

## Comparison with other duties to which Welsh Ministers are subject

### Equality Duties

1. Under the general equality duties, the matters to which authorities have to have due regard *are considerably broader and fewer in number* than the 58 plus rights and obligations in the UNCRC and its Optional Protocols.

2. Under the Equality Act 2010, public authorities will be required, in the exercise of their functions, to have due regard to the need to:

*(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;*

*(b) advance equality of opportunity between persons who share a relevant protected characteristic<sup>1</sup> and persons who do not share it;*

*(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.*

3. I hope that the Committee, by comparing the matters to which authorities must have due regard in the exercise of their functions under these general equality duties, with the 58 plus rights and obligations which the Welsh Ministers will have to think about giving greater effect to under the proposed Measure, will appreciate that the duties are very different in nature.

### Sustainable development duty

4. Turning to the sustainable development duty under section 79 of the Government of Wales Act 2006, that duty *is not a duty to have due regard* to the broad concept of sustainable development in the exercise of the Welsh Ministers' functions. It is *a duty to make a scheme* setting out how the Welsh

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<sup>1</sup> The relevant protected characteristics for the purposes of this part of the Equality Act 2010 are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

Ministers propose, in the exercise of their functions, to promote sustainable development.

5. The Welsh Assembly Government's sustainable development scheme, One Wales, One Planet, sets out 2 core principles and 6 supporting principles of sustainable development that the Welsh Assembly Government uses to inform policy and programme development and delivery. It also sets out specific steps that the Welsh Assembly Government will take with a view to delivering sustainable development. The Scheme is not subject to approval by the Assembly.

#### The principle of equality of opportunity

6. The duty in section 77 of the Government of Wales Act 2006 requires the Welsh Ministers *to 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.

#### Welsh Language Strategy and Scheme

7. The duty in section 78(1) of GOWA 2006 requires the Welsh Ministers *to adopt a strategy and scheme* for certain purposes relating to the Welsh Language.

#### Human Rights Act 1998

8. Section 6 of the Human Rights Act 1998 and section 81 of the Government of Wales Act 2006 provide that it is unlawful for the Welsh Assembly Government to act in a way which is incompatible with certain rights in the European Convention on Human Rights which have been drawn down into the Human Rights Act.

9. The following is a very brief summary list of the substantive rights which have been drawn down into the Human Rights Act:

The right to life;

The right not to be tortured or subjected to inhuman or degrading treatment;

The right not to be treated as a slave or required to perform forced or compulsory labour;

The right to liberty and security of person;

The right to a fair trial;

The right to no punishment without law;

The right to respect for private and family life;

The right to freedom of thought, conscience and religion;

The right to freedom of expression;

The right to freedom of assembly and association;

The right to marry;

The right to peaceful enjoyment of one's possessions;

The right not to be denied access to the educational system;

The right to free elections.

10. I would ask the Committee to compare the above list with the 58 plus rights and obligations set out in the Schedule to the proposed Measure. Some of the rights in the Human Rights Act are replicated in the UNCRC and, of course, children and adults alike have the rights in the Human Rights Act.

11. However, children have many more rights under the UNCRC. These include the rights (these are only some examples):

To have their views heard in decisions which affect them;

To have special care if they have a disability;

To health care, clean water and nutritious food so that they will stay healthy;

To a standard of living that is adequate for their physical, mental, spiritual, moral and social development;

That their education develops their personality and talents to the full, and encourages them to respect their parents and their own and other cultures;

To relax and play and to participate freely in cultural life and the arts;

12. As I stress in this letter, the purpose of the proposed Measure is to require Welsh Ministers to consider the 58 plus UNCRC rights and obligations when they are making strategic decisions about how to exercise their functions, and to consider whether they can give greater effect to those rights.

13. That duty is different in nature from the duty to ensure that the Welsh Assembly Government does not act incompatibly with the rights in the Human Rights Act. The duty in the proposed Measure requires an assessment of what can be proactively done so as to achieve *further* the rights in the UNCRC.

14 The situation in relation to the proposed Measure is different also insofar as it is designed to place a duty on Welsh Ministers to have due regard to an international convention directly into Welsh law, without the benefit of intermediary UK legislation (as in the case of the Human Rights Act) or a large body of established case law.