

The Fairer Scotland Duty

Interim
Guidance
for Public
Bodies

March 2018



Scottish Government
Riaghaltas na h-Alba
gov.scot



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Introduction

Introduction

This is interim guidance for the Fairer Scotland Duty, which is coming into force from April 2018.

It's 'interim' because we want final guidance to be developed with public bodies, grounded on experience of working on the Duty and reflecting the good practice that's already in place. The Duty will be subject to a three year implementation phase where we'll be working with the Equality and Human Rights Commission - the Duty regulator - to make sure the Duty delivers better decision-making. We know that there's a lot of good work already underway and our plan is to build on that strong foundation.

We will also be funding a National Coordinator post in the Improvement Service to help public bodies share best practice through regional meetings, working with the sector and the Scottish Government to improve the guidance over time and manage the intersections between duties focused on socio-economic concerns and equality. And we're introducing a new funding stream, offering small sums of money to help bring the diverse voices of people with direct experience of poverty and disadvantage more directly into strategic decision-making.

The Scottish Government wants to encourage innovation in how public bodies meet the Fairer Scotland Duty and welcomes different approaches. Most importantly, we want the Duty to reduce inequalities of outcome and, for that to happen, we need to develop the Duty in partnership. To reflect this, the guidance is non-statutory - but has been developed with help from a range of partners. Thanks to all those who have worked on the text with us.



About the Duty

What is the Fairer Scotland Duty?

The Fairer Scotland Duty, Part 1 of the Equality Act 2010, comes into force in Scotland from April 2018.

It places a legal responsibility on particular public bodies in Scotland to actively consider ('pay **due regard**' to) how they can **reduce inequalities of outcome caused by socio-economic disadvantage, when making strategic decisions**. This is set out in a diagram below, with more explanation in the pages that follow.

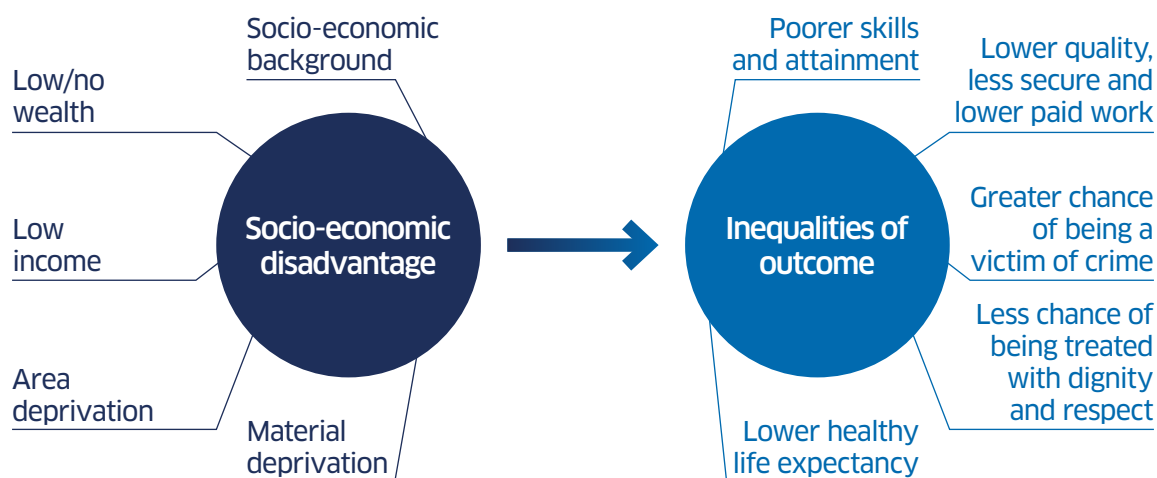
We know that many in the public sector and beyond see this new Duty as an opportunity to do things differently and to put **tackling inequality genuinely at the heart of key decision-making**. People in Scotland still experience significant socio-economic disadvantage and resulting inequalities of outcome. Over a million Scots are living in poverty, including one in four children; and health inequalities and educational attainment gaps are far too wide. This unfairness isn't inevitable. We can reduce poverty and inequalities of outcome, helping to realise the rights of the people who have experienced them.

To fulfil their obligations under the Duty, public bodies must be able to meet what we've called the **key requirement** in each case:

- to actively consider how they could reduce inequalities of outcome in any major strategic decision they make; and
- to publish a written assessment, showing how they've done this.

Some other considerations worth bearing in mind are as follows:

- The Duty applies from 1 April 2018 and does not cover decisions made before this date.
- The Duty also does not override other considerations – such as equality or best value.
- The Duty is nevertheless a key consideration, underpinned by statute.
- The Equality and Human Rights Commission (EHRC) is the **Regulator for the Fairer Scotland Duty** and will be closely involved with monitoring and the development of best practice for the Duty, particularly in the first three years, seen by the Scottish Government as an implementation phase.



Which public bodies are covered by the Duty?

These public bodies are covered by the Fairer Scotland Duty:

- Scottish Ministers [see below]
- Local Authorities
- Regional Health Boards
- Special Health Boards
- Integration Joint Boards
- The Scottish Police Authority
- Highlands and Islands Enterprise
- Scottish Enterprise
- Revenue Scotland
- Food Standards Scotland
- The Keeper of the Records of Scotland
- The Keeper of the Registers of Scotland
- The Scottish Courts and Tribunals Service

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

The public authorities in the list above will have somewhat different functions. Some will take strategic decisions on a regular basis, others only occasionally. How often public bodies engage with the Duty will therefore vary – for some, it may only be once a year, for example in relation to an annual plan.

It’s also worth noting that the functions of public authorities can change – for example, when given new responsibilities by government. This means that a public body’s engagement with the Duty may also need to change over time.

Defining ‘Socio-Economic Disadvantage’

In broad terms, ‘**socio-economic disadvantage**’ means living on a low income compared to others in Scotland, 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.

These issues are now considered in more detail, with reference to where data is available to look further at each element.

LOW INCOME COMPARED TO MOST OTHERS IN SCOTLAND

Low income is a key driver of a range of negative outcomes and can be defined in a range of ways. Relative poverty (after housing costs) is a useful headline measure, looking at the number of individuals living in households in Scotland with incomes below 60% of UK median income. Statistics on absolute poverty (which looks at whether households’ living standards are changing over time) and persistent poverty (where households live in poverty for 3 years out of 4) are also available. Poverty statistics can in most cases be broken down by age group, and breakdowns by gender, ethnicity, disability, tenure and urban/rural are also available. These show minority ethnic groups and households with a disabled adult or child with much higher poverty rates. Some key links are provided here.

- National statistics are available here: <http://www.gov.scot/Topics/Statistics/Browse/Social-Welfare/IncomePoverty>
- Local child poverty statistics, down to ward level (using proxy data) are available from the End Child Poverty Coalition here: <http://www.endchildpoverty.org.uk/poverty-in-your-area-2018/>
- Joseph Rowntree Foundation (JRF) has published a range of very useful analysis on poverty, including a Minimum Income Standard approach: <https://www.jrf.org.uk/income-and-benefits>
- New Policy Institute has produced useful analysis on disability and poverty for JRF <https://www.npi.org.uk/publications/income-and-poverty/disability-and-poverty/>

However, looking at headline statistics in isolation can sometimes offer a limited perspective on low income. Experience of poverty, for example, is gendered, even though official statistics show broadly similar rates of poverty between men and women. Largely, this is a function of looking at household poverty – in which women’s and men’s incomes are considered together as joint incomes. This conceals key differences, not least women’s lower pay, greater likelihood of part-time working and care responsibilities, and the gender pay gap. It also conceals how different groups of men and women fare: lone parents (mostly women) and single adults who live alone (mostly men) are much more likely to live in poverty. Detailed analysis, then, can help form a more useful picture for tackling inequalities of outcome than headline statistics alone.

Defining 'Socio-Economic Disadvantage'

LOW WEALTH

Having access to wealth (including financial products, equity from housing, and a decent pension) provides some protection from socio-economic disadvantage, particularly when the wealth comes in the form of accessible savings. Savings can help households deal with problems that arise on a day-to-day basis. But we know from analysis of wealth and assets in Scotland that wealth inequality is much deeper than income inequality and that the least wealthy 30% of households owned very little or no financial, private pension or property wealth, and less than 7% of physical wealth in 2012/14. Single adult households, including lone parent households, again had very high risks of low wealth: nearly two thirds of lone parent households and over half of single working age households were low wealth households in 2012/14. Nearly half of low wealth households were in employment; households with lower educational qualifications and in routine or manual occupations had significantly higher risks of low wealth.

More on wealth inequality can be found here: <http://www.gov.scot/Publications/2017/02/6032/0>

MATERIAL DEPRIVATION

Refers to households being unable to access basic goods and services and, in data terms, tends to focus on families with children and on pensioner households. Obviously, if households cannot afford to buy items like home contents insurance, a warm winter coat for children or don't have money to repair/replace broken electrical goods, this could impact on outcomes. For example, disadvantaged children and young people, who lack access to IT hardware and broadband services at home, may find homework more challenging, and this may then impact on the attainment gap.

Material deprivation has complex links with low income. Some households will be on a low income, but still have the basic necessities they need to get by, perhaps because they built them up over time; or perhaps relatives and friends help out; or they may be able to draw on some savings. Other households may be unable to afford many basic goods and services, even though their income is a bit higher – perhaps because they need to pay off debt, or only recently started a new job after a period of unemployment. Again, there are equality dimensions here too. For households with children, women as traditionally the main carers of children (and sometimes other adults too) may go without themselves to provide for those they are looking after. Minority ethnic families tend to be larger, which means more resources are needed to meet basic needs. Similarly, disabled families – with a disabled adult or child – may need additional help and support to meet basic needs and the specialist help they may require (people and equipment) can often be costly.

- More on material deprivation and low income as it affects children in local areas can be found here (experimental statistics): <http://www.gov.scot/Publications/2017/11/9758>
- National child combined low income and material deprivation statistics, and pensioner material deprivation data are available at national level in the annual poverty statistics report: <http://www.gov.scot/Topics/Statistics/Browse/Social-Welfare/IncomePoverty>

Defining ‘Socio-Economic Disadvantage’

AREA DEPRIVATION

Living in a deprived area can exacerbate negative outcomes for individuals and households already affected by issues of low income. The most deprived areas face significant challenges; and this is particularly the case for deep-rooted deprivation – for example, those areas that have been consistently among the 5% most deprived in Scotland since SIMD 2004.

- The Scottish Index of Multiple Deprivation (SIMD) is the official Scottish Government tool for identifying areas of multiple deprivation in Scotland. But it is not the only tool and in some contexts it will be important to look at other data and/or combine SIMD data with other evidence to get a full picture. SIMD datasets can be found here: <http://www.gov.scot/Topics/Statistics/SIMD>

However, socio-economic disadvantage is not always experienced in neat concentrations of people in recognisable communities. Indeed, two out of three people who are income deprived do not live in deprived areas. So while it may be appropriate in many cases to take an approach focused on areas of multiple deprivation, there will also be a need to look at deprivation as it affects particular communities of place or communities of interest.

‘Communities of place’ refers to people who are bound together because of where they reside, work, visit or otherwise spend a continuous portion of their time. For example, people in particular rural, remote and island areas face a particular set of circumstances which exacerbate disadvantage – for example poverty is often hidden in smaller communities; cost of living and accessibility of transport, education and employment impact more negatively on rural populations.

The further work done on minimum income standard for remote, rural Scotland may also be useful. <http://www.hie.co.uk/regional-information/economic-reports-and-research/archive/a-minimum-income-standard-for-remote-rural-scotland---a-policy-update.html>

‘Communities of interest’ can refer to groups of people who share an experience. For example, consideration of the impact of strategic decisions on people who have experienced homelessness, care or the asylum system may help develop a deeper understanding of possible socio-economic impacts. Those who share one or more of the protected characteristics listed in the Equality Act 2010 can also be considered communities of interest. Those who share an identity – for example, lone parents – can similarly be communities of interest too.

Data for small populations is often problematic because of sample sizes or where data doesn’t exist, but these are areas where raising awareness by talking to people with lived experience will be particularly important.

SOCIO-ECONOMIC BACKGROUND

The structural disadvantage that can arise from parents’ education, employment and income – social class, in other words – is a final key factor in socio-economic disadvantage. This is, however, more difficult to measure and will require further consideration as to how we build it into assessment.

In summary, socio-economic disadvantage is focused on low income, low wealth, material deprivation and area deprivation – with communities of interest and of place as cross-cutting issues.

The issue of socio-economic background will be explored during the implementation phase.

Defining 'Inequalities of Outcome'

The Fairer Scotland Duty is intended to reduce the **inequalities of outcome** caused by socio-economic disadvantage. By inequalities of outcome, we mean any measurable differences between those who have experienced socio-economic disadvantage and the rest of the population – for example, in relation to health and life expectancy or educational attainment. Socio-economically disadvantaged households have a higher risk of experiencing negative outcomes. The Duty is outcome focused – so, for example:

- In terms of connectivity, we want households to have equal access to the internet. But while 98% of households with an income above £40,000 had internet access, this dropped to 63% for households with an income below £15,000. There are also challenges of connectivity for people in more remote locations compared to urban areas, although the gap in access between the lowest and highest income brackets has decreased from 67% in 2007 to 30% in 2016.
- In terms of incomes, we ideally want everyone to have enough income to be able to save. But more than half of households in the poorest fifth of the population have no savings or investments, compared with just one in eight households in the richest fifth. This means households facing an emergency risk getting into debt to try and resolve it.
- In terms of education, we ideally want disadvantaged pupils' educational outcomes to be the same as for pupils from non-disadvantaged backgrounds. But only 43% of school leavers in the most deprived areas are qualified to Higher level or above, compared with 81% of Scottish school leavers in the most affluent areas.

- In terms of children's health, more than a quarter (26%) of those living in the poorest fifth of households reported less than good health in the first four years of life, compared to just 12% of those in the richest fifth.
- In terms of life expectancy, we would ideally want this to be the same for men and women no matter where they live. However, men's life expectancy is less than women's. Furthermore, men living in the most deprived areas experience 23.8 fewer years of good health compared to men in the most affluent areas. Similarly, women living in the most deprived areas experience 22.6 fewer years of good health compared to women in the most affluent areas.
- In terms of communities, we want people to be satisfied with their neighbourhoods, wherever they are in Scotland. However, in the least affluent areas of Scotland only 10% of residents rated their neighbourhood as a very good place to live, compared to almost 80% of those living in the most affluent areas.

In seeking to meet the Duty, we would expect public bodies to tackle the range of inequalities of outcome they observe in their areas or that are specifically relevant to their core functions. In some cases, as shown in the previous diagram, an effective way to do this will mean tackling socio-economic disadvantage directly by, for example, reducing poverty.

Defining ‘Strategic Level’

The Duty is set at a **strategic level** – these are the key, high-level decisions that the public sector takes. Many of these decisions may be made in the context of public service reform and improving outcomes for people and communities. In general, they will be decisions that affect how the public body fulfils its intended purpose, over a significant period of time. These would normally include strategy documents, decisions about setting priorities, allocating resources, and commissioning services – all decisions agreed at Board level (or equivalent).

For some organisations, such decisions may only be taken occasionally, perhaps once a year. In other cases, they will come up more often. Strategic decisions will have a major impact on the way in which other tactical and day-to-day operational decisions are taken; but they are not in themselves tactical or operational.

Below, we list a range of areas of strategic decisions. This shouldn't be seen as an exhaustive list.

- Preparation of the Local Development Plan
- City deals or other major investment plans
- Preparing legislation
- Development of new strategic frameworks
- Development of significant new policies or proposals
- Preparation of an annual budget
- Major procurement exercises
- Decisions about the shape, size and location of the estate
- Preparing a Local Outcomes Improvement Plan as part of a CPP
- Preparing locality plans
- Preparation of a Corporate Plan
- Commissioning of service

As noted in the introduction, we are funding a new National Coordinator post in the Improvement Service, working on the new Duty and on child poverty. The postholder will work with public bodies to build on this list of strategic decisions over time and highlight good practice models to follow.

Of course, consideration of how to reduce socio-economic inequalities can obviously improve any decision-making, whether the decision in question is strategic or not. So while the statutory focus of the Duty is on strategic decision-making, the ultimate aim of the Duty – as with our equality responsibilities – is for consideration of socio-economic disadvantage to be mainstreamed.

Defining 'Due Regard'

The concept of 'due regard' should be well understood by public bodies in relation to the equality duties they already need to meet. Due regard in relation to the Fairer Scotland Duty should be considered in a similar way. Here are some key considerations to bear in mind:

Active consideration. To 'have due regard' means that, in making any strategic decision, a public authority subject to the Duty must actively consider, with an open mind, whether there are opportunities to reduce inequalities of outcome caused by socio-economic disadvantage. This is not a tick box exercise. Serious consideration must be given – and as early in the decision-making process as possible. That's why we've suggested in this guidance that **an appropriate officer** must be involved in any assessment process under the Duty. There is also an expectation that 'due regard' is given both by staff at the **formation of any strategy/plan/programme** and by decision makers at its **adoption**.

Participation. It may be easier to demonstrate that due regard has been paid if any assessment involves those who may be directly affected by the decision under consideration. The Equality Act does not set a legal requirement to involve communities in meeting the Fairer Scotland Duty, but the EHRC recommends it.¹ Participation is also a human rights principle.

Proportionality. How much regard is due will depend on the relevance of the decision to the scale of socio-economic disadvantage and inequalities of outcome in relation to each strategic issue.

Due regard does not mean there is an obligation to achieve a result. Public bodies are not **required** to reduce inequalities of outcome as part of any decision made under the Duty. There may be a range of good reasons why it's not possible to seek to do so in any particular case.

Results are, however, important. If it is possible for public bodies to make changes to a policy, programme or decision to reduce inequalities of outcome, and there are no compelling reasons for not doing so, due regard would suggest that those changes should be made.

A record of the decision-making process is also important. To ensure that public authorities can demonstrate that they have paid due regard, a record of the assessment process should be written up and made publicly available.

Public bodies can be held to account under the new Duty. As with the Public Sector Equality Duty, if a public body fails to give due regard as required, any individual who is affected could take a Judicial Review arguing that the authority had failed to meet a statutory duty. EHRC could also take a Judicial Review against a body who fails to meet the Duty, as its method of enforcement. However, the Equality Act does not establish 'socio-economic discrimination' – socio-economic status is not a protected characteristic in the Act – and therefore no claim of that type could be made.

¹ <https://www.equalityhumanrights.com/en/publication-download/involvement-and-public-sector-equality-Duty-guide-public-authorities-scotland>

Equality, Human Rights and Child Poverty

The bodies listed under the Fairer Scotland Duty are already covered by the Public Sector Equality Duty and the Human Rights Act.

This means there is an opportunity to build on and improve existing practice on equality and human rights when working on the Fairer Scotland Duty. Local authorities and health boards also have new responsibilities in relation to **child poverty** – but all of the public sector will be expected to help meet the aims of the Child Poverty (Scotland) Act 2017. This means that there are also opportunities to focus on reducing child and family poverty when considering how to meet the new Duty.

Although the Fairer Scotland Duty is derived from the Equality Act 2010, it is separate from the public sector equality Duty (PSED), which requires public bodies to have due regard to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct prohibited by the 2010 Act;
- advance equality of opportunity between persons who share a relevant protected characteristic (as defined by the 2010 Act) and persons who do not share it; and,
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

But while they are separate, there are clear links between the aims of both Duties. As noted earlier in this guidance, those who share particular protected characteristics are often at higher risk of socio-economic disadvantage. So for the most part, it won't be possible to reduce inequalities of outcome effectively if the problem and its solutions aren't considered through an equality lens. For example, in 2015-16, around one in four children were living in households in poverty. But some families with children were much more likely to live in poverty – these include minority ethnic families, families with a disabled adult or child, lone parent families, and families where the mother is under 24 years old. If we fail to consider the specific barriers to these families, we'll likely fail to reduce child poverty and improve outcomes.

With the above in mind, equality groups will be important 'communities of interest' for any socio-economic assessment public bodies undertake. Sometimes communities of interest may also overlap with communities of place – for example, where a relatively larger proportion of minority ethnic households live in a particular deprived area.

Having said this, managing the two Duties may prove challenging in some cases. Applying the Fairer Scotland Duty complements the PSED, but it's important to note that it doesn't supersede or replace it.² We will ask the National Coordinator to focus in on how these two parallel processes can work together successfully in practice, ideally with each strengthening the other.

² The EHRC provides information on applying the PSED here: <https://www.equalityhumanrights.com/en/equality-act/equality-act-2010>.

Equality, Human Rights and Child Poverty

Approaching this Duty in the right way will also help public bodies meet their obligations under the Human Rights Act (HRA) and international human rights law and to deliver their services appropriately. Under the HRA, it is unlawful for public bodies in Scotland to act incompatibly with the Convention rights, and they also have obligations as part of the state to give effect to international human rights treaties signed and ratified by the UK. International treaties with rights regarding economic and social circumstance are as follows:

- International Covenant on Civil and Political Rights
- International Covenant on Economic, Social and Cultural Rights
- Convention on the Elimination of All Forms of Racial Discrimination
- Convention on the Elimination of All Forms of Discrimination against Women
- Convention on the Rights of the Child
- Convention on the Rights of Persons with Disabilities

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

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

The Scottish Government has now done this. There may also be scope for integrating approaches to the Fairer Scotland Duty with a human rights approach, particularly for economic and social rights.³ However, that practice is still being developed – again, we will ask the National Coordinator to consider this during the Implementation phase.

³ See <http://eqhria.scottishhumanrights.com/eqhriaBusinesscase.html>

Three year implementation phase

Reflecting the fact that this is interim guidance, the Fairer Scotland Duty will be subject to a **three year implementation phase**. This means that we will be reviewing with the EHRC how the Duty is working in practice over this period and offering a range of help and opportunities to share best practice. Note that the duty will remain a statutory requirement and the EHRC (and individuals) may still be able to bring a judicial review if they feel due regard has not been given in any particular case.

The new **National Coordinator** at the Improvement Service will help public bodies implement the Duty successfully. The coordinator will also be working on the local child poverty plans flowing from the new Child Poverty Act, so there are good opportunities for joined up working between these two areas. We will also be asking the coordinator to run regional best practice events and to make recommendations to the Scottish Government on how the interim guidance can be improved and tools and templates developed, based on your feedback.

The PSED is also subject to separate reviews by the Scottish Government and the EHRC. We will therefore be looking at how both duties are working together in the field to maximise their joint ability to reduce inequality and advance equality. We'll also be asking the EHRC to contribute to final guidance.

Preparing to meet the Duty

How can public bodies meet the Duty in practice?

Tackling socio-economic disadvantage and narrowing gaps in outcomes are core to what public bodies do now, so the new Duty should not be particularly burdensome. Indeed, the aim of the Duty is to encourage better decision-making and ultimately deliver better outcomes for those who are socio-economically disadvantaged. It should also be a means of ensuring public authorities take economic and social rights into account. This guidance has been designed to build on existing practice as far as possible.

At the heart of the new Duty is the key requirement.

This is an expectation that public bodies will:

- ***actively consider**, at an appropriate level, what more they can do to reduce the inequalities of outcome, caused by socio-economic disadvantage, in any strategic decision-making or policy development context, and
- ***publish a written assessment**, showing how they've done this.

In doing this, public bodies must approach the Duty in a way that:

- *is not a tick-box exercise but is meaningful and influences decision-making
- *helps to achieve public bodies' strategic corporate and equality outcomes
- *makes sense to the public body in relation to the work they do and the processes they already have in place
- *makes sense to the people and communities they serve (in many cases this may need direct community participation), and
- *helps bring about demonstrable change.

Aside from the key requirement, public bodies are able to approach meeting the Duty as they see fit. The Scottish Government wants to encourage innovation in how public bodies meet the Duty and welcomes different approaches at this stage. We also want to wait until the PSED review work concludes and learn from best practice in meeting the Fairer Scotland Duty. However, guidance on how public bodies can prepare for and implement the Duty are set out in the following pages.

Preparing for the new Duty

Public bodies can prepare for the new Duty by considering the following issues re definitions.

A definition of **socio-economic disadvantage** has been set out earlier in this guidance. Public bodies will be working within their own specific contexts so may wish to use this definition, but are able to adapt it as a starting point for future decision-making involving the Duty. For example, public bodies working across Community Planning Partnerships may already have a definition in use or they may want to work together on developing a new shared one. Once defined, the public body could usefully describe the patterns of socio-economic disadvantage within its areas of interest.

A follow on task would determine what the **key inequalities of outcome** are, from the public body's perspective. Crucially these should be inequalities of outcome the public body could realistically do something about. A key focus here should be thinking through the links between socio-economic concerns and the equality work already underway – this is an ideal opportunity to bring together issues of gender, ethnicity, and disability (for example) with issues of socio-economic and place-based disadvantage. For many public sector bodies, key inequalities of outcome will already have been identified in developing Local Outcomes Improvement Plans and associated Locality Action Plans.

A third task is to identify which **strategic decisions** are taken as a matter of course. Many public authorities already routinely do this kind of work when considering their role and contribution to community planning and in helping to shape the priorities for specific places which will be set out in Local Outcome Improvement Plans. Identifying which strategic decisions tend to be taken when should help public bodies with their planning processes.

Through all these preparatory stages, it will be important to **involve relevant communities**, particularly people with direct experience of poverty and disadvantage. Note too that the costs of involving some groups – for example, disabled people – can often be higher, as barriers to their participation need to be overcome. A new funding stream is available from 2018-19 – small amounts of money to help public bodies start up new 'Poverty Truth Commission' type groups locally, ideally in collaboration with local authorities. This is seedcorn money only, but should provide some help for consultation requirements at local level. Joint bids from groups of local public bodies are particularly welcome. In the first instance, we'll be looking to support areas of Scotland where this kind of group would be a significant development locally.

Meeting the Duty day-to-day

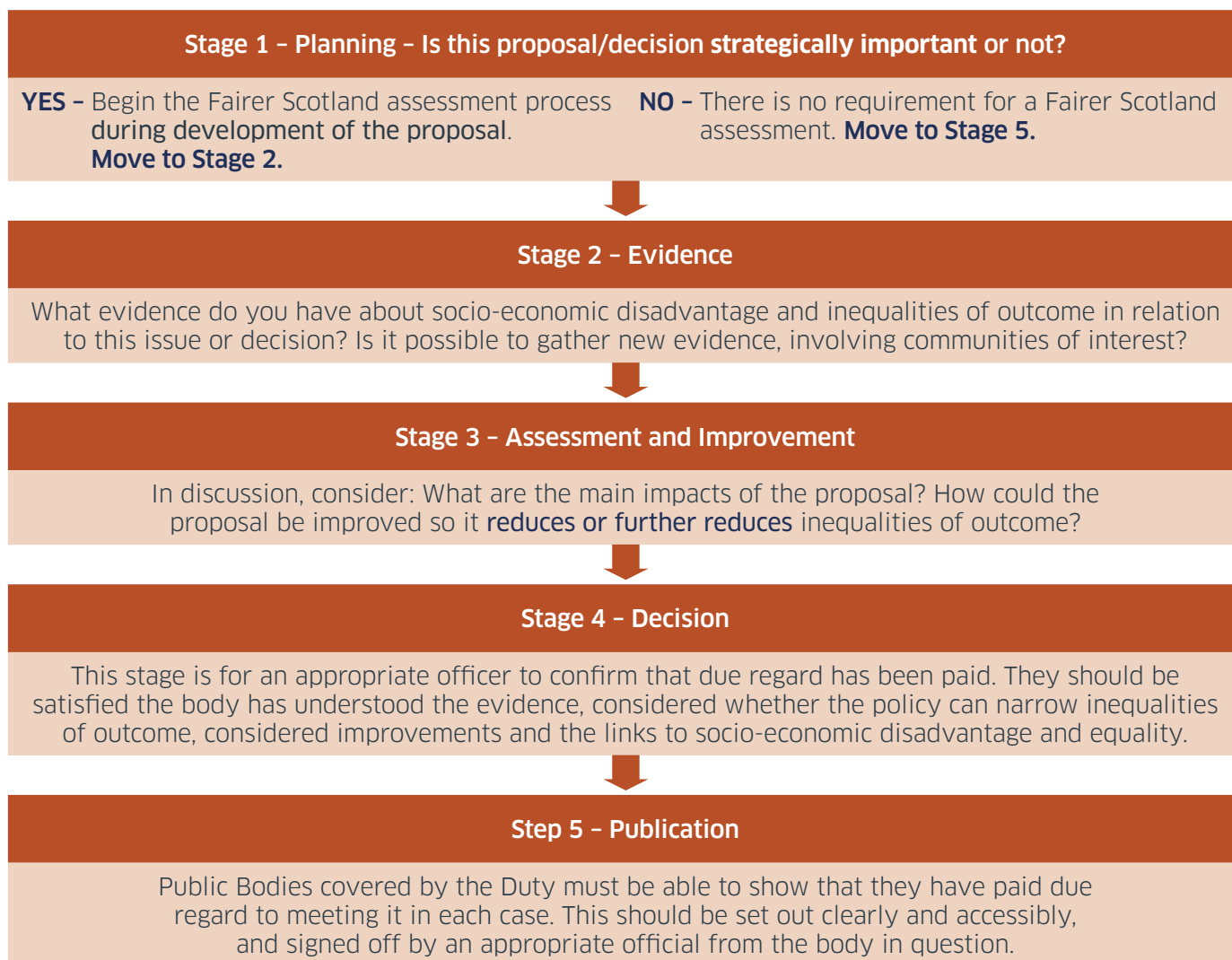
Meeting the Duty day-to-day

THIS SECTION SETS OUT AN EXAMPLE PROCESS FOR MEETING THE DUTY ON A DAY-TO-DAY BASIS.

These steps are intended to be similar to those used by many public bodies for equality impact assessment (EQIA)⁴, as part of the PSED. This should mean it's straightforward for public bodies to fit the Duty into its day-to-day processes.

Note that the PSED is currently subject to review and any findings will inform future iterations of this guidance.

A summary diagram of the process is shown below.



4 As required by Section 5 of the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012

Stage 1 – Planning

The Planning Stage of the process enables public bodies to determine whether a Fairer Scotland Assessment will be required and, where it is, to start planning how to deliver it.

The key question to ask at this stage is: **Is this a strategic programme/proposal/decision or not?** If it is not strategic, there is no formal requirement for a Fairer Scotland Assessment. However, public bodies may wish to consider socio-economic factors in their planning in any case, as good practice. There is of course still a requirement for due regard under the PSED and appropriate equality impact assessment.

If the decision is clearly not strategic and there is no perceived benefit from a Fairer Scotland Assessment, **move to Stage 5.**

If it is strategic, there are three initial tasks to complete.

- First, develop a plan for the remaining stages below, ensuring that there is sufficient time to do so. Note that the public body will need to pay due regard **during the development of the proposal**, not simply when the decision is being taken. This means starting your assessment early.
- Second, confirm the aims and expected outcomes of the programme/policy/decision.
- Third, alert appropriate officers in the organisation that the assessment is now underway and that it may affect the final decision to be made.
- Once you've done that, **Move to Stage 2.**

Stage 2 – Evidence

The Evidence Stage of the process is where public bodies should make full use of the data they hold or can access as they consider how to exercise their responsibilities under the Duty.

The key questions to ask at this stage are:

- What does the evidence suggest about the policy's actual or likely impacts on socio-economic disadvantage and the key inequalities of outcome under consideration?
- What existing evidence do we have about the proposal being developed, including what could be done differently?
- Are some communities of interest or communities of place more affected by disadvantage in this case than others? What does our EQIA planning work – for this issue and previously – tell us about gender, ethnicity, disability and other protected characteristics that we may need to factor into our decisions.
- Is it possible to collect new evidence quickly in areas where we don't currently have any? For example, through consultation meetings, focus groups or omnibus surveys?
- The voices of people and communities will be important here. How do we involve communities of interest (including those with lived experience of poverty and disadvantage) in this process?

Stage 3 – Assessment and Improvement

Most public bodies already have access to a wide range of relevant data (both quantitative and qualitative), from a range of sources. This includes administrative data, data about local neighbourhoods (e.g. SIMD), local child poverty estimates, new experimental statistics on combined low income and material deprivation (now available at local level for the first time), and health, education and employment data. Some public bodies will have access to richer data than others – for example, local authorities may be able to use Council Tax Reduction, free school meals and Housing Benefit data that others may not have access to. There is a **resources section** at the end of this guidance with more details of available data sources.

Where no evidence is available, it may be possible to generate this via focus groups, omnibus surveys or consultation exercises.

Evidence can also be sought from communities and groups directly, particularly when there are evidence gaps – for example, where a significant new policy is being developed. Engagement processes should ideally reflect the principles of the National Standards for Community Engagement.

Another source of help – particularly in terms of integrating equality and socio-economic considerations is the Scottish Government **Equality Evidence Finder**.⁵ This is an updated web resource providing equality evidence by subject area and protected characteristic. We intend to expand this over the next year to include socio-economic disadvantage as an additional category, also including child poverty considerations.

The assessment and improvement stage is a bringing together of the evidence and a consideration of potential improvements to the proposal, plan or decision.

It's essential that appropriate officers in the organisation are involved at this stage to ensure that opportunities for developing a better proposal are able to be taken up. This will be key for meeting the 'due regard' test.

The key questions to discuss at this stage are:

- What are the potential impacts of the proposal/decision as we currently understand them?
- How could the proposal/decision be improved so it **reduces or further reduces** inequalities of outcome, with a particular focus on socio-economic disadvantage?
- How will this policy assist you to reduce inequality in outcomes?
- If you are now planning to adjust the proposal/decision, could it be adjusted still further to benefit particular communities of interest or of place who are **more at risk of inequalities of outcome**?

The outcomes of the assessment phase, with any options emerging for consideration, should be clearly set out for consideration by the appropriate officer(s) in Stage 4. If proposals have changed considerably, there may also be a case for further consultation with communities.

⁵ <http://www.gov.scot/equalityevidence>

Stage 4 – Decision

This decision stage allows appropriate officers to consider the assessment process from Stages 2 and 3, agree any changes to the policy, proposal or decision and confirm that the public body has paid due regard to meeting the Fairer Scotland Duty in this case. In terms of who the appropriate officer should be, in the case of the Scottish Government this would be a Deputy Director or a Director in most cases.

Key questions to ask at this summary stage are:

- What, in brief, does the evidence base underpinning the proposal say about its potential impacts on inequalities of outcome?
- What changes, if any, will be made to the proposal as a result of the assessment? Why are these changes being made and what are the expected outcomes?
- If no changes are proposed, please explain why.

A note of this discussion, with answers to the above questions, should be prepared ahead of Stage 5.

Stage 5 – Publication

Stage 5 requires public bodies covered by the Duty to show that they have paid due regard to meeting it in each case.

Where a proposal, plan or decision is not considered to be strategic, this needs to be set out clearly and accessibly, and signed off by an appropriate officer from the public body in question. This could be made available via one of the following routes:

- As a section in or an annex to a publication setting out the proposal, plan or decision.
- As a separate section within an EQIA, focusing on the proposal, plan or decision.

Where a proposal, plan or decision is considered to be strategic, a record from Stage 4 needs to be set out clearly and accessibly, and signed off by an appropriate officer from the public body in question. This could be written up in one of the following ways:

- As a section in or an annex to a publication setting out the strategic proposal, plan or decision.
- As a Fairer Scotland Assessment document, published separately.
- As a separate section within an EQIA, focusing on the strategic proposal, plan or decision.

There are advantages and disadvantages to each of these approaches. On balance, the Scottish Government practice during the implementation phase will be to publish a separate assessment.

Resources

CASE STUDY 1 DEVELOPMENT OF AN URBAN HOUSING PLAN

Before the Fairer Scotland Duty

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

After the Fairer Scotland Duty

The new Duty is in place and the authority considers this a strategically important decision so it now starts to consider carefully how the new housing will reduce inequalities of outcome. First, it explores the evidence with analysts, focusing in particular on evidence on outcomes in a similar development built ten years previously in a similar outlying area. It also hosts consultation meetings with local people and hears personal testimony from a new group it's set up to bring the voices of people with experience of poverty into decision-making. This leads to new thinking emerging and in the Assessment stage new proposals are worked up.

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

Case Studies

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

The local authority knows it doesn't have all the answers. So, ahead of wider consultation on the local development plan, it tests these ideas with local people again. People say that they prefer the idea to build in the centre of the council area, particularly to make it easy to get a job or to change jobs and to access services. This option is particularly attractive to disabled people, who have been specifically asked about access issues – both in terms of transport and housing.

The local authority now balances all this information to make the best judgement and publishes a short report explaining its final decision.

CASE STUDY 2 PLANNING A CITY REGION DEAL AMONGST MULTIPLE PUBLIC SECTOR PARTNERS

A group of public bodies are working together on a City Region Deal.

Before the Fairer Scotland Duty

The City Growth Deal that's published contains strong statements about the need to tackle poverty and inequality. While the deal offers some very welcome investment, considerable economic development opportunities, and some highly skilled new jobs, there is a question about whether more could have been done to use the significant investment to drive reductions in inequality locally.

After the Fairer Scotland Duty

As part of the development of the City Deal, the partners agree to work together to consider the Fairer Scotland Duty in a collaborative way, taking an inclusive growth approach, even though some of the bodies involved are not covered by the Duty.

The final content of the deal will be how it both supports economic growth and reduces inequalities of outcome. So how change will be monitored and evaluated is key, and the partners therefore deploy analytical resources to help them consider what the impacts will be over the long-term.

Partners are already working with the 'inclusive growth diagnostic', an evidence-based approach for determining the growth and inclusion priorities in a particular area and projects which score well in inclusive growth terms are given additional weight. This means that the final deal is more likely to have positive outcomes in terms of reducing inequalities. A key component of the inclusive growth diagnostic process is input from stakeholders, including the local community. In this case, the partners ask for help from a local community group, made up of people with experience of poverty, to build the evidence base and shape the deal's development.

The final version of the Plan includes investment, considerable economic development opportunities, and a mix of new jobs, the majority of which will be recruited locally. It includes a strong narrative about reducing inequalities and sets out clearly how the deal will make that happen and how they will monitor and evaluate progress. The community group thinks the deal offers them hope, after a period where they hadn't felt their views had been properly heard.

The partners publish their Fairer Scotland Duty assessment jointly as part of a suite of documents related to the city region deal. There is no need for each partner to produce their own individual assessment, because they all signed up to it.

CASE STUDY 3 A SIGNIFICANT INVESTMENT DECISION WITHIN AN ECONOMIC DEVELOPMENT STRATEGY

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

Before the Fairer Scotland Duty

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

After the Fairer Scotland Duty

The Agency contacts the Local Authority, which like the Agency is covered by the Duty, and also engages with the Scottish Funding Council and Skills Development Scotland, which are not covered by the Duty. Together, they establish a task force to review the proposal to see if it either reduces or further increases inequality of outcome due to socio-economic disadvantage. By considering the evidence carefully, they identify that the research jobs are good quality but that they are unlikely to be filled in the local area. Furthermore, the jobs that are lower-skilled may be more suitable for people who experience socio-economic disadvantage but they are not going to be recruited locally. Moreover, the building work itself will be undertaken by a company that has no current apprentices and a poor record of providing career progression to its employees.

Case Studies

The Task Force is still keen to encourage the research headquarters to be developed locally and enters into negotiation with the company to try to mitigate some of the identified negative impacts. They include local people in some of the meetings to help them encourage the company to think about recruiting some of their semi-skilled jobs locally. The company is reluctant because of the skilled nature of the work but a local college agrees to help and offers a day release training opportunity for administration and lab technician posts. As a result, the company agrees to develop a graduate development programme and a modern apprenticeship programme enabling it to build its support workforce over time whilst continuing to recruit its key researcher posts internationally. The company was unwilling to change their building contracts but did agree that future maintenance programmes would be tendered amongst smaller, more local trades. Encouraged by the business benefits of the approach the organisation signs up to the Scottish Business Pledge ensuring that all employees are paid at least the real living wage further mitigating poverty in and out of work.

The Task Force felt that these changes had fulfilled their Duty. They jointly write up the assessment and publish it on partners' websites - although only the Agency and the local authority are obliged to do so legally, all partners wish to make clear their commitment to tackling disadvantage. They warmly welcome the new investment.

Data sources

| Theme | Data Source | Weblink |
|--------------------------------|---|---|
| Low Income | Scottish Government poverty and income inequality statistics are published annually. A wealth of data is available, including on child, working age and pensioner poverty. The most recent publication was March 2018. | http://www.gov.scot/Topics/Statistics/Browse/Social-Welfare/IncomePoverty |
| Low Income | The End Child Poverty Coalition has published relative child poverty estimates for local areas in Scotland, down to ward level. The most recent publication was January 2018. | http://www.endchildpoverty.org.uk/poverty-in-your-area-2018/ |
| Low income | The Scottish Government published national persistent poverty statistics for the first time in March 2017. | http://www.gov.scot/Topics/Statistics/Browse/Social-Welfare/IncomePoverty |
| Low Income | The New Policy Institute has produced useful analysis on disability and poverty for Joseph Rowntree Foundation. | https://www.npi.org.uk/publications/income-and-poverty/disability-and-poverty/ |
| Low wealth | The Wealth and Assets Survey provides data on wealth inequality in Scotland. The last publication was 14 February 2017. | http://www.gov.scot/Publications/2017/02/6032 |
| Material Deprivation | The Scottish Government publishes national combined low income and material deprivation as part of its annual poverty statistics report. The most recent publication was November 2017. | http://www.gov.scot/Topics/Statistics/Browse/Social-Welfare/IncomePoverty |
| Material Deprivation | The Scottish Government published its first combined low income and material deprivation statistics at local authority level in November 2017. These are experimental statistics. | http://www.gov.scot/Topics/Statistics/Browse/Social-Welfare/IncomePoverty |
| Area Deprivation | The Scottish Index of Multiple Deprivation (SIMD) is the official tool for finding the most deprived areas in Scotland. SIMD16 was last published on 31 August 2016. | http://www.gov.scot/Topics/Statistics/SIMD |
| Area Deprivation | The further work done on minimum income standard for remote, rural Scotland may also be useful. | http://www.hie.co.uk/regional-information/economic-reports-and-research/archive/a-minimum-income-standard-for-remote-rural-scotland---a-policy-update.html |
| Communities of place | Review of Equality Evidence in Rural Scotland. | http://www.gov.scot/Resource/0046/00469898.pdf |
| Communities of interest | The Scottish Government Equality Evidence Finder is an updated web resource providing equality evidence by subject area and protected characteristic. It is to be expanded over 2018-19 to cover socio-economic disadvantage too. | http://www.gov.scot/Topics/People/Equality/Equalities/DataGrid |

Glossary of terms

APPROPRIATE OFFICER – Each Fairer Scotland assessment process should be signed off by an appropriate officer. ‘Appropriate’ refers to a level of authority or seniority sufficient to demonstrate that due regard has been given in each case. While this will vary by public body, in the Scottish Government’s case, an appropriate officer would be a deputy director or a director.

CHILD POVERTY ACT (SCOTLAND) 2017 – Legislation setting ambitious targets for eradicating child poverty in Scotland by 2030.

COMMUNITIES OF PLACE – People who are bound together because of where they reside, work, visit or otherwise spend a continuous portion of their time. For example, people in particular rural, remote and island areas.

COMMUNITIES OF INTEREST – Groups of people who share an experience, for example, people who have experienced homelessness or care; or those who share one or more of the protected characteristics listed in the Equality Act 2010; or groups who may share an identity, for example lone parents.

DUE REGARD – Due regard is explained in more detail earlier in this document. To show that a public body has paid due regard, it should demonstrate **active** consideration, ideally including participation with communities affected. How much regard is due will depend on the relevance of the decision to the scale of socio-economic disadvantage and inequalities of outcome in relation to each strategic issue – proportionality is key, in other words. Due regard does not mean there is an obligation to achieve a result. Results are, nevertheless, important.

EQUALITY ACT 2010 – UK legislation which first set out new equality duties. The Duty on ‘socio-economic inequalities’ (which has been renamed the Fairer Scotland Duty) formed Part 1 of this Act of Parliament.

FAIRER SCOTLAND DUTY – Part 1 of the Equality Act 2010 set out a new Duty on socio-economic inequalities. The new Duty comes into force in Scotland (but not in other parts of the UK) from April 2018. It requires public bodies to pay due regard to narrowing the inequalities of outcome, caused by socio-economic disadvantage, when making strategic decisions.

IMPLEMENTATION PERIOD – There will be a three year implementation period for the Fairer Scotland Duty. This will help the Scottish Government and the EHRC learn from best practice, adjust guidance, and make sure that the operation of the new Duty works well alongside the PSED.

INEQUALITIES OF OUTCOME – Any measurable differences in outcomes, for example, in relation to health and life expectancy or educational attainment. Socio-economically disadvantaged households have a higher risk of experiencing negative outcomes.

INTERSECTIONALITY – Intersectionality means recognising that people’s identities and social positions are shaped by multiple factors including age, disability, ethnicity, religion and belief, sexual orientation and socioeconomic background.

Glossary of terms

KEY REQUIREMENT - This is the central expectation of the Fairer Scotland Duty as set out in this guidance. To meet the Duty, public bodies should: actively consider, at an appropriate level, what more they can do to reduce the inequalities of outcome, caused by socio-economic disadvantage, in any strategic decision-making or policy development context, and publish a short written assessment, showing how they've done this.

LOW INCOME - Low income is a key driver of a range of negative outcomes and can be defined in a range of ways. Relative poverty (after housing costs) is a useful headline measure, looking at the number of individuals living in households with incomes below 60% of UK median income. But there are a range of other measures too - see RESOURCES for more information.

LOW WEALTH - Having access to wealth (including financial products, equity from housing, and a decent pension) provides some protection from socio-economic disadvantage, particularly when the wealth comes in the form of accessible savings.

MATERIAL DEPRIVATION - This refers to households being unable to access basic goods and services.

PUBLIC SECTOR EQUALITY DUTY - This Duty requires public bodies to have due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Equality Act 2010; advance equality of opportunity between persons who share a relevant protected characteristic (as defined by the 2010 Act) and persons who do not share it; and foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

SOCIO-ECONOMIC BACKGROUND - The structural disadvantage that can arise from parents' education, employment and income - social class, in other words.

SOCIO-ECONOMIC DISADVANTAGE - In broad terms, socio-economic disadvantage means living on below average incomes, with little 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.

STRATEGIC LEVEL - These are the key, high-level decisions that the public sector takes. Many of these decisions may be made in the context of public service reform and improving outcomes for people and communities. In general, they will be decisions that affect how the public body fulfils its intended purpose, over a significant period of time. These would normally include strategy documents, decisions about setting priorities, allocating resources, and commissioning services.



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This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at
The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-78851-730-0

Published by The Scottish Government, March 2018

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS370286 (03/18)

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