



Llywodraeth Cymru
Welsh Government

Statutory Guidance: The Equality Act 2010 (Authorities subject to a duty regarding Socio-economic Inequalities) (Wales) Regulations 2021

FOR INFORMATION PURPOSES ONLY

Please note: pending the Equality Act 2010 (Authorities subject to a duty regarding Socio-economic Inequalities) (Wales) Regulations 2021 being passed on 9 March 2021, the Statutory Guidance will be published on the commencement of the Duty on 31 March 2021.

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Foreword

Commencing the Socio-economic Duty (“the Duty”) highlights the Welsh Government’s commitment to safeguarding equality and human rights.

The Duty gives us an opportunity to do things differently in Wales. It puts tackling inequality at the heart of decision-making, and will build on the good work that public bodies are already doing.

Never has there been a more pertinent time to act. Decades of EU membership has produced a legacy of benefits in Wales, covering many aspects of daily life, including employment rights, environmental rights and health and safety regulations. However EU exit brings great uncertainty and will likely increase the inequalities which currently exist.

Separately, we know Covid-19 has increased inequalities in Wales¹, and the evidence shows there is an indisputable link between inequality and socio-economic disadvantage².

Commencing the Duty will not compete with or override other duties such as the Equality Act, 2010³ Public Sector Equality Duty (PSED)⁴, the Children and Families (Wales) Measure 2010⁵ and the Well-being Duty under the Well-being of Future Generations Act 2015⁶. It is our intention that commencing the Duty will complement these duties by further contributing towards Wales’ long term well-being goals, in particular “A more equal Wales” and “A Wales of cohesive communities”. Further strengthening social partnership arrangements⁷ and advancing fair work ambitions⁸.

Therefore, the aim is for the Duty to become another key mechanism in supporting the most vulnerable in our society. By requiring public bodies to make better decisions, ones which place consideration of inequality of outcome which arises from socio-economic disadvantage at their heart, it will further help tackle the uncertainty of EU exit and our recovery from Covid-19, allowing us to move towards the reconstruction of a fairer and more prosperous Wales.

Jane Hutt

Deputy Minister and Chief Whip

¹ gov.wales/socio-economic-duty-examples-inequalities-outcome

² by socio-economic disadvantage we mean living in less favourable social and economic circumstances than others in the same society.

³ www.legislation.gov.uk/ukpga/2010/15/contents

⁴ www.gov.uk/government/publications/public-sector-equality-duty

⁵ www.legislation.gov.uk/mwa/2010/1/pdfs/mwa_20100001_en.pdf

⁶ www.futuregenerations.wales/about-us/future-generations-act/

⁷ gov.wales/written-statement-more-equal-wales-strengthening-social-partnership

⁸ gov.wales/written-statement-more-equal-wales-strengthening-social-partnership

Introduction

The Socio-economic Duty came into force in Wales on the 31 March 2021. It will encourage better decision making and ultimately deliver better outcomes for those who are socio-economically disadvantaged.

This statutory guidance is aimed at helping those public bodies who are captured by the Duty (“public bodies”) to deliver the requirements of the Duty.

The Welsh Government recognises that public bodies operate differently and therefore wants to encourage innovation in delivering the Duty, welcoming different approaches.

We know that there is a lot of good work already underway to reduce inequality across the public sector and it is the aim of the Welsh Government and this guidance, to build on this strong foundation.

This guidance is statutory and has been informed by feedback received through the formal consultation and the engagement events held across Wales. It has been co-produced with representatives of the public bodies captured by the Duty, and representatives of the Third Sector. Advice has been provided by the Trade Union Congress Wales, the Welsh Local Government Association and the Equality and Human Rights Commission.

A range of resources to further support public bodies, and which underpin this guidance, can be found on the dedicated Socio-economic Duty **webpage**.

If you have any questions on this guidance or any of the additional resources, please contact **Socio-economicDuty@gov.wales**

Thank you to everyone who has contributed.

The public bodies covered by the Duty

‘The Equality Act (Authorities subject to the Socio-economic Inequality Duty) (Wales) Regulations 2021’ list the following Welsh public bodies as being subject to the Duty, as they fall within the definition of a ‘relevant authority’ in section 2(6) of the Act⁹.

- The Welsh Ministers;
- A County Council or County Borough Council;
- A Local Health Board;
- An NHS Trust;
- Special Health Authorities (which operate on a Wales only basis);
- A Fire and Rescue Authority;
- A National Park Authority;
- The Welsh Revenue Authority.

Responsibility for complying with the duty

Ultimately, responsibility for complying with the Duty sits with the individual public body captured, subject to its arrangements for internal delegation of functions to cabinets, boards, committees or officers’.

As per other equality agendas; it is recommended that leaders identify a senior champion for this Duty.

Policy context

Equality is an issue that concerns everyone. Public authorities make decisions on a daily basis and each of these has the potential to have a significant effect on people's lives. In making these decisions, public authorities must comply with a number of statutory duties.

Section 149 of the Equality Act (2010)¹⁰ introduced a single Public Sector Equality Duty (PSED), or "general duty", requiring public authorities and other bodies carrying out public functions, to have due regard to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
- advance equality of opportunity between persons who share a protected characteristic and persons who do not share it; and
- foster good relations between persons who share a protected characteristic and persons who do not share it.

Although the 'general duty' drives sound decision-making in relation to equalities, it does not require public bodies to consider the impact of these decisions on those individuals who experience socio-economic disadvantage. Instead, it encourages public bodies to understand how different groups of people with particular protected characteristics will be affected by their activities, so that the design and delivery of policies and services takes account of the needs of those groups.

The Well-being of Future Generations (Wales) Act 2015¹¹ gives a legally-binding common purpose – the seven well-being goals – for national government, local government, local health boards and other specified public bodies. It details the ways in which specified public bodies must work, and work together to improve the well-being of Wales. The seven well-being goals and five ways of working provided by the Act are designed to support and deliver a public service that meets the needs of the present without compromising the ability of future generations. The Socio-economic Duty further supports the common purpose and ways of working.

Although public authorities in Wales must comply with a number of statutory duties, including ones which seek to embed equality consideration throughout, more needs to be done to eliminate inequality of outcome associated with socio-economic disadvantage.

¹⁰ www.legislation.gov.uk/ukpga/2010/15/section/149

¹¹ www.futuregenerations.wales/about-us/future-generations-act/

Legislative background

When the 2010 Act¹² was enacted, the Duty lay dormant on the statute book, as the UK Government elected not to commence it. The Wales Act 2017¹³ legislated for a new model of Welsh devolution, which included the power for the Welsh Ministers to commence the Duty in Wales.

Section 45 of the Wales Act 2017¹⁴, amends Part 1 of the Equality Act, 2010¹⁵ to achieve this. The Welsh Ministers have used this power to commence Sections 1 to 3 of the 2010 Act¹⁶ in Wales – the Socio-economic Duty.

SECTION 1

Sets out the Duty itself, which requires public bodies, to whom the duty applies:

“ 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.

It lists the bodies that will be covered by the Duty, and a requirement so that when deciding how to fulfil the Duty, the public bodies in Wales captured by the duty must take into account guidance issued by the Welsh Ministers.

SECTION 2

Confers a power on the Welsh Ministers to make regulations to amend section 1(3) of the 2010 Act¹⁷. This includes the power to add Welsh public bodies to which the Duty will apply.

SECTION 3

Makes clear that the Duty will not create any new justiciable rights for individuals.

In summary, the Duty places a legal responsibility on bodies when they are taking strategic decisions to have due regard to the need to reduce the inequalities of outcome resulting from socio-economic disadvantage.

Please note section 1(6) of the 2010 Act¹⁸ states that there is no requirement for bodies to consider inequalities experienced by those persons subject to immigration control.

There is no reporting duty attached to the Duty. However, it is a statutory duty and bodies must be able to demonstrate how they have discharged it.

If an individual or group whose interests are adversely affected by a public body's decision, in circumstances where that individual or group feels the Duty has not been properly complied with, they may be able to bring a judicial review claim against that body. (See section on Demonstrating Due Regard).

¹² www.legislation.gov.uk/ukpga/2010/15/contents

¹³ www.legislation.gov.uk/ukpga/2017/4/contents/enacted

¹⁴ www.legislation.gov.uk/ukpga/2017/4/section/45/enacted

¹⁵ www.legislation.gov.uk/ukpga/2010/15/section/1

¹⁶ www.legislation.gov.uk/ukpga/2010/15/contents

¹⁷ www.legislation.gov.uk/ukpga/2010/15/section/1

¹⁸ www.legislation.gov.uk/ukpga/2010/15/section/1

Defining the key terms

The text below explores the key terms associated with the Duty.

THESE ARE:

1. **Socio-economic disadvantage;**
2. **Inequalities of outcome;**
3. **Decisions of a strategic nature;**
4. **Due regard;**

These definitions have been developed from policy work undertaken by the Welsh Government, through discussion with key stakeholders and consideration of guidance from the Fairer Scotland Duty, 2018¹⁹.

SOCIO-ECONOMIC DISADVANTAGE

DEFINITION:

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**, leading to further inequality of outcome, which can be further increased when considering **intersectionality**.

Communities of interest

Those who share an identity are described as 'communities of interest'. For example, these people maybe: lone parents; carers; those who share a common first language; or those who share one or more of the protected characteristics listed in the Equality Act 2010²⁰. In addition, groups of people who share an experience, for example: people who have experienced homelessness; the same local health and social care system; or a local service. Accordingly, it is likely that people will be part of several communities of interest.

Communities of place

Those who share a geographical location, are described as 'communities of place'. For example, these locations maybe where people reside, work, visit or otherwise spend a substantial portion of their time.

Socio-economic disadvantage does not respect urban and rural boundaries, disadvantage can be further increased by these factors^{21, 22}.

Intersectionality

The Gender Equality Review²³ defines intersectionality in the following way:

“ Recognising the way in which power structures based on factors such as gender, race, sexuality, disability, class, age and faith interact with each other and create inequalities, discrimination and oppression. Crucially, it is about understanding the way in which characteristics such as gender, race or class, can interact and produce unique and often multiple experiences and disadvantage in a specific situation. One single form of discrimination cannot and should not be understood in isolation from one another. A truly intersectional approach ensures that this does not happen.

INEQUALITIES OF OUTCOME

DEFINITION:

Inequality of outcome relates to any measurable difference in outcome between those who have experienced socio-economic disadvantage and the rest of the population.

Public bodies should understand where they can have the greatest positive impact in reducing inequalities of outcome.

¹⁹ www.gov.scot/publications/fairer-scotland-duty-interim-guidance-public-bodies/

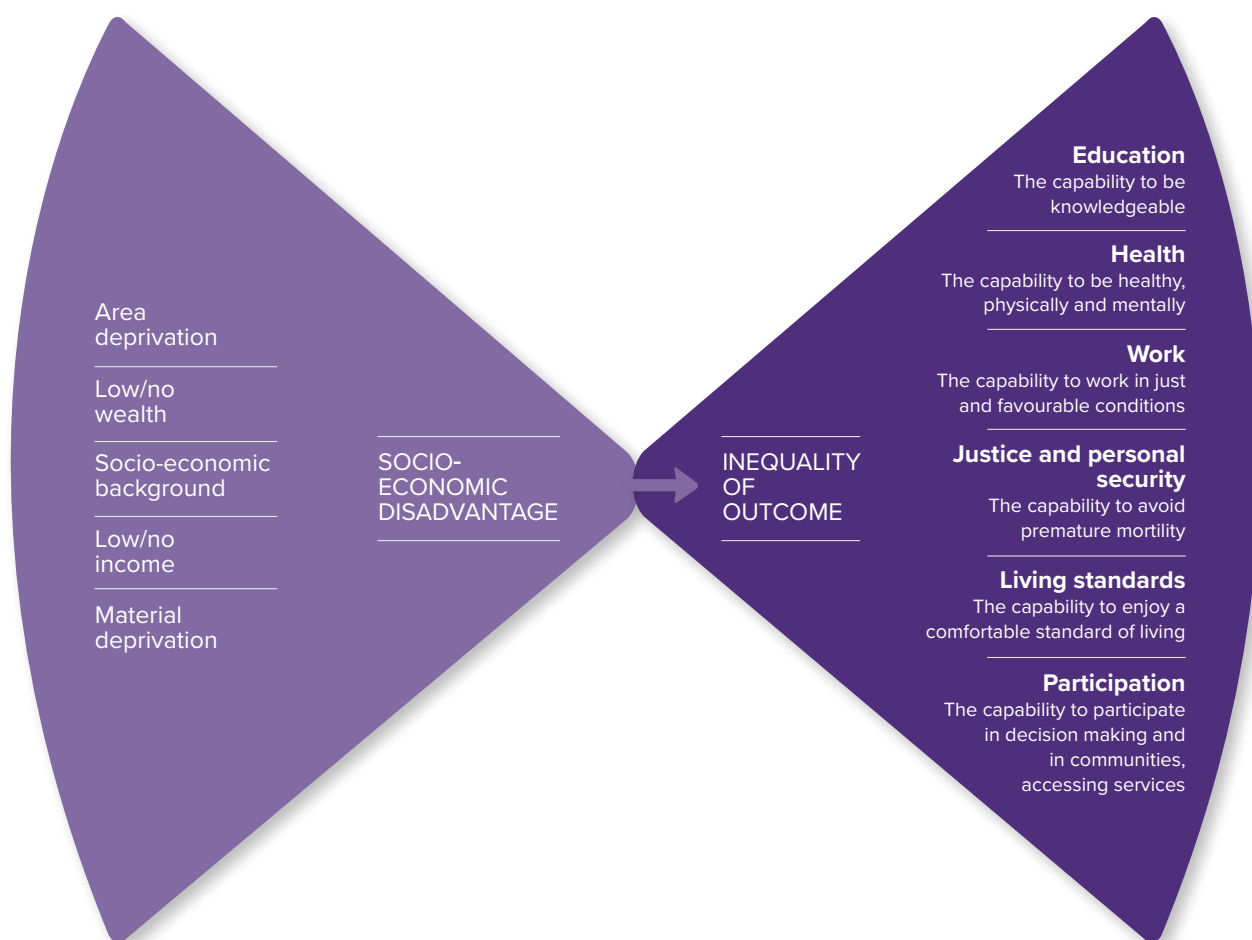
²⁰ www.legislation.gov.uk/ukpga/2010/15/contents

²¹ www.equalityhumanrights.com/sites/default/files/is-britain-fairer-2018-is-wales-fairer.pdf

²² gov.wales/sites/default/files/statistics-and-research/2019-02/national-survey-wales-2017-18-poverty-deprivation.pdf

²³ chwaraeteg.com/wp-content/uploads/2019/09/English-Digital_Summary-GER.pdf

The diagram below illustrates socio-economic disadvantage as a determinant of unequal outcome (inequality of outcome). Terminology used in the diagram reflects the Equality and Human Rights Commission's measurement framework for equality and human rights²⁴



24 www.equalityhumanrights.com/en/publication-download/measurement-framework-equality-and-human-rights

Inequality and the Covid-19 pandemic

In August 2020, Equality, Local Government & Communities Committee (ELGC) published a report *“Into sharp relief: inequality and the pandemic.”*²⁵ The report states:

“During the pandemic, our chances of dying, losing jobs or falling behind in education have in part been determined by our age, race, gender, disability, income and where we live. The virus and the response to it is widening existing inequalities, by reducing the incomes and increasing risks disproportionately for some groups of people.

A snapshot of examples of inequalities of outcome and how they have increased as result of Covid-19 are provided on the Welsh Government’s Socio-economic Duty [webpage](#).

Accessing Evidence

There are a range of ways in which public bodies can better understand inequalities of outcome and where they can have the greatest impact on reducing unequal outcomes as a result of socio-economic disadvantage. Public bodies will already have access to a wide range of quantitative and qualitative data, Examples of high level data, which are routinely updated include:

- **The Equality and Human Rights Commission measurement framework for equality and human rights**²⁶ **setting the indicators for Is Wales Fairer?**
- **The Equality and Human Rights Commission’s report Is Wales Fairer?**²⁷

- **Annual employment data published under the public sector equality duty**²⁸
- **The Welsh Government’s Future Trends report**²⁹
- **The Welsh Government’s Well-being of Wales Report**³⁰
- **Chwarae Teg’s Gender Equality Review**³¹
- **Older Peoples Commissioner for Wales State of The Nation Report**³².
- **Children’s Commissioner for Wales Reports**³³
- **Statistics available from StatsWales**³⁴ **and the Office for National Statistics**³⁵
- **Relative Income Poverty (Households Below Average Income)**³⁶
- **Persistent Poverty**³⁷
- **Wellbeing and Finances, including Material Deprivation (National Survey for Wales)**³⁸
- **Office for National Statistics Income and Wealth data**³⁹
- **The Welsh Index of Multiple Deprivation (WIMD)**⁴⁰
- **Joseph Rowntree Foundation Poverty in Wales Series**⁴¹

Some public bodies will be able to gather evidence via their membership of Public Services Boards established under the Well-being of Future Generations (Wales) Act 2015⁴², who undertake assessments of local well-being to inform the development of local well-being plans.

25 senedd.wales/laid%20documents/cr-ld13403/cr-ld13403-e.pdf

26 www.equalityhumanrights.com/en/publication-download/measurement-framework-equality-and-human-rights

27 www.equalityhumanrights.com/en/publication-download/wales-fairer-2018

28 stats.wales.gov.wales/Catalogue/Equality-and-Diversity/Public-Sector-Equality-Duty

29 gov.wales/future-trends-2017

30 gov.wales/well-being-wales-2019

31 chwaraeteg.com/projects/gender-equality-review/#phase-two

32 www.olderpeoplewales.com/en/reviews/SOTN.aspx

33 www.childcomwales.org.uk/categories/research-reports-and-other-publications/

34 stats.wales.gov.wales/Catalogue

35 www.ons.gov.uk/

36 gov.wales/relative-income-poverty

37 gov.wales/persistent-poverty

38 gov.wales/national-survey-wales-wellbeing-and-finances

39 www.ons.gov.uk/peoplepopulationandcommunity/personalandhouseholdfinances/incomeandwealth

40 stats.wales.gov.wales/Catalogue/Community-Safety-and-Social-Inclusion/Welsh-Index-of-Multiple-Deprivation

41 www.jrf.org.uk/report/poverty-wales-2020

42 www.futuregenerations.wales/about-us/future-generations-act/

Some public bodies also have a duty under the Children and Families (Wales) Measure 2010⁴³ to set objectives for tackling child poverty. This duty can be discharged by some public bodies through the publication of their local well-being plan, but only if their child poverty strategy is an integral part of that plan. Other public bodies may set out their child poverty objectives in their organisational plan, or they may publish a separate child poverty strategy. Public bodies covered by the Duty will be able to draw on evidence of what works well in tackling those inequalities associated with poverty as well as those measures which help prevent and tackle socio-economic disadvantage.

Separately, it is recommended that public bodies engage directly with individuals and communities affected by socio-economic disadvantage to inform strategic decision-making.

Working with Third Sector Partners

Through the Covid-19 crisis and the flooding of 2020, the Third Sector showed how crucial their work with public bodies was to support our communities. Building on this good practice, public bodies should engage Third Sector partners when assessing the impact of their strategic decisions on the inequalities of outcomes associated with socio-economic disadvantage.

Therefore to help public bodies discharge the Duty, public bodies should adopt the principles set out in the Welsh Government **Third Sector Scheme**, for example:

- The Third Sector can help to transform the way that public services meet present and future demands, by treating people and communities as assets and equals in the design and delivery of services, not only as service receivers.
- It makes resources go much further by using them in different and new ways which strengthen individuals and communities.
- Effective partnerships must be based on an appreciation of each party's distinctive contribution.

- This can be achieved through early engagement and consultation with the sector on the impact and contribution the Third Sector can make to the policy decisions.

DECISIONS OF A STRATEGIC NATURE

DEFINITION:

In general, strategic decisions will be those which affect how the public body fulfils its intended statutory purpose (its functions in regards to the set of powers and duties that it uses to perform its remit) over a significant period of time and will not include routine 'day-to-day' decisions.

For some public bodies, such decisions may only be taken annually, but in other cases they will come up more often.

The Duty will apply to both new **strategic decisions** and when reviewing previous strategic decisions. Note, the Duty is not retrospective, meaning that public bodies do not have to give due regard to decisions which have been made before commencement.

Below are some examples (not an exhaustive list) of strategic decisions public bodies may make:

- ✓ Strategic directive and intent
- ✓ Medium to long term plans (for example, corporate plans, development plans, service delivery and improvement plans)
- ✓ Setting objectives (for example, well-being objectives, Equality Act, 2010 equality objectives, Welsh language strategy)
- ✓ Changes to and development of public services
- ✓ Strategic financial planning
- ✓ Major procurement and commissioning decisions
- ✓ Strategic policy development
- ✓ Strategies developed at Regional Partnership Boards and Public Service Boards*

***Regional Partnership Boards and Public Service Boards are not covered by the Duty, refer to page 15 for further information on partnership working.**

DUE REGARD

DEFINITION:

Giving weight to a particular issue in proportion to its relevance.

Due regard is an established legal concept in equalities and public law. The concept of due regard should be well understood by public bodies in relation to the Public Sector Equality Duty⁴⁴. It means giving weight to a particular issue in proportion to its relevance. The same principles apply to this Duty - giving due regard to reducing inequalities of outcome caused by socio-economic disadvantage.

Demonstrating 'Due regard'

As with the Public Sector Equality Duty,⁴⁵ an individual or group may bring judicial review proceedings against a public body which is covered by the Duty if they believe the public body has not considered socio-economic disadvantage when taking decisions of a strategic nature.

To ensure that public bodies are able to provide evidence on how they are meeting their statutory requirements under the Duty, it is recommended they keep an audit trail for all relevant decisions made. In this context an 'audit trail' should reflect a step by step record of evidence gathered to inform a decision, including:

- Evidence which identifies any likely impacts of such decision in relation to the Socio-economic Duty; and
- Evidence of how due regard was given, including records of changes made to the decision, in order to reduce inequalities of outcome as a result of socio-economic disadvantage.

To improve the way that that socio-economic disadvantage is considered and to provide evidence that 'due regard' has been given, it is suggested that it is incorporated into existing processes. This could include: impact assessments; systems for engagement and involvement; systems of assessing risk; Board or Committee papers; consideration of future trends and application of the Well-being of Future Generations (Wales) Act⁴⁶ five ways of working. The Welsh Government would also encourage bodies to find new and innovative ways to improve the extent to which social and economic disadvantage is considered.

Ensuring that 'Due Regard' has been given to the need to reduce the inequalities of outcome resulting from socio-economic disadvantage.

Decision makers within public bodies **must** be satisfied that the body has understood the evidence and likely impact, and has considered whether the policy can be changed to reduce inequality of outcome as a result of socio-economic disadvantage.

A scrutiny framework⁴⁷ to support decision makers' in discharging their Duty, including examples of evidence that decision makers might be provided with or might request, is available on the Welsh Government's Socio-economic Duty **website**.

44 www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty-wales

45 www.legislation.gov.uk/ukpga/2010/15/section/149

46 www.futuregenerations.wales/about-us/future-generations-act/

47 gov.wales/socio-economic-duty-scrutiny-framework

The Duty in practice

An example of how public bodies may meet the Duty in practice is set out below using a five stage approach:

STAGE 1: PLANNING

Is the decision a strategic decision?

STAGE 2: EVIDENCE

What evidence do you have about socio-economic disadvantage and inequalities of outcome in relation to this decision?

Have you engaged with those affected by the decision?

Have you considered protected characteristics?

Have you considered both places and communities of interest?

STAGE 3: ASSESSMENT AND IMPROVEMENT

What are the main impacts of the proposal?

How can the proposal be improved so it reduces inequalities of outcome as a result of socio-economic disadvantage?

STAGE 4: STRATEGIC DECISION MAKERS

This stage is for decision makers to confirm that due regard has been given, for example executives and non-executive directors, board and committee members. They must be satisfied that the body has understood the evidence and likely impact, and has considered whether the policy can be changed to reduce inequality of outcome as a result of socio-economic disadvantage.

STAGE 5:

This stage is the process of evidencing and recording how 'due regard' has been given. At this stage changes to the decision should be made and recorded.

It is recommended that public bodies consider opportunities to embed this way of working within existing organisational processes, including those used to discharge their existing legislative requirements, ensuring more rounded and better decision making.

A **mapping guide**⁴⁸ has been prepared to help public bodies consider opportunities to apply the Socio-economic Duty, the Public Sector Equality Duty⁴⁹ and the Well-being of Future Generations duties⁵⁰ in an aligned way whilst not undermining the distinct requirements of these duties and the outcomes they seek to achieve.

48 gov.wales/more-equal-wales-mapping-guide

49 www.legislation.gov.uk/ukpga/2010/15/section/149

50 www.futuregenerations.wales/about-us/future-generations-act/

Human Rights

Equality and discrimination are inextricably linked to human rights. Socio-economic disadvantage has the potential to blight a person's ability to access and enjoy the human rights available to them in the UK, through a mixture of domestic law (the Human Rights Act 1998⁵¹), retained EU law and international human rights law. Such disadvantage can result in long-term inequalities in education, health, life satisfaction, prosperity and participation in public life.

Approaching implementation of the Socio-economic Duty in the correct way will help public bodies to maximise their contribution to addressing such inequalities, and also to meet their obligations under the Human Rights Act 1998⁵² and international human rights law.

It is unlawful for public bodies in Wales to act incompatibly with the European Convention of Human Rights⁵³. Public bodies also have obligations as part of the state to consider, observe and give effect to international human rights treaties signed and ratified by the UK. Altogether, there are seven international human rights instruments which have been ratified by the UK, all of which have socio-economic relevance:

- International Covenant on Civil and Political Rights⁵⁴
- International Covenant on Economic, Social and Cultural Rights⁵⁵
- Convention on the Elimination of All Forms of Racial Discrimination⁵⁶
- Convention on the Elimination of All Forms of Discrimination against Women⁵⁷
- Convention on the Rights of the Child⁵⁸

- Convention on the Rights of Persons with Disabilities⁵⁹
- United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)⁶⁰.

Socio-economic disadvantage cuts across many aspects of our society. The Future Generations Commissioner for Wales Report, 2020⁶¹ states that:

“ Deepening poverty in Wales is leading to an even starker gap in the experiences and opportunities of people born into different socio-economic backgrounds. Our findings show that this gap has widened in particular for women, disabled people, and some ethnic minority groups.

Underpinning the due regard element of the Duty with appropriate links to existing equality legislation and human rights principles will support public bodies to better understand how socio-economic disadvantage interacts with people's protected characteristics and take better account of how it cuts across the specific needs and vulnerabilities of marginalised groups. This will enable public services to identify the most pressing inequalities in their area and to build on existing partnership arrangements to develop strategic and holistic interventions.

51 www.legislation.gov.uk/ukpga/1998/42/contents

52 www.legislation.gov.uk/ukpga/1998/42/contents

53 www.echr.coe.int/Documents/Convention_ENG.pdf

54 www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx

55 www.ohchr.org/en/professionalinterest/pages/cescr.aspx

56 www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx

57 www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDIndex.aspx

58 www.ohchr.org/en/professionalinterest/pages/crc.aspx

59 www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDIndex.aspx

60 www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx

61 www.futuregenerations.wales/wp-content/uploads/2020/06/Chap-3-Equal.pdf

Meeting the duty when commissioning and procuring services

As only identified public bodies are subject to the Duty, the Duty remains with that body. Therefore, the requirement to meet the Duty does not pass to a third party through procurement, commissioning or outsourcing.

However, in circumstances where this activity is considered by a public body to engage the Duty, the public body must consider how such arrangements reduce inequalities of outcome caused by socio-economic disadvantage.

Meeting the Duty when working in partnership

When a public body works in partnership with bodies not covered by the Duty, the Duty only applies to the specific body that is covered.

For example, local well-being plans are developed and owned by a range of partners, however those public bodies subject to the Duty must ensure that they are discharging their Duty though consideration of how the elements of the plan they have responsibility for will reduce inequalities of outcome caused by socio-economic disadvantage.

However, whilst only those public bodies specified in the regulations will be under a statutory duty to comply with it and take account of any guidance issued, the Welsh Government would encourage all other public bodies to consider the resources made available to support them in their decision-making.

Monitoring and regulation

The Duty will improve decision making within public bodies, which will bring about improved outcomes for those who suffer social and economic disadvantage. Performance in relation to the extent to which bodies are meeting the requirements of the Duty, and performance in relation to improvement in inequalities of outcome as a result of socio-economic disadvantage will be incorporated within the work of bodies who contribute to understanding how public bodies are delivering a more equal Wales. This will be kept under review.

As explained there is no reporting duty attached to the Duty. In its role as the regulator of the Equality Act 2010⁶², the EHRC has powers to promote and provide advice and guidance, and publish research on implementing the Duty. It does not have use of its full enforcement powers in relation to the Duty as the 2010 Act does not establish 'socio-economic discrimination', nor does it identify socio-economic disadvantage as a protected characteristic in the 2010 Act⁶³, and therefore the EHRC will not undertake enforcement of the Duty on the basis of an 'unlawful act'.

Raising concerns

If an individual or group which has been adversely affected by the decision of a public body, and considers that the Duty has not been properly complied with, they can resolve their concerns through the relevant body's formal complaints procedure. It is recommended that public bodies ensure that information regarding raising a concern/ complaint is readily available.

62 www.legislation.gov.uk/ukpga/2010/15/contents/enacted

63 www.legislation.gov.uk/ukpga/2010/15/contents/enacted

Appendix

The following section is intended to provide a brief overview of duties under the Equality Act 2010⁶⁴ and the Well-being of Future Generations (Wales) Act 2015⁶⁵.

The purpose of this is to ensure that, when preparing for the Duty, public bodies are mindful of the other equality and well-being duties which will co-exist alongside the Duty.

It may be useful for public bodies to start thinking about how these duties can be exercised with maximum efficiency, for example, to avoid duplication of work in circumstances where these duties overlap and to address them in an integrated way. A **mapping guide** has been prepared to assist bodies with this and can be accessed through the Socio-economic Duty dedicated **website**.

In addition to the duties set out below, individual public bodies may also have other duties which are specific to them, that they would wish to consider here.

THE EQUALITY ACT 2010

Section 149 of the Equality Act 2010⁶⁶ sets out the Public Sector Equality Duty (PSED) which, in summary, places a general duty on public bodies to have due regard in exercising their functions of the need to:

- **Eliminate discrimination, harassment and victimisation;**
- **Advance equality of opportunity between those who share a protected characteristic and persons who do not share it; and**
- **Foster good relations between persons who share a protected characteristic and persons who do not share it.**

The relevant protected characteristics for the purposes of the PSED are: age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex and sexual orientation.

Building on the 2010 Act⁶⁷, distinctive Welsh regulations⁶⁸ place specific duties on named public bodies in Wales to enable the better performance of their compliance with the PSED. Under these specific duties, listed devolved public sector bodies must publish equality objectives and review these objectives at least every four years. In reviewing these objectives, listed bodies should involve people who share one or more of the relevant protected characteristics and have an interest in the way the public sector body carries out its functions.

The Duty also requires listed bodies to report progress towards fulfilling each of their equality objectives annually, and to assess the likely impact of proposed policies and practices on its ability to comply with the general duty. From time to time, a listed body must carry out an assessment of their activities in relation to compliance with the general duty, publish a report and publish equality information.

THE WELL-BEING OF FUTURE GENERATIONS (WALES) ACT 2015

The Well-being of Future Generations (Wales) Act 2015⁶⁹ aims to improve the social, economic, environmental and cultural well-being of Wales.

It makes the 44 public bodies listed in the Act⁷⁰ think more about the long-term, preventing problems occurring or getting worse through involving people and taking a more joined up approach.

To make sure that public bodies are all working towards the same vision, the Act puts in place seven well-being goals. This will help to create a Wales that we all want to live in, now and in the future.

64 www.legislation.gov.uk/ukpga/2010/15/contents/enacted

65 www.futuregenerations.wales/about-us/future-generations-act/

66 www.legislation.gov.uk/ukpga/2010/15/section/149

67 www.legislation.gov.uk/ukpga/2010/15/contents/enacted

68 www.legislation.gov.uk/wsi/2011/1064/contents/made The Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011

69 www.futuregenerations.wales/about-us/future-generations-act/

70 www.futuregenerations.wales/about-us/future-generations-act/

THE SEVEN WELL-BEING GOALS



The Socio-economic Duty contributes mainly to A More Equal Wales:

A society that enables people to fulfil their potential no matter what their background or circumstances (including their socio-economic background and circumstances).

The 2015 Act⁷¹ introduced the sustainable development principle which places an obligation on public bodies to make sure that when making their decisions they consider the impact they could have on people living in Wales now and in the future.

There are five things public bodies need to think about to show that they have applied the sustainable development principle known as the five ways of working.

COLLABORATION



Acting in collaboration with any other person (or different parts of the body itself) that could help the body to meet its well-being objectives.

INTEGRATION



Considering how the public body's well-being objectives may impact upon each of the well-being goals, on their other objectives, or on the objectives of other public bodies.

INVOLVEMENT



The importance of involving people with an interest in achieving the well-being goals, and ensuring that those people reflect the diversity of the area which the body serves.

LONG TERM



The importance of balancing short-term needs with the need to safeguard the ability to also meet long-term needs.

PREVENTION



How acting to prevent problems occurring or getting worse may help public bodies meet their objectives

Together, the seven well-being goals and five ways of working provided by the Act are designed to support and deliver a public service that meets the needs of the present without compromising the ability of future generations to meet their own needs.

⁷¹ www.futuregenerations.wales/about-us/future-generations-act/

Glossary of terms

Audit Trail

An 'audit trail' should reflect a step by step record of evidence gathered to inform a decision.

Communities of interest

Those who share an identity are described as 'communities of interest'. For example, these people maybe: lone parents; carers; those who share a common first language; or those who share one or more of the protected characteristics listed in the Equality Act 2010⁷². In addition, groups of people who **share an experience**, for example: people who have experienced homelessness; the same local health and social care system; or a local service. Accordingly, it is likely that people will be part of several communities of interest.

Communities of place

Those who share a **geographical location**, are described as 'communities of place'. For example, these locations maybe where people reside, work, visit or otherwise spend a substantial portion of their time.

Decisions of a strategic nature

Those which effect how the public body fulfils its intended statutory purpose (its functions in regards to the set of powers and duties that it uses to perform its remit) over a significant period of time and will not include routine 'day to day' decisions.

Due regard

Giving weight to a particular issue in proportion to its relevance.

Human Rights

Human Rights are the basic rights that belong to every person in the world, from birth until death. They apply regardless of where you are from, what you believe or how you choose to live your life. They can never be taken away, although they can sometimes be restricted – for example if a person breaks the law, or in the interests of national security. These basic rights are based on shared values like dignity, fairness, equality, respect and independence.

Judicial Review

Judicial review is a court process available to an individual or group who has been affected by a particular decision, action or failure to act by a public authority. That individual or group may make an application to the High Court, in order to challenge that decision. If the application is successful, the court can provide a remedy if it decides that the authority has acted unlawfully, unfairly or irrationally. Judicial review is concerned not with the merits of the decision, but whether the public body has followed the right procedures and made the decision in the correct way.

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.

Intersectionality

Recognising the way in which power structures based on factors such as gender, race, sexuality, disability, class, age and faith interact with each other and create inequalities, discrimination and oppression.

72 www.legislation.gov.uk/ukpga/2010/15/contents

Public bodies

Those bodies listed as being subject to the Duty (detailed on page 6) are referred to as public bodies throughout this document.

Socio-economic disadvantage

Living in less favourable social and economic circumstances than others in the same society.

The Equality Act 2010

The Equality Act, 2010⁷³ is a legal framework, which aims to harmonise and strengthen discrimination law, supporting progress towards equality.

The Well-being of Future Generations (Wales) Act 2015

The Well-being of Future Generations (Wales) Act 2015⁷⁴ aims to improve the social, economic, environmental and cultural well-being of Wales.

Additional information

The Brown Principles can also be used to determine whether due regard has been given. Making Fair Financial Decisions⁷⁵ (EHRC, 2019) provides useful information about the 'Brown Principles'. In addition, Welsh Government Guidance on Making Good Decisions⁷⁶ refers to the principle of due regard and assists public bodies to make good decisions that are lawful and comply with the rule of law.

73 www.legislation.gov.uk/ukpga/2010/15/contents

74 www.futuregenerations.wales/about-us/future-generations-act/

75 www.equalityhumanrights.com/en/advice-and-guidance/making-fair-financial-decisions

76 law.gov.wales/docs/lawwales/makinggooddecisionsen.pdf