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Inquiry: AI and the Welsh Economy

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Evidence from: Equality and Human Rights Commission





Exploratory Inquiry response

AI and the Welsh Economy

Consultation details

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Introduction

About the Equality and Human Rights Commission

The Equality and Human Rights Commission (the Commission) is a statutory body established under the Equality Act 2006. We operate independently to encourage equality and diversity, eliminate unlawful discrimination, and protect and promote human rights. The Commission is the equality body for Great Britain and an A status National Human Rights Institution for England, Wales; and Scotland for reserved matters with a statutory mandate to advise Governments and Parliaments on matters relating to equality and human rights.

We welcome this opportunity to respond to this exploratory inquiry.

The Commission's 2022-25 strategic plan sets out our objective to address the equality and human rights impact of digital services and artificial intelligence. We want to be sure people and organisations understand how the Equality Act 2010 applies to the design and use of automated decision-making, and how discrimination that might arise through algorithmic biases can be identified and challenged. We also aim to ensure there is improved understanding of how the Human Rights Act applies to the use of new technology in terms of privacy, surveillance and the use of data.

Artificial intelligence (AI) is a fast-moving area. We recognise the potential benefits for society represented by the advent and use of AI. For instance, it is already showing huge dividends in health in supporting cancer diagnosis. But AI also comes with risks, both in the outputs it produces, as well as in irresponsible use. Some risks include bias and discrimination as well as risks to human rights. It is crucial organisations in all sectors robustly consider their equality obligations when deciding to develop, purchase or use AI in their course of their business.

The Legal Context

Equality Act 2010

The Equality Act 2010 (the Act) provides a legal framework to protect the rights of individuals and advance equality of opportunity for all. It provides Britain with a discrimination law which protects individuals from unfair treatment and promotes a fair and more equal society. The Act makes it unlawful to discriminate against, harass or victimise someone because of a protected

characteristic. This applies to the areas of activity covered by the Act, including employment, services and associations.

Public Sector Equality Duty

The Public Sector Equality Duty¹ (PSED) exists to integrate consideration of equality and good relations into the daily business of public authorities. The PSED requires public authorities to have due regard to the need to:

- eliminate discrimination, harassment and victimisation and other conduct prohibited by the Act
- advance equality of opportunity between people who share a protected characteristic and those who do not
- foster good relations between people who share a protected characteristic and those who do not

The duty requires public authorities to assess how decisions and policies may adversely affect groups of people with different protected characteristics, and to consider how to meet their particular needs.²

Certain listed public bodies must also follow the Wales specific equality duties. The specific duties set out the steps that listed bodies in Wales must take in order to demonstrate that they are meeting the general duty. Wales-specific duties include the requirement for listed bodies to state strategic equality objectives and report on progress towards them and to engage with people with protected characteristics when making policy decisions³.

Socio-economic Duty

The Socio-Economic Duty (SED) requires that Government officials and listed bodies in Wales consider the impact of policy decisions on those who are disadvantaged due to low income or other material deprivation.

¹ [Equality Act 2010 s.149.](#)

² [Equality Act 2010, Section 149.](#)

³ For a full discussion of the Wales specific duties, see the Commission's [Essential Guide to the Public Sector Equality Duty: An Overview for Listed Public Authorities in Wales](#)

Human Rights Act

The Human Rights Act 1998 requires all public bodies (like courts, police, local authorities, hospitals and publicly funded schools) and other bodies carrying out public functions to respect and protect human rights, including when they use AI applications or systems to carry out public functions. Depending on the application AI use could be relevant to various rights, but Article 8, the right to privacy is of particular note.

The Human Rights Act can apply to the use of AI in a broad range of circumstances, including in relation to:

- Article 2: Right to life – the use of some AI technologies may cause risk to life, for example in a medical setting or in self-driving vehicles.
- Article 8: Respect for private and family life – the use of personal data is intrinsic to AI, meaning there may be implications for people’s privacy rights.
- Article 10: Freedom of expression and Article 11: Freedom of assembly and association – the use of particular technologies, such as Facial Recognition Technology, in public spaces may infringe individuals’ rights to free expression and freedom of assembly.
- Article 14: Protection from discrimination in respect of these rights and freedoms – there are well-acknowledged risks of discrimination in AI, which may cause people with particular characteristics to be treated less favourably when exercising their other human rights.

Response to the Inquiry Questions

- **What are the potential economic opportunities and risks that AI may present for Wales, and how might these vary across different parts of Wales and different sectors?**
- **How is AI likely to affect jobs and workers in Wales, and what actions might the Welsh and UK Governments need to take in response?**

Artificial intelligence (AI) is a fast-moving area. While there are big opportunities, there are also significant risks of discrimination. The following sections outline some of our headline concerns in relation to AI in various sectors.

All sectors

Organisations in all sectors must ensure that their development and use of AI applications does not discriminate against groups of people who share protected characteristics.

Recent Commission work has focussed on

- exploring the potential for discrimination as a result of online recruitment through social media platforms
- working together with the England Local Government Association, the Information Commissioner's Office (ICO) and other organisations in central and local governments to produce guidance to help local authorities better consider equality and data protection when procuring AI-based technologies. Although the project focuses on local authorities in England, it is likely to hold transferable value across the public sector in Britain.

Public Sector

AI and new digital technologies are transforming how public services are delivered. They have the potential to improve equality, but they may also lead to discrimination. If public bodies don't take steps to guard against this, they may face reputational damage and legal action for breaches of the [Equality Act 2010](#), including the [Public Sector Equality Duty \(PSED\)](#).

The Commission has published [guidance on artificial intelligence in public services](#) to advise public bodies on procuring, commissioning, building or adapting artificial intelligence (AI) for their workplace or the services they provide.

Public bodies need to consider the PSED from the very start when thinking about whether to use AI. The PSED also applies to any AI systems that public bodies are already using or that others may be developing or using on their behalf. These organisations must build equality into existing services and decisions about new policies or services. That is, they must think about the potential equality benefits of using AI (for example, it may help to meet the needs of people from certain protected characteristic groups), the risks it may pose to equality (for example, it may put some groups at a particular disadvantage) and any risks can be reduced.

Certain listed public bodies must also follow the Wales specific equality duties. These help public bodies improve their performance of the general duty. For a full description of the Wales specific duties see chapter 6 of our [technical guidance on the PSED in Wales](#).

The specific duties that are particularly relevant to AI are likely to be those relating to:

- assessing equality impact;
- procurement and commissioning; and
- setting equality objectives and publishing information to show compliance with the general duty.

Workforce-related obligations are also likely to be relevant for any public bodies using AI in their employment.

Last September, we also published:

- [Revised Public Sector Equality Duty and Data Protection guidance](#). This has been updated in collaboration with the ICO to provide examples of data that can be used as a proxy for characteristics protected under the Equality Act 2010, as well as advice on how public bodies in Britain processing such data can comply with the PSED and data protection law (including in the context of AI). The update includes a case study on the risks of using AI-based technologies that mass process proxy data without 'due regard' to its equality impact.
- [A range of case studies](#) demonstrating how local authorities can consider equality when commissioning and using AI technologies. Although the case studies are about local authorities in England, we think they are relevant to all public bodies across Britain.

AI in recruitment and the workplace

There is a risk of bias and discrimination through use of AI in recruitment. Bias and discrimination can occur in each stage of the recruitment journey – from sourcing applicants with targeted online job advertising; to screening, including CV screening; to interviews, for example voice and face recognition in interviewing; to selection of candidates. Using AI systems for recruitment is likely to grow. The potential harm caused is difficult to measure and prove; for example, an individual may be unaware why their CV was screened out or that AI was used in the process.

Conclusion

Our current strategic focus is identifying areas of risk to equality and human rights in the development of AI. equality and human rights are central to the development and use of AI.

Government and others are increasingly looking to us for support in understanding these risks. We have an important role in supporting responsible and fair innovation and use of AI. We are partnering with the Responsible Technology Adoption Unit (formerly the Centre for Data Ethics and Innovation, part of the Department for Science Innovation and Technology), Innovate UK, and the ICO to drive the development of new socio-technical solutions to address bias and discrimination in AI systems. We are also participating in the Fairness Innovation Challenge, alongside the ICO and the RTAU.

We are in the process of developing our strategic plan for 2025–28, and as part of this process, we will consider our strategic approach to regulating AI.

We would be happy to further engage with the Senedd Economy, Trade and Rural Affairs Committee on this topic.