

The Socio-Economic Duty

A Consultation

July 2017

MINISTERIAL FOREWORD



The public sector has a central role to play in tackling poverty and inequality and many of our key partners are already well ahead of the game. This is visible in the wider context of public service reform, in the everyday operation of Scottish local authorities as they provide critical services in their communities, in the pioneering work of Fairness Commissions, and in the innovative work of NHS Boards to support low income households on maximising incomes.

These efforts are very welcome, but we need to do more. Over a million people are living in poverty in Scotland, including one in four children; and inequalities of income and wealth are far too wide. This unfairness simply isn't acceptable in a country as rich as Scotland – so I want to make sure that, wherever we can, we are taking action across the country to reduce poverty and inequality in a systematic way.

That's why the Scottish Government is bringing forward a new socio-economic duty for the public sector. This duty means that key public bodies – like local councils and the NHS - will have to think carefully about how they can reduce poverty and inequality whenever they make the big decisions that are important to all of us. These decisions include, for example, an economic development plan; or an annual budget setting out spending priorities.

Public bodies will need to be able to show that they **understand** the key socio-economic inequality gaps that exist **and** that they've **taken account** of them in the decisions they make.

I know that many in the public sector support the introduction of the duty as a way to work more systematically on these issues. My view is that looking through the lens of poverty and inequality will lead to better decisions for the future.

In October last year, the Scottish Government published the Fairer Scotland Action Plan (FSAP), which set out 50 concrete actions to tackle poverty and inequality. The introduction of the duty was Action 1 within that plan and we committed then to consult on the duty because we want to make sure we get implementation right. Thanks in advance for your help, through this consultation, in making sure this duty works in practice.

When the duty is introduced later this year, Scotland will be the first and only part of the UK to have this, the 'missing' part of the Equality Act 2010 in place. This is a great opportunity to shift up a gear and do even more to make Scotland a more equal and a fairer country.

A handwritten signature in black ink, appearing to read "Angela Constance".

ANGELA CONSTANCE
CABINET SECRETARY FOR COMMUNITIES, SOCIAL SECURITY AND EQUALITIES

INTRODUCTION

About the Socio-Economic Duty

The socio-economic duty asks particular public authorities to do more to tackle the **inequalities of outcome** caused by **socio-economic disadvantage**. In particular, the duty aims to make sure that **strategic decisions** about the most important issues are carefully thought through so that they are as effective as they can be in tackling socio-economic disadvantage and reducing inequalities of outcome. These strategic decisions would include, for example, an economic development strategy; or an annual budget setting out key investment choices.

These key terms (in bold above) are defined in more detail in **Section 1** of this paper.

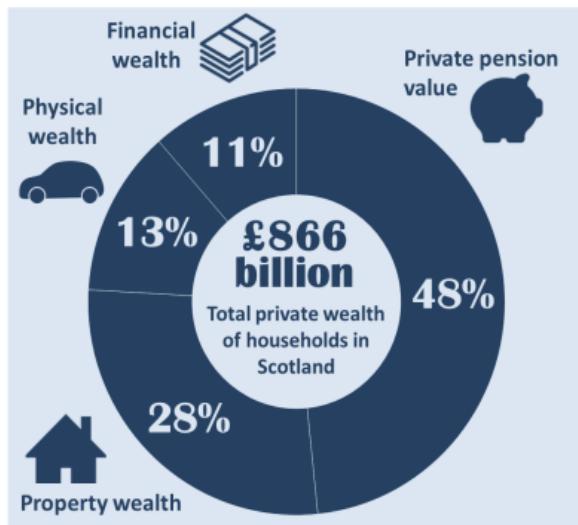
Strategic public authorities – those that tend to be the most influential - will be covered by the duty. They will have the opportunity to show that they both understand the key socio-economic inequality gaps and have taken account of them in the decisions they make. The strategic bodies covered by the duty are set out in **Section 2** of this paper.

The main outcome that the Scottish Government is looking for from the introduction of the duty is improved decision-making that genuinely leads to better outcomes for those experiencing disadvantage. We will know if inequalities are reducing from the range of statistics we publish on a regular basis, including indicators on poverty, education, crime, health and income in the National Performance Framework and the Scottish Index of Multiple Deprivation. However, we recognise that some public authorities will need help and advice, so questions on how public authorities can fulfil their responsibilities under the duty, to inform the production of guidance, are set out in **Section 3**.

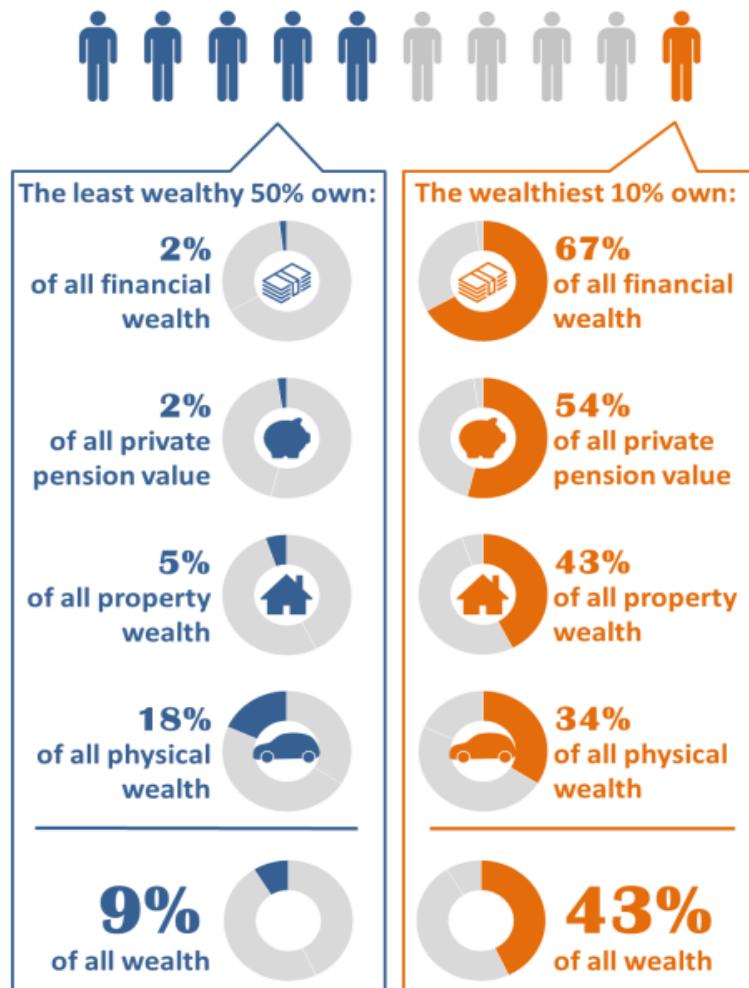
To show how the duty might work in practice, three case studies are set out in an Annex at the back of this consultation paper. These may help you answer some of the broader questions in the consultation document.

The case for introducing the socio-economic duty is compelling. The public sector already does a lot of important work on poverty and inequality. But the scale of the challenge we face as a country is huge. Over a million people are living in poverty in Scotland, including one in four children; and, as shown below, inequalities of income and wealth are persistent, with knock-on impacts on a wider range of outcomes.

Scotland is a wealthy country.



But not everybody has an equal share.



Source: Wealth and Assets Survey 2006-2014 <http://www.gov.scot/Publications/2017/02/6032>

Background to the Socio-Economic Duty

The socio-economic duty has a complicated history. It was first introduced in legislation in April 2009 when the last UK Labour Government published an Equality Bill. The Bill included provision for a socio-economic duty (“the duty”) to be introduced. The duty was put into statute as Section 1 of the Equality Act 2010.¹ The intention of the then government was to bring together the duty on socio-economic disadvantage with duties on equality (from the same Act of Parliament), and child poverty (from the Child Poverty Act 2010). These three strands together would help the public sector build a fairer UK.

However, this did not turn out as planned. Soon after taking office, the UK Coalition (Conservative and Liberal Democrat) Government decided not to commence the socio-economic duty. To date, the duty has not been introduced in any part of the UK. Then, in 2015, the Conservative Government removed the child poverty elements from the Child Poverty Act 2010, renaming it the ‘Life Chances Act’. This means that, of the three strands introduced in 2010, only the equality duties are actually in place.

In Scotland, we are taking a different approach. The Scottish Government now intends to introduce the socio-economic duty here. Following recommendations by the Smith Commission, the power to commence the duty was included within the Scotland Act 2016² and that power transferred to Scottish Ministers on 23rd May 2016.

The Scottish Government has also introduced a Child Poverty Bill to the Scottish Parliament,³ which effectively reinstates the requirements of the Child Poverty Act 2010, but in a more ambitious way. This means that, in Scotland at least, there is now the opportunity to realise the original ambition and bring together the various duties on equality, socio-economic disadvantage and child poverty.

The Scottish Government’s plan to introduce the socio-economic duty was set out in the Fairer Scotland Action Plan (October 2016), with time for consultation and further development of guidance on how the duty should be operationalised. Subject to this consultation, the Scottish Government plans to commence the duty by end 2017.

The socio-economic duty places an overarching requirement on strategic public bodies, or ‘public authorities’ as the legislation refers to them; this is the term we’ve used in this consultation paper to refer to this strategic part of the public sector.

The duty in the context of public service reform

The socio-economic duty is set in the broader context of Scottish public service reform. High quality public services are at the heart of the Scottish Government’s work to shape a fairer society and deliver our national outcomes. Our approach puts

¹ <http://www.legislation.gov.uk/ukpga/2010/15/part/1>

² <http://www.legislation.gov.uk/ukpga/2016/11/section/38/enacted>

³ <http://www.parliament.scot/parliamentarybusiness/Bills/103404.aspx>

people and communities at the heart of public service delivery and policy making and is designed to tackle the causes of disadvantage, not simply its consequences.

Building on the foundations established by the Christie Commission in 2011, our approach to Public Service Reform is underpinned by the four pillars of reform – prevention, people, partnership and performance. These pillars provide the strategic context and drive for all of the Government's key initiatives that aim to improve the lives of disadvantaged people across Scotland, including this new duty.

Developing from these pillars and key to the success of this new duty are the following principles:

- Reforms must **empower people and communities** receiving public services by involving them in the design and delivery of the services they use;
- Providers of public services must work much more closely in **partnership** to **integrate service provision** and so improve the outcomes they achieve;
- We must prioritise expenditure on public services which **prevent negative outcomes** from arising;
- And our whole system of public services – public, third and private sectors – **must become more efficient** by reducing duplication, *improving* performance and sharing services wherever possible.

The socio-economic duty is one of a number of public sector duties with a socio-economic focus. It is an overarching duty, which applies to strategic public authorities at a strategic decision-making level. Other duties such as the Child Poverty (Scotland) Bill and the Children and Young People (Scotland) Act 2014 tend to apply more at operational levels, but it is important that the socio-economic duty is not seen in isolation from these other duties. Links between duties are discussed in more detail in **Section 4** of this consultation paper.

About this consultation paper

In 2017, Scotland will become the first part of the UK to introduce the socio-economic duty. This consultation paper asks for your help in doing this, ahead of guidance that we will be developing later in the year.

The Scottish Government wants to make sure that this duty is introduced in the right way, so that it can have maximum positive impacts. So it's important to get implementation right and this consultation paper is a key way to make sure we do.

This consultation therefore asks for your views on these issues:

- **Section 1:** Whether you agree with definitions of key terms
- **Section 2:** Which public authorities the duty should apply to
- **Section 3:** What public authorities could do to show they are meeting the duty and

- **Section 4:** How public authorities could sensibly approach the links between different duties with a socio-economic focus

We would welcome views from anyone who has an interest in the issues raised by the duty. We would particularly like to hear from people with direct experience of poverty, from public authorities likely to be affected by the duty, and from organisations and individuals working on issues of poverty and disadvantage. An **easy read version of the consultation paper** is also available on the Scottish Government website.⁴

Some of the questions that follow are targeted more towards the bodies that will be implementing the duty, while others are more general. **Anyone can answer any question** but please feel free not to answer a question where you don't have a ready answer.

Please note that in order to meet legislative timescales and enable the socio-economic duty to be introduced in 2017, a shorter eight week period has been set for this consultation process.

⁴ <http://www.gov.scot/publications>

SECTION 1 – DEFINING THE KEY TERMS OF THE DUTY

About the socio-economic duty

This consultation paper asks for views on how public authorities can meet the requirements of the duty as it is currently defined. The key section in legislation is as follows:

(1) An authority to which this section applies must, when making decisions of a strategic nature about how to exercise its functions, have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage.⁵

This text below defines the key terms in this section. These definitions have been developed from guidance from other Scottish duties and from a guide published by the UK Government alongside its original Equality Bill.

We would be interested in any views on these definitions. An opportunity to comment on the definitions is provided at the end of the section.

Socio-economic disadvantage. Being ‘socio-economically disadvantaged’ means living in less favourable social and economic circumstances than others in the same society. Features of socio-economic disadvantage can include low income and living in a deprived area.

Socio-economic disadvantage is not always experienced in neat concentrations of people in recognisable communities - it may apply to particular communities of place, communities of interest or even individual households. This is an important distinction to make: two out of three people who are income deprived do not live in deprived areas and just under one in three people living in a deprived area are income deprived.

We would therefore expect public authorities to focus on communities **within particular disadvantaged places**; but also **within particular disadvantaged communities of interest** – such as young people leaving care; disabled people; or people from minority ethnic communities. We would also expect public authorities to focus on the specific nature of socio-economic disadvantage for people in rural, remote and island areas.

Inequalities of outcome. By inequalities of outcome, we mean any measurable differences in what happens to people through their lives – for example, in relation to their health and life expectancy, or their educational attainment. Socio-economically

⁵ <http://www.legislation.gov.uk/ukpga/2010/15>

disadvantaged households have a higher risk of experiencing poor outcomes. For example, we know that in Scotland:

- In the most affluent areas, 81% of Scottish school leavers are qualified to Higher level or above, compared with 43% in the most deprived areas.
- Men in the most affluent areas experience 23.8 more years of good health compared to men living in the most deprived areas. Similarly, women in the most affluent areas experience 22.6 more years of good health compared to women living in the most deprived areas.

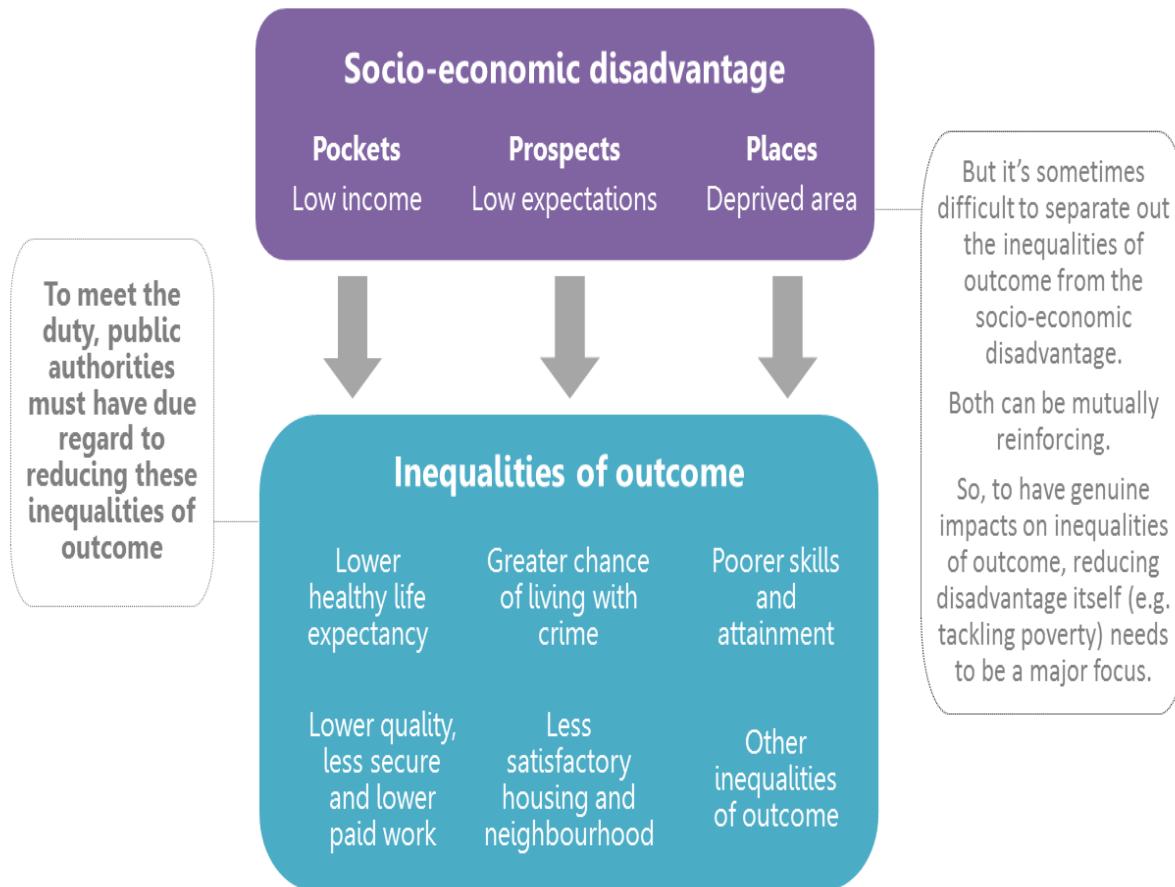
Outcomes for individuals are complex and derived from a range of interlinked factors. First, they can relate to the existing institutional, cultural and market structural factors that affect wider life chances (for example, levels of educational attainment; levels of unemployment; nature of employment, experiences of crime, life expectancy, levels of poverty and income inequality). Second, they can relate to decisions made nationally or locally about the availability of goods and services - for example, how money is spent locally, whether good quality affordable housing is available locally, the number of police allocated to a particular area, or the range of career progression opportunities in the local area. And, third, of course, particular equality considerations (age, disability, gender reassignment, race, religion, sex, sexual orientation) can lead to inequalities of outcome being widened further in some cases. These three sets of factors are inter-related. Decision making can change the shape of institutional and market structures, whilst structures can impact on both the nature of decisions made and the outcome for individuals.

As such, outcomes may be the result of a particular strategy or policy or practice, or related to the fact that no such strategy or policy is in place.

In carrying out this duty, we would expect public authorities to tackle the range of inequalities of outcome they observe in their area. In some cases, an effective way to do this will mean tackling socio-economic disadvantage directly by, for example, reducing poverty.

Authorities will also need to be mindful that the socio-economic duty applies to both 'physical communities' and 'communities of interest' and that the experience of socio economic disadvantage and the approaches to tackling poverty and inequality of outcome will need to be tailored accordingly.

The diagram over the page illustrates how the duty can help tackle both inequalities of outcome and socio-economic disadvantage.



Decisions of a strategic nature. These are the key, high-level decisions that determine how an organisation goes about its business and many of these decisions may be made in the context of reform and improving outcomes for service users. In general, they will be decisions that affect how the public authority fulfils its intended purpose, over a significant period of time.

These would normally include decisions about setting priorities and targets, allocating resources, and commissioning services. For some organisations, such decisions may only be taken annually. In other cases, they will come up more often. Decisions of a strategic nature will have a major impact on the way in which other tactical and day-to-day operational decisions are taken; but they are not in themselves tactical or operational.

Over the page are some examples of strategic decision making where public authorities should explicitly consider their socio-economic responsibilities.

For a local authority

- Preparation of the Local Development Plan⁶
- Production of a housing strategy or business plan
- Economic development/ regeneration strategy
- City deals or other major investment plans

For an Integration Joint Board

- Development of their strategic commissioning plan
- Investment decisions
- Policies to address health inequalities
- Location of key facilities

For a Police Authority

- Crime prevention strategy
- Stop & search
- Community engagement strategies

For all

- Cross cutting or specific policies which address issues which impact on deprived communities. For example, for groups (the Race Equality Framework and Disability Delivery Plan) or for sectors (regional transport strategies).

Due regard. Commonly, legislation places a duty on somebody (an individual or a body corporate) to "have regard" to certain considerations when making a decision. In order for somebody to "have due regard", not only must they consider the issue but it must be given weight which is proportionate to its relevance.

The socio-economic duty is designed to strike a balance and the Scottish Government does not want to be overly prescriptive. We recognise the need for public authorities to operate within their financial thresholds and to adopt policies which are coherent and complementary. The "due regard" requirement does not take precedence over these matters but operates within that context. It requires that public authorities explore how they might reduce inequalities in outcome for those who experience socio-economic disadvantage.

The duty will not necessarily require public authorities to spend additional resources; nor will they necessarily need to rethink existing projects or programmes, or develop new ones, although they may choose to do that in some cases.

They will need to balance the requirements of the duty – that they consider the desirability of reducing the unequal outcomes that result from socio-economic disadvantage – with their other objectives. With this in mind, it is not necessary for

⁶ The duty would apply to the preparation of the local development plan by the planning authority, but it would not interfere with the development plan's legal status as the basis for decision making and would not apply to individual planning decisions.

public authorities to demonstrate, with every single action they take, that they are reducing inequalities.

For many public authorities, tackling disadvantage and reducing inequalities in outcomes related to such disadvantage is already part of their core business. For them, the duty will give that part of their work a boost, by giving it a statutory basis where one doesn't exist already; ensuring it remains a priority; and helping them secure commitment and help from key partners.

For other organisations, reducing inequalities in outcomes will be a less obvious part of their remit. Here, the duty will act as a spur for them to assess what role they can play, either alone or in partnership with others, on this important objective.

QUESTION 1 – The key terms defined in this section are:

- Socio economic disadvantage
- Inequalities of outcome
- Decisions of a strategic nature
- Due regard

Do you agree that the definitions of these terms are reasonable and should be included within the Scottish Government's forthcoming guidance on the socio-economic duty?

SECTION 2 – THE PUBLIC AUTHORITIES COVERED BY THE DUTY

The wording of the Equality Act 2010, as amended by the Scotland Act 2016, enables Scottish Ministers to specify by regulations the public authorities to be covered by the socio-economic duty, as set out in section 2(4) below.

2. Power to amend section 1

- (4) The Scottish Ministers or the Welsh Ministers may by regulations amend section 1 so as to—
- add a relevant authority to the authorities that are subject to the duty under subsection (1) of that section;
 - remove a relevant authority from those that are subject to the duty;
 - make the duty apply, in the case of a particular relevant authority, only in relation to certain functions that it has;
 - in the case of a relevant authority to which the application of the duty is already restricted to certain functions, remove or alter the restriction.

However, as section 2(5)(c) makes clear, only an authority that is similar to those listed for England in the 2010 Act can be specified.

- (5) For the purposes of the power conferred by subsection (4) on the Scottish Ministers, “relevant authority” means an authority whose functions—
- are exercisable only in or as regards Scotland,
 - are wholly or mainly devolved Scottish functions, and
 - correspond or are similar to those of an authority for the time being specified in section 1(3).

The list of public authorities in the Act, covering England, originally specified the following:

- a Minister of the Crown;
- a government department other than the Security Service, the Secret Intelligence Service or the Government Communications Head-quarters;
- a county council or district council in England;
- the Greater London Authority;
- a London borough council;

- the Common Council of the City of London in its capacity as a local authority;
- the Council of the Isles of Scilly;
- a Strategic Health Authority established under section 13 of the National Health Service Act 2006, or continued in existence by virtue of that section;
- a Primary Care Trust established under section 18 of that Act, or continued in existence by virtue of that section;
- a regional development agency established by the Regional Development Agencies Act 1998
- A police authority established for an area in England.

Scottish Ministers therefore propose that the following Scottish public authorities be bound by the duty:

- Scottish Ministers [see below]
- Local Authorities
- NHS Health Scotland
- Integration Joint Boards
- Regional Health Boards
- The Scottish Police Authority
- Highlands and Islands Enterprise
- Scottish Enterprise

“Scottish Ministers” covers the following: The Scottish Government, Accountant in Bankruptcy; Disclosure Scotland; Education Scotland; Scottish Prison Service; Scottish Public Pensions Agency; Student Awards Agency for Scotland; Transport Scotland. The new Scottish Social Security Agency, once established, will also be subject to the duty.

QUESTION 2A – Do you agree that the socio-economic duty should apply to the Scottish public authorities named here? If not, please specify which authority you do not think it should apply to and why?

QUESTION 2B – Do you think the duty should apply to any other public authorities, similar to those listed in the Equality Act 2010? If so, please name them and explain why you think the duty should apply.

SECTION 3 – MEETING THE REQUIREMENTS OF THE DUTY

This section sets out initial thinking about the kinds of steps public authorities could take to show they are meeting the duty. The Equality Act 2010 sets out that public authorities must take into account guidance issued by Scottish Ministers (see below).

1 Public sector duty regarding socio-economic inequalities [...]

- (2) In deciding how to fulfil a duty to which it is subject under subsection (1), an authority must take into account any guidance issued in accordance with subsection (2A).
- (2A) The guidance to be taken into account under subsection (2) is—
- (a) in the case of a duty imposed on an authority in relation to devolved Scottish functions, guidance issued by the Scottish Ministers;

To help develop guidance, we have set out a number of steps that we know some public authorities are already taking and would welcome your views on these. This list is not definitive and will be amended or added to, based on your responses.

Step 1: Identifying which strategic decisions public authorities take

A first task for named authorities under the duty will be to identify which strategic decisions they take, as a matter of course. This will then allow time to build in evidence gathering and assessment in advance. Public authorities already routinely do this kind of work when considering their role and contribution to community planning and in helping to shape the priorities for specific places which will be set out in Local Outcome Improvement Plans. Section 1 of this paper includes some initial suggestions on what might constitute a strategic area for decision-making.

One area set out in Section 1 is budget setting. The Scottish Government already publishes analysis of the impacts of spending decisions on low income households in its suite of documents as part of the annual Draft Budget. This is fairly high level analysis, however, and a more detailed account could be provided. We are interested to hear how public authorities and others consider issues of socio-economic inequality when setting annual budgets.

Step 2: Identifying inequalities of outcome caused by socio-economic disadvantage

In any strategic decision-making process, public authorities need to be aware of the inequalities of outcome, caused by socio-economic disadvantage, that they are dealing with in each case.

There are a range of ways in which authorities can build this awareness. They already have access to a wide range of relevant quantitative data and other evidence including, for example, the Scottish Index of Multiple Deprivation, local child poverty estimates, and employment data, as well as their own administrative data. Some public authorities will have access to richer data than others – for example, local authorities may be able to use Council Tax Reduction, free school meals and Housing Benefit data that others may not have access to. Public authorities should make full use of the data they hold or can access when considering how to exercise their responsibilities under the duty.

A second way to gather evidence about the key inequalities of outcome is to set up a specific body for this purpose. A number of local authorities and Community Planning Partnerships have introduced fairness or poverty commissions at local level to demonstrate strategic foresight. We strongly support these commissions as good examples of strategic thinking and analytical insight. We would be interested to hear whether other public authorities would consider establishing fairness/poverty commissions of some kind in order to help strengthen their strategic approaches, thereby demonstrating a commitment to the principles of the duty.

A third way to understand inequalities of outcome is to involve communities themselves, including the experiences of people with direct experience of poverty. Fairness Commissions have often brought in community experiences into the heart of how they work and this is to be commended. In addition, the Scottish Government already funds the Poverty Truth Commission to bring the voices of people with that lived experience into policy making and we are shortly to announce funding for three new similar bodies based locally. Involving communities in the big decisions public authorities make is key to getting decisions right and making sure they do have the positive outcomes we all want. But of course, this has to be done appropriately and sensitively and we would be interested in your views on how to do this well.

Step 3: Exercising the duty during decision-making

Public authorities covered by the duty must be able to show how they are meeting its requirements. There must therefore be a clear audit trail for all decisions of a strategic nature, including an assessment of impacts on reducing inequalities of outcome, caused by socio-economic disadvantage, for any strategic decision. This could be written up as a core component of the decision-making process OR a separate report could be produced annually, showing how the authority has met the duty in the decisions it has reached.

Note that there is also an expectation that ‘due regard’ is given both by staff at the formation of any strategy/plan/programme and by decision makers at its adoption.

Public authorities could also choose to produce and publish impact assessments, which may mean, for example, making adjustments to existing Equality Impact Assessments. Published assessments would provide stakeholders with a consistent approach and a degree of scrutiny on individual decisions. We would be interested to hear about others’ best practice on impact assessments, particularly where issues

such as equality and low income are considered in an integrated way, to help us consider this further.

Step 4: Monitoring the Impact over the longer term

Our view is that it is not sensible to try to identify another measurement framework to monitor the impact of the socio-economic duty which is a broad ranging strategic duty. A number of frameworks already publish key poverty and outcomes data at a strategic level, the main one at a national level being the Scottish Government's National Performance Framework and at a local level the various frameworks and plans of Community Planning Partnerships. There is scope to further develop the analysis and understanding of inequalities of outcomes related to socio-economic disadvantage but our view is that this should be done through continuous improvement to existing monitoring systems rather than developing new frameworks.

The Scottish Government recognises that some stakeholders believe the socio-economic duty should be strengthened so that a) all of the public sector is brought under the duty and b) the provisions of the duty have broader scope – for example, to place the socio-economic duty on more of a level with existing equality duties, including on enforcement. However, this would require new Scottish legislation and the Scottish Government has not yet reached a view on whether this is necessary or proportionate. Ministers will consider evidence of how public authorities have responded to the duty in its initial period of operation before determining how to proceed in future years.

QUESTION 3A – Do you have any comments on the steps set out in SECTION 3?

QUESTION 3B - What other actions could public authorities take to demonstrate that they are meeting the duty?

QUESTION 3C – Could you offer suggestions as to how public authorities could improve budgetary analysis and reporting so as to take better account of inequalities related to socio-economic disadvantage?

QUESTION 3D – Can you offer examples of how public authorities and others have made best use of the expertise of people with direct experience of poverty?

QUESTION 3E - What kind of guidance and support on meeting the duty would be most useful for public authorities?

QUESTION 3F – Do you have a view on whether public authorities should use existing monitoring frameworks to track whether the socio-economic duty is making a difference to outcomes over the long term?

SECTION 4 – LINKS BETWEEN THIS AND OTHER DUTIES

The socio-economic duty is one of a number of duties, already set out in legislation, that have a socio-economic focus; the key ones are set out in the box below and illustrated by a diagram over the page. This section asks how public authorities could sensibly approach the links between the different duties, again to inform guidance.

The socio-economic duty should not be seen in isolation from these other duties. It is an overarching duty, which applies to strategic public authorities at a strategic decision-making level. Other duties tend to apply at operational levels.

Child Poverty (Scotland) Bill

The Child Poverty (Scotland) Bill currently includes a duty on local authorities and health boards to publish annual Local Child Poverty Action Reports, setting out action taken to reduce child poverty and drive progress towards the 2030 income targets.

Children and Young People (Scotland) Act 2014

The Child and Young People (Scotland) Act 2014 requires local authorities and health boards to ensure that relevant national outcomes and objectives (including the Child Poverty Strategy) are reflected in Children's Services Plans.

Education (Scotland) Act 2016

The Education (Scotland) Act 2016 amended the Standards in Scotland's Schools etc. Act 2000 to require education authorities to have due regard to the need to carry out school education functions in a way designed to reduce inequalities of outcome for those pupils experiencing them as a result of socio-economic disadvantage.

Community Empowerment (Scotland) Act 2015

The Community Empowerment (Scotland) Act 2015 requires Community Planning Partnerships (CPPs) to act with a view to reducing inequalities of outcome which result from socio-economic disadvantage unless the CPP considers that it would be inappropriate to do so.

DUTIES WITH A SOCIO-ECONOMIC FOCUS

SOCIO-ECONOMIC DUTY

Overarching strategic duty on named public authorities

An authority to which this section applies must, when making decisions of a strategic nature about how to exercise its functions, have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage.

CHILD POVERTY (SCOTLAND) BILL

Local authorities and health boards required to publish annual Local Child Poverty Action Report, setting out action taken to reduce child poverty

CHILDREN & YOUNG PEOPLE (SCOTLAND) ACT 2014

Local authorities and health boards must ensure that relevant national outcomes and objectives (including the Child Poverty Strategy) are reflected in Children's Services Plans .

COMMUNITY EMPOWERMENT (SCOTLAND) ACT 2015

CPPs must act with a view to reducing inequalities of outcome which result from socio-economic disadvantage unless the CPP considers that it would be inappropriate to do so.

EDUCATION (SCOTLAND) ACT 2016

Education authorities must have due regard to the need to carry out school education functions in a way designed to reduce inequalities of outcome for those pupils experiencing them as a result of socio-economic disadvantage.

In addition, public authorities are also subject to other duties on equality and human rights. These also link to socio-economic concerns, as follows.

Equality Act 2010.

The public sector equality duty (PSED) in the Equality Act 2010 came into force in April 2011: Scottish public authorities must have 'due regard' to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations (also known as the General Duty). Scottish Ministers made regulations in May 2012 placing specific duties on Scottish public authorities to enable the better performance of the PSED: these are known as the Scottish Specific Duties.

Both the PSED and the socio-economic duty require 'due regard' ("the conscious direction of the mind towards...") and evidence that due regard has been given.

In the case of the PSED, listed public authorities are required to publish the results of their equality impact assessments and report on progress on the General Duty on a regular basis. The socio-economic duty does not require these approaches, but public authorities will need to be able to demonstrate due regard if challenged.

There is considerable cross-over between equality and socio-economic issues, in the sense that many of the disadvantages faced by particular equality groups are underpinned or made worse by low income. Indeed, discrimination can be a direct cause of socio-economic disadvantage. There are varying degrees of evidence of a correlation between protected characteristics and poverty (in gender, race, disability, faith and belief and sexual orientation) but the reasons for deprivation – and thus the routes out of deprivation - amongst protected characteristics groups may differ significantly from geographical deprived groups. For example, disabled people's poverty could be caused by the additional costs of disability or higher levels of unemployment due to poor or inaccessible public transport. For minority ethnic groups, poverty could be a product of lower levels of economic activity due to higher numbers of students or higher levels of unemployment linked to discrimination. For women, structural issues such as disproportionately low pay, low access to affordable childcare, and occupational segregation could be the cause.

Because of the links between equality and socio-economic duties, each strategic decision would need to be assessed against both. This therefore provides a rationale for considering equality and socio-economic issues in an integrated way, while still making sure that each protected characteristic is considered in depth and with care in any kind of assessment process. We are aware that a number of local authorities are already looking to integrate equality and socio-economic concerns, and that some have recently published socio-economic focused outcomes alongside their equality outcomes. This could also help streamline monitoring and reporting.

We would be interested to hear more from public authorities and others on how they make the most of connections between these cross-cutting areas to improve policy development and reduce inequality.

Human rights legislation.

There are obvious links too between the socio-economic duty and human rights.

The International Covenant on Economic, Social and Cultural Rights was ratified by the UK in 1976. The Covenant contains some of the most significant international legal provisions establishing economic, social and cultural rights relating to:

- Work in just and favourable conditions
- Social protection
- An adequate standard of living
- The highest attainable standards of physical and mental health
- Education
- Enjoyment of the benefits of cultural freedom and scientific progress

The Scottish Government updates the United Nations on progress towards implementing and observing international human rights standards by including a distinctive Scottish contribution in formal UK reports to the UN Committee on Economic, Social and Cultural Rights. The Scottish Government was also represented as part of the UK delegation in Geneva during a review of the UK under the Covenant in June 2016. Following this review, the UN Committee included the following recommendation in its set of concluding observations:⁷

“The Committee recommends that the State party bring into force the relevant provisions of the Equality Act that refer to the public authorities’ duty with respect to socioeconomic disadvantage, as well as with respect to the prohibition of intersectional discrimination, in order to enhance and guarantee full and effective protection against discrimination in the enjoyment of economic, social and cultural rights..”

As can be seen, there are evident connections between the Covenant and the Scottish Government’s aspirations for the socio-economic duty and, as with equality responsibilities, it is worth considering how these responsibilities could be part of an integrated framework.

QUESTION 4A - Once the socio-economic duty is introduced, the Scottish Government is keen for public authorities to look strategically across all planning processes in place to maximise their impact. What could public authorities and the Scottish Government do to make sure that the links between the different duties are managed effectively within organisations?

QUESTION 4B – Can you offer examples of good practice in taking an integrated approach to issues such as poverty, equality, and human rights?

⁷

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGBR%2fCO%2f6&Lang=en

SUMMARY OF QUESTIONS

QUESTION 1 – The key terms defined in this section are:

- Socio economic disadvantage
- Inequalities of outcome
- Decisions of a strategic nature
- Due regard

Do you agree that the definitions of these are reasonable and should be included within the Scottish Government's forthcoming guidance on the socio-economic duty?

QUESTION 2A – Do you agree that the socio-economic duty should apply to the Scottish public authorities named here? If not, please specify which you do not think it should apply to and why?

QUESTION 2B – Do you think the duty should apply to any other public authorities, similar to those listed in the Equality Act 2010? If so, please name them and explain why you think the duty should apply.

QUESTION 3A – Do you have any comments on the steps set out in SECTION 3?

QUESTION 3B - What other actions could public authorities take to demonstrate that they are meeting the duty?

QUESTION 3C – Could you offer suggestions as to how public authorities could improve budgetary analysis and reporting so as to take better account of inequalities related to socio-economic disadvantage?

QUESTION 3D – Can you offer examples of how public authorities and others have made best use of the expertise of people with direct experience of poverty?

QUESTION 3E - What kind of guidance and support on meeting the duty would be most useful for public authorities?

QUESTION 3F – Do you have a view on whether public authorities should use existing monitoring frameworks to track whether the socio-economic duty is making a difference to outcomes over the long term?

QUESTION 4A - Once the socio-economic duty is introduced, the Scottish Government is keen for public authorities to look strategically across all planning processes in place to maximise their impact. What could public authorities and the Scottish Government do to make sure that the links between the different duties are managed effectively within organisations?

QUESTION 4B – Can you offer examples of good practice in taking an integrated approach to issues such as poverty, equality, and human rights?

You can respond to the consultation online at
<https://consult.scotland.gov.uk/social-justice/the-socio-economic-duty>
or by sending an email and a completed Respondent Information Form to
SEDconsultation@gov.scot

ANNEX – CASE STUDIES OF THE SOCIO-ECONOMIC DUTY IN OPERATION

The case studies below give a range of scenarios where considering a decision from a socio-economic disadvantage perspective could influence the shape of the decision. Often it isn't what is done, but how it is done that will make the difference.

CASE STUDY 1 – DEVELOPMENT OF AN URBAN HOUSING PLAN

Before the Socio-Economic Duty. A local authority is putting together a new business plan for low-cost housing to inform the next review of their local development plan. There are two potential sites but the business plan expresses a preference for the new housing to be sited in the far east end of the council area. This is a greenfield site where it is easy and relatively cheap to lay the new utility pipes and to build houses with gardens which people have said they wanted. This is great on the one hand because there's a real shortage of houses that most people could afford in the area and it represents good value because the cost per home is lower than building in other areas. But on the other hand, there are very few bus services. So many people, especially those on low pay, could find it hard to get to work. And the plans haven't included the services people really need – there's no plan to build shops or a health centre, for instance. The plan says that buses and local services would need to be thought about, but there's no information about how these new services would be put in place.

After the Socio-Economic Duty. As the business plan is clearly an important decision, the authority has to think carefully about how the new housing will reduce inequalities of outcomes, because the new duty is in place.

This version of the business plan says that the new housing is being considered for the far east end of the council area because of the ease and cost of development and because they can build houses rather than flats. But if this area is the preferred option, new bus services will have to be set up to help local people, especially those on low pay, get to work. And shops and a health centre would be needed too, along with other basic services. This version of the business plan includes much more information about how these new services will be set up and how much they will cost.

But the plan also sets out another idea – to build a different type of flatted low-cost housing in an empty site nearer to the centre of the council area. This type of development costs more per home, because there are old pipes to dig up and contaminated land to treat. But it would make it easier for people living in the new housing to get to work and to use the local services that are already there. Some money would still need to be spent on upgrading local services and a play area for children but the cost is lower than providing new services.

The local authority knows it doesn't have all the answers. So it decides to test these ideas with local people, including people with direct experience of poverty. People say that they prefer the idea to build in the centre of the council area, particularly to make it easy to get a job or to change jobs. The local authority now balances all this information to make the best judgement and publishes a short report explaining its final decision.

CASE STUDY 2 – A SIGNIFICANT INVESTMENT DECISION WITHIN AN ECONOMIC DEVELOPMENT STRATEGY

A private research company has contacted a local council about developing a new Scottish research headquarters on a site on the outskirts of small rural town. The town has high levels of poverty and few job opportunities for less skilled workers. The council is keen for the area to welcome any type of investment and economic development.

Before the socio-economic duty

The council considers the proposal and notes that the research headquarters will bring 45 new jobs to the area. Most of the jobs will be high quality, secure with good career progression. The building will be newly built to high sustainability criteria with their London headquarters overseeing the building. New jobs will be made for skilled researchers but also for less skilled workers such as security, lab technicians, administration, cleaning and servicing of the building. The skilled jobs will be recruited internationally. The other jobs will be filled on contract from their London headquarters through recruitment agencies in the nearest city, 30 miles away. On balance the Council are very keen to signal that they welcome new investment and encourage the location of the research headquarters.

After the socio-economic duty

The council assesses the proposal to see if it either reduces or further increases inequality of outcome due to socio-economic disadvantage. They note that the research jobs are good quality but that they are unlikely to be filled in the local area. Furthermore, the jobs that are lower-skilled may be more suitable for people who experience socio-economic disadvantage but they are not going to be recruited locally. Moreover, the building itself will be undertaken by a company that has no current apprentices and a poor record of providing career progression to its employees.

The council is still keen to encourage the location of the research headquarters but enters into negotiation with the company to try to mitigate some of the identified negative impacts. They include local people in some of the meetings to help them encourage the company to think about recruiting some of their semi-skilled jobs locally. The company is reluctant because of the skilled nature of the work but a local college agrees to help and offers a day release training opportunity for administration and lab technician posts. As a result, the company agrees to develop a graduate development programme and a modern apprenticeship programme enabling it to build its support workforce over time whilst continuing to recruit its key researcher posts internationally. The company was unwilling to change their building contracts but did agree that future maintenance programmes would be tendered amongst smaller, more local trades. The council felt that these changes had fulfilled their duty. They wrote this up, published it on their website and welcomed the new investment.

CASE STUDY 3 – REPROVISIONING A MENTAL HEALTH HOSPITAL.

In City X, the mental health facilities have developed on an ad hoc basis over many years with consultation happening in various buildings throughout the city. Many of the buildings are not suitable for modern approaches to mental health; there is a lack of key digital infrastructure and a lack of communication across the different offices. In response, the health board has proposed a major, multi-year investment to locate all mental health services together in purpose-built accommodation on a site that it owns.

Before the socio-economic duty

The health board thinks carefully about the type of accommodation required and how to make it suitable for the range of treatments and accommodation combinations needed by the medical staff. It also spends time considering how to make sure that the new facilities meet the needs of a variety of patients, including friendly, clear signage for children; wheelchair accessibility and facilities; appropriate signage for sensory impairments; suitable car parking and public transport options.

After the socio-economic duty

The health board also takes time to think about the inequalities caused by socio-economic disadvantage. There is reasonable evidence that people in poverty or living in deprived neighbourhoods have a higher risk of addiction and mental illness and it's also known that many patients struggle financially and socially. The new site is very well serviced by public transport so the Health Board doesn't think there are any problems there, but wonders whether it would be sensible to include a small office which could be offered for free to a local third sector organisation to provide a full benefit-check for patients. By reducing financial stress, this might help mental health outcomes.

The health board employs a wide range of staff and has already committed to paying the living wage. But consultation with staff has suggested that the new site might increase transport costs for employees, which could be particularly problematic for those who are disadvantaged. The Board decides to negotiate with a local bus company to give their workers a 10% discount on travel-cards for the first 18 months after the move. It also commits to examining the data held on workers' shifts to check that employees are being offered enough work to suit their individual requirements and reduce in-work poverty and, as a result, decides to roll-out career progression discussions.

Finally, the board decides to run a road-show in local secondary schools in deprived areas to encourage pupils, especially boys, to think about a future career in mental health nursing or related occupations.

The socio-economic duty has not changed the initial decision but it has identified a few areas where the health board could tweak its approach to further demonstrate its commitment to tackling inequality in outcomes.



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