

# Report



## Cabinet Member Community and Resources

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### Part 1

Date: 14 January 2020

**Subject** **Welsh Government Consultation: Commencing the Socio-economic Duty**

**Purpose** To note the proposed enactment of the “socio-economic duty” and response to the Welsh Government consultation on this.

**Author** Head of People and Business Change  
Head of Law and Regulation

**Ward** All

**Summary** The Welsh Government has asked Welsh Public Sector Bodies to respond to a consultation on the enactment of the “socio-economic duty”. This duty would ask the Authority to consider (and evidence consideration of) socio-economic disadvantage alongside other equality considerations in all ‘strategic decisions’.

The report outlines the requirements which will take effect from April 2020 and response to the consultation with public bodies.

**Proposal** **To endorse the Council’s response to the enactment of the Duty as set out in the report.**

**Action by** Head of People and Business Change

**Timetable** Consultation January 2020, duty effective April 2020.

This report was prepared after consultation with:

- Strategic Directors
- Heads of Service
- Head of Law and Regulation

**Signed**

## Background

The 2010 Equality Act's aim was to strengthen the law which supports progress on equality. The Act brings together and re-states a number of enactments including the Equal Pay Act 1970, the Race Relations Act 1976 and the Disability Discrimination Act 1995. The 2010 Act makes it unlawful to discriminate against those persons with a protected characteristic under the Act. The 2010 Act also places a 'due regard' duty (Public Sector Equality Duty) on public bodies to ensure that advancement of equality of opportunity is a key consideration for public authorities when carrying out their functions.

When the 2010 Act was enacted the UK Government elected not to commence the socio-economic duty. The Wales Act 2017 legislated for a new model of Welsh Devolution, which including devolving the power to commence the socio-economic duty in Wales to the Welsh Ministers. Therefore, the Welsh Ministers intend to use this power to commence Sections 1 to 3 of the 2010 Act in Wales – the socio-economic duty.

Commencing the socio-economic duty in Wales will require relevant public bodies, when taking strategic decisions, to have due regard to the need to reduce the inequalities of outcome that result from socio-economic disadvantage. Failure to demonstrate 'due regard' to the socio-economic duty in relation to strategic decisions could result in the Authority being taken to judicial review.

### Draft Definitions

The Welsh Government proposes to define "strategic decisions" as the following: *"Decisions which set the organisations' overall priorities, strategies and key policies, targets, broad approaches, and expenditure concerning the delivery of its business."*

The Welsh Government also proposes a range of ways in which relevant public bodies can identify inequalities of outcome, including building evidence based on data including:

- National well-being indicators
- Annual employment data published under the Public Sector Equality Duty;
- The Equality and Human Rights Commission's annual report *'Is Wales Fairer'*
- Welsh Government's Future Trends report
- A wide range of other official statistics via StatsWales31 and the Office for National Statistics

The Welsh Government proposes to define "socioeconomic disadvantage" as *"Living on a low income compared to others in Wales, with little or no accumulated wealth, leading to greater material deprivation, restricting the ability to access basic goods and services. Socio-economic disadvantage can be experienced in both places and communities of interest, leading to further negative outcomes such as social exclusion."*

Welsh Government intend to release "interim statutory guidance" to local authorities in April 2020, it is currently understood that this will be in effect until 2022. This interim guidance will include final definitions such as the nature of a "strategic decision" and what is meant by 'socio-economic disadvantage'. Welsh Government have suggested that during the time this interim guidance is in effect judicial reviews will be less likely, although the authority will still be subject to the duty and a judicial review cannot be ruled out.

The Welsh Government is consulting on the enactment of this duty and have asked Welsh Public Sector Bodies to respond by 17th January 2020.

It is proposed that the duty will apply to the following eligible public bodies, as they are deemed to have satisfied the 'test' to determine relevant authorities under section 2(6) of the Equality Act 2010:

- Welsh Ministers;
- Local Health Boards;
- NHS Trusts;
- Welsh Special Health Authorities (HEIW);

- Local Authorities;
- Fire and Rescue Services;
- Welsh Revenue Authority; and
- National Park Authorities.

Subject to a final vote in the Senedd in March 2020, this duty is due to come into force on the 1<sup>st</sup> of April 2020.

## **Changes Required**

The Council is fully committed to our responsibilities under the Equality Act 2010 and we are working towards a new Strategic Equality Plan which is both aligned with our corporate and wellbeing plans, and reflects the key areas of inequality that are highlighted in 'Is Wales Fairer'. The plan will include a commitment to bring the Authority's current decision making process in line with the interim statutory guidance Welsh Government are due to release in April 2020. The Strategic Equality Plan and equality objectives are being revised for publication by the 1st April 2020 and this will be the subject of a separate Cabinet Report.

We will also need to revise our Fairness and Equalities Impact Assessment (FEIA) process, and related guidance, to ensure that the socio-economic duty is considered when decisions are being made. It should be noted that it is generally recognised that FEIAs are limited in their influence unless conducted in a timely and effective manner and fully embedded in an organisation's decision making process. A cultural shift toward greater awareness of the process, and commitment from service areas to conduct robust assessments will be necessary to effectively enforce the duty. When Welsh Government release their interim statutory guidance relating to the duty we will also amend our advice for managers and internally delivered equalities training package that is available to elected members to ensure that the authority's obligations in relation to the socio-economic duty are well understood.

## **Consultation**

Welsh Government's consultation seeks the views of members of the public and key stakeholders on which public bodies should be captured by the duty and how the duty is implemented.

The responses to the consultation will inform guidance to ensure the socio-economic duty works for public bodies to whom it applies and delivers for the people of Wales.

The key points of the consultation that Local Authorities are focusing on are the following questions:

- 1) Do you agree with the definition of a 'strategic decision'?**
- 2) Do you agree with the definition of Socio-economic disadvantage?**
- 3) Do you agree with the definition of Inequalities of Outcome?**
- 4) We do not believe it is sensible to create a new measurement framework to monitor the impact of the duty. Do you support our approach? (Please state reasons for your answer).**
- 5) What existing monitoring tools and frameworks could public bodies use to track how the duty is making a difference to outcomes over the long term?**
- 6) Other than statutory guidance, please specify any other support you think public bodies will require to help them understand and/or discharge their duty e.g. training / online tools etc. Are there any particular aspects of helping a public body discharge their duty which will require a greater focus?**

The proposed response to the consultation is attached as appendix to this report.

## Financial Summary

As the consultation regards existing legislation there are no financial implications expected to arise.

## Risks

Risk	Impact of Risk if it occurs* (H/M/L)	Probability of risk occurring (H/M/L)	What is the Council doing or what has it done to avoid the risk or reduce its effect	Who is responsible for dealing with the risk?
Not properly preparing for the implications of implementing the socio economic duty	Medium	Low	The duty will be considered in the Strategic Equality Plan which is being drafted for publication April 2020	Head of PBC
Being taken to judicial review for failure to demonstrate 'due regard' within the council's decision making process	Medium	Medium	We are amending our Fairness and Equality Impact Assessment process (and accompanying guidance) to reflect this new obligation in time for April 2020.  Amending internally delivered "Equality training for members" to include new obligations relating to the socio-economic duty within the Equality Act 2010.	Head of PBC

\* Taking account of proposed mitigation measures

## Links to Council Policies and Priorities

The Socio-Economic Duty links to the Council's corporate theme of Resilient Communities and to 'Improve People's Lives' by promoting the equality of opportunity of residents of Newport.

The duty will need to be reflected in the Council's new Strategic Equality Plan which is being developed for April 2020.

## Options Available and considered

1. To endorse the proposed response to the consultation as outlined in this report.
2. To amend the response to the consultation and respond to Welsh Government by the consultation deadline.

## Preferred Option and Why

To endorse the proposed response to the consultation as outlined in this report.

## Comments of Chief Financial Officer

There are no financial impacts in responding to this consultation.

The proposed legislation will, in itself, have potentially significant impact, depending on the final definitions used in the enactment, as currently strategic decisions to which this is applicable would include "*expenditure concerning the delivery of its business*". Nearly all decisions around what and how services are delivered affect 'expenditure in running the Council's services' and therefore the socio-economic factors would need to be assessed in a very wide range of decisions and ultimately, be open to potential legal challenge if not carried out appropriately. Again, depending on the final definitions used

in the enactment, the Council's decision making, and in particular budget setting processes / procedures, would need to be updated appropriately.

### **Comments of Monitoring Officer**

There are no specific legal issues arising from the consultation response. However, there will be significant legal implications for the Council when the statutory duty is introduced. The proposed introduction of the relevant sections of the Equality Act in Wales, under devolved powers, will require the Council to demonstrate that it has had due regard to the need to reduce inequalities of outcome resulting from social-economic disadvantage when taking key policy and strategic decisions. Failure to do so could result in policy decisions being challenged on procedural grounds, by way of judicial review proceedings. As with the Public Sector Equality Duty and well-being objectives, the Council will need to ensure this new statutory duty is clearly embedded within impact assessment and decision-making processes and can evidence that due regard has been had to the social-economic duty when taking these decisions. The proposed responses to the consultation questions are supported. For the most part the devil will be in the detail and clear guidance will need to be provided to supplement the statutory definitions. Some of the proposed statutory wording is considered to be too vague and ambivalent and more detailed provisions should be set out in the interim guidance. In particular, there needs to be clarity about what types of decisions are covered by the duty and the precise definition of "socio-economic advantage". Because the "due regard" duty just underpins key policy decisions, it should be reflected within existing monitoring and reporting frameworks, so there should be no requirement for an additional and separate measurement framework. The timescale for implementation and the 2 year interim guidance period is also challenging and, although Welsh Government suggest that judicial reviews are less likely during this period based on the Scottish experience, the existence of the statutory duty will still create the potential for further grounds of legal challenge.

### **Comments of Head of People and Business Change**

As author of this report, the full comments of the Head of People and Business Change are contained within the body of the report. The Council is working towards a new equality plan that will take account of the anticipated interim statutory guidance relating to the Socio-Economic Duty. The Council will also need to revise its Fairness and Equalities Impact Assessments (FEIAs) process and related guidance to ensure that the Duty requirement is considered when decisions are being made.

Noting links between the Socio-Economic Duty and the Well-being of Future Generations Act (WFG Act), the draft Council response to the consultation proposes consistency of definition and monitoring of the Duty with Welsh Government indicators that apply to the WFG Act's Well-being Goal of "A More Equal Wales".

There are no direct HR implications arising from this report.

### **Local issues**

None

### **Scrutiny Committees**

Not applicable.

### **Equalities Impact Assessment and the Equalities Act 2010**

The Equality Act 2010 contains a Public Sector Equality Duty which came into force on 06 April 2011. The Act identifies a number of 'protected characteristics', namely age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation; marriage and civil partnership. The new single duty aims to integrate consideration of equality and good relations into the regular business of public authorities. Compliance with the duty is a legal obligation and is intended to result in better informed decision-making and policy development and services that are more effective for users. In exercising its functions, the Council must have due regard to the need to: eliminate unlawful discrimination, harassment, victimisation and other conduct that is prohibited by the Act; advance equality of opportunity between persons who share a protected characteristic and those who do not; and foster good relations between persons who share a protected characteristic and those who do not. The

Act is not overly prescriptive about the approach a public authority should take to ensure due regard, although it does set out that due regard to advancing equality involves: removing or minimising disadvantages suffered by people due to their protected characteristics; taking steps to meet the needs of people from protected groups where these differ from the need of other people; and encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

### **Children and Families (Wales) Measure**

Although no targeted consultation takes place specifically aimed at children and young people, consultation on planning applications and appeals is open to all of our citizens regardless of their age. Depending on the scale of the proposed development, applications are publicised via letters to neighbouring occupiers, site notices, press notices and/or social media. People replying to consultations are not required to provide their age or any other personal data, and therefore this data is not held or recorded in any way, and responses are not separated out by age.

### **Wellbeing of Future Generations (Wales) Act 2015**

The Welsh Government consider the requirements of the Wellbeing of Future Generations (Wales) Act (WFG Act) 2015 in the planning and implementation of their work. The implementation of the Socio-Economic Duty will be relevant to the “A more equal Wales” and “A Wales of cohesive communities” wellbeing goals.

The Council’s draft consultation response supports consistency of definition and monitoring of the Socio-Economic Duty with Welsh Government indicators associated with the Well-being Goal “A More Equal Wales” in the WFG Act.

### **Crime and Disorder Act 1998**

Section 17(1) of the Crime and Disorder Act 1998 imposes a duty on the Local Authority to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.

### **Background Papers**

Welsh Government Consultation Document - A More Equal Wales – Commencing the Socioeconomic Duty Draft Consultation Response

Dated: 7 January 2020

## Appendix A:

### **NCC's Response to Welsh Government: Enactment of the Socio-Economic Duty**

**Q1A – Do you agree the above definitions of these terms** (decisions of a strategic nature, inequalities of outcome and socio-economic disadvantage) **are reasonable, easily understandable and should be included within the Welsh Government's forthcoming guidance on the socio-economic duty?**

These terms are key to understanding how and when public sector bodies should demonstrate due regard to the socio-economic duty and should be included within the forthcoming guidance.

However, these definitions will need greater clarity either in themselves or within the forthcoming guidance, to be operationally useful to local authorities in Wales. At present these definitions are too ambiguous and are limited in terms of the operational direction they provide local authorities, who have wide ranging responsibilities in terms of service delivery.

**Q1B – Do you agree with this definition of a 'strategic decision'?**

As the definition of "Strategic Decision" is key to the applicability of the socio-economic duty, the list of examples should be more limited. For example, the use of the word "targets" within the duty is too broad, as a local authority will set "targets" at every level of the organisation. Similarly "expenditure concerning the delivery of its business" is also too broad and could be seen as including all amendments to service delivery.

Whilst the definition needs to be the same across a number of bodies, greater consideration should be given to the work of local authorities and the dynamic financial context they operate within. As such the definition of a strategic decision should be more limited in order to help us better distinguish between what the duty considers a "strategic" as opposed to "operational" decision.

An alternative definition for Welsh Government's consideration might look like: *"Decisions which set the organisations' overall priorities, strategies and key policies."*

**Q1C – Do you agree with the proposed approach to help define inequalities of outcome?**

Defining socio-economic disadvantage within the context of the Well-being indicators that contribute to a "More Equal Wales" is a welcome clarification, however the statutory guidance could go further and restrict the definition to a smaller number of the indicators, for example, Welsh Government's own 2018-19 [Well-being of Wales Report](#) only utilises indicators relating to; relative income poverty, material deprivation, and fuel poverty within the section on socio-economic disadvantage.

**Q1D – Do you agree with this definition of Socio-economic disadvantage?**

The definition is "wordy", and is unclear as to whether socio-economic disadvantage is limited to material disadvantage (as is suggested within the first sentence) or is wider, and includes access to services (as is possibly suggested within the second sentence). A simpler definition, closer to that within the Scottish measure, may be more useful, and the statutory guidance will need to be much clearer as to the limit or extent of the socio-economic duty. A more limited definition, such as one focusing solely on material deprivation, would help all public sector bodies more confidently pay due regard to the socio-economic duty. The definition should be built around a small number of the well-being indicators that Welsh Government believes contributes to "A More Equal Wales".

**Q2A – Based on the test in section 2(6) and list of Welsh public bodies we consider meet the test, do you agree the socio-economic duty should apply to all the bodies listed? Please specify any bodies not listed which you consider meet the above test and should be included together with any reasons for doing so.**

The list could be more explicit about what is meant by Welsh Ministers. The Scottish socio-economic duty clarifies the bodies covered by the term "Scottish Ministers". This section is absent from the Welsh consultation document.

**Q2B – Based on the list of eligible Welsh public bodies, please specify any of the listed bodies you think the duty should not apply to, and provide an explanation why a particular authority should be exempt.**

N/A

**Q3A – Do you believe that issuing ‘interim’ guidance on the 1 April 2020, followed by ‘final’ guidance on the 1 April 2022, allows relevant public bodies’ sufficient time to consider the implications of the duty and to fully embed it within working practices?**

Without access to statutory guidance, or greater clarity on the definition of “socio-economic disadvantage” or the extent of a “strategic decision” it is difficult to identify the impact of the socio-economic duty on the delivery of council business. As the authority will be subject to the duty from the 1<sup>st</sup> of April 2020, and therefore liable to legal challenge on the grounds of failing to give ‘due regard’, Newport City Council would expect to see a ‘lead-in time’ which would enable all listed bodies sufficient time to make the required changes to internal processes *before* the duty came into effect.

Moreover, the Authority is not confident, as has been indicated by Welsh Government representatives in initial consultation events that listed bodies would have any protection from judicial review in the period that bodies were subject to interim guidance.

Given the current ambiguities within the definitions, it would likely be beneficial to set an extended ‘interim period’ that mirrors the lifespan of a Strategic Equality Plan (SEP), as this also comes into force on the 1<sup>st</sup> of April 2020. Furthermore, if this were the case, the embedding of statutory guidance into the governance structure of organisations would make for a logical equality objective within Strategic Equality Plans.

**Q3B – What other actions or additional steps could public bodies take to demonstrate they are meeting the duty? Do you have any other comments on the steps set out in Section 3?**

NA

**Q3C – Can you offer any suggestions on how public bodies could improve analysis and reporting to take better account of inequalities related to socio-economic disadvantage?**

Explicit reference to socio-economic disadvantage could be made within SEP annual reports or Well-being Plan reports.

**Q3D – Can you offer examples of how public authorities and others have made best use of the expertise of people with direct experience of poverty? For example, how are public bodies using the five ways of working in the Well-being of Future Generations Act to strengthen their analysis?**

N/A

**Q3E – We do not believe it is sensible to create a new measurement framework to monitor the impact of the duty. Do you support our approach? (Please state reasons for your answer). What existing monitoring tools and frameworks could public bodies use to track how the duty is making a difference to outcomes over the long term?**

Newport City Council agrees with the approach of not creating a new measurement framework. Using a small number of the Well-being indicators that contribute to a “More Equal Wales” as an existing monitoring framework would create a degree of consistency across policy areas. As stated, Welsh Government’s own 2018-19 [Well-being of Wales Report](#) only utilises indicators relating to; relative income poverty, material deprivation, and fuel poverty within the section on socio-economic disadvantage. WIMD data could also be utilised.

**Q3F – Other than statutory guidance, please specify any other support you think public bodies will require to help them understand and/or discharge their duty e.g. training / online tools etc. Are there any particular aspects of helping a public body discharge their duty which will require a greater focus?**

- Workshops delivered in accessible locations
- The development of online training similar to the “Ask and Act” training



- Specific package that contextualises the socio-economic duty for local authorities would be beneficial
- Package for elected members

**Q4A - What could relevant public bodies do to make sure the links between the different duties are managed effectively within organisations?**

- The lifecycles of future SEPs and Well-being Plans could be brought into line with one another. This would encourage the development of these policies to take place in tandem.

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**Q4B - Please can you provide any examples which you have either seen or undertaken of good practice in taking an integrated approach to issues such as, but not limited to, poverty, equality, and human rights.**

N/A

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**Q5A - Do you agree with our assessment of the likely impacts of the Duty?**

NA

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**Q5B - Do you have any additional/alternative data to help inform the final assessment of costs and benefits contained within the Regulatory Impact Assessment?**

NA