

September 2017

## Joint Submission to the Scottish Government's consultation on the introduction of the socio-economic duty in Scotland

1. The Equality Trust works to improve the quality of life by reducing economic inequality. Just Fair works to realise a fairer and more just society by monitoring and advocating the protection of economic and social rights.
2. In October 2016, the Scottish Government announced that it intended to introduce the socio-economic duty contained in [Section 1 of the Equality Act 2010](#).<sup>1</sup> This duty requires public bodies "*when making decisions of a strategic nature about how to exercise [their] functions [to] have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage*".
3. In July 2017, the Scottish Government reiterated this commitment and launched an open [consultation](#). At the end of this process, Scotland will become the first part of the UK to bring the socio-economic equality duty to life.<sup>2</sup>

### The socio-economic equality duty: A human rights remedy against austerity

4. Abundant [empirical evidence](#) shows that in countries where there are higher levels of inequality, there are also higher levels of physical and mental ill health, lower levels of self-esteem, trust and civic participation, and that unequal societies have less social mobility and tend to have higher crime rates. Comparative quantitative research has also proven that the negative impact of income inequality on the fulfillment of economic and social rights is statistically significant across countries.<sup>3</sup>
5. In 2015, world leaders agreed on a set of 17 [Sustainable Development Goals](#) (SDGs). Like all other countries, the UK is expected to report regularly on the progressive implementation of these Goals at the national level. This includes

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<sup>1</sup> The power to commence the duty was included in the [Scotland Act 2016 \(Section 38\)](#).

<sup>2</sup> The [Wales Act 2017 \(Section 45\)](#) gives this power to the Welsh Government as well.

<sup>3</sup> Sakiko Fukuda-Parr, Terra Lawson-Remer and Susan Randolph, [Fulfilling Social and Economic Rights](#), Oxford University Press, 2015, p. 177.

SDG No. 10, whereby governments have pledged to ensure equal opportunity and reduce inequalities of outcome between and within countries.

6. Despite being adopted in 2010, the UK governments since then have refused to bring Section 1 of the Equality Act into force. This refusal was criticised by the UN Committee on Economic, Social and Cultural Rights (CESCR) in 2016, which warned that the UK was not doing everything within its power regarding non-discrimination in relation to these rights.<sup>4</sup>
7. We very much welcome the Scottish Government's determination to bring the socio-economic equality duty to life in Scotland. We hope Scotland will set an example for the governments in Wales and the UK as a whole.

### Responses to the consultation

8. *QUESTION 1 – The key terms defined in this section are:*

- ☐☐☐ *Socio economic disadvantage*
- ☐☐☐ *Inequalities of outcome*
- ☐☐☐ *Decisions of a strategic nature*
- ☐☐☐ *Due regard*

*Do you agree that the definitions of these are reasonable and should be included within the Scottish Government's forthcoming guidance on the socio-economic duty?*

We believe the definitions provided in the document are generally adequate.

As the consultation document suggests, it is important to look into socio-economic disadvantages across areas. Relative poverty and inequality manifest in relatively prosperous councils or neighbourhoods, as dramatically exposed by the Grenfell Tower tragedy in the Royal Borough of Kensington and Chelsea. There are good reasons to focus on “particular disadvantaged communities of interest”, as the document indicates. However, we recall that under international human rights law socio-economic status is a prohibited ground of discrimination,<sup>5</sup> despite not being listed as a protected characteristic in the Equality Act 2010.

Moreover, discrimination rarely occurs for one reason only. On the contrary, it tends to be multiple and combined, cumulative or intersectional, and being at the lower end of

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<sup>4</sup> CESCR, [Concluding Observations: UK](#) (2016), UN doc: E/C.12/GBR/CO/6, para. 22-23.

<sup>5</sup> CESCR, [General Comment No. 20: non-discrimination in economic, social and cultural rights](#) (2009), UN doc: E/C.12/GC/20, para. 35.

the income or wealth gap is the most common feature among people experiencing discrimination. Indeed, given the predominance of disabled, BME, women and older people who are at the lower end of the wealth and income distributions, low socio-economic status might be intrinsically connected with certain protected characteristics. For example, as the majority of people with caring responsibilities are women, discrimination on the grounds of caring duties is regarded as discrimination on the grounds of gender. In this regard, we regret the UK Government's failure to commence Section 14 of the Equality Act 2010, which forbids discrimination on dual grounds.

Unlike direct and indirect discrimination, inequality of outcome does not in itself constitute a human rights violation. Yet, inequality concerns human rights not only as a matter of equality of opportunity but of outcome too. International human rights law calls on States to make full use of their "maximum available resources" to ensure the progressive fulfilment of economic and social rights.<sup>6</sup> This must be done without discrimination and ensuring minimum essential levels for everyone. Particularly when minimum standards are not satisfied, mounting inequality suggests that public authorities are not doing everything in their power to guarantee an adequate standard of living for all. The [duty to take due regard](#) of the Equality Act 2010 means that, as a matter of transparency and evidence-based policy-making, governments bear the burden to prove that their policies are best designed to achieve equality and a higher level of enjoyment of economic and social rights for everyone, especially for the most disadvantaged groups.

9. *QUESTION 2A – Do you agree that the socio-economic duty should apply to the Scottish public authorities named here? If not, please specify which you do not think it should apply to and why. QUESTION 2B – Do you think the duty should apply to any other public authorities, similar to those listed in the Equality Act 2010? If so, please name them and explain why you think the duty should apply?*

Bearing in mind the remit of the Equality Act 2010 and the Scotland Act 2016, we believe the list of strategic public authorities listed in the document is correct.

10. *QUESTION 3A – Do you have any comments on the steps set out in SECTION 3? QUESTION 3B - What other actions could public authorities take to demonstrate that they are meeting the duty?*

The described process and actions seem reasonable.

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<sup>6</sup> Article 2(1) of the [International Covenant on Economic, Social and Cultural Rights](#), ratified by the UK in 1976.

11. *QUESTION 3C – Could you offer suggestions as to how public authorities could improve budgetary analysis and reporting so as to take better account of inequalities related to socio-economic disadvantage?*

A number of initiatives on budget analysis from several countries are noteworthy. We could cite the [sources](#) suggested by the Scottish Human Rights Commission. See also the analysis and hyperlinked references cited in this [article](#).<sup>7</sup> For a conceptual connection with international human rights law and discourse, read the 2014 [report](#) by the UN Special Rapporteur on Extreme Poverty and Human Rights.<sup>8</sup> We also recommend the careful scrutiny regularly conducted by [Women’s Budget Group](#) in the UK.

Even though the UK Government has not yet commenced the socio-economic duty, several councils have incorporated this duty in their strategic planning and integrated impact assessments (see also the answer to question 3D below).

**Newcastle** City Council’s work to reduce socio-economic inequalities includes “[A Fair Budget for a Fairer City](#)”. At every stage of the budget process, the Council considers the impact of measures on equality and services to the most disadvantaged groups. The Council carries out Cumulative Impact Assessments to ensure that decisions are informed by the fullest understanding available of their effects on people and communities.

12. *QUESTION 3D – Can you offer examples of how public authorities and others have made best use of the expertise of people with direct experience of poverty?*

The information and evidence used to inform the cumulative analysis of the **Newcastle** City Council draws on the individual integrated impact assessments for each budget proposal. The Council [publishes](#) the budget proposals area by area (learning disabilities, social care of older people, mental health, adult social work... up to 35) pre- and post-consultation. The post-consultation documents specify what groups the Council has engaged with in the process.

**Islington** Council (London) produced a helpful [Equality Impact Assessment \(EIA\) guidance](#) for practitioners and policy makers. The guidance includes a template and helps identify when an EIA should be conducted, how to do it step by step, who is responsible and at what level, and who can help with information and support.

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<sup>7</sup> Ian Allen and others, [Using budget analysis to confront governments: what practitioners need to know](#), *Open Democracy*, 2 May 2016.

<sup>8</sup> [Report](#) of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda, on taxation and human rights (2014), UN doc: A/HRC/26/28.

**Newham** Council (London) developed a three-year [Equality and Cohesion Plan](#) using the previous Equality Schemes for Race, Gender and Disability as a starting point. The process followed these steps: review of existing schemes; review of results from mainstream consultation and engagement such as the Annual Residents' Survey, Liveability Survey and data from service consultation such as the Tenants' Survey; involvement and consultation with local people and organisations including focus groups and stakeholder events; staff satisfaction survey results and feedback from staff focus groups arising from the 2009 Staff Satisfaction Survey; a 12-week consultation as part of agreeing the final Equality and Cohesion Plan and incorporation of feedback from residents and employees; and finally formal consultation, revision and agreement.

According to its [Corporate Equality and Diversity Strategy](#), **Leicester** City Council tracks the impact of the Government's welfare reforms on individuals and households in the city and identifies emerging priorities for action arising from these impacts.

13. *QUESTION 3E - What kind of guidance and support on meeting the duty would be most useful for public authorities? QUESTION 3F – Do you have a view on whether public authorities should use existing monitoring frameworks to track whether the socio-economic duty is making a difference to outcomes over the long term?*

Scottish public authorities have access to a variety of quantitative datasets to identify inequality of outcomes and evaluate their own performance in light of the socio-economic equality duty, such as the National Performance Framework, the Scottish Index of Multiple Deprivation and others mentioned in the consultation document.

Indicators and benchmarks are necessary to assess the level of enjoyment of economic and social rights, but they must also be used to evaluate the commitment to protect, promote and fulfil these rights and the capacity of duty-bearers to do so. In other words, Scotland's compliance with international human rights obligations can be expressed as a function of both its economic ability to provide these rights and its willingness to devote the maximum available resources for that purpose.

Notwithstanding the specific sources used in the evaluation, Scottish authorities should consider following the guide to measurement and implementation of the UN Office of the High Commissioner for Human Rights (OHCHR), and in particular its tripartite set of indicators to examine structures, processes and outcomes.<sup>9</sup> Structural indicators evaluate whether authorities have established the institutions, policies and legislative measures required for the realisation of rights. Process indicators monitor progressive

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<sup>9</sup> OHCHR, [Human Rights Indicators: A Guide to Measurement and Implementation](#), 2012, pp. 30-41.

realisation. These indicators are used to track change over time. They monitor effort, not outcomes. Outcome indicators, in contrast, reflect the level of enjoyment of rights.

As acknowledged in the consultation document, it would be beneficial for Scottish authorities and policy makers to work with a diverse range of people living in poverty or at risk of poverty to come up with the most suitable indicators to measure progress. Apart from using statistics and quantitative data, the authorities should foster active participation and engage with rights-holders themselves in order to understand structural factors, assess progress and identify desirable outcomes.

*14. QUESTION 4A - Once the socio-economic duty is introduced, the Scottish Government is keen for public authorities to look strategically across all planning processes in place to maximise their impact. What could public authorities and the Scottish Government do to make sure that the links between the different duties are managed effectively within organisations?*

It is advisable not to duplicate efforts unnecessarily. Scottish authorities could learn from the experience in **Newcastle** and **Islington**, where the councils have incorporated the socio-economic status in the integrated and cumulative impact assessments required by the Equality Act. These actions were also informed by the local Fairness Commissions, in which the Equality Trust played a part.

The socio-economic duty should not be seen in isolation but as an overarching duty. When effectively in force, all public authorities should treat this duty fairly and on an equal footing with the general Public Sector Equality Duty (PSED)<sup>10</sup> and public duties under Scottish law.<sup>11</sup>

It is essential that both the PSED (Section 149 of the Equality Act 2010) and the socio-economic duty (Section 1) are monitored and enforced through a fair mechanism. Conceptually both duties are equally attached to the principle of equality. Because of the close relationship between human rights and equality, it is highly recommended that the Equality Act 2010, the [Human Rights Act 1998](#) and indeed [other international human rights obligations](#) are taken together.

*15. QUESTION 4B – Can you offer examples of good practice in taking an integrated approach to issues such as poverty, equality, and human rights?*

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<sup>10</sup> The [PSED](#) is set out in Section 149 of the Equality Act 2010.

<sup>11</sup> Child Poverty (Scotland) Bill, Children and Young People (Scotland) Act 2014, Community Empowerment (Scotland) Act 2015 and Education (Scotland) Act 2016.

As indicated in previous answers, we recommend the Scottish Government learn from the experiences of those councils that have implemented the socio-economic duty in spite of the UK Government's refusal to commence it. In particular, we commend the efforts of **Leicester** City Council, **Newham** and **Islington** in London, and particularly **Newcastle** Council, whose website is very transparent and illustrative.

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