

The Improvement Service

ELECTED MEMBER BRIEFING NOTE

Fairer Scotland Duty



What is the purpose of the briefing note series?

The Improvement Service (IS) has developed an Elected Members Briefing Series to help elected members keep pace with key issues affecting local government.

Some briefing notes will be directly produced by IS staff but we will also make available material from as wide a range of public bodies, commentators and observers of public services as possible.

We will use the IS website and elected member e-bulletin to publicise and provide access to the briefing notes. All briefing notes in the series can be accessed at www.improvementservice.org.uk/elected-member-guidance-and-briefings.html

About this briefing note

The Fairer Scotland Duty came into force on 1 April 2018, enacting part 1 of the Equality Act 2010, in Scotland. It places a duty on certain public bodies in Scotland to consider how to reduce inequalities of outcome caused by socio-economic disadvantage.

It means that, as an elected member, you have a role in ensuring that the decisions you take for your authority are informed by consideration of socio-economic disadvantage in your area and the inequalities of outcome experienced by those living in socio-economic disadvantage. Officers should be considering the Fairer Scotland Duty at the outset and all the way through the development of any strategic plans, budget savings etc. You, as a decision maker at the end of the process, should be paying due regard to the requirements of the duty when making those decisions.

This briefing note provides a summary of the key aspects of the duty and how local authorities might go about meeting the duty.

What is the issue?

Over a million Scots are living in poverty, including one in four children. Health inequalities and educational attainment gaps are far too wide but public bodies in Scotland can help to reduce poverty and inequalities of outcome.

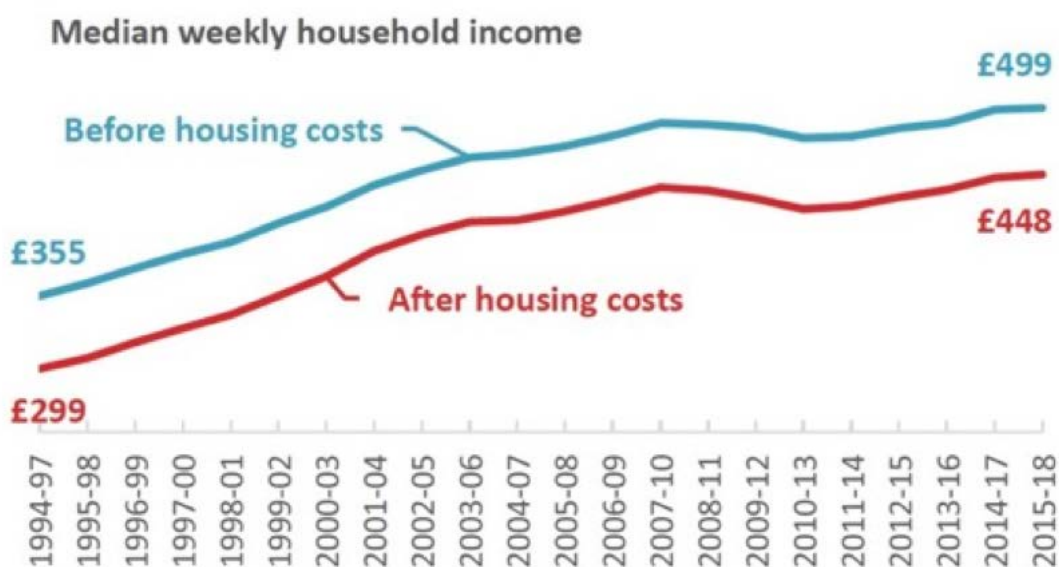
Key trends¹ show that poverty in Scotland is slowly rising. Twenty per cent of people in Scotland are living in relative poverty **after** housing costs.

Statistics show that poverty is higher for working age women than men; higher for female pensioners than for male pensioners; higher for minority ethnic groups and higher when a family member is disabled. It is important to consider the public sector equality duty protected characteristics when considering poverty (see the [elected member briefing on the Public Sector Equality Duty](#)). There is also a clear link to the Child Poverty Act and Local Child Poverty Action Reports (http://www.improvementservice.org.uk/documents/em_briefing_notes/em-briefing-note-lcpar.pdf).

Income inequality is rising. The top 10% of the population in Scotland had 27% more income in 2015-18 than the bottom 40% combined, up 3% from previous estimates.

Median income has reached its highest levels since reporting began. Median income before housing costs in Scotland in 2015-18 was £499 a week. Median income after housing costs was £448 per week in 2015-18, at its highest level since reporting began.

However, median incomes have not risen for all age groups: pensioners' median household income declined, and children's median household income stalled.



1 <https://www.gov.scot/publications/poverty-income-inequality-scotland-2015-18/pages/1/>

Household income increased more for those with higher incomes. Many people have household incomes near the poverty threshold. This means that small movements in the overall distribution can sometimes lead to sizeable movements in poverty rates.

Relative Poverty

It is estimated that 20% of Scotland's population, 1.03 million people each year, were living in relative poverty after housing costs in 2015-18. Before housing costs, 17% of Scotland's population, 900,000 people each year, were living in relative poverty in 2015-18. Poverty rates after housing costs in Scotland have been falling since the late nineties, but recent years' data shows a continuous increase since 2009-12. Before housing costs, relative poverty numbers have been rising since 2011-14.

Absolute Poverty

It is estimated that 18% of Scotland's population, 930,000 people each year, were living in absolute poverty after housing costs in 2015-18.

Before housing costs, 15% of Scotland's population, 780,000 people each year, were in absolute poverty. The trend is similar to the after housing costs measure, although the downward trend started to stagnate a few years later.



Relative Poverty

Relative poverty is a measure of whether the income of the poorest households is keeping pace with middle income households across the UK.

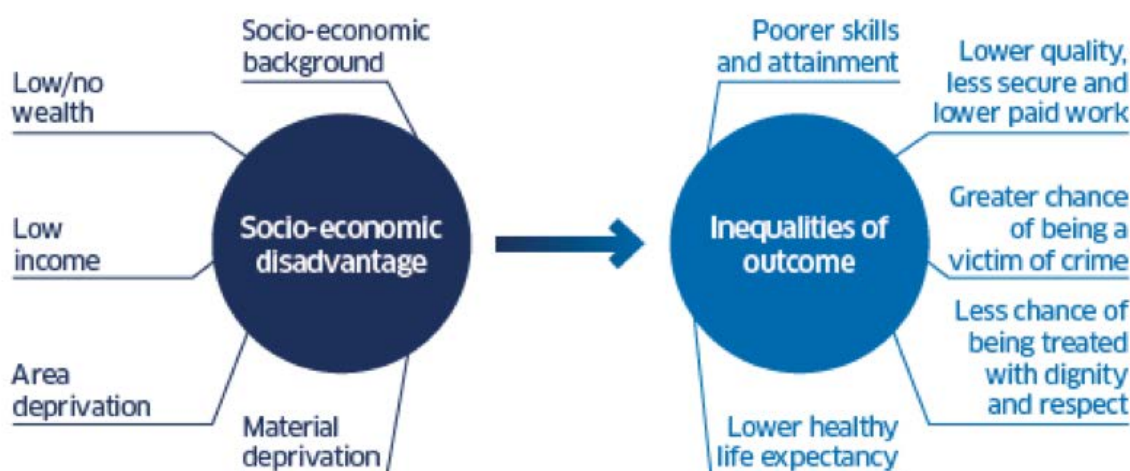


Absolute Poverty

Absolute poverty is a measure of whether the incomes of the poorest households are keeping pace with inflation and is based on the poverty threshold in 2010/11.

What is the Fairer Scotland Duty?

The Fairer Scotland Duty places a legal responsibility on particular public bodies in Scotland to actively consider how they can reduce inequalities of outcome caused by socioeconomic disadvantage.



The commitment to enact the duty was set out in the Scottish Government’s Fairer Scotland Action Plan, where the government pledged that it would introduce the duty as it recognises that the public sector is key to delivering a fairer Scotland. The intention of the duty is to help make sure that the public sector takes full account of poverty and disadvantage when key strategic decisions are being made.

The duty is set out under Part 1 of the Equality Act 2010, as the ‘public sector duty regarding socio-economic inequalities’. It has been commonly referred to as the ‘socio-economic duty’; however, its proper term is the Fairer Scotland Duty.

The Fairer Scotland Duty came into force on 1 April 2018 but does not cover decisions made before this date. It does not override other considerations – such as equality or best value.

The Duty is nevertheless a key consideration, underpinned by statute. The [Equality and Human Rights Commission](https://www.equalityhumanrights.com/en/commission-scotland/public-sector-equality-duty-scotland)² (EHRC) is the Regulator for the Fairer Scotland Duty and will be involved in monitoring and developing best practice for the Duty, particularly in the first three years.

2 <https://www.equalityhumanrights.com/en/commission-scotland/public-sector-equality-duty-scotland>

Guidance on how the duty should be implemented

[Interim Guidance for Public Bodies](#)³ on the Fairer Scotland Duty has been published on how public bodies can meet the duty. There is an **expectation** that public bodies will:

- actively consider what more they can do to reduce the inequalities of outcome in any major strategic decision they make, and
- publish a written assessment, showing how they have done this.

Public bodies must approach the duty in a way that:

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

The guidance goes into more detail on:

- socio-economic disadvantage
- low income compared to most others in Scotland
- low wealth
- material deprivation
- area deprivation
- socio-economic background

Engagement is ongoing over the three-year implementation phase of the duty to determine if there should be additional strategic decisions in the guidance.

Consideration of how to reduce socio-economic inequalities can improve decision making, whether the decision is strategic or not. While the statutory focus of the duty is on strategic decision-making, the ultimate aim of the duty, as with equality responsibilities, is for consideration of socio-economic disadvantage to be mainstreamed. Many authorities will already routinely think through their decisions in regard to socio-economic disadvantage, but now have to clearly evidence that they have done this.

3 <https://www.gov.scot/publications/fairer-scotland-duty-interim-guidance-public-bodies/>

Public bodies covered by the duty

The Fairer Scotland duty applies to the public authorities listed in [The Equality Act 2010 \(Authorities subject to the Socio-economic Inequality Duty\) \(Scotland\) Regulations 2018](#).⁴

The list of public authorities is more limited than those listed under the [public sector equality duty](#).⁵ The list is restricted by the provisions set out in Part 1 of the Equality Act 2010. A three point test requires that public authorities subject to the duty have functions that:

- are exercisable only in or as regards Scotland
- are wholly or mainly devolved Scottish functions, and
- correspond or are similar to the UK/English public authorities listed.

The Scottish Government plans to add any future public bodies that meet the test. The new Social Security Agency was automatically added as it comes under the Scottish Minister category. Any other new public bodies that meet the test may require to be brought under the duty through regulations.

Links to other legislation

There are a number of pieces of legislation which link to the Fairer Scotland Duty including:

- Human Rights Act
- Public Sector Equality Duty
- Child Poverty Act
- Education Act
- Children and Young People's Act
- Community Empowerment Act

More information on how these interact can be found on the [Fairer Scotland Duty Knowledge Hub page](#).

Process

A five-stage process is set out in the Scottish Government Guidance to help public bodies meet the duty. It is similar to the steps used by public bodies when undertaking an Equality Impact Assessment.

4 <http://www.legislation.gov.uk/sdsi/2018/9780111038086/body>

5 https://www.equalityhumanrights.com/sites/default/files/redraft_of_psd_tech_guidance_-_v6sc.pdf

Stage 1 – Planning – Is this proposal/decision strategically important or not?

YES – Begin the Fairer Scotland assessment process during development of the proposal. **Move to Stage 2.**

NO – There is no requirement for a Fairer Scotland assessment. **Move to Stage 5.**

Stage 2 – Evidence

What evidence do you have about socio-economic disadvantage and inequalities of outcome in relation to this issue or decision? Is it possible to gather new evidence, involving communities of interest?

Stage 3 – Assessment and Improvement

In discussion, consider: What are the main impacts of the proposal? How could the proposal be improved so it **reduces or further reduces** inequalities of outcome?

Stage 4 – Decision

This stage is for an appropriate officer to confirm that due regard has been paid. They should be satisfied the body has understood the evidence, considered whether the policy can narrow inequalities of outcome, considered improvements and the links to socio-economic disadvantage and equality.

Stage 5 – Publication

Public bodies covered by the duty must be able to show that they have paid due regard to meeting it in each case. This should be set out clearly and accessibly, and signed off by an appropriate official from the body in question.

The interim guidance also provides three case study examples. A number of authorities have integrated assessment of the Fairer Scotland Duty into their integrated impact assessment processes covering e.g. Equality, Health, Human Rights and Environmental impact assessment. Work is ongoing to develop a generic integrated impact assessment toolkit for use by public bodies.

Three-year timescale for implementation

The Fairer Scotland Duty is subject to a three-year implementation phase. The idea is that this will allow time for public bodies to develop best practice and become fully compliant with the duty.

National Coordinator

The Scottish Government is funding a National Coordinator post at the [Improvement Service](#)⁶ over the implementation phase to gather best practice and develop toolkits and the guidance.

Is it the same as the public sector equality duty?

No. The Fairer Scotland duty is not the same as the [public sector equality duty](#).⁷ The new duty falls on a smaller number of public authorities and only applies to decisions of a strategic nature. However, there will be some overlap because people who share particular protected characteristics are often at higher risk of socio-economic disadvantage.

The Equality and Human Rights Commission is currently [reviewing the equality duty process](#).⁸ The outcome of that review may feed into future versions of the Fairer Scotland duty guidance.

Does it create a new protected characteristic?

No. Protected characteristics describe the characteristics people have, that are protected from discrimination under the Equality Act 2010. They are: age, disability, gender reassignment, marriage and civil partnership, race, religion or belief, sex, sexual orientation, pregnancy and maternity. An individual would not be able to make a claim of discrimination on grounds of socio-economic disadvantage.

What does this mean for elected members?

Elected Members, when making decisions of a strategic nature will have to actively consider, at an appropriate level, what more they can do to reduce the inequalities of outcome, caused by socio-economic disadvantage, in any strategic decision making or policy development context. This is particularly important when considering budget decisions.

You will most likely be aware of the key inequalities of outcome in your local area, and this may be set out in the Local Outcomes Improvement Plan, Locality Plans and/or Corporate Plans. Useful sources of information such as Strategic Needs Assessments will assist with this understanding.

6 <http://www.improvementservice.org.uk/>

7 <https://www.equalityhumanrights.com/en/public-sector-equality-duty-scotland>

8 <https://www.equalityhumanrights.com/en/publication-download/reviewing-aims-and-effectiveness-public-sector-equality-duty-psed-great-britain>

You may engage with constituents who are socio-economically disadvantaged and their voices should inform consideration of strategic decisions. You may need to speak to a wider group of people to feel fully informed. Other engagement processes will be undertaken across your authority, and some of this will be targeted towards those, for example, living in deprived areas.

You will consider reports at Committee which will relate to areas of a strategic nature. It is important to make sure that Fairer Scotland Duty Assessments have been carried out on these and feature in the Committee reports.

Key issues and questions for elected members to consider

1. Is this a strategic programme/proposal/decision or not?
2. If yes, has a Fairer Scotland Duty Assessment been carried out?
3. Does the report of the Fairer Scotland Duty Assessment identify any negative impacts on those experiencing socio-economic disadvantage and inequality of outcome?
4. If yes, can any changes to the strategic programme/proposal/decision be made to reduce this negative impact?
5. Does the report set out any mitigating actions to combat inequality of outcome?
6. Does the strategic programme/proposal/decision provide any opportunities to reduce or further reduce inequalities of outcome?

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The Improvement Service is devoted to improving the efficiency, quality and accountability of public services in Scotland through learning and sharing information and experiences.

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