

Report

Cabinet



Part 1

Date: 22 February 2021

Subject **Socio-economic Duty**

Purpose To outline the implications of the introduction of the Socio-economic Duty, commencing in Wales on the 31st March 2021 and seek approval from Cabinet on next steps to be taken for the Council to ensure compliance with the Duty.

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Ward All

Summary The Socio-economic Duty (the Duty) is set out in Part 1, Sections 1 to 3 of the Equality Act 2010. It requires specified public bodies, when making strategic decisions, to pay due regard to the need to reduce the inequalities of outcome that result from socio-economic disadvantage.

The devolved Government has the powers to enact this part of the Act, and intend to do so on the 31st March 2021. Failure to demonstrate due regard to the Duty when a body makes a strategic decision is grounds for judicial review. There is no reporting duty attached to this piece of legislation, however, it is a statutory requirement, and relevant bodies should be able to demonstrate how they have fulfilled the Duty. This report outlines the steps the Council should take to ensure compliance with the Duty in the short and medium term, including changes to decision making supported by relevant training.

Proposal To approve the suggested recommendations included in this report.

Action by Head of People and Business Change

Timetable Pending approval by Cabinet of the approach outlined, the immediate recommendations contained in this report will be implemented as soon as practicable. Longer term recommendations will be implemented from April 2021.

This report was prepared after consultation with:

Cabinet Member for Community and Resources, Equalities Lead
Cabinet Member for Sustainable Development, Socio Economic Duty Lead
Heads of Service
Strategic Equalities Group

Background

A. Introduction

The Socio-economic Duty (the Duty) is set out in Part 1, Sections 1 to 3 of the Equality Act 2010. It requires specified public bodies, when making strategic decisions, such as deciding priorities and setting objectives, to pay due regard to the need to reduce the inequalities of outcome that result from socio-economic disadvantage.

Welsh Government has the powers to enact this part of the Act, and intend to do so on the 31st March 2021. The duty is intended to complement and not compete with, or override, other statutory duties, for example the Public Sector Equality Duty, or the Well-being of Future Generations (Wales) Act 2015.

The overall aim of the Duty is to deliver better outcomes for those who experience socio-economic disadvantage by ensuring that those taking strategic decisions:

- Take account of evidence and potential impact through consultation and engagement;
- Understand the views and needs of those impacted by the decision, particularly those who suffer socio-economic disadvantage;
- Welcome challenge and scrutiny; and
- Drive a change in the way that decisions are made and the way that decision makers operate

B. Socio-economic Disadvantage

Welsh Government defines socio-economic disadvantage as ‘living in less favourable social and economic circumstances than others in the same society’. Socio-economic disadvantage can be disproportionate in both communities of interest and communities of place, and characteristics such as race, gender and class can interact to create multiple disadvantage.

C. Inequalities of outcome

Inequality of outcome relates to any measurable differences in outcome between those who have experienced socio-economic disadvantage and the rest of the population. Welsh Government have suggested key areas of focus may be health, education, work, living standards, justice and personal security, and participation.

D. A Strategic Decision

The Welsh Government’s definition of strategic decisions is “those which affect how the relevant public body fulfils its intended statutory purpose over a significant period of time and will not include routine ‘day to day’ decisions”. These may include:

- Strategic directive and intent
- Strategies developed at Regional Partnership Boards and Public Service Boards which impact on a public body’s functions
- Medium to long term plans (for example, corporate plans, development plans, service delivery and improvement plans)
- Setting objectives (for example, well-being objectives, equality objectives, Welsh language strategy)
- Changes to and development of public services
- Strategic financial planning
- Major procurement and commissioning decisions
- Strategic policy development

E. Paying due regard

Due regard is an established legal concept in equalities law and application of the Public Sector Equality Duty, meaning to give weight to a particular issue in proportion to its relevance. The Welsh Government recommend that relevant public bodies are able to evidence a clear audit trail for all decisions made under the Duty, such as impact assessment processes and systems for engagement.

Welsh Government emphasise that attempts to justify a decision as being consistent with the exercise of the duty, when it was not considered before the decision, are not enough to discharge the duty.

In order to evidence due regard, public bodies must engage effectively with those communities that may be affected by the decision in question, and consider the voices of those with lived experience of socio-economic disadvantage. Evidence relating to the decision's actual or likely impact on inequalities of outcome as a result of socio-economic disadvantage must be gathered and considered.

F. Role of partners

Specified bodies that the Duty applies to in Wales are:

- The Welsh Ministers
- Local Authorities
- Local Health Boards
- NHS trusts
- Special health authorities (operating on a Wales-only basis)
- Fire and rescue authorities
- National park authorities
- The Welsh revenue authority

When a specified body works in partnership with bodies not covered by the Duty, the Duty only applies to the specified body. For example, local well-being plans are developed and owned by a range of partners, however those public bodies subject to the Duty should ensure that they consider how the elements of the plan they have responsibility for will reduce inequalities of outcome caused by socio-economic disadvantage. All public bodies in Wales are encouraged to support the spirit of the Duty.

The Duty will not apply to schools. School Governing Bodies are created by section 19 of the Education Act 2002 and are statutory corporations. They therefore have a distinct legal identity from Local Authorities.

The requirement to meet the Duty does not pass to a third party through procurement, commissioning or outsourcing. However, in circumstances where the procurement activity itself is considered by a specified public body to engage the Duty, the relevant public body must consider how such arrangements reduce inequalities of outcome caused by socio-economic disadvantage.

G. Enforcement/Monitoring

To support relevant public bodies, in its role as the regulator of the 2010 Equality Act, the Equality and Human Rights Commission (EHRC) has powers to promote and provide advice and guidance, and publish research on implementing the Socio-economic Duty.

It does not have use of its full enforcement powers in relation to the Duty as the Equality Act does not establish socio-economic status as a protected characteristic, however, failure to demonstrate due regard to the Duty when a body makes a strategic decision is grounds for judicial review. The EHRC may support an individual or group with regard to any such challenge, or take such a challenge itself.

There is no reporting obligation attached to this piece of legislation, however, it is a statutory requirement, and relevant bodies should be able to demonstrate how they have fulfilled the Duty.

Both the EHRC and Audit Wales are considering how existing monitoring mechanisms can be used to measure progress, outcomes and compliance of public bodies. Organisations are also encouraged to consider how positive outcomes of using the legislation can be demonstrated through existing assessment tools (e.g. wellbeing assessments)

Embedding the Duty

The council has already taken steps to prepare for the introduction of the Duty, including liaison with Welsh Government and participation in their Socio-economic Duty Advisory Group which has helped to develop non-statutory guidance for specified bodies.

The council has also ensured that the Duty is referenced in the authority's Strategic Equality Plan 2020-24, including a specific action relating to embedding the Duty in council processes. The council's recent COVID-19 Community Impact Assessment focusses specifically on the socio-economic impact of the pandemic in order to contribute to local evidence which will be available to strategic decision makers in the context of the Duty.

Welsh Government has suggested a range of ways in which the Duty can be embedded within existing processes, including:

- Taking an integrated approach to impact assessment
- Taking a broader approach to engagement and involvement to include socio-economic disadvantage
- Developing scrutiny frameworks to include scrutiny of impact with respect to inequality of outcome that results from socio-economic disadvantage
- Taking an integrated approach to planning and reporting
- Developing Integrated performance measures
- Considering prevention of inequalities of outcome caused by socio-economic disadvantage through application of the Wellbeing of Future Generations Act's five ways of working

The Duty Guidance also sets out a 5 step approach to embedding the Duty in practice:

1. **Planning** - deciding whether a decision is strategic, and therefore subject to the Duty
2. **Evidence** – collecting evidence about socio-economic disadvantage and inequalities of outcome in relation to the decision and engaging with those affected by the decision, both communities of place and interest
3. **Assessment and Improvement** – assessing the main impacts of the proposal, and considering how it could be improved so that it reduces inequalities of outcome as a result of socio-economic disadvantage
4. **Strategic Decision Makers** – strategic decision makers to confirm that due regard has been given, and that they are satisfied that the body has understood the evidence and likely impact, and considered whether the proposal can be changed to reduce inequalities of outcome
5. **Evidencing Due Regard** – ensuring that the process of considering the Duty has been recorded, including any changes to the decision

Welsh Government recognise that many specified bodies will be using their existing equality impact assessment processes to embed these 5 steps. Before doing this, organisations are recommended to consider how effective these are, and undertake work to improve them if necessary.

Currently, the council uses its corporate Fairness and Equality Impact Assessment (FEIA) to assess and mitigate the impact of policies and decisions on inequalities. FEIAs also require decision makers to consider the Wellbeing of Future Generations Act's 5 ways of working. FEIAs should be completed as part of the strategic policy and decision-making process, although this requires review and improvement to ensure their consistent and meaningful use.

Recommendations

With the above in mind, the following short and medium term actions are recommended:

Short term (immediate)

1. Revise the council's current Fairness and Equality Impact Assessment template, aligning with the new Duty
2. Revise the accompanying FEIA guidance to reflect responsibilities under the new Duty and provide decision makers with both evidence relating to socio-economic disadvantage which may be considered, and indicators for measurement of successful outcomes (e.g. Wellbeing Indicators)
3. Amend the Cabinet report template to include explicit reference to the Duty, and the requirement for an FEIA to accompany all cabinet reports
4. Deliver training/awareness sessions to senior leaders and Elected Members
5. Consider ways in which existing performance monitoring structures/measures can evidence both due regard, and positive outcomes of the Duty (for example, Service Area Plans)

Medium Term (April onwards)

1. Develop an integrated toolkit for decision-making which builds on the existing FEIA process, embedding the Duty within a wider framework which considers all of the legal responsibilities which the council must comply with in its decision-making.
2. Include reporting against the impact of the Duty within strategic reporting structures, for example, the Strategic Equality, Corporate, and Wellbeing Plan annual reports
3. Align the council's wellbeing assessment (work to commence April 21), profiles and strategic Wellbeing Plan with a focus on socio-economic equality/wellbeing
4. Mandate equality training for all staff and Elected Members, inclusive of responsibilities relating to the Socio-economic Duty

Financial Summary

Work relating to the implementation of the Duty will be undertaken by existing council officers, with no additional resources. Welsh Government plan to publish a Regulatory Impact Assessment which will outline the estimated costs and benefits associated with the Duty, including revenue, capital and opportunity costs.

	Year 1 (Current) £	Year 2 £	Year 3 £	Ongoing £	Notes including budgets heads affected
Costs (Income)					Not applicable
Net Costs (Savings)					
Net Impact on Budget					

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?
That the council is not compliant with requirements of the new Socio-economic Duty by 31/03/21	M	L	Steps that the council will take to avoid this risk are set out as recommendations within this report	Head of Service – P&BC

Links to Council Policies and Priorities

The Duty forms part of the Equality Act 2010, which already requires the council to develop a series of Equality Objectives focussed on reducing inequalities for people that share protected characteristics. There are evidenced links between socio-economic disadvantage and protected characteristics, and the Duty allows this to be explicitly considered. The Well-being of Future Generations Act aims to improve the social, economic, environmental and cultural well-being of Wales and the Duty closely supports the delivery of the council's responsibilities in this area, focussing on removing disadvantage and creating a more prosperous, equal society for all.

Options Available

- a) To approve the recommendations included in this report
- b) Not to approve the recommendations included in this report

Preferred Option and Why

Option a) is the preferred option, in order to ensure that the Council is compliant with its statutory obligations.

Comments of Chief Financial Officer

There are no adverse financial implications associated with the recommendations in this report. The cost of implementing the Duty is met from existing budgets in service areas.

The Duty, and the general obligations and requirements under the Act are key issues in the planning and delivery of services and therefore will need to be considered in the budget setting process.

Comments of Monitoring Officer

The Welsh Ministers have used their devolved powers to amend the Equality Act 2010 to require certain public bodies in Wales to pay due regard to the need to reduce the inequalities of outcome that result from socio-economic disadvantage, when taking strategic decisions. As from 1st April 2021, the Council will be required to demonstrate that it has had due regard to this social-economic duty 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 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.

Comments of Head of People and Business Change

There are no direct HR implications arising from this report. The Duty represents another important step towards creating a fairer, more equal Newport. It builds on positive work already achieved under the

council's Wellbeing and Strategic Equality Plans and contributes to the delivery of the national wellbeing goals.

Comments of Cabinet Member Sustainable Development

Newport, along with the rest of Wales, has experienced significant changes over the last few years – the continued impact of Brexit, and more recently, the COVID-19 pandemic, has meant that the city, and the people that live here, face continued economic uncertainty. An explicit focus on socio-economic impact will enhance the tools that we already have to ensure that the decisions we make are properly informed by principles of equality and fairness, and continue to ensure better outcomes for our communities. Socio-economic disadvantage can impact on people in many ways, from poorer education and health outcomes, to barriers to participation in public life.

Our aim is to ensure we have strong, resilient communities equipped with the resources and support they need have a successful future, and the Duty will allow us to do this more effectively. As the implementation of the Duty progresses it will be important to ensure that our performance is monitored through a range of existing processes as outlined in the Report.

Comments of Cabinet Member Community and Resources

We know that socio-economic disadvantage can impact on people in many ways, from poorer education and health outcomes, to barriers to participation in public life. As the lead member for equalities I support the introduction of the Duty and will ensure that it is integrated into our ongoing equalities work. This includes a report on the impact of the Duty within the Strategic Equality Plan Annual Report. We will also ensure that all staff and Elected Members receive equalities training, including responsibilities relating to the Socio-economic Duty

Local issues

N/A

Scrutiny Committees

N/A

Equalities Impact Assessment and the Equalities Act 2010

As stated, the Socio-economic Duty forms part of the existing Equality Act 2010. Welsh Government have completed a draft integrated impact assessment on the Duty, which finds that whilst the Duty will benefit the well-being of the population of Wales as a whole, it will impact specifically on individuals and groups who are experiencing 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) which also suggest that people who share these characteristics will benefit from the enactment of the Duty.

Children and Families (Wales) Measure

The enactment of the Socio-economic Duty is likely to have a positive impact on children and families who experience socio-economic disadvantage.

Wellbeing of Future Generations (Wales) Act 2015

In line with the five ways of working identified within the Wellbeing of Future Generations Act, the Duty will support sustainable improvements by considering how strategic decisions may prevent/mitigate socio-economic disadvantage in both the short and long term. The Duty maximises the contribution of relevant public bodies to achieving the well-being objectives and the 7 well-being goals for Wales, most significantly, the goal of creating a more equal Wales, creating a society that enables people to fulfil their potential regardless of their background or circumstance.

Crime and Disorder Act 1998

Not applicable

Background Papers

Wales Govt advice – [Socio Economic Duty, an Overview](#)

Cabinet Member Report - Welsh Government Consultation: Commencing the Socio-economic Duty

Dated: 22 February 2021