



# Welsh Local Government Association's response to the Welsh Government consultation on commencing the socio- economic duty.

16<sup>th</sup> January 2020



## INTRODUCTION

1. The Welsh Local Government Association (WLGA) represents the 22 local authorities in Wales. The three national park authorities and the three fire and rescue authorities are associate members.
2. It seeks to provide representation to local authorities within an emerging policy framework that satisfies priorities of our members and delivers a broad range of services that add value to Welsh Local Government and the communities they serve.
3. The WLGA is the Employers Organisation for local authorities in Wales.
4. The WLGA is an existing partner of the public sector social partnership arrangement, the Workforce Partnership Council.
5. The WLGA welcomes the opportunity to respond to this consultation process which has significant implications for the services it commissions and procures as well as the workforce its employs and engages.

## CONTEXT

6. This consultation response is based on the WLGA's core principles, existing policies and priorities as well as further consultation with elected members and constituent councils.
7. The WLGA submits this response to meet the timescale for the closure of the consultation period but will continue to take further political soundings which may impact on its position. The WLGA will also review its position further as the details on any Bill are published.

## PRINCIPLES

8. **Reform, continuous improvement and a commitment to partnership** - the WLGA believes in local government reform and continuous improvement as the processes for delivering better services and outcomes for the people of Wales. Aligned to this is an emphasis on ensuring that resources are used as effectively and as efficiently as possible. In order to deliver better outcomes for the people of Wales, it is important that local government and the Welsh Government continue to work together, based on clear principles of mutual respect and understanding. Collectively, we lead and support collaborative public service reform and improvement and ensure that the governance of regional services is democratically accountable and, wherever possible, streamlined;
9. **Fair and flexible funding** – councils need greater fiscal autonomy and flexibility to respond to local needs and priorities. Specific grants are a valid mechanism for supporting new policy initiatives but should be

transferred into the settlement once it is agreed that the policy has been embedded. It is important that any new policies, national initiatives and legislation are fully costed and funded by the Welsh Government and councils would welcome multiyear financial settlements so that they can plan more effectively;

**10. Commitment to the principle of Subsidiarity** – the Welsh Government and the National Assembly should commit to the *European Charter of Local Self Government* and the principle of subsidiarity, where the presumption is that power is transferred to the level of government closest to the people. The WLGA believes that the Welsh Government has a clear national strategic role but also believes in the devolution of powers beyond central government and Cardiff Bay to local government and to local communities.

## CONSULTATION RESPONSE

### **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?**

In general, the suggested definitions are reasonable, relatively easy to understand and should be included in forthcoming guidance.

Socioeconomic disadvantage blights a person's ability to enjoy the rights guaranteed to them by international law. Such disadvantage can result in long-term inequalities in education, health, life satisfaction, prosperity and participation in public life. Approaching implementation of the socioeconomic duty in the right way will help public services to maximise their contribution to addressing such inequalities, and also meet their obligations under the Human Rights Act 1998 and international human rights law. Therefore, the guidance could also reference:

- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- International Covenant on Civil and Political Rights (ICCPR)
- United Nations Convention on the Rights of the Child (UNCRC)
- United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)
- United Nations Convention on the Elimination of All Forms of Discrimination against Women (UNCEDAW)
- United Nations Convention on the Elimination of All Forms of Racial Discrimination (UNCERD)

Socioeconomic disadvantage cuts across many aspects of our society. We know that children, young people, disabled people and women are much more likely to experience the cumulative effects of poverty and can often lock them into a cycle of disadvantage. Underpinning the guidance with appropriate links to existing equality legislation and human rights principles will support public services to better understand how socioeconomic disadvantage interacts with people's protected characteristics and take better account of how it cuts across the specific needs and vulnerabilities of marginalised groups. This will enable public services to identify the most pressing inequalities in their area and to build on existing partnership arrangements to develop strategic and holistic interventions.

The WLGA would also welcome a further breakdown of key elements in the suggested definitions. For example:

- Low income compared to others

- Little or no wealth
- Material deprivation
- Area deprivation, communities of place and communities of interest.

This would provide clarity on the key aspects of socioeconomic disadvantage and provide a consistent frame of reference through which the new duty can be applied.

While local authorities are familiar with the concept of 'due regard', it could have been included within the scope of this consultation. The draft guidance could set out clear expectations, drawing from caselaw<sup>1</sup> (Brown Principles), as to how due regard to the socioeconomic duty can be exercised. The draft guidance presents a clear opportunity to remind public bodies of the Brown Principles and to ensure that the new socioeconomic duty must be exercised:

- With an awareness to pay due regard to socioeconomic disadvantage
- In a timely manner
- With rigour
- Without delegation
- As an ongoing and continuing duty
- with appropriate record-keeping and transparency.

The guidance should also make clear that the new socioeconomic duty complements, rather than supersedes, existing equalities duties.

**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?**

The WLGA agrees with the definition of a 'strategic decision'. While we recognise that the suggested list of strategic decisions is not exhaustive, the guidance would benefit from explicitly including the preparation of Strategic Equality Plans and budget-setting/allocation, as the Welsh Government's definition includes '...expenditure concerning the delivery of its business'. This would also help to raise the profile of wellbeing and prevention in strategic decision-making processes and would further support public bodies to work in an integrated way to secure alignment between the various corporate governance procedures. For example, it could support further alignment between expenditure and wellbeing statements – helping public bodies to prioritise preventative spend (possibly targeting those who are disadvantaged) under the socio-economic duty. However, we do not believe that operational decision-making or the decisions of frontline staff should be subject to the duty. Therefore, the WLGA would prefer 'objectives' rather than 'targets' to be included in the proposed definition.

---

<sup>1</sup> R (Brown) v Secretary of State for Work and Pensions [2008] EWHC 3158 (Admin)

Although the duty would apply to Welsh Ministers, the consultation document does not list the 'strategic decisions' of the Welsh Government, which should include budget setting/allocation and legislation.

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

Overall, we agree with the approach set out in the consultation document. It is important for the new socioeconomic duty to be embedded within existing practices rather than result in unnecessary or overly bureaucratic burdens. However, the guidance could make clearer that the starting point for analysis should be consistent with human rights norms. In doing so, it should encourage public bodies to look across each of the Wellbeing Goals (for example, using the wider social determinants of health) to identify the cross-cutting inequalities of outcome. It would be helpful for the guidance to adopt a definition similar to that set out in the Scottish guidance to define 'inequalities of outcome' as:

*"...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."*

Local authorities' situational analyses through the population needs assessments and wellbeing assessments can play a vital role in identifying socioeconomic disadvantage and inequalities of outcome. These analyses already give regard to the National Indicator Set under the Wellbeing of Future Generations Act 2015. However, it is important to note that the National Indicator Set poses challenges in drawing out the specific needs and vulnerabilities of disadvantaged groups across the protected characteristics. For example, many of the indicators relating to subjective wellbeing are reliant on the National Survey for Wales; the results of which do not include the perspectives of children and young people under the age of 16. Data from the School Health Research Network's Student Health and Wellbeing Surveys would go some way to mitigating this data gap but it only includes children and young people in secondary school. This means there may be limitations in how well inequality outcomes can be identified across the protected characteristics of children and young people. Some of these indicators include:

- NI 19: Percentage of people living in households in material deprivation,
- NI 23: Percentage who feel able to influence decisions affecting their local area,
- NI 24: Percentage of people satisfied with their ability to get to/access the facilities and services they need
- NI 25: Percentage of people feeling safe at home, walking in the local area, and when travelling
- NI 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 with respect
- NI 30: Percentage of people who feel lonely

- NI 35: Percentage of people attending or participating in arts, culture or heritage activities at least 3 times a year.

While local authorities are best positioned to determine the inequalities of outcomes in their local areas, we would welcome more information from Welsh Government about the challenges Wales faces at a national level. This would help to set the national vision for tackling inequalities and would help local authorities take account of the structural inequalities that compound local socioeconomic disadvantage. In addition to the Equality and Human Rights Commission's annual report, such information should draw from the Welsh Index of Multiple Deprivation, other Commissioners' annual reports (e.g. Children's Commissioner for Wales and the Older Persons Commissioner for Wales) and relevant Concluding Observations/assessments from various UN Committees and Special Rapporteurs (e.g. Report of the Special Rapporteur on extreme poverty and human rights in the UK) to ensure that our response appropriately aligns with human rights principles and duties.

**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?**

The WLGA welcomes the suggested definition of 'socio-economic disadvantage'. However, as suggested above, the guidance would benefit from better alignment with human rights principles and breaking down key elements of its definitions in that context. For example, the ICESCR could be used to guide "*access to basic goods and services*". A further breakdown of key elements in the suggested definitions may be useful, for example:

- Low income compared others
- Little or no wealth
- Material deprivation
- Area deprivation, communities of place and communities of interest.

This would provide clarity on the key aspects of socioeconomic disadvantage and provide a consistent frame of reference through which the new duty can be applied.

The definition also notes that socioeconomic disadvantage can affect communities of place or specific communities of interest. It would be helpful for the guidance to include a suggested list of population groups that experience socioeconomic disadvantage that may otherwise not be identified through the protected characteristics, for example:

- Single people;
- People at risk of or need of care and support e.g. looked after children, ex-offenders, people experiencing homelessness
- Young carers
- People with no recourse to public funds
- Some rural communities.

The suggested definition does present some data collection challenges, particularly for smaller population groups. As mentioned above, much of the National Indicator Set is reliant on the results of the National Survey for Wales. This dataset may limit the extent to which local authorities and public services can fully assess the range of factors that result in socioeconomic disadvantage across the protected characteristics and how they may affect marginalised or vulnerable groups. The WLGA would welcome further guidance on this.

## **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.**

The WLGA agrees with the list of public bodies who would be subject to the duty listed in the draft statutory guidance.

The scope for Welsh Government to add 'eligible bodies' is constrained by the 2010 Act and must be similar to those bodies listed in England. This therefore limits the Welsh Government's ability to confer the duty on wider Welsh specific public bodies.

It may therefore not be within the Welsh Government's competence to include Public Service Boards, although the duty would be relevant given Public Service Boards' remit in undertaking relevant 'strategic decisions', notably preparation of wellbeing assessments, objectives and plans. The Welsh Government may wish to refer to the relevance of the duty for PSBs in statutory guidance, particularly as some of the core PSB partners will be subject to the duty anyway.

Furthermore, the application of this duty could also apply to national public bodies listed under section 6(1) of the Wellbeing of Future Generations Act 2015 (for example, Sports Wales, Arts Council for Wales and Natural Resources Wales). While there may be little scope to change legislative provision under the Equality Act 2010, Welsh Government may have additional levers at its disposal to include these Welsh Government Sponsored Bodies or other public bodies, for example, through remit letters or guidance. This would help to ensure rights and equality are everyone's business and would help support further implementation of the sustainable development principle across Wales. Similar to the issue discussed above, further consideration could also be given to how Regional Partnership Boards can be encouraged to take account of the new socioeconomic duty.

### **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?**

The WLGA welcomes the collaborative approach set out by Welsh Government and, on balance, supports the phased implementation of the new socioeconomic duty. It is vital that the guidance is co-produced with local authorities and other public bodies.

While local authorities will be already familiar with the overarching principles, we are concerned that limited resource has been identified to coordinate awareness-raising, training and capacity-building to help local authorities and other public bodies prepare for the new socio-economic duty. It is therefore a concern that public bodies would be subject to legal challenge of any relevant strategic decisions they make from the 1<sup>st</sup> April 2020, without statutory guidance being available until that date. Furthermore, there has been limited opportunity to plan and prepare for implementation; public bodies will need to review decision-making and governance arrangements, internal guidance and training of staff and, in the context of local authorities, councillors.

The Welsh Government has indicated that it will take a 'softer' approach to challenge and that the EHRC will assist with support and guidance, the consultation document warns:

*"...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."*

It is questionable therefore that the public or the Courts could or would be prepared to take a 'softer' approach. Public bodies will therefore be subject to increased risk without statutory guidance or an adequate implementation or transition period. One suggestion has been to reconsider the date of commencement, for example 1<sup>st</sup> April 2021 rather than 1<sup>st</sup> April 2020. This would help local authorities (and other public bodies) to avoid retrofitting the new duty and enable them to build capacity and establish arrangements that meaningfully support implementation.

**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?**

The overarching approach set out in Section 3 is welcome. Local authorities are already familiar with giving due weight specific policy topics and already prioritise

tackling poverty and disadvantage in much of their strategic decision-making (for example, in corporate plans or strategic equality plans). However, the guidance should make clearer that the new duty is designed to improve decision-making processes and better consider and address the impact of socioeconomic disadvantage. The approach to allow public bodies subject to the duty to determine which socio-economic inequalities they are able to influence is welcome; as noted in the WLGA's consultation response to the Welsh Government's Strategic Equality Objectives, the elimination of inequality caused by poverty is an ambitious aim as such inequality has deep roots in history and is perpetuated by popular culture, the media and other factors which Welsh Government (or other public bodies) cannot control, notably the welfare state.

All local authorities make use of various impact assessment tools to maximise the benefits and mitigate potential risks of new policy or proposed policy change. These tools enable local authorities to meaningfully consider impact, exercise proportionality and evidence a clear audit trail of informed decision-making. The WLGA welcomes the flexibility afforded to local authorities to make use of various topic-specific/integrated impact assessment tools. Evidencing how local authorities have exercised the new duty will likely be included in the publication of Equality Impact Assessments and/or Health Impact Assessments.

The Wellbeing of Future Generations Act 2015 requires public bodies to involve key stakeholders in their decision-making processes. Citizen engagement and involvement in decision-making is a core role of local authorities as democratically accountable organisations. Local authorities already have structures and programmes in place to support participatory decision-making in planning, service design and scrutiny. These are often built into impact assessment processes.

Experience and evidence suggests, however, that many households experiencing socioeconomic disadvantage are more likely to experience barriers to public engagement and may not be able to and may not feel involved in decision-making processes that might affect them. Any approach by public bodies to involve these communities in decision-making must be inclusively designed. Therefore, it would be helpful for the guidance to refer to the National Principles of Public Engagement and the Children and Young People's National Participation Standards.

**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?**

Local authorities already undertake extensive work with partners to identify socioeconomic disadvantage and inequalities of outcome through population needs assessments, wellbeing assessments and other consultation programmes. Additionally, we already make use of impact assessments to maximise the potential benefits and mitigate the risks of proposed policy change.

Given that the socioeconomic duty is likely to be exercised through Equality Impact Assessments, annual reporting procedures on progress made against Strategic Equality Plans provide an obvious starting point to report on the extent to which the

new socioeconomic duty has informed and benefitted decision-making processes. Reporting on the duty in this way will improve transparency, support organisational learning and development, and promote the sharing of good practice.

**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?**

Agreed. However, it will be important for Welsh Government to clearly communicate how well the new duty is promoting positive outcomes. This could be achieved through Welsh Government's Annual Report on Equality. Learning could also be drawn from the Children's Rights Scheme under the Rights of Children and Young Persons (Wales) Measure 2011 to promote transparency and accountability. However, it is important to note that a national reporting mechanism should focus on the promotion of culture change and sharing good practice rather than the compliance of individual public bodies. A focus on individual compliance may result in unintended consequences and tokenistic retrofitting.

**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?**

While local authorities will be already familiar with the overarching principles, we are concerned that limited resource has been identified to coordinate awareness-raising, training and capacity-building to help local authorities and other public bodies prepare for the new socio-economic duty.

#### **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?**

Much of the socioeconomic duty can already be discharged through local authorities' approach to the Well-being of Future Generations Act. For example, many have aligned their impact assessment processes to the Wellbeing Goals and the sustainable development principle. However, leadership is required by Welsh Government to align the requirements of various Acts and guidance. This is important in order to harmonise responsibilities, avoid duplication and limit the bureaucratic burdens on local authorities in strategic planning and reporting. It would also be helpful for the draft

guidance to also refer to duties to tackle child poverty under Part 1 of the Children and Families (Wales) Measure 2010.

## **QUESTION 5**

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

In the main, we agree with the assessment of impact set out in the Strategic Integrated Impact Assessment. However, the duty is likely to have a positive impact on children's rights. The proposals make a positive contribution to Articles 2, 3, 4 and 27 of the UNCRC. However, some of the data gaps in the National Indicator Set, as highlighted above, mean that there are some risks that the specific needs and vulnerabilities of children (and other marginalised groups) may not be fully considered in an age-inclusive approach. Mitigating measures could include expanding the expanding the School Health Research Network surveys to all school-aged children and including this within National Indicators' dataset.

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

The Regulatory Impact Assessment helpfully details costs of proposed options to support implementation of the socioeconomic duty. Option 2 is the WLGA's preferred option and, in general, the assessment of costs seems reasonable. However, we are concerned that limited resource has been identified to coordinate awareness-raising, training and capacity-building to help local authorities and other public bodies prepare for the new socio-economic duty.

## **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?**

The WLGA agrees with the Welsh Government's assessment in the Strategic Integrated Impact Assessment (SIIA) that the socio-economic duty will not negatively impact the Welsh language. The socioeconomic duty could help to highlight language barriers more generally as this can negatively impact on people's ability to access services and can be another form of disadvantage.

**[END]**