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Consultation Document

A More Equal Wales – Commencing the Socio-economic Duty

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Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

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Overview	We want your views on which public bodies should be captured by the commencement of the socio-economic duty and how the duty can be delivered in Wales.
How to respond	This is a written, electronic consultation. Questions can be found at the end of this consultation document and you can complete the online form, download the form and complete manually and post to us at the address provided or send via email.
Further information and related documents	<p>Mae'r ddogfen yma hefyd ar gael yn Gymraeg / This document is also available in Welsh</p> <p>This consultation document can be accessed from the Welsh Government's website at gov.wales/consultations.</p> <p>Large print, Braille and alternative language versions of this document are available on request.</p>
Contact details	<p>For further information, please contact: Communities Division Communities and Tackling Poverty Directorate Welsh Government Cathays Park Cardiff CF10 3NQ e-mail: Socio-economicDuty@gov.wales</p>

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Cathays Park
CARDIFF
CF10 3NQ

e-mail:

Data.ProtectionOfficer@gov.wales

The contact details for the Information Commissioner's Office are:

Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Tel: 01625 545 745 or
0303 123 1113

Website: <https://ico.org.uk/>

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Foreword by the Deputy Minister and Chief Whip

The UK's exit from the European Union continues to bring immense uncertainty, not least in relation to equality and human rights. Decades of EU membership have produced a legacy of benefits covering many aspects of daily life in Wales, for example employment and environmental rights and health and safety regulations.

In response to calls from many stakeholders for Welsh Government to take action to safeguard equality and human rights, particularly in the context of EU withdrawal, several strands of work are being taken forward, of which commencing the socio-economic duty is one aspect. In broad terms, this means that in Wales we will be using our powers to place a legislative duty on relevant public bodies so when they take certain decisions they must consider the need to reduce the inequalities that result from socio-economic disadvantage.

In his election manifesto, the First Minister made a commitment to commence Part 1, Sections 1 to 3 of the Equality Act 2010¹ ("the 2010 Act") - the socio-economic duty ("the duty"). Subsequently, on 11 June 2019 I gave an oral statement to Plenary regarding Advancing Equality and Human Rights in Wales. In the statement I said:

"to demonstrate and reaffirm Welsh Government's commitment to the principles of advancing Equality and Human Rights in Wales, Welsh Government would be taking forward work to explore options to safeguard equality and human rights in Wales. This work would begin with commencing the socio-economic duty in Wales, as well as working with the Equality and Human Rights Commission to review and strengthen the Welsh regulations for the public sector equality duty."

There is an indisputable link between inequality and socio-economic disadvantage. In Wales, action to enable people to fulfil their potential no matter what their socio-economic background and circumstances has been strengthened through the Well-being of Future Generations (Wales) Act 2015². This brings the challenge of intergenerational socio-economic disadvantage into a comprehensive framework for decision making in 44 public bodies in Wales. It provides for a single principle ('the sustainable development principle') to guide the exercise of functions of public bodies to consider how they are meeting the needs of current generations without compromising future generations, to better address long term challenges such as inequalities of outcome. The Well-being of Future Generations (Wales) Act 2015² therefore supports existing legislation that seeks to improve equality in Wales, including the Equality Act 2010¹ (and Welsh specific equality duties).

Commencing the duty builds on the above and gives us an opportunity to do things differently, putting tackling inequality at the heart of strategic decision-making for relevant public bodies. This work will ultimately build on the good work that public bodies are already doing to tackle inequality, which links to plans to strengthen our social partnership arrangements as both the socio-economic duty and the potential Social Partnership Bill will help to address inequality from different perspectives.

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

² <http://www.legislation.gov.uk/anaw/2015/2/contents/enacted>

This consultation is the first step in a process to deliver on the commitments made by the First Minister and myself. It aims to seek 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 delivered. This will inform guidance as to ensure the socio-economic duty works for the people of Wales.

Jane Hutt AC/AM
Y Dirprwy Weinidog a'r Prif Chwip
Deputy Minister and Chief Whip

Legislative Background

The 2010 Act¹ is a legal framework which aims to harmonise discrimination law and to strengthen the law which supports progress on equality. The 2010 Act¹ brings together and re-states a number of enactments including the Equal Pay Act 1970³, the Race relations Act 1976⁴ and the Disability Discrimination Act 1995⁵. 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 Duty⁶) 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 Act¹ was enacted, the socio-economic duty lay dormant on the statute book, as UK Government elected not to commence it. The Wales Act 2017 legislated for a new model of Welsh Devolution, which included devolving the power to commence the socio-economic duty in Wales to the Welsh Ministers. Section 45 of the Wales Act 2017⁷, amends Part 1 of the 2010 Act⁸ in order to achieve this. The Welsh Ministers intend to use this power to commence Sections 1 to 3 of the 2010 Act¹ in Wales - the socio-economic duty.

Taking the relevant sections within Part 1 of the 2010 Act¹ in turn:

Section 1 requires key 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**. It lists the bodies that will be covered by the duty, and includes a provision for Ministers to issue guidance for public bodies in regard to it.

(The key terms highlighted in bold are explained below in Section 1 of this document.)

Section 2 confers a power on the Welsh Ministers to make regulations, naming those relevant public bodies to which the duty will apply. In determining which bodies are 'relevant authorities' the Welsh Ministers must consider whether each authority meets the criteria specified in section 2(6) of the 2010 Act¹.

Section 3 makes clear that the duty will not create any new justiciable rights for individuals.

In summary, 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**.

3 http://www.legislation.gov.uk/ukpga/1970/41/pdfs/ukpga_19700041_en.pdf

4 <http://www.legislation.gov.uk/ukpga/1976/74/enacted>

5 <https://www.legislation.gov.uk/ukpga/1995/50/contents>

6 <http://www.legislation.gov.uk/ukpga/2010/15/section/149>

7 <http://www.legislation.gov.uk/ukpga/2017/4/contents/enacted>

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

Section 1 – Defining the Key Terms

The text below explores various definitions of the key terms from section 1. These are:

- (i) Decisions of a strategic nature;
- (ii) Due regard;
- (iii) Inequalities of outcome;
- (iv) Socio-economic disadvantage.

These definitions have been developed from policy work undertaken by Welsh Government officials and through consideration of relevant guidance from other parts of the UK. They will be used within statutory guidance which will be produced by Welsh Ministers to support relevant public bodies discharge their duty under this proposed legislation.

i) Decisions of a strategic nature

The Explanatory Notes which accompany the 2010 Act¹ state in relation to Section 1 (the socio-economic duty):

“this section requires specified public bodies, when making strategic decisions such as deciding priorities and setting objectives, to consider how their decisions might help to reduce the inequalities associated with socio-economic disadvantage.”³

The Welsh Government wishes to use a definition which truly captures the important decisions relevant public bodies make. It is therefore proposed in Wales a strategic decision, in the context of the proposed duty, is defined as:

“Decisions which set the organisations’ overall priorities, strategies and key policies, targets, broad approaches, and expenditure concerning the delivery of its business.”

In general, a strategic decision will be one which effects how the body fulfils its intended statutory purpose over a significant period of time (i.e. twelve months) as to exclude routine ‘day to day’ decisions. For some relevant public bodies, such decisions may only be taken annually, in other cases, they will come up more often.

Below are some possible examples (not an exhaustive list) of strategic decision making for some of the relevant public bodies in Wales and where they should explicitly consider their socio-economic responsibilities:

Local Authorities

- Setting and publishing well-being objectives⁹;
- Preparation of a local development plan¹⁰;
- Preparation of a local transport plan;
- Preparation of a housing strategy;
- Preparation of economic development/regeneration strategy such as City deals;
- Development of education policies;

Local Health Boards

⁹ <https://gov.wales/well-being-future-generations-guidance>

¹⁰ <https://gov.wales/sites/default/files/publications/2018-11/planning-your-community-a-guide-to-local-development-plans.pdf>

- Setting and publishing well-being objectives⁹;
- Development of Integrated Medium Term Plans¹¹;
- Planning and service change proposals;
- Population Health Assessments¹²;

Fire and rescue services

- Setting and publishing well-being objectives⁹;
- Strategic or corporate plans;
- Improvement plan or its successor;
- Reviews of front-line capacity and capability;

National Parks

- Setting and publishing well-being objectives⁹;
- National Park Management Plans¹³;
- National Park Local Development Plans¹⁴.

ii) Due regard

Due regard is an established legal concept in equalities law. The concept of ‘due regard’ should be well understood by public bodies in relation to the Public Sector Equality Duty. It means giving weight to a particular issue in proportion to its relevance. We would expect the same principles to apply to the duty.

Relevant public bodies already have clear policy objectives. The new duty does not override these as to require public bodies develop new ones, although they may choose to do that in some cases. Instead it will require relevant public bodies, make making new strategic decisions, to consider the desirability of reducing the unequal outcomes that result from socio-economic disadvantage with their other objectives.

iii) Inequalities of outcome

The explanatory notes¹⁵ accompanying the 2010 Act¹ state:

“Such inequalities could include inequalities in education, health, housing, crime rates, or other matters associated with socio-economic disadvantage. It is for public bodies subject to the duty to determine which socio-economic inequalities they are in a position to influence.”

The Welsh Government wishes to use an approach which does not create unnecessary bureaucratic burden and duplication for relevant public bodies, and where possible allows the duty be embedded alongside existing working practices. Upon this basis, the Welsh Government wishes to help public bodies in determining which socio-economic inequalities are important to Wales by linking this to existing measures of inequality. We propose that this can be done through a number of ways.

Firstly, this can be through public bodies giving regard to the National Well-being Indicators laid by Welsh Ministers under the Well-being of Future Generations (Wales) Act 2015 which are relevant to inequalities. Primarily this would be the indicators that

11 <https://gov.wales/nhs-wales-planning-framework-2020-2023>

12 <https://gweddiill.gov.wales/topics/health/socialcare/act/population/?lang=en>

13 Environment Act 1995 Section 66 1)

14 Planning and Compulsory Purchase Act 2004 s.37(5), Environment Act 1995 ss.68, 69, and Town and Country Planning Act 1990 s.4A

15 <https://www.legislation.gov.uk/ukpga/2010/15/notes/division/3/1/1>

contribute most significantly to ‘a more equal Wales’ well-being goal, which aims to create a society that enables people to fulfil their potential no matter what their background or circumstances (including their socio economic background and circumstances)’.

The mapping of the current 46 indicators and the Well-being goals are included within the Well-being of Wales report and website¹⁶. For this purpose, the indicators included in **Annex A** are those that are mapped against the ‘a more equal Wales’ well-being goal.

Under the proposed approach we do however recognise there will be some relevant public bodies who are not in scope of the Well-being of Future Generations (Wales) Act 2015 and therefore do not currently have a requirement to consider the contribution they make to these indicators and to a more equal Wales. However we believe this proposed approach further aligns these public bodies with their counterparts (who are captured under the Well-being of Future Generations (Wales) Act 2015) in considering a common set of outcomes which are used to measure progress of inequalities. Furthermore, in meeting the Duty we would only expect relevant public bodies to have due regard to the need to reduce the range of inequalities of outcome they observe in their areas or those which are specifically relevant to their core functions. This recognises that different public bodies have a different contribution to make which is dependent on their existing powers and duties.

Secondly, and linked to the above, is the Well-being of Wales report¹⁷ which provides an update on well-being in Wales and insight into the progress we are making against the seven well-being goals analysing the 46 national indicators alongside a range of other statistical information. The recent 2018-19 report noted the intention to make amendments to the current set of 46 national indicators to align with the recommendations of the Fair Work Commission¹⁸, to extend the pay difference indicator to cover other population groups, and to replace indicator 46 with a new indicator on active global citizens. These amendments will further assist relevant public bodies assess inequalities of outcomes.

Thirdly, Is Wales Fairer¹⁹, the annual report produced by the Equality and Human Rights Commission which reviews how Wales is performing on Equality and Human rights, providing a picture of people’s life chances in Wales.

The above is not proposed to be an exhaustive list, and public bodies may wish to supplement the above with locally gathered intelligence.

iv) Socio-economic disadvantage

Features of socio-economic disadvantage are complex and are often interlinked, for example health outcomes get progressively poorer across the socio-economic gradient²⁰; no/ low accumulated wealth leads to households having no/ limited access to basic goods and services such as transport, education and health care services; a lack of social mobility in terms of higher education and career prospects; discrimination faced if individuals have protected characteristics²¹.

It is important to recognise socio-economic disadvantage is not only experienced in those communities typically regarded as deprived. For example, analysis of the Welsh Index of

16 <https://gov.wales/well-being-wales-progress-reports-against-well-being-goals>

17 <https://gov.wales/well-being-wales-2019>

18 <https://gov.wales/fair-work-commission>

19 <https://www.equalityhumanrights.com/en/publication-download/wales-fairer-2018>

20 <http://www.publichealthwalesobservatory.wales.nhs.uk/inequalities-and-inequities>

21 <https://www.gov.uk/government/publications/social-mobility-in-great-britain-state-of-the-nation-2018-to-2019>

Multiple Deprivation shows that while around 20 per cent of income deprived people live in the 10 per cent most deprived areas, this means that around 80 per cent of income deprived people do not. However living in a deprived area can exacerbate negative outcomes for individuals and households as these areas face significant challenges; and this is particularly the case for deep-rooted deprivation. This is illustrated within the Wellbeing of Wales 2019¹⁷ report which includes analysis of some of the National Indicators by considering the disparities between those least and most deprived.

In its statutory guidance, the Welsh Government will seek to define ‘socio-economically disadvantaged in Wales, including reference to where data is available to consider the contributing factors. It is through this consultation which we are seeking views on this definition.

In July 2017, Scotland consulted²² on commencing the socio-economic duty (“Fairer Scotland Duty”). Their consultation document contained the following proposed definition of socio-economic disadvantage:

“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.”

The responses to their consultation however showed²³:

“Some respondents highlighted that socioeconomic disadvantage is very complex, and that this complexity must be reflected in the definition.....However, others felt that the ultimate aim of the duty was being obscured by too many terms being used to describe the problems that should be addressed. These respondents wished to see a stronger focus on tackling the causes of poverty and wealth inequality, rather than ameliorating the consequences.”

Based on the complexity, location and interconnecting factors of socio-economic disadvantage, and consideration of work undertaken in Scotland, it is proposed that in Wales we use a similar definition which is contained within Scotland’s interim guidance for the Fairer Scotland Duty²⁴:

“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.”

We would welcome your views on this proposed definition or suggestions of an alternative approach, possibly one which clearly captures both the economic and social impacts. We would like to use a definition which can be measured using existing data.

²² <https://www.gov.scot/publications/consultation-socio-economic-duty/>

²³ <https://www.gov.scot/publications/consultation-socio-economic-duty-analysis-responses/>

²⁴ <https://www.gov.scot/publications/fairer-scotland-duty-interim-guidance-public-bodies/pages/2/>

Question 1

The key terms defined in this section are:

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

Q1A – Do you agree the above definitions of these terms are reasonable, easily understandable and should be included within the Welsh Government’s forthcoming guidance on the socio-economic duty?

Q1B – Do you agree with this definition of a ‘strategic decision’?

“Decisions which set the organisations’ overall priorities, strategies and key policies, targets, broad approaches, and expenditure concerning the delivery of its business.”

If you do not agree with either of these definitions please can you provide an alternative?

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

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

“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.”

If you do not agree with this definition are you able to provide an alternative?

Section 2 – The Public Bodies Covered By the Duty

As explained, the wording of the 2010 Act¹ enables Welsh Ministers to specify by regulations the relevant Welsh Authorities (public bodies) to be covered by the socio-economic duty. Section 2(4) states:

- (4) ... Welsh Ministers may by regulations amend section 1 so as to-*
- (a) add a relevant authority to the authorities that are subject to the duty under subsection (1) of that section;*
 - (b) remove a relevant authority from those that are subject to the duty;*
 - (c) make the duty apply, in the case of a particular relevant authority, only in relation to certain functions that it has;*
 - (d) 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 section 2(6) of the Act provides a ‘test’ to determine which devolved Welsh Authorities are eligible for inclusion in the list at section 1(3) of the 2010 Act¹ as ‘relevant authorities’ to which the socio-economic duty will apply. Section 2(6) of the 2010 Act¹ states:

- (6) For the purposes of the power conferred by subsection (4) on the Welsh Ministers, “relevant authority” means [a devolved Welsh authority (within the meaning given by section 157A of the Government of Wales Act 2006) whose functions correspond] or are similar to those of an authority for the time being specified in subsection (3) of section 1 or referred to in subsection (4) of that section.*

This means for a devolved public body to be captured under the duty in Wales, they must have functions which correspond or are similar to those of an authority in subsection (3) of section 1.

The list of relevant public authorities set out in section 1(3) of the 2010 Act¹, 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.

During its passage through the House of Commons, the Solicitor-General, Vera Baird said as follows in relation to section 1(3) of the 2010 Act¹:

“It is a new duty covering only a limited number of organisations [.....] and it is not a long list because it is intended to apply only to high level strategic bodies taking key decisions²⁵.”

Stakeholders should therefore note the criteria of section 2(6) of the 2010 Act¹ limits the discretion of the Welsh Ministers, when applying the socio-economic duty, to those bodies which are deemed relevant, by reference to how their functions ‘correspond or are similar to’ the named English bodies listed above.

In Wales we propose the following Welsh public authorities be bound by the duty, as they appear to meet the test set out in section 2(6) of the 2010 Act¹:

- The Welsh Ministers;
- A Local Authority;
- 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.

The Welsh Government believes the duty should to apply to all eligible public bodies in Wales, making strategic decisions, so as to achieve a system wide approach to reducing the socio-economic disadvantage.

Question 2

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.

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.

²⁵ Hansard, HC Public Bill Committee, 5th Sitting, col. 145 (June 11 2009).

Section 3 – Meeting the requirements of the duty

This section sets out our initial thinking about the kinds of steps relevant public bodies could take to show they are meeting the duty.

Due to the importance of this legislation, Welsh Ministers have requested ‘rapid progress’ in its implementation, and are therefore proposing the duty comes into force on the 1 April 2020.

To support relevant public bodies ‘interim’ guidance will be issued on the 1 April 2020 for a period of two years before being issued as ‘final’ statutory guidance on the 1 April 2022. Section 1(2A) (aa) of the 2010 Act¹ above sets out that relevant public bodies must take into account guidance issued by Welsh Ministers. This guidance will be co-produced between Welsh Government, relevant public body representatives, and other key stakeholders through a series of events.

Although the duty will apply as a statutory duty from the 1st April 2020, the proposed implementation period is intended to convey that a ‘softer’ approach will be applied to the duty during the first two years, to allow the Welsh Government time to work with relevant public bodies to refine the guidance and for relevant public bodies to fully understand the requirements and embed it within existing working practices. This will provide an opportunity for continuous review and on-going engagement to ensure that the duty works as intended in its efforts towards reducing inequalities of outcome linked to socio-economic disadvantage.

It is worth noting however, that once the duty is commenced, on 1st April 2020, if a relevant public body fails to perform the duty, an individual or group whose interests are adversely affected by that public body’s decision, may be able to bring a judicial review claim against that authority.

However, to support relevant public bodies, in its role as the regulator of the 2010 Act¹, the Equality and Human Rights Commission (“EHRC”) will promote and provide advice and guidance on implementing the socio-economic duty in Wales. Additionally, the Welsh Government ‘Guidance on Making Good Decisions’ assists public authorities in Wales to make good decisions that are lawful and comply with the Rule of Law²⁶. It does so by describing in clear and accessible terms the main grounds on which a public authority’s actions may be challenged through the judicial review procedure.

Separately, the 2010 Act¹ does not establish ‘socio-economic discrimination’ – socio-economic status is not a protected characteristic in the Act – and therefore the EHRC will not undertake enforcement on the basis of an ‘unlawful act’.

We would welcome views on this proposed approach and the associated two year timeframe.

To inform the development of the interim guidance, set out below are a number of proposed steps relevant public bodies will need to undertake to fulfil their legal obligations under the duty. As indicated, the intention is not to create unnecessary bureaucratic burden and duplication, therefore this list is not definitive. We are interested to learn the views of stakeholders through this consultation and through co-producing guidance on what the possible key steps will be for relevant public bodies.

²⁶ <https://law.gov.wales/constitution-government/public-admin/intro-admin-law/welsh-government-guidance-on-making-good-decisions/?lang=en#/constitution-government/public-admin/intro-admin-law/welsh-government-guidance-on-making-good-decisions/?tab=overview&lang=en>

Step 1: Identifying which strategic decisions public authorities take and when they take them

A first task for relevant public bodies 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 bodies may already routinely do this, for example when local health boards produce service change proposals, these are routinely supported by a range of impact assessments of each proposal. (Section 1 includes some initial suggestions on what might constitute a 'strategic decision'.)

Separately, the Public Sector Equality Duty⁶ brings together and strengthens the existing equality duties in regard to race, gender, and disability, and extends that protection to people on the grounds of age, sexual orientation, gender reassignment, pregnancy and maternity, and religion or belief. Given the clear links between socio-economic inequalities and those associated with particular protected characteristics, the two duties reinforce and support each other allowing for relevant public bodies to consider adopting similar process when considering the impact of their decisions.

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

When making the strategic decisions, identified within Step 1, relevant public bodies will need to consider the outcomes their decisions may have on socio-economic disadvantaged populations. There are a range of ways in which relevant public bodies can build this awareness as they will already have access to a wide range of relevant quantitative data and other evidence including, for example:

- National well-being indicators²⁷;
- Annual employment data published under the Public Sector Equality Duty²⁸;
- The Equality and Human Rights Commission's annual report '*Is Wales Fairer*'²⁹;
- Welsh Government's Future Trends report³⁰;
- A wide range of other official statistics via StatsWales³¹ and the Office for National Statistics³².

Some relevant public bodies will be able to gather evidence via their membership on Public Services Boards, setup under the Well-being of Future Generations (Wales) Act 2015, as they are required to undertake well-being assessments and publish local well-being plans. Separately, relevant public bodies can engage directly with individuals and communities who are effected by socio-economic disadvantage as to inform strategic decision making, for example through consultation and engagement events. Ultimately, involving communities in the big decisions public authorities make is key to getting decisions right and making sure they achieve the desired positive outcomes, we would be interested in your views on how to do this well.

Step 3: Exercising the duty during decision-making

Relevant public bodies must be able to demonstrate how they are meeting the duty's requirements. In practice this will mean considering the aforementioned evidence, where

²⁷ <https://gov.wales/well-being-wales-progress-reports-against-well-being-goals>

²⁸ <https://stats.wales.gov.wales/Catalogue/Equality-and-Diversity/Public-Sector-Equality-Duty>

²⁹ <https://www.equalityhumanrights.com/en/publication-download/wales-fairer-2018>

³⁰ <https://gov.wales/future-trends-2017>

³¹ <https://stats.wales.gov.wales/Catalogue>

³² <https://www.ons.gov.uk/>

the evidence suggests taking a particular strategic decision would reduce socio-economic disadvantage a relevant public body should give it appropriate weight and balance this against other policy objectives and available resources. We expect this process align to processes relevant public bodies have in place when undertaking impact assessments.

Relevant public bodies will need to be able to evidence a clear audit trail for all decisions made under the duty, however, it is anticipated relevant public bodies will already be operating in this manner when making strategic decisions as part of their governance arrangements; as effective transparency is one key part of improving the delivery of public bodies.

There is no reporting duty attached to this piece of legislation, but as this is a statutory duty, relevant bodies should be able to demonstrate how they have fulfilled this duty, when making strategic decisions. As part of the above Welsh Government would encourage relevant public bodies to detail how they are discharging their duty by using their existing monitoring and reporting mechanisms where appropriate.

Integrated Reporting is an approach that can help relevant public bodies, it encourages organisations to report and communicate how their strategy, governance and performance lead to the creation of value over the short, medium and long term. Also in taking an integrated approach, relevant public bodies should look at opportunities to integrate the way in which they report existing duties.

We also accept that it will difficult to collect data and management information that will allow public bodies to report directly against the definition we have proposed in Section 1. Public bodies will be expected consider the different factors of socio-economic disadvantage in context depending on the issue being reported upon. We will provide guidance to support public bodies in terms of measuring and analysis and the data sources which can support this work.

In some instances, relevant public bodies may also choose to produce and publish their assessments undertaken under the duty (these could sit alongside the suite of impact assessments undertaken), providing further openness and transparency. We would therefore be interested to hear about 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

We believe it is not desirable to try to create another measurement framework to monitor the impact of the socio-economic duty. By aligning the duty to the National Well-being Indicators which contribution to a more equal Wales, the Well-being of Wales report³³ and Is Wales Fairer³⁴, it allows relevant public bodies to consider the impact against existing indicators.

³³ <https://gov.wales/well-being-wales-2019>

³⁴ <https://www.equalityhumanrights.com/en/publication-download/wales-fairer-2018>

Question 3

Section 3 sets out initial thinking about the kinds of steps public authorities could take to show they are meeting the duty.

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?

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?

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?

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?

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?

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?

Section 4 – Links between this and other Duties

The socio-economic duty, if enacted in Wales, will become one of the key strategic duties aimed at reducing socio-economic disadvantage alongside, a number of other Wales-specific legislative duties, which tend to apply to certain public bodies at an operational level, and which also have a socio-economic focus. This section asks how public authorities could sensibly approach the links between the different duties, these include:

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

The Well-being of Future Generations (Wales) Act 2015² provides a comprehensive framework for decision making in 44 public bodies in Wales. It provides for a single principle ('the sustainable development principle') to guide the exercise of functions of public bodies to consider how they are meeting the needs of current generations without compromising future generations, to better address long-term challenges such as inequalities of outcome.

The Wales we want to see, with social, environmental, economic and cultural well-being at its heart, is articulated in the Act's seven well-being goals – they provide a common purpose for public bodies and others in Wales. The well-being goals are an integrated set – it will not be possible to achieve a healthier, more prosperous, more resilient, globally responsible Wales, with cohesive communities and vibrant culture and Welsh language, without having a more equal Wales. The duty to involve people that reflect the diversity of the area in which a public body serves supports the involvement duty in the Welsh Public Sector Equality Duties.

The Equality Act 2010 – Public Sector Equality Duty

The Public Sector Equality Duty⁶ requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities.

There is considerable cross-over between equality and socio-economic issues, in the sense that many of the disadvantages faced by particular protected groups are underpinned or made worse by poverty. Indeed, discrimination can be a direct cause of socio-economic disadvantage. There are varying degrees of evidence^{19 35} 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.

The Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011

The 2010 Act¹ introduced a new general public sector equality duty ('the general duty') that was brought into force by the UK Government in April 2011. The Act also made provision for the Welsh Ministers to be able to make regulations that impose specific public sector equality duties on "relevant Welsh public authorities" listed in Part 2 of Schedule 19 to the Act. The Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011³⁶ contain specific equality duties to enable the better performance of the general duty by the public sector in Wales.

³⁵ <https://gov.wales/relative-income-poverty-april-2017-march-2018>

³⁶ <http://www.legislation.gov.uk/wsi/2011/1064/contents/made>

Human rights legislation

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 Human Rights Act 1998³⁷ sets out the fundamental rights and freedoms that everyone in the UK is entitled to. It incorporates the rights set out in the European Convention on Human Rights into domestic law. In particular, Article 14 is based on the core principle that all of us, no matter who we are, enjoy the same human rights and should have equal access to them.

The United Nations Convention on the Rights of the Child³⁸ has been embedded into Welsh law through The Rights of Children and Young Persons (Wales) Measure 2011³⁹. This places a duty on the Welsh Ministers to have 'due regard' to the Convention when exercising any of their functions. The 'due regard' duty doesn't extend to wider public bodies outside the Welsh Government but the impact of the 2011 Measure on policy development in Wales is far reaching. More recently the 'due regard' duty was incorporated into the Social Services and Wellbeing (Wales) Act 2014⁴⁰, thus ensuring that the 'due regard' duty is considered by certain public bodies i.e. Local Authority Children's Services Departments, when making decisions about children.

The above list of duties illustrates the clear links between socio-economic disadvantage and existing public body duties, therefore we propose that each strategic decision is to be assessed in this wider sense, providing a rationale for considering socio-economic issues in an integrated way. This could help streamline monitoring and reporting. We would be interested to hear how relevant public bodies make the most of connections between these cross-cutting areas to improve policy development and reduce inequality.

Question 4

Section 4 explores the links between the Socio-Economic Duty, and other duties public bodies must carry out.

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

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.

³⁷ <http://www.legislation.gov.uk/ukpga/1998/42/contents>

³⁸ <https://www.unicef.org.uk/what-we-do/un-convention-child-rights/>

³⁹ <http://www.legislation.gov.uk/mwa/2011/2/contents>

⁴⁰ <https://www.legislation.gov.uk/anaw/2014/4/contents>

Section 5 – Supporting Documents

To help assess the potential impact of commencing the socio-economic duty in Wales we have, alongside this consultation, published the following draft documents:

A Regulatory Impact Assessment which provides Welsh Ministers, the Accounting Officer, the National Assembly for Wales and stakeholders with information on the likely impact of the proposed legislation. This includes best estimates of the potential costs and savings arising from the legislation.

An Integrated Impact Assessment Summary which provides a summary of the most significant impacts, positive and negative along with details on the monitoring of the proposal and its evaluation.

We would welcome your views on the context of these document, especially the Regulatory Impact Assessment as to determine if the costs and benefits provided are fair and reasonable.

Question 5

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

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

Summary of Socio-economic Duty

The commencement of the socio-economic duty is about requiring relevant public bodies to:

- consider socio-economic disadvantage when making key strategic decisions;
- demonstrate they have considered available evidence on socio-economic disadvantage to inform how they can better target their policies and resources to help those who are most disadvantaged;
- balance the desirability of that aim against other objectives;
- working within existing resource allocations and budgets, and within existing planning, decision-making, and reporting processes.

The duty is not about:

- creating a new equalities strand or protected characteristic;
- creating new justiciable rights for individuals;
- addressing discrimination against individuals on account of socioeconomic factors;
- superseding all other strategic priorities;
- creating burdensome new monitoring or reporting processes;
- directly affecting or determining operational decisions or everyday decisions; or
- requiring relevant public bodies to use their resources to remove unequal outcomes in every case where they are identified.

Summary of consultation questions

Question 1

The key terms defined in this section are:

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

Q1A – Do you agree the above definitions of these terms are reasonable, easily understandable and should be included within the Welsh Government’s forthcoming guidance on the socio-economic duty?

Q1B – Do you agree with this definition of a ‘strategic decision’?

“Decisions which set the organisations’ overall priorities, strategies and key policies, targets, broad approaches, and expenditure concerning the delivery of its business.”

If you do not agree with either of these definitions please can you provide an alternative?

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

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

“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.”

If you do not agree with this definition are you able to provide an alternative?

Question 2

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.

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.

Question 3

Section 3 sets out initial thinking about the kinds of steps public authorities could take to show they are meeting the duty.

Q3A – 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?

Q3B – 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?

Question 4

Section 4 explores the links between the Socio-Economic Duty, and other duties public bodies must carry out.

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

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.

Question 5

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

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

Question 6

We would like to know your views on the effects that *commencing the socio-economic duty* would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Question 7

Please also explain how you believe the proposal to *commence the socio-economic duty* could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Question 8

We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here:

Annex A

National Well-being Indicators under the Well-being of Future Generations (Wales) Act 2015 which contribute to an Equal Wales

1. Percentage of live single births with a birth weight of under 2,500g.
2. Healthy life expectancy at birth including the gap between the least and most deprived.
3. Percentage of adults who have fewer than two healthy lifestyle behaviours (not smoking, healthy weight, eat five fruit or vegetables a day, not drinking above guidelines and meet the physical activity guidelines).
4. Levels of nitrogen dioxide (NO₂) pollution in the air.
5. Percentage of children who have fewer than two healthy lifestyle behaviours (not smoking, eat fruit/vegetables daily, never/rarely drink and meet the physical activity guidelines).
8. Percentage of adults with qualifications at the different levels of the National Qualifications Framework.
10. Gross Disposable Household Income per head.
16. Percentage of people in employment, who are on permanent contracts (or on temporary contracts, and not seeking permanent employment) and who earn more than 2/3 of the UK median wage.
18. Percentage of people living in households in income poverty relative to the UK median: measured for children, working age and those of pension age.
19. Percentage of people living in households in material deprivation.
20. Percentage of people moderately or very satisfied with their jobs.
21. Percentage of people in employment.
22. Percentage of people in education, employment or training, measured for different age groups.
24. Percentage of people satisfied with their ability to get to/ access the facilities and services they need.
25. Percentage of people feeling safe at home, walking in the local area, and when travelling.
26. Percentage of people satisfied with local area as a place to live.
27. Percentage of people agreeing that they belong to the area; that people from different backgrounds get on well together; and that people treat each other with respect.
29. Mean mental well-being score for people.
30. Percentage of people who are lonely.
31. Percentage of dwellings which are free from hazards.

32. Number of properties (homes and businesses) at medium or high risk of flooding from rivers and the sea.
33. Percentage of dwellings with adequate energy performance.
34. Number of households successfully prevented from becoming homeless per 10,000 households.
35. Percentage of people attending or participating in arts, culture or heritage activities at least three times a year.
38. Percentage of people participating in sporting activities three or more times a week.
41. Emissions of greenhouse gases within Wales.
42. Emissions of greenhouse gases attributed to the consumption of global goods and services in Wales.
43. Areas of healthy ecosystems in Wales.
45. Percentage of surface water bodies, and groundwater bodies, achieving good or high overall status.
46. The social return on investment of Welsh partnerships within Wales and outside of the UK that are working towards the United Nations Sustainable Development Goals.