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Education, equality and human rights: Exploring the impact of devolution in the UK

Abstract

Foremost amongst social policy interventions, state education has a singular and foundational role in the promotion of equality and human rights. This paper explores the way that such matters are addressed in the policy and law making programmes of the UK's devolved administrations. It is argued that this is an appropriate locus of enquiry for the constitutional law establishing the devolved legislatures contains clauses empowering government to promote equality of opportunity; in the case of Wales and Northern Ireland, these are positive legal duties. Against the background of governments' espousal of 'mainstreaming' equalities, analysis reveals that the respective administrations have made some advances in embedding the promotion of equality and human rights in the policy framework covering the schools curriculum, teacher training and inspections. Notwithstanding this, a number of issues and shortcomings are identified. Overall, the analysis reveals evidence of an ongoing 'disconnect' between the mainstreaming rhetoric and policy outcomes.

Key words: anti-discrimination, constitutional reform, curriculum, mainstreaming

Introduction

Foremost amongst social policy interventions, state education has a singular and important role in the promotion of equality and human rights (Ahonen, 2002). As Lynch and Lodge (2002: 1) assert, it: 'plays a foundational role in determining the character of the political, economic and socio-cultural life of any given society . . . it is a key player in legitimating and ordering socio-cultural relations'. This means that policy can challenge pre-existing and contemporaneous social norms that may

discriminate, marginalize, and oppress social groups. It can also break the intergenerational transmission of prejudice and equip one generation with knowledge to challenge discriminatory or prejudiced views held, and deemed acceptable, by forebears and peers alike. This paper engages with a burgeoning international literature concerned with the way that equality and human rights are addressed in the schools curriculum (Hill, 2001; Banks, 2004; Cole, 2006; Johansson et al., 2007). Its purpose is not to focus specifically on issues of equality for 'minority' languages and policy on additional support requirements/special educational needs (these are discussed elsewhere, see Chaney, 2011); rather, the present concern is to explore the extent to which the general promotion of equality and human rights features in the education policy discourse of the UK's devolved administrations. As such, it provides an example of the pursuit of the 'social guarantee' concept in social policy. Gacitua-Mario et al. (2009: 6) argue that the latter 'gives operational expression to fundamental human rights principles by providing mechanisms for awareness, participation, equity, and redress in the delivery of social policy'. The present critical perspective on policy and practice in the devolved polities of the UK is an appropriate locus of enquiry – for the UK's devolution programme has effectively 'constitutionalized' the promotion of equality and observance of human rights in the founding Acts of the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly. Under the new governance arrangements, the respective administrations have gained competency to promote equalities in relation to a range of social policy functions, including education. Crucially, as will be discussed, the governments in Belfast and Cardiff were placed under comprehensive statutory duties requiring ministers to take a proactive stance in tackling inequality and discrimination. This shift is significant, not least because the legal definition of equality in the devolved polities is broader in scope than Great Britain-wide statutes, and because it gives the lie to a widely held view that equality of opportunity is a reserved, non-devolved matter. Accordingly, the following analysis adds to understanding of the process of social policy divergence in quasi-federal states (Alcock et al., 2008; Birrell, 2009); and underlines the increasing salience of multi-level governance to understanding contemporary efforts to promote equality in conditions of increasing social diversity; this is because education policy is not the exclusive preserve of central government but is shaped by different tiers of public administration in the form of the United Nations, European Union, central,

and 'regional' government. The remainder of this paper is structured thus: following an outline of the methodology, attention is focused on equality and human rights law in the devolved territories, including the respective administrations' legislative competence on such matters. Legal and policy developments are then explored in relation to the curriculum, teacher training, and the work of education inspectorates and other regulators. The paper concludes by evaluating the progress made against devolved governments' espousal of mainstreaming equality and human rights in education.

Method

The following discussion draws principally upon policy discourse analysis (Edelman, 1988; DeLeon, 1998). This is part of a post-empiricist, interpretative approach that places an emphasis on the language of policy documents in order that 'ideas thus move to the centre of policy evaluation' (Fischer, 2003: 223). Each administration's education policies are analysed in relation to initiatives to promote equality and human rights. This methodology: allows an appreciation of how policy-makers formulate and construct problems; enables focus on their claims and rhetoric; and acknowledges that policy documents are complex exercises in agenda-setting power and that policy issues like equality of opportunity may be framed in particular forms of language reflecting the political viewpoints of those in power (Fischer and Forester, 1993: 5–7). The paper also reports on the findings of an exhaustive survey of devolved enactments since the founding of the new legislatures, as well as a series of policy evaluations by academics, government and independent bodies.

Equality and human rights law in the devolved polities

Equality and human rights law in the devolved polities underlines the salience of multi-level structures and processes of governance to contemporary social policy making. Thus, the legal framework relating to the state provision of education stems from UN treaty obligations, EC Directives, Westminster statutes and devolved enactments. In relation to the last, clauses in the devolution statutes of 1998–9 have effectively

'constitutionalized' the promotion of equality (Chaney, 2004). This is not a phenomenon restricted to 'regional' government in the UK; other European examples include Catalonia's Statute of Autonomy and the constitutional law of federal German states. In the case of the Scotland Act (1998, Schedule 5, Section 22), qualified provision is given for the parliament to legislate and develop policy in relation to equalities. Whilst not a duty on government, the Act states that it may advance: 'the encouragement (other than by prohibition or regulation) of equal opportunities, and in particular of the observance of the equal opportunities requirements'. Here equality of opportunity is defined in broader terms than in GB-wide statutes; specifically it denotes: 'the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds, or on grounds of disability, age, sexual orientation, language or social origin, or of other personal attributes, including religious beliefs or political opinions'. Writing at the outset of devolved governance in Wales, Lambert (1999: 69) underlined the fact that the general equality duty in the Government of Wales Act (GOWA) (1998, s.120; superseded by GOWA, 2006, s.77) has 'no parallel in any other devolution legislation'. It is singular in its non-specific phrasing and all-embracing scope and is an imperative that applies to all people and all functions of government. According to Clements and Thomas (1999: 11), the government 'has a duty to put in place a clear and known process to guarantee due regard to the principle of equality of opportunity . . . otherwise a legal challenge, via judicial review, is likely to be successful'. In broadly similar fashion, Section 75 of the Northern Ireland Act (1998) places an active duty to promote equalities on government and designated public bodies in the province. Under its provisions they are required to have due regard to the need to promote equality of opportunity: 'between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation; between men and women generally; between persons with a disability and persons without; and between persons with dependants and persons without'. Each designated body must thus have an equality scheme in place, a plan for performance on the duty, and must assess (and publish a report on) the equality impact of their policies. The Scottish equality clause and Welsh duty sit alongside Great Britain-wide equality statutes (e.g. the Race Relations Amendment Act, 2000), which also apply to devolved government. As noted, their significance is that, notwithstanding the extension of GB equalities law (under the provisions of the Equality

Act, 2010), they require government to promote equality for a broader range of groups than is the case in England/in respect of non-devolved matters. In addition, the respective administrations are bound by the incorporation of the European Convention on Human Rights into the devolution statutes;¹ and the need to act in accordance with European Community law² and the UK's international obligations³ – such as the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD).⁴

Against this background, a 'mainstreaming' discourse has emerged in each territory (Chaney, 2010). The origins of this theoretical approach to advancing equality can be traced to gender mainstreaming developed by feminists working on international aid programmes in the 1970s. Whilst the initial focus was on gender, in some contexts, such as the devolved polities in the UK, mainstreaming has subsequently been applied to a range of equality dimensions such as disability, language, and ethnicity. The Council of Europe offers a policy-oriented definition: 'mainstreaming is the (re)organisation, improvement, development and evaluation of policy processes, so that an equality perspective is incorporated in all policies at all levels and at all stages, by the actors normally involved in policy-making' (CoE, 2004: 12). Thus, it relies on a series of policy tools such as equality indicators and equality impact assessment procedures (EQIAs). In Scotland, the devolved Executive's first equality strategy (Scottish Executive, 2000: 14) affirmed a commitment to 'mainstreaming equality'; a decade on, the state education inspectorate continues to espouse the aim of 'mainstreaming equality and diversity' (HMIE, 2009: 2). In Northern Ireland, the Equality Commission actively monitors government's 'work in mainstreaming equality' (ECNI, 2007: 5). Whilst, the Welsh government's Mainstreaming Strategy states that: 'the key to delivering the equality and diversity vision is the principle of mainstreaming' (WAG, 2006a: 7).

Schools curriculum

Existing studies point to the pivotal role of the schools curriculum in challenging prejudice and promoting equality (Osler, 2000). In the wake of devolution, the Standards in Scotland's Schools Act (2000) requires that authorities' annual statement of education improvement objectives, 'shall include an account . . . of the ways in which they will, in providing school education, encourage equal opportunities'.⁵

In policy terms, a raft of early post-devolution initiatives (Scottish Executive, 2004, 2006a) were aimed at groups traditionally targeted by equality initiatives. Guidance in relation to the current review of compulsory-phase education, the 'Curriculum for Excellence', asserts that: 'equal opportunities can be seen in terms of legislative duties . . . these need to be given consideration from a support perspective, to ensure that there is a level playing field when accessing the curriculum' (Scottish Government, 2008a: 48). Accordingly, the indicative learning outcomes for respective subjects in the proposed curriculum include the promotion of equality. In institutional terms, a further driver of the promotion of equality and human rights is the Scottish Human Rights Commission; under its founding Act it has a legal duty to promote awareness of human rights.⁶ According to its current Strategic Plan: 'we will support the further development of a human rights ethos in education, which permeates not only the formal curriculum, but the everyday life of the institution, so that human rights are at the heart of education in Scotland' (SHRC, 2008: 24). Other recent initiatives include the introduction of a Gender Equality Toolkit in order that 'schools will have lesson ideas for mainstreaming gender equality into the curriculum' (Scottish Government, 2007: 14) and the use of equality impact procedures to promote 'race' equality in the new schools curriculum (Scottish Government, 2008d: 17). In addition, anti-sectarianism has been the subject of a series of policy developments (Scottish Executive, 2005a, 2005b; HMIE, 2006b) and has seen the introduction of anti-sectarian education resources for schools. Current policy guidance sets out the aim of 'a Scotland free from discrimination'. It continues, '[t]he vital role that education plays in achieving that outcome cannot be underestimated. . . . Curriculum for Excellence is itself a programme for tackling sectarianism' (Learning and Teaching Scotland, 2008).

In Wales, education policies need to conform to the commitment made by the devolved administration in 2000 to apply the principles of the UN Convention on the Rights of the Child (UNCRC) in respect of all policy matters, including Article 2 on preventing 'discrimination of any kind'. At the outset of devolution, the ten-year strategy for compulsory-phase education stated that it 'will be actioned with due regard to the Assembly's consistent commitment to . . . promote equality of opportunity' (WAG, 2001: 8). Despite the publication of guidance on promoting equal opportunities in the curriculum (ACCAC, 2001), a subsequent review by the Schools Inspectorate (Estyn, 2004) highlighted mixed progress, and identified the need for a further

strengthening of the policy framework. Amongst its main findings was the fact that: ‘a minority of schools ha[d] embedded the promotion of race equality and diversity within the ethos, philosophy and day-to-day life of the school’ (Estyn, 2004: 32). The successor education strategy (WAG, 2006b: 31) again underlined the need to ‘promote equality of opportunity for all learners’. Following the UK government’s Equalities Review (DLGC, 2007: 47) that called for policies in early years education, ‘to prevent the start of a cascade of disadvantage’, the phased introduction in Wales 2008–11 of the Foundation Phase for 3–7 year olds (see Siraj-Blatchford et al., 2007; WAG, 2008a) is aimed at broadening and deepening of the level of instruction to education providers on the promotion of equalities⁷ and meeting the requirements of the UNCRC. Inter alia, it requires that 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’ (WAG, 2008a: 7). This agenda is also evident in the revised curriculum for 11 to 19 year olds introduced 2008–10. In this case, for all subjects, legally binding Curriculum Orders specify the skills, programme of study and outcomes in order: ‘to eliminate discrimination and harassment, to promote positive attitudes and equal opportunities and encourage participation in all areas of school life’ (WAG, 2008d: 3). The policy discourse is one of promoting pupils’ understanding of diversity and tolerance, and challenging prejudice, racism and stereotyping. Thus, the Curriculum Order for Art and Design states ‘[t]hrough art and design activities they become aware of other cultures and ways of life, and develop the concept of global citizenship’ (WAG, 2008b: 7); whilst examples in relation to personal and social education include:

Learners should be given opportunities to understand:

- their rights, e.g. the UN Convention on the Rights of the Child, and responsibilities
- how injustice and inequality affect people’s lives
- what is meant by disability
- the challenges learners might have in accessing learning opportunities in school.

Positive attitudes should be developed to enable children to become increasingly aware of, and appreciate the value of, the diversity of cultures and languages that exist in a multicultural Wales. (WAG, 2008c: 5)

In Northern Ireland, a revised schools curriculum was introduced in 2007. This set out statutory guidance⁸ requiring that schools promote equality (in accordance with the definition of 'equality' in the Northern Ireland Act, 1998). Thus, for example, guidance on 'Learning for Life and Work: Local and Global Citizenship' states that 'pupils should have opportunities to: explore how inequalities can arise in society including how and why some people may experience inequality or discrimination on the basis of their group identity' (DENI: 2008: 7). Under the curriculum framework there is also a statutory obligation that pupils should have opportunities to investigate: 'ways of managing conflict and promoting community relations, reconciliation; and investigate the opportunities arising from diversity' (Northern Ireland Curriculum, 2007: 25). As in the other devolved polities, education policy in the province is undergoing reform. The proposed 'Indicators of effective performance' in the curriculum include the need to demonstrate that: 'A clear commitment exists to promoting equality of opportunity, high quality learning, a concern for individual pupils and a respect for diversity' (DENI, 2009: 14). The policy discourse in the province also articulates equality aims in the context of human rights. Thus, according to the Northern Ireland Executive, the current 'reform agenda . . . is consistent [with] Articles 28 and 29 of the United Nations Convention on the Rights of the Child' (DENI, 2009: ii) (inter alia 'the right of the child to education . . . on the basis of equal opportunity'). In response, teaching materials developed by the Northern Ireland Human Rights Commission have been introduced into the curriculum (NIHRC, 2007).

Teacher training

In each country there have been post-devolution measures to promote equality and human rights in teacher training programmes. For example, in Scotland, the government's current Disability Equality Scheme (2008–11) sets out measures to improve teacher training, including: a two-year Action Plan by all Initial Teacher Education (ITE) establishments to embed inclusive approaches to teaching for pupils with additional support needs; and the addition of five new areas to the Continuing Professional Development Framework, including autism and dyslexia, in order for teachers to gain formal recognition for expertise in teaching children with additional support needs (Scottish Government,

2008b). In addition, current policy employs positive action measures such as a teacher recruitment campaign to, 'target people from our ethnic communities, raising awareness of the Teaching profession in Scotland' (Scottish Government, 2008d: 43). The General Teaching Council for Scotland's current Strategy (GTCS, 2009: 19) also outlines the use of equality impact assessment procedures, referring to: 'equalities monitoring in respect of GTC Scotland's regulatory process to identify any aspects which might impact adversely on any particular group and whether any particular group may be disproportionately represented'.

In Wales, the General Teaching Council's Statement of Professional Values and Practice, asserts that teachers are 'committed to providing equal opportunities to pupils, colleagues and others . . . regardless of gender, ethnicity, age, religion and beliefs, special needs, sexual orientation and linguistic background' (GTCW, 2006: 31). Moreover, government policy asserts that:

The principles of the UNCRC are included across the school curriculum, they will be covered in Initial Teacher Training (ITT) – as providers have to ensure that knowledge and teaching of the relevant curriculum, including the Personal and Social Education Framework, is incorporated in ITT in order to ensure that trainee teachers demonstrate that they have met the Qualified Teacher Status Standards. (WAG, 2009: 36)

However, significant further work remains before such matters are fully embedded in training programmes. Thus, according to government, efforts are ongoing to ensure 'appropriate coverage of disability equality issues in teacher training' in relation to proposed changes in the Qualified Teacher Status standards (DCELLS, 2009: 24) and an 'Empowering Teachers Task Group' has been established to consider additional learning needs training in relation to initial teacher training, Early Professional Development and Continuing Professional Development. To assess the impact of these measures the statutory inspection arrangements require that inspectors consider 'how well the training promotes equal opportunities' (Estyn, 2004: 28).

In the case of the General Teaching Council for Northern Ireland's 'Code of Values and Professional Practice' equality is listed as one of nine 'core values of the profession' (GTCNI, 2004: 2). Here the discourse is one that emphasizes building 'social capital', 'communal well-being' and 'social cohesion'. These themes are repeated in 'The Charter for Education in Northern Ireland' (GTCNI, 2006: 2); as well as reference to

a 'commitment to, and appropriate investment in education, [to secure] a stable society respectful of diversity and individual needs'. Accordingly, the official guidance on the 'Inspection of Initial Teacher Education Provision' requires that 'in arriving at an evaluation of the extent to which the student teachers demonstrate professional values and practice, consider the extent to which they: demonstrate a commitment to . . . equal opportunity, and respect for diversity' (ETINI, 2009a: 8).

Monitoring and enforcement

Constitutional reform has seen the development of a range of public bodies that have a remit to monitor policy and law on promoting equalities in education. Although founded before 1998/9, the respective education inspectorates in Scotland, Wales and Northern Ireland have adapted to devolution. Thus, in its standard schools inspections procedures 'equality and fairness' is amongst HM Inspectorate of Education in Scotland's (HMIE) core quality indicators (HMIE, 2008c). It is also covered in thematic inspections such as its review of progress towards inclusive schooling (HMIE, 2002: 31). This rejected Enlightenment era equal-treatment approaches by asserting that:

The approach required for inclusive education is the antithesis of what might be described as a 'one size fits all' approach to education. It requires schools to be able to offer a wide range of different learning opportunities, which are adapted and tailored to meet the needs of particular individuals in ways which engage and motivate them. (HMIE, 2002: 32)

In addition, a recent study (HMIE, 2008a) of local authorities' response to the provisions of the Education (Additional Support for Learning) (Scotland) Act (2004) found that they sometimes failed to provide adequate information for parents, children and young people about their rights under the new legislation. As a result, current government policy on HMIE's work calls for action to secure '[i]ncreased awareness of the disability equality duty from [education] providers as part of the planned inspection/review programmes' (Scottish Government, 2008b: 12). In terms of 'race' equality, the inspectorate states that it:

recognise[s] that education has a key role to play in developing a coherent national approach to addressing race equality issues and eliminating

racial discrimination . . . in carrying out our programme of inspections and reviews, we aim to maximise the contribution that we can make to ensuring equality and fairness for all. (Scottish Government, 2008d: 288)

The regulatory framework in Scotland evidences some progress in the adoption of mainstreaming practices, for the inspectorate has recently introduced equality impact assessment procedures and equality training programmes to staff (Scottish Government, 2008c). Further changes being introduced by HMIE include those to 'ensure equal and balanced representation from stakeholders during inspections/reviews' (Scottish Government, 2008c: 65).

In the Welsh case the inspectorate, Estyn, is independent of, but funded by the devolved government. Its latest Framework for Schools Inspections sets out a range of criteria to measure the promotion of equalities, such as: 'the quality and effectiveness of teaching, training and assessment; how well learning experiences meet the needs and interests of learners and the wider community; and the effectiveness of leadership and strategic management on equality of opportunity matters' (Estyn, 2008: 22–7, 25). In Northern Ireland, and in contrast to the prevailing mainstreaming discourse (and S.75 requirements), an examination of the principal policy guidance of the Education and Training Inspectorate in Northern Ireland (ETINI) reveals that the promotion of equality is not fully embedded in the schools inspection framework.⁹ An exception is the 'Evaluating the Quality of Careers Education, Information, Advice and Guidance' (ETINI, 2009a: 1–10). Inter alia, this refers to the fact that the guidance: 'can promote social inclusion, challenge stereotypes and promote equality of opportunity by raising the aspirations of disadvantaged groups and supporting them in accessing opportunities that otherwise might be denied' (ETINI, 2009a: 56).

In addition to the education inspectorates, constitutional reform has also seen the comparatively rapid development of a range of commissioners, public sector bodies and ombudsmen with a remit that extends to the promotion of equality and human rights in education. Examples include Scotland's Commissioner for Children and Young People, the Scottish Human Rights Commission, and the Gaelic Language Board. In Wales, such bodies include the Children's Commissioner, the (proposed) Welsh Language Commissioner, the Special Educational Needs Tribunal for Wales, and the Care and Social Services Inspectorate. In addition, with a quasi-federal structure reflecting devolved governance, the Equality and Human Rights Commission (EHRC) has broad

powers to uphold equality and human rights in education and beyond. In Northern Ireland the equalities infrastructure includes the Commissioner for Children and Young People, the Northern Ireland Human Rights Commission, and the Equality Commission for Northern Ireland (ECNI). Amongst the last's 'overarching objectives for the education sector' are that: 'every child should have equality of access to a quality educational experience . . . and that every school should promote the inclusion and participation of all children' (ECNI, 2008: 23). Accordingly, ECNI has issued policy guidance on embedding 'the principles and practices of equality into the core of the education system' (ECNI, 2008: 27). Underlining the multi-level governance dimension, supra-national bodies also have a monitoring role in respect of equality and human rights in education in the devolved context. Examples include, the UN in assessing progress in meeting the terms of the UN Convention on the Rights of the Child (United Nations Committee on the Rights of the Child, 2008); and the Council of Europe in relation to progress in conforming to the European Charter for Regional or Minority Languages (CoE, 2010).

Evaluating progress

In Scotland, analysis by the state education inspectorate concluded that: 'many education authorities have strengthened their policies in relation to diversity, equality and fairness' (HMIE, 2009: 9). Moreover, a government-commissioned study concluded that: 'most parents stated that they were not aware of any gender bias in teaching and learning' (Scottish Executive, 2006b: iv). However, with regard to disability equality, an official report identified that, 'there is less awareness of the requirements and aspirations of the Disability Equality Duty. This is supported by feedback from [Scottish Government] consultation events with disabled people' (Scottish Government, 2008b). Furthermore, the education inspectorate found that whilst:

In a few schools, equality and fairness was excellent . . . [yet] the quality of practice is not yet well developed across all schools . . . concerted efforts to actively promote race equality and other equality issues systematically and progressively through the curriculum are not common. (HMIE, 2006a: 45)

Referring to the role of education authorities it stated that: 'fulfilment of equalities aspirations will remain a priority for the foreseeable future if Scotland is to achieve its goals as a socially cohesive community pursuing sustainable economic development' (HMIE, 2008b: 3–5). Thus, when weighed against the (then) devolved administration's first equality strategy (Scottish Executive, 2000), progress in mainstreaming equalities in education policy has been uneven and work is still ongoing. Revised practices introduced in 2008 offer the potential for more effective promotion of equality. For example, as part of the government's internal assurance process, senior officials are now required to report on the use of equality impact assessments in those areas for which they are responsible (Scottish Government, 2008b: 30).

In Wales, there is mixed evidence on promoting equality and human rights in education. During the first decade of devolution, a series of studies has highlighted the necessity to move away from a 'declaratory' approach to promoting equalities in public policy. An early example concluded: 'there is a particular need to ensure that policy documents make routine use of measurable targets set in specific timeframes in order that the effectiveness of policies can be readily assessed by reference to equality outcomes' (Chaney and Fevre, 2002: xxiii). A subsequent government-commissioned study reiterated this point, asserting that 'the use of equality and diversity baseline data is essential to measuring the effectiveness of policy strategies and action plans' (NAfW, 2007: 7). In relation to disability equality, the education inspectorate's review of schools' compliance with the Disability Discrimination Act, 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' (Estyn, 2007: 39). Yet, it also identified a range of problems including that: 'where disabled pupils do not have good access to the curriculum it is often because schools lack an appropriate variety of teaching methods, have poor ICT, and support staff do not have adequate specialist knowledge' (Estyn, 2007: 2). In terms of 'race' equality, there is evidence of some progress, as well as ongoing concerns: 'most schools provide care, support and guidance of good or outstanding quality for ethnic minority learners' (Estyn, 2009: 12). Yet, a survey of schools found that:

Most had race equality policies, but only around half had adapted them to reflect their particular circumstances. Other schools, mainly where

numbers of ethnic minority pupils are low, did not see the development of race equality policy and practice as a priority. (Estyn, 2009: 12)

More recently, an EHRC report highlighted that 'the absence of set targets in equalities policies often prevents a quantified assessment of their effectiveness' (Chaney, 2009: 127). In response, a more robust monitoring regime has emerged in the form of six-monthly departmental progress reports against the policy aims in the government's Single Equality Scheme 2009–12 (WAG, 2009). Yet, when weighed against the mainstreaming discourse, it remains the case that such monitoring is often process-oriented (e.g. detailing the issuing of government contracts, and production of official guidance to schools), rather than focusing on measurable equalities outcomes.

A number of official reports and independent studies allow an assessment of the developing equalities and human rights agenda in Northern Ireland's education system. An early example found that 'the statutory basis of the [government's equality] duty is proving effective in moving authorities towards compliance and mainstreaming of equality within the public sector' (McLaughlin and Faris, 2004: 45). However, subsequent research found that its impact was largely process-driven rather than concerned with equality outcomes. Further concerns identified by Niens et al. (2006: 14) include the fact that:

In post conflict Northern Ireland, both the formal and informal education sectors have adopted ideas about citizenship and human rights education, supported by decisions at policy level . . . [yet] there are often specific difficulties related to each of these sectors. In formal education such difficulties may include lack of time, lack of space in a tightly packed curriculum, competition for resources, and institutional support.

Moreover, referring to its own human rights teaching materials, the Northern Ireland Human Rights Commission reflected that, 'there is considerably more to do in order to promote awareness of their existence, to persuade schools to use them, and to increase the confidence and skills of teachers in the classroom to deliver these materials' (NIHRC, 2007: 13). However, the latest evaluation of the Section 75 equality duty (ECNI, 2007: 37) has identified some progress in developing technical and training measures to promote equality in education. It observes that:

In the Education and Library Boards, processes and procedures have been developed to ensure consistent application of the equality duties. This included a Screening Toolkit developed by and for the use of those responsible for policy development . . . A number of training packages were developed – including disability awareness, consultation skills, dealing with complaints on grounds of sexual orientation. (ECNI, 2007: 9)

The latter report also found that the five Education and Library Boards 'have developed consultative fora that involve representatives of affected groups in the policy development process . . . A collaborative joined-up approach to implementing the duties has been particularly apparent within the education sector' (ECNI, 2007: 10–12). In addition, the ECNI concluded that: 'The education sector has been particularly proactive in working together to ensure robust screening and EQIAs, and as a result have been proactive in reducing potential adverse impacts in the development of policies' (ECNI, 2007: 13). However, it also pointed to key failings, including that education authorities 'were poor in demonstrating outcomes in relation to screening and equality impact assessment' (ECNI, 2007: 13). Further issues and shortcomings were identified by an independent audit of public bodies' compliance with Section 75, including: that:

Equality and good relations were seen by the rest of the institution as human resource issues . . . the consultants expected to see more attention to wider curricula issues . . . education is a diverse sector and the public authorities in the sample displayed varying levels of compliance . . . there was some frustration that Section 75 had had no funding attached . . . [and] some in a leadership position [were] questioning the return from the resources invested in complying with Section 75. (Reeves Associates, 2007: xxii–xxiii)

In turn, Bridge (2007) has questioned whether these issues stem from the earlier policy guidance issued by the Equality Commission for it did not require authorities to give full accounts of policy outcomes in relation to equalities. In response the Commission has determined to: 'amend its approach to progress reporting to require public authorities to measure the impact of mainstreaming on policy outcomes' (ECNI, 2007: 46). The need for further progress is acknowledged in the ministerial foreword to the current review of compulsory-phase education in the province: 'there is much within our education system that needs improvement . . . we must do more to achieve equity in our system' (DENI, 2009: i).

Conclusions

Against the espousal of a mainstreaming approach to the promotion of equality in public policy, analysis of the devolved governments' policy framework on equality and human rights in compulsory-phase education reveals a number of commonalities, contrasts, areas of progress, and shortcomings. In terms of similarities, in each territory the multi-level governance framework of equalities law can be seen to shape education policy. Not least, the respective devolution statutes have placed upon government distinctive equalities competencies and the need for compliance with the European Convention on Human Rights and international treaty obligations such as the UNCRPD. Analysis of the policy outputs of the past decade shows that the devolved administrations have used their legislative powers to issue guidance and statutory orders so as to embed equality and human rights in the schools curriculum as well as to require local education authorities, General Teaching Councils and education inspectorates to address the promotion of equality and human rights in the exercise of their functions. This is part of the growing legislative dimension to the equalities and human rights agenda witnessed in each territory. This body of 'devolved law' is significant, for, if accompanied by effective monitoring and enforcement regimes, it marks the shift towards the increasing use of 'hard' policy enforcement mechanisms. A further commonality is the variety of approaches to promoting equality and human rights employed by each of the devolved administrations. These include: positive action (e.g. initiatives to increase the number of trainee teachers from ethnic minorities), fostering participation (e.g. HMIE Scotland's efforts in gaining feedback on schools inspections/reviews from different ethnic groups), and establishing new monitoring and compliance requirements (e.g. Care and Social Services Inspectorate Wales' National Minimum Standards for promoting equality and diversity in boarding schools (Social Services Inspectorate for Wales, 2004)).

In terms of contrasts, the asymmetrical nature of devolution in the UK means that governments' powers and policy priorities differ between polities (e.g. greater emphasis on anti-sectarianism in Scotland and Northern Ireland, and on language equality in Wales). Significantly, contrasting territorially specific legal definitions of equality mean that different legal rights and protections apply in the devolved countries of the UK. With regard to progress, there has been

an intensification of policy outputs and increased state capacity to promote equality and human rights in education. Moreover, although outwith the aims of the present discussion, it is notable that devolved electoral politics has created a context whereby NGOs and professional bodies can lobby on promoting equalities and human rights in education in ways that were not possible prior to 1998/9. Significantly, in Wales and Northern Ireland, constitutional law provides additional means of redress by placing a statutory duty on ministers to promote equality.

At a symbolic level, the subscription to 'mainstreaming' equalities advanced by successive governments in each territory is significant for it signals the adoption of an ambitious, holistic and proactive approach by government. Nevertheless, when weighed against this benchmark, shortcomings abound. For example, there are limitations in territorially specific equalities data. There is also a lack of judicial framework in relation to the devolved equality clauses compared to GB anti-discrimination statutes, such that education providers are more aware of the latter. Moreover, in all territories, the application of mainstreaming tools is highly variable. The adequacy of resources to promote equality and human rights is a further concern. Managers' and leaders' commitment to the promotion of equality in compulsory-phase education is a further issue; a number of policy evaluations have highlighted that, in the face of competing priorities (e.g. on attainment, and 'best value'), equality and human rights initiatives are not always prioritized to the fullest extent. However, the principal flaws in relation to the mainstreaming agenda are variability in the application of equality impact assessment techniques, and shortcomings in setting out desired policy outcomes in terms of equality indicators. The endurance of these issues also raises questions about the role of compliance bodies. Overall, analysis reveals that devolution has signalled the political reprioritization of the promotion of equality and human rights in compulsory-phase education following the governments' commitment to mainstreaming. This has led to a plethora of policy initiatives, devolved enactments, and the development of governance structures and state capacity to further this policy priority. Nevertheless, there is a continuing 'disconnect' between the devolved administrations' espousal of mainstreaming and policy outcomes; significant challenges remain before the mainstreaming rhetoric is fully realized in the devolved education systems of the UK.

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Notes

1. Scotland Act, 1998, Section 100; Government of Wales Act, 2006, Section 81; and Northern Ireland Act, 1998, Section 24.
2. E.g. Northern Ireland Act, 1998, S.24; Government of Wales Act, 2006, Section 80.
3. E.g. Northern Ireland Act, 1998, S.24; Government of Wales Act, 2006, Section 82.
4. Ratified by the UK government in 2009.
5. Section 5(2).
6. The Scottish Commission for Human Rights Act (2006), Section 2.
7. See the Education (National Curriculum) (Foundation Stage) (Wales) Order (2008), Section 3(1-2).
8. See the Education (Curriculum Minimum Content) Order (Northern Ireland) (2007).
9. There is no mention of 'equal opportunities'/'equality' in the following: 'A Common Framework for Inspection' (ETINI, 2008); 'Evaluating Schools' (ETINI, 2009a); 'Short Inspection – Primary: Information for Teachers' (ETINI, 2009b).

References

- Ahonen, S. (2002) 'From an Industrial to a Post-industrial Society: Changing Conceptions of Equality in Education', *Educational Review* 54(2): 173–81.
- Alcock, C., Daly, G. and Griggs, E. (2008) 'Welfare within a Fragmented State: Devolved Social Policy', pp. 108–29 in *Introducing Social Policy*, 2nd edn. Harlow: Pearson Longman.
- Awdurdod Cymwysterau, Cwricwlwm ac Asesu Cymru (ACCAC) (2001) *Equal Opportunities in the School Curriculum in Wales*. Cardiff: ACCAC.
- Banks, J. A. (ed.) (2004) *Diversity and Citizenship Education: Global Perspectives*. San Francisco: Jossey-Bass.
- Birrell, D. (2009) *The Impact of Devolution on Social Policy*. Bristol: Policy Press.
- Bridge, S. (2007) *Assessing the Impact of Section 75 on the Development of Public Policy*. Belfast: Simon Bridge Associates.

- Chaney, P. (2004) 'The Post-Devolution Equality Agenda: The Case of Welsh Assembly's Statutory Duty to Promote Equality of Opportunity', *Policy and Politics* 32(1): 37–52.
- Chaney, P. (2009) *Equal Opportunities and Human Rights: The First Decade of Devolution*. Manchester: Equality and Human Rights Commission.
- Chaney, P. (2010) 'Citizenship and Women's Political Representation', pp. 189–209 in E. Breitenbach and P. Thane (eds) *Women and Citizenship in Britain and Ireland in the Twentieth Century*. London: Continuum.
- Chaney, P. (2011) *Equality and Public Policy*. Cardiff: University of Wales Press.
- Chaney, P. and Fevre, R. (2002) *An Absolute Duty: The Equality Policies of the Government of the National Assembly for Wales and their Implementation: July 1999 to January 2002. Report for the Equal Opportunities Commission, Disability Rights Commission, and Commission for Racial Equality*. Cardiff: Institute of Welsh Affairs.
- Clements, L. and Thomas, P. (1999) 'Human Rights and the Welsh Assembly', *Planet: The Welsh Internationalist* 136: 7–11.
- Cole, M. (ed.) (2006) *Education, Equality and Human Rights: Issues of Gender, 'Race', Sexuality, Disability and Social Class*, 2nd edn. London: Routledge.
- Council of Europe (2004) *Gender Mainstreaming*. Strasbourg: CoE.
- Council of Europe (2010) *Application of the Charter on Regional and Minority Languages in the United Kingdom*. Strasbourg: CoE.
- DeLeon, P. (1998) 'Models of Policy Discourse: Insights versus Prediction', *Policy Studies Journal* 26(1): 147–61.
- Department for Children, Education, Lifelong Learning and Skills (DCELLS) (2009) *DCELLS Single Equality Scheme Action Plan Progress Report March 09–Sept 09*. Cardiff: DCELLS.
- Department for Local Government and Communities (DLGC) (2007) *The Equalities Review: Interim Report for Consultation*. London: DLGC.
- Department of Education for Northern Ireland (DENI) (2008) *Review of Irish-medium Education Report*. Belfast: DENI.
- Department of Education for Northern Ireland (2009) *Every School a Good School: A Policy for School Improvement*. Belfast: DENI.
- Edelman, M. (1988) *Constructing the Political Spectacle*. Chicago: Chicago University Press.
- Education and Training Inspectorate for Northern Ireland (ETINI) (2008) *A Common Framework for Inspection*. Belfast: Education and Training Inspectorate for Northern Ireland.
- Education and Training Inspectorate for Northern Ireland (2009a) *Self-Evaluation and Inspection of Initial Teacher Education Provision 2009–2010*. Belfast: Education and Training Inspectorate for Northern Ireland.
- Education and Training Inspectorate for Northern Ireland (2009b) *Short Inspection – Primary: Information for Teachers*. Belfast: Education and Training Inspectorate for Northern Ireland.

- Equality Commission for Northern Ireland (2007) *Report on Public Authority Five Year Reviews of Equality Schemes – August 2007*. Belfast: ECNI.
- Equality Commission for Northern Ireland (2008) *Every Child an Equal Child: An Equality Commission Statement on Key Inequalities in Education and a Strategy for Intervention*. Belfast: ECNI.
- Estyn (2004) *Guidance on the Inspection of Secondary Schools*. Cardiff: Estyn.
- Estyn (2007) *Disability Discrimination Act (1995): The Practice of Schools and Local Education Authorities in Implementing their Duties*. Cardiff: Estyn.
- Estyn (2008) *The Common Inspection Framework for Education and Training in Wales*. Cardiff: Estyn.
- Estyn (2009) *The Annual Report of Her Majesty's Chief Inspector of Education and Training in Wales 2008–2009*. Cardiff: Estyn.
- Fischer, F. (2003) 'Beyond Empiricism: Policy Analysis as Deliberative Practice', pp. 209–27 in M. A. Hajer and H. Wagenaar (eds) *Deliberative Policy Analysis: Understanding Governance in the Network Society*. Cambridge: Cambridge University Press.
- Fischer, F. and Forester, J. (1993) *The Argumentative Turn in Policy Analysis*. London: UCL Press.
- Gacitua-Mario, E., Georgieva, S. and Norton, A. (eds) (2009) *Building Equality and Opportunity through Social Guarantees: New Approaches to Public Policy and the Realization of Rights*. Washington: World Bank Publications.
- General Teaching Council for Northern Ireland (GTCNI) (2004) *Code of Values and Professional Practice*. Belfast: GTCNI.
- General Teaching Council for Northern Ireland (2006) *The Charter for Education in Northern Ireland*. Belfast: GTCNI.
- General Teaching Council for Scotland (2009) *Equality and Diversity Action Plan 2009–10*. Edinburgh: GTCS.
- General Teaching Council for Wales (2006) *A Professional Development Framework for Teachers in Wales*. Cardiff: GTCW.
- Her Majesty's Inspectorate of Education (2002) *Count Us In: Achieving Inclusion in Scottish Schools*. Edinburgh: HMIE.
- Her Majesty's Inspectorate of Education (2006a) *Improving Scottish Education*. Edinburgh: HMIE.
- Her Majesty's Inspectorate of Education (2006b) *Promoting Understanding and Combating Sectarianism*. Edinburgh: HMIE.
- Her Majesty's Inspectorate of Education (2008a) *How Good Are We at Implementing the Additional Support for Learning Act? How Good Can We Be?* Edinburgh: HMIE.
- Her Majesty's Inspectorate of Education (2008b) *Improving Scottish Education: A Report by HMIE on Inspection and Review 2005–8*. Edinburgh: HMIE.
- Her Majesty's Inspectorate of Education (2008c) *QIs to be Used in Inspections from January 2008*. Edinburgh: HMIE.
- Her Majesty's Inspectorate of Education (2009) *Policy on Equality and Diversity*. Edinburgh: HMIE.

- Hill, D. (2001) 'Equality, Ideology and Education Policy', pp. 7–34 in D. Hill and M. Cole (eds) *Schooling and Equality: Fact, Concept and Policy*. Abingdon: Routledge Falmer.
- Johansson, O., Davis, A. and Geijer, L. (2007) 'A Perspective on Diversity, Equality and Equity in Swedish Schools', *School Leadership and Management* 27(1): 21–33.
- Lambert, D. (1999) 'The Government of Wales Act: An Act for Laws to be Ministered in Wales in Like Form as it is in this Realm?', *Cambrian Law Review* 30: 60–71.
- Learning and Teaching Scotland (2008) 'Why Challenge Sectarianism? Statement from the First Minister'. Edinburgh: LTS. [<http://www.ltsotland.org.uk/supportinglearners/positivelearningenvironments/inclusionandequality/challengingsectarianism/whychallengesectarianism/statement.asp>]
- Lynch, K. and Lodge, A. (2002) *Equality and Power in Schools: Redistribution, Recognition and Representation*. London: Routledge Falmer.
- McLaughlin, E. and Faris, N. (2004) *The Section 75 Equality Duty – An Operational Review: A Report Prepared for the Northern Ireland Office as the First Stage of the Review*. Belfast: Northern Ireland Office.
- National Assembly for Wales (NAfW) (2007) *Policy Review Project Report*, Papers of the Equality of Opportunity Committee, EOC (2)-02-07, Annex 2. Cardiff: NAfW.
- Niens, U., Reilly, J. and Smith, A. (2006) 'Human Rights Education as Part of the Peace Process in Northern Ireland', *Journal of Social Science Education* 34(1): 12–32.
- Northern Ireland Curriculum (2007) *Personal Development and Mutual Understanding for Key Stages 1 & 2*. Belfast: Northern Ireland Curriculum.
- Northern Ireland Human Rights Commission (NIHRC) (2007) *Education Strategy 2007–10*. Belfast: Northern Ireland Human Rights Commission.
- Osler, A. (2000) 'The Crick Report: Difference, Equality and Racial Justice', *The Curriculum Journal* 11(1): 25–37.
- Reeves Associates (2007) *Independent Audit of Compliance of Section 75 of the Northern Ireland Act 1998*. Belfast: Reeves Associates.
- Scottish Executive (2000) *Working Together for Equality*. Edinburgh: Scottish Executive.
- Scottish Executive (2004) *Inclusion and Equality: Promoting Race Equality*. Edinburgh: Scottish Executive.
- Scottish Executive (2005a) *Action Plan on Tackling Sectarianism in Scotland*. Edinburgh: Scottish Executive.
- Scottish Executive (2005b) *Sectarianism: Don't Give It, Don't Take It*. Edinburgh: Scottish Executive.
- Scottish Executive (2006a) *Mainstreaming*. Edinburgh: Scottish Executive.
- Scottish Executive (2006b) *Review of Strategies to Address Gender Inequalities in Scottish Schools*. Edinburgh: Scottish Executive.

- Scottish Government (2007) *Closing the Opportunity Gap (CtOG) Programme: Phase 1 Evaluation*. Edinburgh: Scottish Government.
- Scottish Government (2008a) *Curriculum for Excellence: Building the Curriculum 3 – A Framework for Learning and Teaching*. Edinburgh: Scottish Government.
- Scottish Government (2008b) *Disability Equality Scheme 2008–2011*. Edinburgh: Scottish Government.
- Scottish Government (2008c) *Gender Equality Scheme 2008–2011*. Edinburgh: Scottish Government.
- Scottish Government (2008d) *Race Equality Scheme 2008–2011*. Edinburgh: Scottish Government.
- Scottish Human Rights Commission (2008) *Strategic Plan 2008–12*. Edinburgh: SHRC.
- Siraj-Blatchford, I., Milton, E., Laugharne, J. and Charles, F. (2007) 'Developing the Foundation Phase for 3–7-Year-Olds in Wales', *The Welsh Journal of Education* 14: 43–68.
- Social Services Inspectorate for Wales (2004) *National Minimum Standards for Boarding Schools*. Cardiff: Social Services Inspectorate for Wales.
- United Nations Committee on the Rights of the Child (2008) *Response to Reports Submitted by States Parties*. New York: United Nations.
- Welsh Assembly Government (WAG) (2001) *Wales – The Learning Country*. Cardiff: WAG.
- Welsh Assembly Government (2006a) *Mainstreaming Strategy*. Cardiff: WAG.
- Welsh Assembly Government (2006b) *The Learning Country: Vision into Action*. Cardiff: WAG.
- Welsh Assembly Government (2008a) *Foundation Phase: Framework for Children's Learning for 3 to 7-Year-Olds in Wales*. Cardiff: WAG.
- Welsh Assembly Government (2008b) *National Curriculum Order for Art and Design*. Cardiff: WAG.
- Welsh Assembly Government (2008c) *National Curriculum Order for Personal and Social Education*. Cardiff: WAG.
- Welsh Assembly Government (2008d) *National Curriculum Orders*. Cardiff: WAG.
- Welsh Assembly Government (2009) *Single Equality Scheme 2009–12*. Cardiff: WAG.

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