

**Submission on behalf of the Equality Coalition to the
NI Executive draft Budget 2015-16**

December 2014

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The Equality Coalition is a broad alliance of non-governmental organisations whose members cover all the categories listed in section 75 of the Northern Ireland Act 1998), as well as other equality strands. It was founded in 1996 and was instrumental in putting equality at the forefront of the agenda at that time, specifically in relation to the Belfast/Good Friday Agreement and ultimately the public sector duty in section 75.

The Equality Coalition now has over 80 members (listed in the appendix), many of which are umbrella organisations. It is co-convened by the Committee on the Administration of Justice (CAJ) and UNISON. The Equality Coalition continues to provide a forum for unity between all sectors when working for equality, through recognising multiple identities, mutual support between members and respect for the diversity of its members' work and views. We welcome this opportunity to respond to the Northern Ireland Executives draft budget for 2015-16.

This submission will outline some of the impacts of the budget on section 75 groups and it will make recommendations on how to conform to equality requirements such as equality screening and impact assessments. The appendix will focus on the scope and application of section 75. Several members of the Equality Coalition will be submitting detailed evidence on the impacts of the Budget on their constituent groups and we ask that you take this into consideration alongside this submission.

The Department of Finance and Personnel (DFP), the department under which the budget responsibility falls, commits to using screening and EQIAs to assess the impacts of its policies on equality in its second generation equality scheme approved in January 2012.¹ DFP states in its equality scheme that it will carry out EQIAs in accordance with the Procedures set out in this ECNI guidance.² The draft budget consultation document itself sets out a commitment to equality impact assess in chapter 6, to 'produce an equality impact screening document in accordance with statutory requirements'³ the statutory requirement as set out in chapter 4.5 of the DFP equality scheme would be to screen at 'the earliest opportunity.' There is still no screening published with only 12 working days left of the consultation period.

The Equality Coalition strongly urge the DFP to fulfil its' equality commitments and equality impact assess the impact of the draft budget on all of the section 75 nine equality groups using all available data and research available at the earliest stage possible.

¹ DFP second generation equality scheme can be found at the following link <http://www.dfpni.gov.uk/final-equality-scheme-april-2011.pdf>

² See para 4.17 of DFP equality scheme <http://www.dfpni.gov.uk/final-equality-scheme-april-2011.pdf>

³ See point 6.8 of draft budget <http://www.northernireland.gov.uk/draft-budget-2015-2016.pdf>

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The Equality Coalition deem any changes, revisions or cuts to the budget and corresponding Government Departments as changes to policy and so need to be equality screened and Equality Impact assessed accordingly and any or all other cuts/policy changes stemming from this policy will also need to be equality screened at their earliest stage possible. The Equality Coalition reminds DFP of its obligations to consider alternative policies or mitigating measures where an adverse impact on an equality category occurs. If positive action⁴ is needed in order to alleviate the impact on any category this should be carried out, backed up by evidence gathered through the consultation process or by the data collected in the DFP audit of inequalities.

We recognise that the Northern Ireland Executive is under pressure to sign off on the draft budget but given that DFP has to comply with the statutory equality duty, it is possible that further delay could be incurred through a complaint or investigation on any deficiencies in the equality process.

Disadvantaged groups are already suffering barriers to accessing public services and cannot enjoy full participation in society due to austerity measures, cuts to public services, threat of welfare reform and other policies that will have an impact on health and housing. Those who are most vulnerable in society are set to be hit the hardest. It is therefore crucial to consider the impacts in the distribution of the draft budget 2015-16 on these groups and use the existing audits of inequalities gathered by departments to target those in objective need and promote equality of opportunity in a meaningful way.

Equality Coalition members would like to draw your attention to the below list of concerns, these are by no means exhaustive but aim to serve as an indication of how important the budget and respective cuts will have:

- UNISON believe that the current budget proposals are a blatant attack on public services, the NHS and the welfare state and as a result have a profound adverse impact on the quality of life of the people of NI. It is, in effect, an attack on the social fabric of NI; a broadside aimed at an already ailing economy; and an attempt to deconstruct the social gains resulting from the post-war promise to safeguard the people from the 'five giant evils' identified in the Beveridge report. The process has been marked by radically incomplete information from the majority of government departments; the

⁴ See definition of positive action at point 1.4 of the ECNI employers guide
<http://www.equalityni.org/Publications/Employers-Service-Providers/Employment-issues/Positive-action-employer-guide?ID=463>

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absence of equality and human rights impact assessments; and impossible and shortened deadlines for response.

Consequently, this budget should be rejected by the NI Assembly and our elected politicians should have the steel to stand up to threats from the UK Government, the Treasury, and warnings of the collapse of our institutions.

- CAJ have complained to the Department of Justice on the adverse impacts that cuts to the Police Ombudsman (OPONI) budget will have to historic OPONI investigations given as these are cases relate to pre-1998 matters many relatives will be elderly and may pass away before an investigation into the death of their loved one is completed. This will be compounded by further delays introduced by cuts and hence would constitute an adverse impact on the category of age but also have impacts on gender, religious belief and political opinion given the composition of the victims and their families.
- NIPSA the public sector trade union believes this budget represents a broad attack on the public and their services. In attacking jobs and services it mirrors Westminster's failed austerity programme and applies it to an already struggling local economy. In particular we believe this will adversely affect a society already struggling to cope with deep legacy issues and will have a particularly adverse effect on low paid, prominently women workers. The loss of public sector jobs equals emigration.⁵
- In August 2014, Minister Stephen Farry announced that expansion plans for the University of Ulster Magee Campus were to be shelved due the Department for Employment and Learning budget cuts. This decision was made without an equality screening exercise to ascertain what the equality impact would be across the nine section 75 categories, if screening had been done it would have been clear that the categories most affected are catholic female staff and young people as students, it will also impact those who cannot travel long distances such as disabled students or those with caring responsibilities.⁶

⁵ See NIPSA 'Threat to Public Sector Jobs' leaflet

http://www.nipsa.org.uk/NIPSA/media/NIPSA/PDFs/Campaigns/Ref-A4_0448.pdf

⁶ ECNI FETO Monitoring report 2012 Page 27

<http://www.equalityni.org/ECNI/media/ECNI/Publications/Delivering%20Equality/FETO%20Monitoring%20Reports/MonitoringReportNo23full2013.pdf?ext=.pdf>

- Disability Action is worried as there is a lack of specific detail on the budget proposals which makes it impossible to identify potential impacts on people with disabilities or to identify mitigation. There is also no reference, within the budget proposals, to the seven significant programmes set out in the Disability Strategy or what funding has been allocated for implementation. Disability Action is also particularly concerned that a reduction in the funding for Legal Aid and NI Courts and Tribunal Service will have an adverse impact on disabled people's access to justice.

- 21.2% of 18-24 year olds are unemployed, compared to 6.3% of working adults. The evidence clearly indicates therefore that young people and disadvantaged young people in particular, are disproportionately impacted by the economic recession and austerity measures. Young people from the most socially deprived areas are three times as likely to be 'NEET' (those not in education, employment or training) as those from the least deprived areas.⁷ The youth sector are also worried about the impacts cuts to youth justice services could have on children and young people.

To reiterate what has been said above the Equality Coalition would urge DFP to equality screen at the earliest opportunity and be mindful that any additional or subsequent cuts that may fall out of this budget decision will also need to be equality screened.

The following part of the submission goes into specific details on the scope and application of the section 75 equality duty and has been adapted for DFP from a similar submission that was sent to the Ad Hoc Committee on Conformity with Equality requirements around the welfare reform bill

⁷ Presentation by Dr. Stephen Donnelly on Young People not in Education, Training or Employment (December 2014)

Appendix 1

Understanding the Scope and Application of s75

Given the enduring inequalities in our society⁸, section 75 was introduced to ensure that public policy was developed and implemented in a manner that helps promote equality of opportunity and mitigate any adverse impacts on the nine named equality groups (relating to religious belief, political opinion, racial group, age, marital status, sexual orientation, gender, disability and dependants).

The existence of section 75 is well known, but the requirements for fulfilling the duty in practice are often misunderstood. Section 75 requires that a designated public authority, shall in carrying out its functions relating to Northern Ireland have due regard to the need to promote equality of opportunity between the nine equality groups. In order to fulfil this duty, public authorities must comply with both:

- the definition of 'due regard'; and
- the requirements of Schedule 9 Northern Ireland Act 1998 ('Schedule 9').

Each of these provide more detailed information to inform public authorities how to apply section 75.

Definition of 'Due Regard'

'Due regard' is considered by the Equality Commission for Northern Ireland ('ECNI') to mean that 'the weight given by a public authority to the need to promote equality of opportunity is proportionate to the relevance of the particular duty to any function of the public authority.'⁹ For a similar public sector race equality duty in Great Britain,¹⁰ Dyson LJ defined due regard as:

'the regard that is appropriate in all the circumstances. These include on the one hand the importance of the areas of life of the members of the disadvantaged racial group that are affected by the inequality of opportunity and the extent of the inequality; and on the other hand, such countervailing factors as are relevant to the function which the decision-maker is performing'.¹¹

⁸ Evidence of the many inequalities in our society is included in the audits of inequalities carried out by public authorities designated under s75.

⁹ ECNI, S75: A Guide for Public Authorities, April 2010, page 27.

¹⁰ S71 Race Relations Act 1976, as amended; now superseded by s149 Equality Act 2010.

¹¹ Baker [2008] EWCA Civ 141.

The above definition has also been applied to the meaning of 'due regard' in section 75 by our local High Court in 2011.¹² In that case, the Lord Chief Justice Sir Declan Morgan, referred to other caselaw¹³ which summarised some key principles for having 'due regard'.

These principles were confirmed and added to by the English Court of Appeal,¹⁴ as follows:

- the duty must be fulfilled before and at the time of the decision, not as justification after the fact;
- the duty is to have due regard, not to achieve results or to refer in terms to the duty (although it is good practice to keep an adequate record);
- the test of whether a decision maker has had due regard is a test of the substance of the matter, not of mere form or box-ticking,
- the duty must be performed with vigour and with an open mind;
- it is a continuing duty; and
- it is a non-delegable duty.

Requirements of Schedule 9

In addition to the need to have 'due regard', Schedule 9 provides more detailed information on how section 75 is applied. It provides that an equality 'scheme shall show how the public authority proposes to fulfil the duties imposed by s75.'¹⁵ It specifies that each equality scheme must contain (among others):

- arrangements for assessing and consulting on the impact on equality of opportunity of policies adopted or proposed;
- arrangements for monitoring and publishing any adverse impact of such policies;
- arrangements for publishing the results of the assessments of equality impacts, including: measures which might mitigate any adverse impact; and
- alternative policies which might better achieve the promotion of equality of opportunity; and
- arrangements for ensuring and assessing public access to information and services.

¹²'Tasers', JR1 Application [2011] NIQB 5

¹³ Brown [2008] EWHC 3158.

¹⁴ Domb [2009] EWCA Civ 941

¹⁵ Para 4(1) Schedule 9 Northern Ireland Act 1998.

Schedule 9 also requires that, in making any decision with respect to a policy adopted or proposed to be adopted by it, a public authority shall take into account the assessment and consultation carried out in relation to equality impacts. It sets out procedures for complaints and investigations to ensure that public authorities do not breach any of the commitments included in their equality schemes.

In addition, Schedule 9 sets out that the equality schemes must conform to any guidelines as to form or content which are issued by ECNI with the approval of the Secretary of State ('Guidelines'). The ECNI's 2010 guide¹⁶ on section 75 also contains information on how to assess a policy's impact on equality of opportunity, namely through screening and systematic analysis in equality impact assessments ('EQIA'). The ECNI has released practical guidance on EQIAs.¹⁷ This guidance sets out the steps required to carry out an EQIA and underlines the importance of:

- the consideration of available data and research;
- the use of that information to decide whether there is (likely to be) a differential impact on a relevant group;
- consideration of measures which might mitigate any adverse impact and
- alternative policies which might better achieve the promotion of equality of opportunity; and
- taking into account all of the above when making a decision with respect to the proposed policy.

In order for a public authority to have 'due regard' within the meaning of section 75, it must consider available data. Otherwise, it would merely be guessing as to what impacts a proposed policy might have on the nine equality groups. It is clear from Schedule 9 that a public authority must 'assess' (not guess) the impacts, and so sufficient data must be required. Furthermore, the equality scheme recognises that, without sufficient information, it is not possible to conduct meaningful analysis of the impact of its policies on all of the nine categories.¹⁸ In its practical guidance on EQIAs, the ECNI states that 'relevant, reliable and up to date information is essential' to carrying out an EQIA.¹⁹

Schedule 9 states that 'in making any decision with respect to a policy adopted or proposed to be adopted by it, a public authority shall take into account the assessment and consultation carried out' in relation to the policy's equality impacts. This is repeated in the ECNI Guidelines on section 75, which also states that 'this is

¹⁶ See <http://www.equalityni.org/archive/pdf/S75GuideforPublicAuthoritiesApril2010.pdf>.

¹⁷ See <http://www.equalityni.org/archive/pdf/PracticalGuidanceEQIA0205.pdf>.

¹⁸ See point 4.8 of the DFP equality scheme <http://www.dfpni.gov.uk/final-equality-scheme-april-2011.pdf>

¹⁹ ECNI practical guidance on EQIAs 2005, at page 11.

an important commitment and failure to comply with it could lead to complaints of failure to comply with a scheme' The ECNI practical guidance on EQIAs also makes it clear that 'the public authority shall take into account any EQIA and consultation carried out in relation to the policy' and states that it is 'essential that the public authority fully complies with this commitment.'²⁰

The practical guidance on EQIAs clarifies that 'it is not sufficient merely to take equality into account; it must be accorded considerable weight. That is, the need to promote equality of opportunity must be given due regard or weight in accordance with Section 75.

'At this point all available information should be combined in a decision or decisions on an existing or proposed policy or policies, together with the rationale for that decision. Decision-making documentation must show how the impact of alternative policies and mitigation, and that the implications for other policies associated with the EQIA were considered.'²¹

These requirements are echoed in the many judgments that require the equality duty to be carried out 'with vigour and an open mind' in order for 'due regard' to be satisfied. Therefore, in order to comply with section 75 it is necessary for the public authority to consider its EQIA of the draft budget at the earliest stage possible.

²⁰ ECNI practical guidance on EQIAs 2005 page 44

²¹ ECNI practical guidance on EQIAs 2005 page 45

Appendix 2

List of Member Organisations of the Equality Coalition

Action Mental Health

Age NI

An Teasmann TSG

An Munia Tober

Artsekta

Aware Defeat Depression

Banardos

Belfast Islamic Centre

Business and Professional Women

Committee on the Administration of Justice

Cara- Friend

Carers NI

Children in Crossfire

Children in Northern Ireland

Childrens Law Centre

Chinese Welfare Association

Citizens Advice Bureau

City Bridges

Coiste na nIarchimí

Community Development and Health Network

Confederation of Community Groups

Conference of Religious of Ireland- Northern Ireland

Community Organisations of the South Tyrone Area

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Corrymeela Community
Craigavon Travellers Support Committee
Disability Action
Falls Community Council
Fermanagh Women's Network
Ginger Bread
Housing Rights Service
Human Rights Consortium
Include Youth
Inclusive Mobility and Transport Advisory Committee
Irish Congress of Trade Unions
Law Centre NI
HERE NI
Local Initiatives for Needy Communities
Mencap
Mindwise
National Children's Bureau
National Energy Action
NEET Strategy Forum
Northern Ireland Association for Mental Health
North West Community Network
Northern Ireland Anti Poverty Network
Northern Ireland Association for the Care and Resettlement of Offenders
Northern Ireland Council for Ethnic Minorities
Northern Ireland Community for Refugees and Asylum Seekers

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Northern Ireland Community Voluntary Association

Northern Ireland Hospice

Northern Ireland Gay Rights Association

Northern Ireland Public Service Alliance

Northern Ireland Rural Women's Network

Northern Ireland Women's European Platform

NSPCC

NUS-USI Students

Omagh Women's Area Network

Opportunity Youth

Parents Advice Centre

Participation and the Practice of Rights Project

Pobal

Princes Trust

Pat Finucane Centre

Public Interest Litigation Support Project

Queens University Human Rights Centre

Queer Space

Rainbow Project

Relate NI

Rural Community Network

Sai-Pak Chinese Community Association

Save the Children

Social Economy Agency

South Tyrone Empowerment Programme

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The National Deaf Children's Society
Training for Women Network
UNISON
Upper Springfield Development Trust
Victim Support NI
Women into Politics
Women's Aid Federation Northern Ireland
Women's Resource and Development Agency
Women's Support Network
Women's Tec
Youth Net
174 Trust

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