research in meeting its own obligations under the PSED should build equality considerations into its regulatory activity including oversight of action and progress on equality objectives set by those within its remit.

Apprenticeships

The Welsh Government's Programme for Government, updated in December 2021 to reflect the Co-operation Agreement between Labour and Plaid Cymru includes pledges on apprenticeships.⁸ It promises 125,000 all-age apprenticeships, an increase of apprenticeships in care; and to expand the use of shared and degree apprenticeships.

⁸ [Wales Programme for Government 2021-26](#)

However, significant challenges still remain. Our, *Is Wales Fairer? 2018* report sets out that 'in apprenticeships, strong gender segregation remains. Ethnic minorities are under-represented in apprenticeships and the representation of disabled people is particularly low.'⁹ It is important to note that employment-related inequalities have been further entrenched by the pandemic.¹⁰

The Welsh Government should set and meet targets for disabled people and ethnic minorities to access and complete apprenticeships and take action to address gender segregation in apprenticeships.

It is also important that data is collected and analysed on how many of these apprenticeship starts complete the apprenticeships. This data should be disaggregated by protected characteristic.

The new Commission on Tertiary Education and Research should take and support action to address under representation of disabled people and ethnic minorities and action to address gender segregation in apprenticeships.

In 2019, we commissioned independent research on the use of positive action in apprenticeships.¹¹ Positive action allows employers to take steps to increase employment and training opportunities for under-represented groups.¹² The research found that the provisions were underutilised, with low uptake of positive action measures attributed to lack of awareness of the provisions, and lack of confidence in using them (including confusion between positive action and unlawful discrimination).

⁹ And the forthcoming Commission on Tertiary Education and Research

¹⁰ EHRC (2020), '[How Coronavirus has affected equality and human rights](#)'.

¹¹ EHRC (2019), '[Exploring positive action as a tool to address under-representation in apprenticeships](#)'.

¹² Two forms of positive action are permitted under the Equality Act 2010: general positive action, which might include reserving places for a protected group on training courses or providing mentoring for a particular group to increase their representation at senior levels; and positive action that specifically relates to recruitment and promotion, also known as the 'tie-break provision'. Here an employer can take an individual's protected characteristic into account in recruitment or promotion.

The research identified examples where positive action had been used to effectively address barriers that make it harder for some women, disabled people and certain ethnic minority groups to participate in the labour market.¹³ The report recommended more effective and strategic promotion of positive action to encourage greater use.¹⁴

The new Commission on Tertiary Education and Research should take and support action to promote and encourage greater use of positive action to address under representation and gender segregation in apprenticeships

Is Wales Fairer? 2018 also recommends:

To reduce gender segregation and improve the participation and progression of women, ethnic minorities and disabled people across a range of apprenticeships:

- i. The Welsh Government, National Training Federation for Wales, apprenticeship providers, employers and other relevant stakeholders should take action to address barriers to participation and ensure that apprenticeships at all levels are of good quality. This should include requiring apprenticeship providers to set and meet targets for improved participation and to use positive action provisions.
- ii. The Welsh Government should hold apprenticeship providers to account, including through procurement and funding mechanisms.
- iii. The Welsh Government should monitor and report progress on the effectiveness of action taken to increase participation of under-represented groups, including improvements made by apprenticeship providers and employers in Wales

¹³ EHRC (2019), '[Exploring positive action as a tool to address under-representation in apprenticeships](#)'. See also: EHRC (May 2020): '[Evidence to the Business, Energy, and Industrial Strategy Committee Inquiry on the Impact of Coronavirus on Businesses and Workers](#)'.

¹⁴ Ibid., page 8.

Data

There are gaps in the data in Wales that make it difficult to understand the experiences of people across all protected characteristics. There is a particular lack of data broken down by the protected characteristics of sexual orientation, gender reassignment, religion or belief, and race.

The new Commission for Tertiary Education and Research will be an official statistics body. In order to meet its duties under the PSED it will need to ensure that it gathers comprehensive data from providers about learners and this will need to be disaggregated by all protected characteristics. An example would be the new ability to request data from UCAS on applicant to acceptance data. This should be disaggregated by all protected characteristics.

The new Commission on Tertiary Education and Research should ensure that it gathers data disaggregated by protected characteristic, about learners and funding from PCET providers and that it shares the information that it holds in this same way.

ⁱ <https://gov.wales/sites/default/files/publications/2021-10/tertiary-education-and-research-bill-equality-impact-assessment.pdf>