

CAJ's submission no. S.280

CAJ's response to the
Executive's consultation on
its Draft Budget 2011-15 and
Equality Impact Assessment

February 2011

What is the CAJ?

The Committee on the Administration of Justice (CAJ) was established in 1981 and is an independent non-governmental organisation affiliated to the International Federation of Human Rights. CAJ takes no position on the constitutional status of Northern Ireland and is firmly opposed to the use of violence for political ends. Its membership is drawn from across the community.

The Committee seeks to ensure the highest standards in the administration of justice in Northern Ireland by ensuring that the government complies with its responsibilities in international human rights law. The CAJ works closely with other domestic and international human rights groups such as Amnesty International, Human Rights First (formerly the Lawyers Committee for Human Rights) and Human Rights Watch and makes regular submissions to a number of United Nations and European bodies established to protect human rights.

CAJ's activities include - publishing reports, conducting research, holding conferences, campaigning locally and internationally, individual casework and providing legal advice. Its areas of work are extensive and include policing, emergency laws and the criminal justice system, equality and advocacy for a Bill of Rights.

CAJ however would not be in a position to do any of this work, without the financial help of its funders, individual donors and charitable trusts (since CAJ does not take government funding). We would like to take this opportunity to thank Atlantic Philanthropies, Barrow Cadbury Trust, Hilda Mullen Foundation, Joseph Rowntree Charitable Trust, Oak Foundation and UNISON.

The organisation has been awarded several international human rights prizes, including the Reebok Human Rights Award and the Council of Europe Human Rights Prize.

Submission to the Executive's Consultation on its Draft Budget 2011-15 and Equality Impact Assessment

Committee on the Administration of Justice

1. Introduction

The Committee on the Administration of Justice ('CAJ') is an independent human rights organisation with cross community membership in Northern Ireland and beyond. It was established in 1981 and lobbies and campaigns on a broad range of human rights issues. CAJ seeks to secure the highest standards in the administration of justice in Northern Ireland by ensuring that the government complies with its obligations in international human rights law. CAJ is co-convenor of the Equality Coalition. We welcome the opportunity to comment on the Executive's consultation on its draft budget 2011-15 and equality impact assessment ('EQIA').

CAJ is encouraged that the Executive has released an EQIA of its draft budget 2011-15, but the incorrect timing of its publication detracts from this initiative to the extent that renders it ineffective. The narrow scope of the EQIA in relation to subject matter and analysis also limits its usefulness. As a result, we feel unable to respond to the budget consultation in a meaningful way, as the equality impacts are unclear.

Certain aspects of the EQIA content and process do not correspond with the objectives and operation of s75. The belief that universal application will lead to positive impacts for all is misguided, and the contracting-out of impact assessment and mitigation to departments has been unsuccessful and inappropriate. Ultimately, the Executive has not fully considered the equality impacts of its budget 2011-15 allocations. Each of the above issues will be considered in more detail below.

2. Incorrect Timing of Consultation

We have had insufficient time to scrutinise the Executive's draft budget 2011-15 and EQIA, due to the short consultation period and late publication of the

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EQIA. It is good practice for public consultations to run for at least a 12 week period, as confirmed in both OFMDFM Guidance on Policy Making¹ and the BERR Code of Practice on Consultation.² The Executive's draft budget 2011-15 consultation has run for only seven weeks.

Further, it has taken place over the Christmas and New Year break. BERR Guidance states that *'[i]f a consultation exercise is to take place over a period when consultees are less able to respond, e.g. over the summer or Christmas break, or if the policy under consideration is particularly complex, consideration should be given to the feasibility of allowing a longer period for the consultation'*³ (at para 2.2).

We are even more concerned that the EQIA on the draft budget 2011—15 was published less than two weeks before the end of the consultation period. This is in direct conflict with the Equality Commission for Northern Ireland ('ECNI') Guidance on s75, which states that *'[w]e recommend that the consultation period lasts for a minimum of twelve weeks.'*⁴

The late publication of the EQIA limits civil society's ability to consider and respond to the consultations on both the EQIA and the draft budget itself. It is clear that the severe spending cuts imposed on our administration will have many negative impacts across Northern Ireland. Given that s75 groups are more likely to need public services, and experience barriers to access, it is likely that they will be affected disproportionately. Therefore, it is not possible to respond to the budget consultation without understanding in full the equality impacts which may ensue.

Furthermore, the late publication of EQIA suggests that the assessment of equality impacts has only taken place after the draft budget 2011-15 allocations were decided upon. As we have stated in our previous correspondence with departments, EQIAs must be carried out before policies

¹ OFMDFM (2003) "A practical guide to policy making in Northern Ireland", at section 8.5, found at: <http://www.ofmdfmi.gov.uk/practical-guide-policy-making.pdf>.

² Department for Business, Enterprise and Regulatory Reform, July 2008, found at <http://www.berr.gov.uk/files/file47158.pdf>. Criterion 2 states that *'Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.'*

³ Department for Business, Enterprise and Regulatory Reform, July 2008, *supra*.

⁴ Section 75 of the Northern Ireland Act 1998 A Guide for Public Authorities, April 2010, at page 38, states *'[w]e recommend that the consultation period lasts for a minimum of twelve weeks'*. See <http://www.equalityni.org/archive/pdf/S75GuideforPublicAuthoritiesApril2010.pdf>.

are settled or consulted upon. Caselaw in GB⁵ has underlined the need for advance consideration of the promotion of equality of opportunity⁶, as opposed to ‘rearguard action’.⁷ The courts have warned that ‘it is unlawful to adopt a policy contingent on an assessment’,⁸ and that such an equality impact assessment would amount to ‘policy-based evidence rather than evidence-based policy.’⁹

Finally, the Programme for Government (‘PfG’) and Investment Strategy for Northern Ireland (‘ISNI’) have not yet been published. The Executive’s draft budget 2011-15 consultation document stated that EQIA would be ‘produced in accordance with statutory requirements to consider the equality impacts of the PfG, Budget and ISNI’ (at para 5.8). This has clearly not taken place and the later publication of the PfG and ISNI will further exacerbate the incorrect timing of the consultation.

We appreciate the time pressures involved in the budget process, but the necessary review of policies once the PfG and ISNI are published will further delay the adoption of the budget. It is essential for the Executive to assess equality impacts, as required by s75, before the draft budget, PfG and ISNI are approved.

3. Limited scope of EQIA

The scope of the EQIA is limited in terms of subject areas and s75 groups covered, and the information provided.

First, it appears that the EQIA only considers equality in the narrow context of economic objectives, as opposed to across policy areas. Although we welcome the consideration of empirical data, this seems to be focused on employment levels and circumstances. While these issues are important, they are only one aspect of the policy areas affected by the draft budget 2011-15. For example, the spending cuts will lead to library, school and hospital closures and less funding for social housing and welfare. These issues will

⁵ In relation to s71 Race Relations Act 1976, which requires public authorities to have due regard for the need to promote the equality of opportunity in relation to race.

⁶ R (Elias) v Secretary of State for Defence [2006] WLR 321, [2006] EWCA Civ 1293.

⁷ R (BAPL and Another) v Sec of State for the Home Department and for Health, supra.

⁸ R (Kaur and Shah) v London Borough of Ealing [2008] EWHC 2062, at para 36.

⁹ Ibid, at para 37.

clearly have impacts on several s75 groups, but are not considered in the EQIA.

It appears that the Executive is considering the equality impacts of its strategic objectives, as opposed to considering the impacts of those areas that will not be funded or are not priorities. All allocations and reductions should be considered.

Secondly, there is a divergence in the approach to the different s75 groups within the EQIA. Some categories have discussion of data and conclusions on potential barriers. Others have little data (gender) or analysis (sexual orientation and gender). It is surprising that none of the s75 groups are found to be negatively impacted upon by the budget 2011-15, despite the recognition of barriers to access,¹⁰ socio-economic inequalities¹¹ and adverse effects of the economic downturn.¹²

It appears that the EQIA has not completed its assessment. It has considered some of the available data and challenges facing disadvantaged groups, but it has not continued in this analysis by considering the way in which the draft budget 2011-15 will impact on these underlying inequalities. It is likely that any existing inequalities will be exacerbated by budget cuts. It is crucial that these impacts are considered face on so that they can be consulted upon, mitigated and/or alternatives proposals put forwards (as is required by para 4(2)(b) and para 9(1) Schedule 9 Northern Ireland Act 1998).

Therefore, and finally, there is insufficient information to comment on the Executive's draft budget 2011-15 in full, as the potential equality impacts are unclear. In order to engage in meaningful consultation, consultees must be provided with sufficient information to understand, scrutinise and comment on the policies proposed. In the BERR Code of Practice on Consultation,¹³ *Criterion 3 (entitled Clarity of scope and impact)* states that '*[c]onsultation documents should be clear about the consultation process, what is being*

¹⁰ For example, in relation to disability, dependents and race, at pages 24, 25 and 27 draft budget 2011-15 consultation document respectively.

¹¹ For example, in relation to religious opinion, political belief, age, disability, dependants, marital status and gender, at pages 18-27 of the draft budget 2011-15 consultation document.

¹² For example in relation to age, at page 21 of the draft budget 2011-15 consultation document.

¹³ Department for Business, Enterprise and Regulatory Reform, July 2008, found at <http://www.berr.gov.uk/files/file47158.pdf>.

proposed, the scope to influence and the expected costs and benefits of the proposals.¹⁴

The above is referred to in the Equality Commission for Northern Ireland's ('ECNI') Guidance on s75 which recommends '*that information is made available to ensure meaningful consultation, including detailed information on the policy proposal being consulted upon and any relevant quantitative and qualitative data*.'¹⁵ Also, in common law, the need for sufficient information in any consultation process is set out in the "Sedley Requirements"¹⁶, which state that:

- i. it must be undertaken when proposals are still at a formative stage;
- ii. it must give sufficient reasons to permit the consultee to make a meaningful response;
- iii. it must allow adequate time for consideration; and
- iv. the results of the consultation must be conscientiously taken into account in finalising any proposals.

We believe that these minimum requirements for meaningful consultation have not been fulfilled in relation to equality impacts. As stated above, there is limited information in relation to both policy areas and s75 groups. In addition to this, equality impacts have not been fully considered or mitigation and/or alternative policies put forwards.

4. Incorrect Approach to Equality

We are concerned that the draft budget 2011-15 EQIA shows a fundamental misunderstanding of equality and the objectives and operation of s75.

Despite the '*Executive's commitment to work to address all forms of inequality and to build a better and shared future for all*' (at para 50), there appears to be a belief that the universal application of a potentially positive policy will automatically have a positive equality impact across the s75 groups. For example, the EQIA states that '*[m]easures which help to improve the*

¹⁴ Ibid at page 9.

¹⁵ Section 75 of the Northern Ireland Act 1998 A Guide for Public Authorities, April 2010, at page 39, found at

<http://www.equalityni.org/archive/pdf/S75GuideforPublicAuthoritiesApril2010.pdf>.

¹⁶ R v London Borough of Barnet, ex parte B [1994] ELR 357, 372G.

competitiveness of the local economy should provide benefits across all the equality categories identified by Section 75 (at para 18).

Due to underlying inequalities in our society, some groups may have less access to or benefit from a policy, despite its universal application. S75 is in place to help understand these barriers and adapt policies to help facilitate access and benefit for all. Also, different levels of participation in specific policies results in impacts being felt more strongly by certain groups.

Therefore, many groups may find it difficult to benefit from increased competitiveness or greater employment opportunities, despite the intention that they benefit all. In fact, it is most likely that the barriers to disadvantaged groups will prevent their access to greater employment, which would further exacerbate the inequalities in our society.

We understand the need to stimulate our economy, for all the population, but it is imperative that, in doing so, the Executive considers the way in which such initiatives will impact on vulnerable groups, so that equality can be promoted. Indeed, several studies have shown how greater income equality is the best way to benefit the whole community.¹⁷

Also, the obligation in s75 requires the Executive to have to regard to the need to promote equality of opportunity. Therefore, the Executive should consider, not only the adverse impacts of its budget allocation strategy, but also any possibilities of increasing equality for those in the s75 groups.

5. Inadequate Input by Departments

The Executive has delegated much assessment of equality impacts to the individual departments. The draft budget 2011-15 consultation document states that *'there remains a greater onus on departments responsible for spending proposals to ensure that the equality and sustainable development impacts are considered in the appropriate manner'* (at para 5.2).

We understand that each department has a responsibility to comply with s75 for its own budget proposals. We also appreciate DFP's efforts to standardise the initial stages of the impact assessment. However, several problems have arisen in relation to departmental input. First, the effort to coordinate

¹⁷ See, for example, *The Spirit Level*, 2009, Wilkinson and Pickett.

departmental input has not been greatly successful. Secondly, the Executive cannot rely wholly on the departments to undertake the s75 duties. It must take some responsibility for assessing equality impacts itself.

Each department was asked to complete a high level impact assessment ('HLIA') when submitting its spending and saving proposals last year. It is clear that not all the departments have completed these HLIAs and, of those that have, many have adopted a formulaic, tick-box approach (see CAJ's responses to the departments' budgets 2011-15 for more details¹⁸). Furthermore, the HLIA is not sufficient, in itself, to discharge the s75 duties, as confirmed by the ECNI. Rather, it can be used as a complement to that process.

Further, the mitigation of any adverse impacts has only been summarised in the Executive Summary of the EQIA and only shows existing policies of individual departments. The section of the EQIA devoted to '*mitigating measures and alternative policies / options*' (section 7) largely discusses the individual departments' s75 obligations and does not consider any mitigating measures or alternative policies that the Executive could itself undertake. The Executive should consider its own possible mitigation and alternative policies, further to para 9(1) Schedule 9 Northern Ireland Act 1998.

As the departments have not discharged their own s75 duties, the Executive's reliance on their performance has limited the effectiveness of its own s75 assessment. In this regard, it is crucial that the overall budget allocations, and their equality impacts, are considered with more coherence. This is particularly important as the various proposals included in the budget inter-relate, as do their equality impacts. As such, each department's proposals cannot be considered only in isolation. The overall allocations and reductions, their equality impacts and mitigation must ultimately be considered by the Executive.

6. Conclusion

We request that the Executive carry out a more detailed EQIA once the PfG has been finalised and release it for consultation in advance of approving the budget, PfG and ISNI. We request that any such consultation has a minimum

¹⁸ See www.caj.org.uk.

12 week period. We also request that the Executive consider more carefully, and with evidence, the actual impacts that its budget may have on disadvantaged groups and the best way to promote equality of opportunity.

We remind you that the purpose of the s75 duty is to consider the impact of proposals on vulnerable people. In a time of recession, people who are already disadvantaged should be given every consideration and there is a duty on officials to mitigate any adverse impact. The process of making crucial decisions over spending for the next four years will impact on people who already live in difficult circumstances.

The importance of these impacts is also reflected in international human rights treaties.¹⁹ Indeed the UN Independent Expert on human rights and extreme poverty stated last month that *[h]uman rights are not dispensable and cannot be disregarded in times of economic uncertainty.. before designing and implementing any policy measures aimed at the recovery, policy makers must assess the impact of the measures on the most vulnerable groups of society, assess the appropriateness of the measures, and examine alternative policy options that would protect vulnerable sectors of society as a matter of priority.*²⁰

¹⁹ Such as the International Covenant on Economic, Social and Cultural Rights, ratified by the UK in 1976.

²⁰ Statement of Magdalena Sepúlveda, UN Independent Expert on human rights and extreme poverty, following a recent mission to Ireland. Full text can be found at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10658&LangID=E>.