



## THE SOCIO-ECONOMIC DUTY: A CONSULTATION EQUALITY SECTOR RESPONSE, SEPTEMBER 2017

### INTRODUCTION

1. As a coalition of national equalities organisations, we welcome the opportunity to comment on the Scottish Government's proposals for the socio-economic duty and the principle of the socio-economic duty itself. We commend Scottish Government for giving serious consideration to addressing socio-economic disadvantage through its ambitions for the socio-economic duty.
2. As the consultation sets out, there is considerable overlap between inequality as a result of having a protected characteristic and socio-economic disadvantage. The two directly intersect in the racialised, gendered, and disability-inflected nature of poverty, and the inequality-based causes of people's propensity to be at risk of poverty. For example, women are twice as likely as men to depend on social security<sup>1</sup>; 48% of households containing a disabled adult were living in poverty compared with 18% in households where there was no disabled adult<sup>2</sup>, and non-white minority ethnic individuals are at twice the risk of poverty of white individuals<sup>3</sup>. Adults whose sexual orientation is lesbian, gay, bisexual or other are more likely (25%) to live in deprived areas than heterosexual people (19%)<sup>4</sup>.

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<sup>1</sup> Engender (June 2016) *Securing Women's Futures: Using Scotland's new social security powers to close the gender equality gap*

<sup>2</sup> <http://www.npi.org.uk/publications/income-and-poverty/disability-and-poverty/>

<sup>3</sup> Households Below Average Income (HBAI), Department for Work and Pensions, UK, 2017

<sup>4</sup> Sexual Orientation in Scotland 2017, Scottish Government 2017

<http://www.gov.scot/Resource/0051/00513240.pdf>

3. Most of our organisations took part in the Discrimination Law Review that thoroughly reviewed the pre-2010 anti-discrimination law landscape. This produced some of the recommendations that led to the Equality Act 2010, which includes the socio-economic duty. We are acutely aware of the then-UK Government's ambition that the three elements of the public sector equality duty, Child Poverty Act, and socio-economic duty be mutually reinforcing and complementary. This is helpfully restated in the Scottish Government's consultation.
4. During the last decade, we have enabled and observed the functioning of the positive duty on the public sector in Scotland to undertake equalities mainstreaming, first under the race, disability, and gender equality duties and then the public sector equality duty. Along with colleagues across the equalities sector, we have considerable insight into the extent to which the duties have been a driver of positive outcomes.
5. We are concerned that the relatively new public sector equality duty<sup>5</sup>, which has been operating for only four years, has contributed to a diminution of focus in the identity-based inequality experienced by Black and minority ethnic people, women, disabled people, LGBTI people, older and younger people, and people of faith and belief in Scotland.
6. Mindful of the interrelationship and articulation between the socio-economic duty and the public sector equality duty we **alert Scottish Government to the risk that introducing the socio-economic duty as it is currently conceived is likely to undermine the performance of the public sector equality duty. We propose that full implementation of the socio-economic duty is paused until planned four-year reviews of the public sector equality duty are completed this year.** We suggest that this will provide Scottish Government with a welcome opportunity to ensure that the public sector equality duty and socio-economic duty are complementary in ambition and in practice.
7. As a result, this response does not speak to the proposed detail of the socio-economic duty in the consultation paper.

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<sup>5</sup> The public sector equality duty came into force on 5 April 2011, but the specific requirements for public bodies to evidence their response to the duty, including publishing a mainstreaming report, equality impact assessment, and equal pay statement, did not come into force until 5 April 2013.

## CURRENT PERFORMANCE OF THE PUBLIC SECTOR EQUALITY DUTY

8. Within our individual equalities sectors, we have carried out monitoring and evaluation work over the past ten years that has yielded considerable insight into public authorities' response to the positive equality duties.

### The theory and history of equality mainstreaming duties in Scotland

9. The theory of equality mainstreaming duties is relatively straightforward, and is rooted in academic work on mainstreaming that was produced in the late 1980s and early 1990s. They require public bodies to consider the different experiences of protected groups when making policy, by bringing a race, disability, gender, sexual orientation, gender identity, religion & belief, and age lens to bear on specific policy domains. The public sector equality duty obliges public authorities to design policy<sup>6</sup> in a way that will **reduce discrimination, advance equality, and promote good relations** between different groups across nine protected characteristics<sup>7</sup>.
10. Mainstreaming duties were implemented unevenly within Great Britain<sup>8</sup>, with the race equality duty leading off, later to be joined by the disability equality duty and then the gender equality duty. The race duty was formulated as a result of the Macpherson Inquiry into the racist murder of Stephen Lawrence. Sir William Macpherson identified that institutional racism was evident within the Metropolitan Police force, and that a new approach to equality was needed to counterbalance systemic discrimination. It was no longer sufficient only to provide remedy to Black and minority ethnic individuals after discrimination had occurred.
11. Almost as soon as the duty came into force, race equality organisations became concerned at the extent to which the purpose and ambition of mainstreaming was being lost within convoluted processes and outputs. The disability and gender equality duties were designed to be outcome-focused, in part to counterbalance what were considered to be missteps in the design of the race equality duty. The Disability Equality Duty and Gender Equality Duty came into

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<sup>6</sup>'Policy' refers to legislation, strategies, curricula and any significant outputs, including what would usually be described as policy.

<sup>7</sup> EHRC (September 2016) *Technical Guidance on the Public Sector Equality Duty: Scotland*

<sup>8</sup> Neither the Equality Act 2006 nor the Equality Act 2010 extend to Northern Ireland, which has its own suite of equality law. Proactive equality duties are set out in Section 75 of the Northern Ireland Act. Accordingly, the Equality and Human Rights Commission's mandate, which is contained within the Equality Act 2006, does not extend to Northern Ireland.

force in 2006 and 2007 respectively, each containing different and divergent specific requirements for public bodies to deliver against.

12. Even within the less cluttered duty landscape of the mid-2000s, public bodies immediately sought to simplify and streamline their duty responses. They did this by attempting to consolidate the various process, engagement and publication requirements of the race, disability, and gender equality duties.
13. There was responding disquiet from the three equality regulators that harmonisation would be at the expense of efficacy. Joint guidance by the three statutory equality commissions in January 2007 warned public bodies against the risks of attempting a generic approach to the three existing duties, noting that **“differences in the general duties illustrate the differences in the nature of discrimination experienced by the different groups”**<sup>9</sup>. This is a critical point, and one that is highly relevant to the development of the socio-economic duty.

#### Homogenisation: an unwelcome feature of public sector equality response

14. As the three predecessor duties gave way to the public sector equality duty, with its nine protected characteristics<sup>10</sup>, the sense grew among equality organisations that outcomes of change for people were steadily being displaced as a focus by process. Although PSED was ostensibly designed to minimise process and publication requirements in favour of outcomes, this has not been reflected in practice.
15. The response from public authorities to the public sector equality duty has essentially been to treat protected characteristics in an undifferentiated way, glossing over or ignoring the specific disadvantage and discrimination faced by specific groups of people. Public bodies increasingly attempt to consider multiple characteristics at the same time, and without adequate data or characteristic-specific competence. There has been a trend away from characteristic-specific engagement and (co)production mechanisms such as women’s committees, race equality officers, and disability stakeholder groups. Instead, structures that cover multiple characteristics, such as equality advisory groups and internal ‘equality

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<sup>9</sup> Commission for Racial Equality, Disability Rights Commission, and Equal Opportunities Commission in Scotland (January 2007) *Bringing Equality to Scotland: The Three Public Sector Duties*

<sup>10</sup> Age, sex, gender reassignment, religion & belief, pregnancy & maternity, marital status, race, disability, and sexual orientation.

champions' have been established<sup>11</sup>.

16. Contrary to the warning of the three predecessor equality bodies, our collective sense is that the publication and process requirements of the public sector equality duty are now almost universally carried out using a highly genericised approach that spans all of the protected characteristics.
17. It is now four years after the introduction of the public sector equality duty in Scotland<sup>12</sup>, and we have been through one full planning and reporting cycle. In order to assess the duty's impact, a number of reviews are planned. UK Government, Scottish Government, the statutory Equality and Human Rights Commission and a variety of equality organisations are all planning evaluation and assessment work.
18. The reviews will consider the efficacy of the duty, but also reflect on its component requirements, which are specific to the three nations of Scotland, Wales, and England. The content of the specific duties is devolved to Scotland<sup>13</sup>, and the relationship between the various requirements of the Scottish-specific duties, which includes a mainstreaming report that incorporates a wide range of data, specific reporting on equal pay and occupational segregation, the setting of equality outcomes, equality impact assessment, and the specific consideration of equality within procurement processes, should all be interrogated.
19. The timing of this socio-economic duty consultation means that this evaluation work has not finished, and in some cases has yet to begin. However, equality organisations have provided some interim findings to this response.
20. Close the Gap, Scotland's expert organisation on gender and the labour market, notes in correspondence that it:

[is] currently undertaking its third biennial assessment of public bodies' compliance with the public sector equality duty, the report of which will be published later this

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<sup>11</sup> Worryingly, Close the Gap has identified examples of public bodies who have even disbanded their pan-characteristic equalities committees as they perceive them to be "a barrier to mainstreaming". Those bodies who have taken this approach have also been identified as some of the poorest scoring bodies in Close the Gap's assessment.

<sup>12</sup> The public sector equality duty came into force on 5 April 2011, but the Scotland-specific requirements for public bodies to evidence their response to the duty, including publishing a mainstreaming report, equality impact assessment, and equal pay statement, did not come into force until 5 April 2013.

<sup>13</sup> The requirements of the Scotland-specific duties are contained in the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012, which have been amended in 2015 and 2016.

year. The assessment has identified a **significant decline in performance of the duty since it replaced the single equality duties on gender, disability and race**. There has been an increasing homogenisation of equalities work, with the nine protected characteristics targeted as a single group, with **little recognition that the causes of the inequality experienced by protected groups are different, as are the solutions**.

21. Inclusion Scotland, a national disabled people's organisation, refers in its response to the socio-economic duty consultation to concerns about the "homogenisation of equalities"<sup>14</sup> under the public sector equality duty.
22. Stonewall Scotland, a national LGBTI equality organisation, analysed equality outcomes and mainstreaming reports in 2013, and observes in a section entitled "areas of concern" that "where public authorities have taken a multiple or cross equality strand approach to outcomes, it is vital that specific actions and measurement tools are implemented for each characteristic concerned."<sup>15</sup> In guidance to public authorities on the public sector equality duty<sup>16</sup> it explicitly addresses the multiple-strand approach:

**Broad equality outcomes can risk ignoring the specific barriers that LGBT people face.** Writing outcomes that specifically relate to the barriers that LGBT people face will help you to tackle these much more effectively. If an equality outcome is appropriate and relevant to multiple characteristics, make sure you plan for different actions or activities to address the different barriers faced by each characteristic (see below for examples), as well as planning specific measurements for how the activity has impacted each of the relevant characteristics.

23. Scottish Women's Aid made a similar observation in its own 2013 analysis of equality outcomes<sup>17</sup>, observing that:

[Scottish Women's Aid's] review found that 7 local authorities published generic outcomes aimed at improving safety or reducing risk of harm regardless of protected characteristic, referring to people, individuals or communities. These outcomes relate to all people feeling safe or being at less risk of harm. **This fails to understand or address the needs of different protected characteristic groups and fails to recognize the importance of a gender based approach to addressing the safety of women.**

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<sup>14</sup> Inclusion Scotland (September 2017) *The Socio-Economic Duty*

<sup>15</sup> Stonewall Scotland (November 2013) *Analysis of equality outcomes and mainstreaming reports 2013*

<sup>16</sup> Stonewall Scotland (September 2016) *A guide for public authorities on meeting the public sector equality duty*

<sup>17</sup> Scottish Women's Aid (2013) *Analysis of local authority equality outcomes*

24. A Coalition for Racial Equality and Rights (CRER) forthcoming report examining the published equality outcomes of Scotland's local authorities in relation to racial equality found that:

Overall only 17 of the 32 local authorities (53%) produced an equality outcome which, at minimum, referenced race. For those 15 councils who did not, 4 had published only general outcomes, with no protected characteristics addressed.

In total, 37 outcomes addressed race. However, 20 of these mentioned race alongside other protected characteristics (meaning that the outcome was not particular to race), 15 addressed Gypsy/Travellers specifically, 5 addressed issues affecting recent migrants, and only 2 addressed wider race equality issues.

25. These are interim findings and not final, but we collectively anticipate a need to revisit the content and guidance of the Scotland-specific duties to ensure that they are fit for purpose. We share Scottish Government's ambitions for realising equality and rights in Scotland. We endorse the Cabinet Secretary for Social Justice, Communities and Pensioners' Rights words in the introduction to the Race Equality Framework<sup>18</sup>:

We are clear about the centrality of equality and human rights to Scotland's future and the importance of inclusive growth, fair work and social justice to our economic success and social wellbeing.

The public sector equality duty has a vital part to play in bringing equality into the centre of public bodies' decision-making, and early indications suggest that it may need to flex and change in order to achieve this.

#### Confusion with socio-economic inequality and disadvantage

26. In addition to concerns about the performance of the duty in general, equality organisations have also noted an unwelcome confusion of socio-economic disadvantage with identity-based inequality in PSED responses. This is despite the lack of any link in the design and framing of the existing public sector equality duty with socio-economic disadvantage. Close the Gap notes in correspondence:

Public bodies' reports on meeting the duty indicate a widespread conflation of work on socioeconomic issues with equalities work. Many public bodies have cited generic work on, for example, widening access, as evidence they are meeting the equality duty, despite this work having no equalities focus.

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<sup>18</sup> Scottish Government (2016) *Race Equality Framework for Scotland*

27. The Coalition for Race Equality and Rights says in correspondence:

The person in our office who is reviewing the PSED reports for Glasgow (for all protected characteristics) has said that nearly every public body referenced poverty and socio-economic inequality, while failing to mention all 9 protected characteristics in their mainstreaming reports and equality outcomes.

One body with more than 100 staff referenced age, gender, and socio-economic status, but did not mention any other protected characteristics.

28. These findings provide early indication that there is substantive and substantial confusion about the purpose and function of the public sector equality duty. Specifically, and absent any current requirement to include or consider socio-economic disadvantage, socio-economic inequality is nonetheless displacing the focus of organisations from characteristic-based inequalities.

## WHAT THIS MEANS FOR THE SOCIO-ECONOMIC DUTY

29. We welcome Scottish Government's ambition for the socio-economic duty, and concur that "looking through the lens of poverty and inequality will lead to better decisions for the future". We share its analysis that socio-economic disadvantage and identity-based inequality are profoundly and deeply connected. In the spirit of the original vision for the two interrelated duties and Child Poverty Act, we agree with the case that strong links should be made between the public sector equality duty and socio-economic duty.

30. The consultation paper explicitly envisions how the relationship between the equality and socio-economic duties might work:

Because of the links between equality and socio-economic duties, each strategic decision would need to be assessed against both. This therefore provides a rationale for **considering equality and socio-economic issues in an integrated way, while still making sure that each protected characteristic is considered in depth and with care in any kind of assessment process**. We are aware that a number of local authorities are already looking to integrate equality and socio-economic concerns, and that some have recently published socio-economic focused outcomes alongside their equality outcomes. This could also help streamline monitoring and reporting<sup>19</sup>.

31. Equality impact assessment (EQIA) is a key equality mainstreaming methodology, yet early indications are that it is not leading to effective mainstreaming, not

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<sup>19</sup> Scottish Government (2017) *The Socio-economic Duty: A consultation* p.21

shaping policymaking, and not bringing about equality. Although the Equality and Human Rights Commission has had a programme of monitoring and enforcement of the public sector equality duty, it has not looked at the question of the extent to which equality impact assessment is making change happen for each protected group. Equalities organisations are currently working together to determine how we can collectively draw lessons from the four years that public bodies have been required to undertake EQIA.

**32. Our experience with the mechanics of the public sector equality duty make us cautious about the potential for layering different types of analysis on top of one another. Whether or not equality impact assessment is itself working well is important to answer before attempting to develop the concept of socio-economic disadvantage impact assessment and certainly before linking the two types of assessment.**

33. We are aware from our capacity-building and training work that civil and public servants perceive the proliferation of different types of impact assessment as burdensome. However, even attempts to streamline their policymaking work by integrating somewhat related domains like equality and human rights within equality and human rights impact assessment (EQHRIA) have yielded only tepidly successful results.

34. The Scottish Human Rights Commission produced a piece of work that surveyed human rights impact assessment models that have been deployed internationally<sup>20</sup>, and then worked with a number of academics and equalities and human rights practitioners to develop and test a model for EQHRIA. Despite the rigour of this work, and the support of the two statutory equality and human rights commissions in Scotland, none of our organisations is aware of any public body systematically using EQHRIA, including Scottish Government. There is no robust evidence to suggest that integrating equality and human rights within an Equality and Human Rights Impact Assessment (EQHRIA) yields positive and effective results.

35. There are models of poverty impact assessment and socioeconomic and environment impact for development work. We are aware that a light-touch process of poverty impact assessment has been tested in Falkirk, and possibly

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<sup>20</sup> Scottish Human Rights Commission (June 2010) *Human Rights Impact Assessment: Review of Practice and Guidance for Future Assessments*

elsewhere in Scotland. However, this is substantially undertheorised in a Scottish context.

36. This is not an abstract or theoretical question. It is the position laid out in the consultation that, as a “number of frameworks already publish key poverty and outcome data at a strategic level”, there is not a need for an additional measurement framework. However, we know that poverty datasets are seldom disaggregated for race and disability and that the Scottish Government itself holds little data detailing the experiences of poverty for these groups. This will severely limit the ability of the government and relevant public authorities to determine whether socio-economic disadvantage is decreasing for these and other equality groups, rather than just the majority of people. If the success of work to tackle socio-economic disadvantage is measured through the datasets and frameworks that already exist, then this will obscure the experience of groups protected by the Equality Act 2010.
37. Furthermore, much of the understanding of poverty at the level Local Authorities or Health Boards is reliant on SIMD, despite several protected characteristic groups generally not being concentrated in SIMD areas although they are at greater risk of poverty. This is inextricably linked to the wider issues of the failure of place-based policies to properly consider people with protected characteristics.<sup>21</sup>
38. Developing a robust model of impact assessment may also include the incorporation of other theories of inequality as the socio-economic disadvantage ‘lens’ is formulated. For example, NHS Health Scotland has demonstrated<sup>22</sup> how unfair distributions of income, power and wealth influence the distribution of wider environmental influences on health and access to services and wider society. They note that: “this in turn shapes people's individual experiences and results in health inequalities.”

## RECOMMENDATIONS

39. As we have outlined, we are concerned about the potential for the socio-economic duty as it is currently formulated to exacerbate the displacement of the public sector equality duty. This will disadvantage groups protected by the

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<sup>21</sup> Matthews, P., and G. Netto (September 2012) *‘Hard-to-Reach’ or ‘Easy-to-Ignore’? A rapid review of place-based policies and equality*

<sup>22</sup> <http://www.healthscotland.scot/health-inequalities>

Equality Act 2010. We are also of the view that the socio-economic duty could be more robustly developed, in order to maximise the benefits of action to tackle socio-economic disadvantage. We therefore recommend that:

- a) Scottish Government restrict the immediate implementation of the socio-economic duty to a requirement to carry out socio-economic disadvantage budgeting, which itself has the potential to realise significant impacts; and
- b) That development of the remainder of the duty, including details of any impact assessment, data-gathering and reporting, outcome-setting, and ministerial reporting requirements are paused until after the performance of the public sector equality duty can be reviewed and any amendments to its form and function considered in parallel.

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## **ABOUT US**

### **Close the Gap**

Close the Gap works in Scotland on women's labour market participation. We work strategically with policymakers, employers and employees to influence and enable action that will address the causes of women's inequality at work.

### **Coalition for Racial Equality and Rights (CRER)**

The Coalition for Racial Equality and Rights (CRER) works to eliminate racial discrimination and harassment, and promote racial justice across Scotland. Our key mission is to: 1) protect, enhance, and promote the rights of Black/minority ethnic communities across all areas of life in Scotland; and 2) strengthen the social, economic, and political capital of Black/minority ethnic communities, especially those at greatest risk of disadvantage.

### **Engender**

Engender is a membership organisation working on feminist agendas in Scotland and Europe, to increase women's power and influence and to make visible the impact of sexism on women, men and society. We provide support to individuals, organisations and institutions who seek to achieve gender equality and justice.

## Equality Network

The Equality Network is a national organisation in Scotland working for lesbian, gay, bisexual, transgender and intersex (LGBTI) equality. Our work includes policy development and advice based on engagement with diverse LGBTI communities across Scotland, LGBTI community development, information provision, Scottish Trans Alliance policy and community engagement, intersectional equality issues, intersex equality development, training, research and European networking and skills sharing.

## Inclusion Scotland

Inclusion Scotland is a national network of disabled people's organisations and individual disabled people. Our main aim is to draw attention to the physical, social, economic, cultural and attitudinal barriers that affect disabled people's everyday lives and to encourage a wider understanding of those issues throughout Scotland. Inclusion Scotland is part of the disabled people's Independent Living Movement.

## LGBT Youth Scotland

LGBT Youth Scotland is the largest youth and community-based organisation for lesbian, gay, bisexual and transgender (LGBT) people in Scotland. The charity's mission is to:

“empower lesbian, gay, bisexual and transgender young people and the wider LGBT community so that they are embraced as full members of the Scottish family at home, school and in every community.”

## Scottish Women's Aid

Scottish Women's Aid (SWA) is the lead organisation in Scotland working towards the prevention of domestic abuse and plays a vital role in campaigning and lobbying for effective responses to domestic abuse. SWA is the umbrella organisation for 36 local Women's Aid organisations across Scotland; they provide practical and emotional support to women, children and young people who experience domestic abuse. The services offered by our members include crisis intervention, advocacy, counselling, outreach and follow-on support and temporary refuge accommodation

## Scottish Women's Convention

The Scottish Women's Convention (SWC) is funded to engage with women throughout Scotland in order that their views might influence public policy. The SWC uses the views of women to respond to a variety of Parliamentary, Governmental and organisational consultation papers at both a Scottish and UK level. The organisation engages with women using numerous communication channels including Roadshow events, Thematic Conferences and regional contact groups.

## Stonewall Scotland

Stonewall Scotland is a charity for lesbian, gay, bi and trans equality, working across Scotland and internationally to create a world where every single person can be accepted without exception.

## The ALLIANCE

The Health and Social Care Alliance Scotland (the ALLIANCE) is the national third sector intermediary for a range of health and social care organisations. It brings together over 2,000 members, including a large network of national and local third sector organisations, associates in the statutory and private sectors and individuals. Our vision is for a Scotland where people of all ages who are disabled or living with long term conditions, and unpaid carers, have a strong voice and enjoy their right to live well, as equal and active citizens, free from discrimination, with support and services that put them at the centre.