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policy and practice

Enacting the socio-economic duty: inequalities of outcome and section 1 Equality Act 2010

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The first section of the landmark Equality Act 2010 has been lying dormant for 14 years. The 'public sector duty regarding socio-economic inequalities' – passed by the Labour government in 2010 – was never brought into force in England by the Conservative-led coalition that replaced them. The new Labour government has committed to its resurrection. Drawing on evidence from Scotland and Wales, where the 'socio-economic duty' has been in force since April 2018 and March 2021 respectively, this article offers three reflections for policy makers and those who will be tasked with its implementation in England: the promise of its 'holistic' incorporation into the Equality Act 2010 of impact assessment processes; the ongoing necessity for support with evidence collection and data sharing; and the duty's potential as a catalyst for broader organisational change far beyond a strict interpretation of its legal remit. Although (very) far from a panacea, if coupled with well-executed guidance, training and oversight, its commencement could help to encourage greater consideration and transparency of evidence on socio-economic inequalities in key areas of public sector decision making.

Keywords discrimination law • Equality Act 2010 • Fairer Scotland Duty • public sector equality duty • socio-economic duty

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Introduction

The first section of the landmark Equality Act 2010 has been lying dormant for 14 years. The 'public sector duty regarding socio-economic inequalities' – passed by the UK Labour government in 2010 – was never brought into force in England by the Conservative-led coalition that replaced them. The new Labour government has committed to its resurrection. As promised in their 2024 manifesto: 'Labour will ensure no matter whatever your background, you can thrive, and therefore we will enact the socio-economic duty in the Equality Act 2010' (Labour Party, 2024: 90). Described variously as 'a legal duty to reduce inequality', 'socialism ... made legally enforceable',

and a measure that ‘potentially criminalises inequalities’ (Eaton, 2024; Massie, 2024), commentary on its enactment has sometimes been divorced from the reality of the duty’s aims, its construction and the lessons learnt from its implementation elsewhere in the UK.

Drawing on evidence from Scotland and Wales, where the ‘socio-economic duty’ has been in force since April 2018 and March 2021 respectively, this article offers three reflections for policy makers and those who will be tasked with its implementation in England. After setting out the scope and shape of the duty, it looks at each of these in turn: the promise of its ‘holistic’ incorporation into existing impact assessment processes under the Equality Act 2010; the ongoing necessity for evidence collection and data sharing; and the duty’s potential as a catalyst for broader organisational change far beyond a strict interpretation of its legal text. Although (very) far from a panacea, if coupled with well-executed guidance, training and oversight, its commencement is a welcome development which could help to ensure greater consideration and transparency of evidence on socio-economic inequalities in key areas of public sector decision making.

What is the socio-economic duty?

Far from the ‘socialism in one clause’ characterisation that has accompanied debate over its enactment (Casla, 2019: 556), the ‘public sector duty regarding socio-economic inequalities’ is, in effect, a procedural duty that bites on the policy-making process: it places an obligation on certain public bodies, when taking key decisions, to have regard to whether it is desirable to reduce the inequalities of outcome which result from socio-economic disadvantage. Section 1 of the Equality Act 2010 sets out, *inter alia*, that:

An authority to which this section applies must, *when making decisions of a strategic nature* about how to exercise its functions, *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*. (Section 1, Equality Act 2010, emphasis added)

For our purposes, there are three points of note about the construction of the duty. First, in echoing this ‘due regard’ formulation, it sits within a broader move in anti-discrimination law from a reliance on ‘reactive’ or ‘negative’ legal tools (offering redress *after* discrimination) to the development of ‘proactive’ or ‘positive’ ones (seeking to change behaviour *before* discrimination) (see McLaughlin, 2007). In the same spirit (and echoing the same ‘due regard’ formulation) as the ‘public sector equality duty’ (PSED) in section 149 of the Equality Act 2010, it requires public authorities to ‘confront, rather than turn a blind eye’ to the potential impact of policy decisions (McColgan, 2015: 478), and – in so doing – fosters ‘greater transparency, accountability and evidence-based policymaking’ in respect of an otherwise overlooked group (Casla, 2019: 556). In practice, this will generally take the form of an equality impact assessment (on which more later), but the duty is silent on the weight any such evidence is given when a public body carries out its functions, and does not require that socio-economic issues trump other factors in a decision (be they fiscal, social or other policy considerations). The duty is fundamentally distinct from the far broader-ranging ‘reactive’ protections that would come with including ‘socio-economic disadvantage’ as one of the nine ‘protected characteristics’ within the Act, alongside age, sex, religion or belief, gender reassignment, being married or in a civil partnership, being pregnant or on maternity leave, disability, race, and sexual

orientation (for an argument in favour of this bolder move, which would have far broader implications for both public and private bodies, see [Benn, 2020](#)).

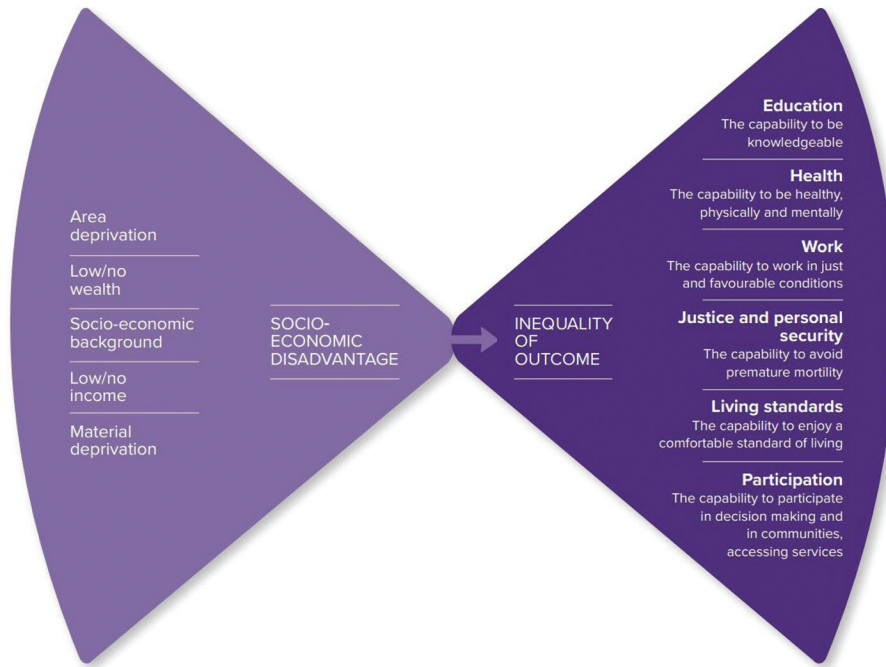
Second, the duty is significantly ‘less intense’ than the parallel PSED under section 149 of the Equality Act 2010 ([Freedman, 2010: 19](#)). Key sections – italicised in the excerpt quoted above – dilute the obligations imposed on public authorities. The duty applies only to ‘decisions of a strategic nature’ rather than all public functions, in turn narrowing its scope to only those public bodies that exercise such strategic functions in the first place (such as government departments and ministers, local authorities, NHS bodies, and so on). A ‘strategic decision’ is not defined in the legislation, but guidance in the Welsh and Scottish context identifies a broad remit: namely, ‘high-level decisions that the public sector takes, such as deciding priorities and setting objectives’, examples of which range from preparing legislation and corporate/development plans or strategies, to major investment and procurement exercises or decisions to commission services (see [Scottish Government, 2022](#)). In a further important contrast to the PSED, the public authority must have ‘due regard’ only to the *desirability* of exercising their functions in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage. This is significantly softer than a stronger formulation that could require action in response to identification of such inequalities (such as the requirement to ‘take reasonable steps’ to address them) or even the PSED formulation of having simple ‘due regard’ without the *desirability* gloss (see [McColgan, 2015](#)).

Third, the remit of ‘inequalities of outcome which result from socio-economic disadvantage’ is a broad one; it is left largely to the accompanying guidance and the public bodies concerned to flesh out its meaning and an appropriate approach to the assessment of these inequalities. Guidance from the Welsh government is illustrative of the breadth of issues that could be relevant ([Welsh Government, 2021](#)). Drawing on the Equality and Human Rights Commission’s (EHRC’s) measurement framework for ‘equality and human rights’, the Welsh government set out a smörgåsbord of factors when unpacking the duty’s organising concepts of ‘socio-economic disadvantage’ and ‘inequality of outcome’, as replicated in [Figure 1](#) ([Welsh Government, 2021: 9](#)).

Clearly, this is a cornucopia of possible relevant factors, combining what the Welsh government characterises as the ‘socio’ element of the duty (the demographic factors associated with deprivation) with the ‘economic’ (the financial and material resources that individuals and communities possess or lack, impacting their ability to participate fully in society) ([Welsh Government, 2021](#)). Welsh participants in the EHRC evaluation pointed to the heavily contextual nature of this definition and called for ‘clearer definitions’ to be provided, particularly suggesting that the impact of the COVID-19 pandemic and the challenges faced by rural communities were neglected in the guidance available to public bodies ([EHRC, 2021: 49](#)). As [Fredman](#) notes, there ‘may be something to be said for leaving it to public bodies to decide for themselves what they consider to be socio-economic disadvantage and inequalities of outcome’ ([Fredman, 2010: 12–13](#)). After all, what evidence is relevant to discharge the duty is heavily contingent on the specific decision under consideration. It is clear, however, that the scope of its application is intentionally broad-ranging.

Taken together, these three factors make clear that this duty is not sufficient to form in its own right – as some have argued ([Eaton, 2024](#)) – a legal impediment to austerity. However, nor is it necessarily a tepid form of what could be characterised as a ‘technocratic mode of process regulation’ or a tick-box exercise with no teeth (for an outline of both sides of

Figure 1: Diagram provided in the statutory guidance on the socio-economic duty issued by the Welsh government



Source: [Welsh Government \(2021: 9\)](#).

these arguments in the context of anti-discrimination law, see [O’Cinneide, 2016](#)). The evidence on commencement in Scotland and Wales suggests that the duty holds promise for bringing greater transparency and consideration of evidence to bear on the socio-economic impacts of policy-making decisions and can help to catalyse broader change in organisational practices beyond a strict reading of the legal confines of the duty. The next section draws on evidence from the commencement in Scotland and Wales to draw three reflections about how the socio-economic duty has played out in practice.

What does the Scottish and Welsh experience tell us?

As noted, the socio-economic duty has been in place in Scotland since April 2018 (under its devolved powers granted in the Scotland Act 2016) and in Wales since March 2021 (under devolved powers granted in the Wales Act 2017), albeit both with differences in accompanying guidance, available training, and with significant lead-in times for implementation. Northern Ireland has long-standing devolved powers on this front and has continued its own approach to equalities legislation, underpinned by a ‘patchwork’ of statutory duties ([Hepple, 2010](#)). Although a version of the equality duty is not in place, the Equality Commission for Northern Ireland – the independent public body which oversees equality and discrimination law – has called for ‘urgent action to address poverty and social exclusion experienced by a range of specified equality groups’ and set out policy positions within the current statutory rubric (see [Equality Commission for Northern Ireland, 2020](#)).

On the basis of desk-based research on publicly available impact assessments (a number of which can be found at [Meers and Mahal, 2024](#)) and an evaluation by the EHRC of commencement in Scotland and Wales ([EHRC, 2021](#)), this article offers three reflections when looking ahead to enacting the duty in England.

First, although there are huge variations in approaches (see [EHRC, 2021](#): 18–19), most public bodies tasked with discharging the duty have done so ‘holistically’: they have had regard to the impact a policy or decision may have on inequalities of outcome which result from socio-economic disadvantage at the same time as they undertake an impact assessment on other groups as required by the PSED. This ‘holistic’ approach serves two purposes. Practically, it avoids what participants in the EHRC evaluation characterised as a ‘duplication of effort and issues’ ([EHRC, 2021](#): 7). For instance, many Scottish local authorities undertake an ‘integrated impact assessment’, combining assessment of socio-economic impacts alongside protected characteristics under the Equality Act 2010, as in the excerpt from Aberdeenshire Council’s revised impact assessment ([Figure 2](#)) after commencement of the Fairer Scotland Duty (for further examples see [Meers and Mahal, 2024](#)).

However, more fundamentally, it also helps to ensure that the socio-economic duty works to complement and enhance the discharge of the PSED under section 149 of the Equality Act 2010. There is clear intersectionality between the status-based discrimination already protected under the Act (with regard to race, sex, disability and so on) and socio-economic disadvantage. As Fredman argues, the ‘reciprocal nature of the linkage should not be ignored’ by exercising the duties in ‘isolation from each other’ ([Fredman, 2010](#)). Likewise, as the PSED bites on a broader range of decision

Figure 2: Excerpt from Aberdeenshire Council’s ‘integrated impact assessment’ form

5. Equalities and Fairer Scotland Duty Impact Assessment

5.1. Protected Groups

Indicator	Positive	Neutral	Negative	Unknown
Age (Younger)		Yes		
Age (Older)		Yes		
Disability		Yes		
Race		Yes		
Religion or Belief		Yes		
Sex		Yes		
Pregnancy and Maternity		Yes		
Sexual Orientation		Yes		
Gender Reassignment		Yes		
Marriage or Civil Partnership		Yes		

5.2. Socio-economic Groups

Indicator	Positive	Neutral	Negative	Unknown
Low income		Yes		
Low wealth		Yes		
Material deprivation		Yes		
Area deprivation		Yes		
Socioeconomic background		Yes		

Source: From [Meers and Mahal \(2024\)](#).

making over and above those of a ‘strategic nature’ envisaged in the tight statutory construction of section 1 of the Equality Act 2010, an ‘holistic’ assessment process helps to ensure considerations of socio-economic impacts bleed across into other policy areas beyond those envisaged under the tight construction of the legal duty. The EHRC evaluation points to evidence of this, with impact assessment processes ‘not being restricted to high-level strategic decisions’ but instead spreading across a broader range of decisions about frontline service delivery (EHRC, 2021: 20). Indeed, the sample of integrated impact assessments collated for this article (see Meers and Mahal, 2024) indicate the broad range of policy areas for which the Fairer Scotland Duty has been considered, from ‘garden waste permits’ to ‘janitorial provision’, in addition to clearly strategic decisions on social care or annual budgets.

Second, it is clear that the adequate assessment of impact requires significantly more attention and support for evidence gathering and access to data for public bodies, especially those without a high-quality existing evidence base and given the considerable ongoing pressures on resource and capacity. Participants in the EHRC evaluation argued that ‘support was required to ... find the evidence, and know what data was available and how to access it’ (EHRC, 2021: 31). This is important not only for ensuring the effective discharge of the duty itself – without access to such data, there is a danger of assessments being largely tick-box exercises – but also to evaluate its impact over time on the ‘inequalities of outcome’ it seeks to improve. Put another way, data access is important both to discharge the duty and to assess its impact. As in other areas of government (for example, see HM Government, 2023), there is significant potential for increased data sharing between public bodies to provide access to such data at low (or no) cost, or provide additional support and, as a result, improve the quality of assessments on socio-economic impact. Tools developed in the private sector – such as the Low Income Family Tracker used by a number of local authorities – illustrate what is possible (HM Government, 2021).

Third, the duty is most effective when treated not simply as a legal obligation, but as a catalyst or focal point around which to shape organisational practices more broadly. This is true to its original intent (Casla, 2019). As Fredman argues, in the (ultimately superfluous) 2010 accompanying government guidance, it was clear that the ‘major thrust’ of the duty was to ‘provide a statutory foundation to work which is already ongoing in relation to socio-economic disadvantage’ (Fredman, 2010, 12). Indeed, within England, a number of local authorities and other public bodies (such as Hackney and Newcastle councils, and Transport for Greater Manchester) have voluntarily adopted the socio-economic duty into their own practices (Just Fair, 2023). Here, its discharge has led to changes that go beyond a strict legal reading of section 1 of the Equality Act 2010, leading to greater collaborative working and an increased focus on socio-economic disadvantage across far broader areas of an organisation’s activities (Just Fair, 2023: 20). For instance, the EHRC evaluation pointed to examples of public bodies integrating consultation with affected groups more fully into their working practices, such as the use of ‘lived experience boards’ to advise on the development of policy (EHRC, 2021: 25). Access to training on these approaches was underscored as being particularly valuable by the EHRC (EHRC, 2021: 33), and an eco-system of organisations has already emerged, well-placed to fulfil this broader training need (see Resolve Poverty, 2024).

There is much to be said about the ‘socio-economic duty’ that goes far beyond what is possible to interrogate in an article of this length. The current construction of the duty (and, to date, the guidance for its commencement in Scotland and Wales) could do more to address ‘outcomes’ rather than ‘process’ (see [EHRC, 2021: 61](#)), go beyond a formulation pegged to a ‘desirability’ of having ‘due regard’ towards a more muscular duty, and provide stronger mechanisms to hold public bodies to account for their discharging of the duty (see [Fredman, 2010; EHRC, 2021](#)). It suffers from similar limitations to the PSED, such as the propensity to address policy decisions in silos, rather than in terms of their cumulative impact on protected groups (see [Meers, 2022](#)). The role of the EHRC, and the drafting of accompanying guidance, will be pivotal to how the duty is operationalised and how public bodies are held to account for its implementation, but – much like the PSED – the duty has the potential to ‘reach into much public sector decision-making’ ([McColgan, 2015: 478](#)).

More fundamentally, the variation in approaches across the United Kingdom raises questions about the devolution of equalities legislation; similar duties may refract through regional variations, including the practices of public bodies, the ‘divergent policy landscape’ and fundamental ‘differences in lived experience’ ([Boyle and Busby, 2023: 79](#)). The integration of socio-economic inequality into the canon of anti-discrimination law ignites long-standing debates on the separation between distributive inequality and status-based inequalities (see [Fredman, 2010; Benn, 2020](#)). As Barrett notes, the socio-economic duty is not alone here; in recent years other statutory duties, particularly in the health and education context, have required public bodies to tackle socio-economic inequalities ([Barrett, 2018: 58](#)).

Commencement of the duty in England will no doubt further catalyse these broader debates about the role of socio-economic inequality in anti-discrimination law, and the value of ‘process based’ duties on public bodies. However, in the spirit of the ‘policy and practice’ section of this journal, the lesson of the Scottish and Welsh experience on the ground is that the impact of this duty has promise. In complementing the assessment of status-based discrimination under the Equality Act 2010 it helps to address intersecting discrimination; it provides an impetus for the collation and analysis of data on the impact of key policy decisions for those suffering disadvantage due to their socio-economic status; and it can serve as a totem for a broader organisational shift to integrating an assessment of socio-economic disadvantage in the discharge of public functions outside of the immediate confines of the duty. Its integration in equality impact assessment processes has the potential to bring greater transparency to decision making by requiring public bodies to face the socio-economic impacts of key policy choices. A ‘mainstay against austerity’ ([Carr, 2014](#)) or ‘socialism in a clause’ it is not, but the evidence from elsewhere in the UK suggests the enactment of the ‘socio-economic duty’ will be a welcome development.

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Conflict of interest

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