

## Report

To:	<b>Executive Committee</b>
Date:	<b>28 March 2018</b>
Prepared by:	<b>Executive Director (Finance and Corporate Resources)</b>

Subject:	<b>Fairer Scotland Duty</b>
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### 1. Purpose of this Report

- ◆ to advise the Committee of the impending implementation in April 2018 of the Fairer Scotland Duty

### 2 Recommendation

2.1 The Executive Committee is asked to approve the following recommendation:

- (1) that the report be noted.

### 3. Background

3.1. The Fairer Scotland Duty, otherwise known as the Socio- Economic duty, derives from section 1 of the Equality Act 2010 which is not yet in force but is to be brought into force in Scotland in April of this year.

3.2. The duty which applies to all local authorities in Scotland places a responsibility on public bodies to actively consider how inequalities of outcome arising from socio economic disadvantage can be reduced.

### 4. Implications for Local Government

4.1. The duty is a strategic duty and does not commit the Council to a particular manner of exercising its functions nor does it restrict the exercise of it's' functions. Councils have a key role in reducing socio-economic inequalities as a result of strategic decisions which will impact on housing, education, health, transport and employability. The Council also has a key role in influencing other public sector and third sector bodies through the Community Planning Partnership and Health and Social Care Joint Board

4.2. The duty obliges the Council to have due regard to the desirability of exercising its functions in such a way as to reduce inequalities of outcome such as poor attainment, lower life expectancy, greater chance of being a victim of crime arising from socio economic disadvantage such as low income , material or area deprivation and socio economic background. This is only one of a range of factors which the Council will require to consider in the exercise of the strategic nature of its functions.

- 4.3. The duty will apply to strategic decisions such as the development of the Council Plan or Local Outcome Improvement Plan, annual budget setting, setting priorities or targets, strategic policy development, allocating resources, major procurements, commissioning services or economic development strategy. It does not explicitly apply to operational decisions however strategic decisions may have a major impact on operational day to day service delivery.
- 4.4. Public Authorities are obliged to take into account any guidance issued by Scottish Ministers on the exercise of the duty. Final guidance is not yet available but draft Interim Guidance has been prepared and issued to COSLA's Environment and Economy Board for comment early in March 2018. The Scottish Government intends to develop final non statutory guidance in partnership with public bodies, so that it is grounded on experience of working with the duty and reflects good practice already in place. COSLA has also been advised that whilst the duty formally comes into force on 1<sup>st</sup> April 2018, there will be a 3 year implementation period, along with possible revised guidance and training opportunities taking place in various regions across Scotland. The Scottish Government is funding a National Coordinator post, based in the Improvement Service, to help public bodies to share best practice through regional meetings. The full implications of what is expected from Councils will become clearer once the guidance is available
- 4.5. The duty does not prohibit the Council from taking a strategic decision which will not reduce inequalities or even increase them. The key requirement is that the Council has clearly and actively considered how they could reduce inequalities before taking any strategic decision and is able to publish a short written assessment, showing how they have done this. The draft interim guidance suggests that it may be easier to demonstrate that due regard has been paid if the Council involves people likely to be affected by the decision in the assessment. Providing the Council has complied with this key requirement before taking its decision and is able to evidence it, there should be no ground for challenge. The Equality and Human Rights Commissioner has been appointed as the Regulator for the Fairer Scotland Duty and will be closely involved with monitoring the duty and the development of best practice for the duty. The Council is already covered by the Public Sector Equality Duty and the Human rights Act, and the Scottish Government is of the view that the Fairer Scotland Duty will build on existing practice already followed for equality and human rights. The general basis for a legal challenge in this respect would be whether the decision is one which no reasonable Council having had due regard to the duty and acting reasonably, could have come to (the "Wednesbury unreasonableness" test). Accordingly if there are competing factors such as Best Value, which the Council reasonably consider outweigh the terms of Section 1 it will be entitled to decide on that basis.
- 4.6. The Guidance suggests any decision to which the Fairer Scotland Duty applies will have 5 stages:-

**Stage 1** – Determine whether the proposal /decision will be of strategic importance

**Stage 2** – Does the Council have any evidence about socio-economic disadvantage and inequalities of outcome in relation to this issue or decision

**Stage 3** – Assess what the main impacts of the proposal are likely to be and how it could be improved so to reduce inequalities of outcome

**Stage 4** – Appropriate Officer to confirm that decision makers have had due regard to the duty in their decision. The officer should be satisfied that the members have understood the evidence, considered whether it could reduce inequalities of outcome, and considered improvements and the links to socio-economic disadvantage and equality

**Stage 5** – The assessment should be signed off and published in order to show that members paid due regard to the duty before taking the decision.

- 4.7. It is essential that the Council considers this duty in relation to its strategic functions. Council decisions have been deemed to be unlawful where the Councillors had a duty to “*have due regard*” to a matter but have been unable to evidence that it was drawn to their attention or that they did actually consider it.

## **5. Employee Implications**

- 5.1. Employee implications will become clear once further information is available

## **6. Financial Implications**

- 6.1. Financial implications will become clear once further information is available

## **7. Other Implications**

- 7.1. There are no issues in terms of sustainability associated with this report.

## **8. Equality Impact Assessment and Consultation Arrangements**

- 8.1. This matter does not require an equality impact assessment to be undertaken.

**Paul Manning**

**Executive Director (Finance and Corporate Resources)**

15 February 2018

## **Link(s) to Council Values/Ambitions/Objectives**

- ◆ Focused on people and their needs
- ◆ Promote economic growth and tackle disadvantage

## **Previous References**

- ◆ None

## **List of Background Papers**

◆ None

## **Contact for Further Information**

If you want further information, please contact:-

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