

CAJ's Submission no. S.281

CAJ's response to the Department of Agriculture and Rural Development's consultation on its Draft Budget 2011-15

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.

Minister Michelle Gildrew MLA

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Cc Bob Collins and Evelyn Collins, Equality Commission NI

16 February 2010

Dear Minister

Budget 2011-15: Inadequate assessment of equality impacts

Thank you for your letter of 27 January 2011 and for further explaining the Department of Agriculture and Rural Development's ('DARD') approach to its equality duties in relation to the budget. Thank you also for the letter sent by Gary Mitchell, which includes the High Level Impact Assessments ('HLIA') on DARD's proposed savings and capital and revenue spending measures.

We recognise the efforts that have been made by DARD to comply with the equality duties of s75 Northern Ireland Act 1998 ('s75'). However, certain aspects of DARD's impact assessments require attention.

First, where negative equality impacts were found, DARD has not taken action to address these before the consultation period. We acknowledge that DARD intends to screen all proposals in future budget exercises. We also understand that it intends to carry out Equality Impact Assessments ('EQIA') where initial HLIAs and screening '*signals the need for further work*'. However, these EQIAs would be too late to feed in to the current budget consultation process.

Secondly, without access to the underlying HLIA and screening forms, DARD's draft budget 2011-15 consultation document contains very little information on the equality assessments undertaken. In this regard, the summary of equality impacts in the consultation form does not wholly

correspond to the detail in the underlying HLIA and screening forms. We would like to consider the above points in more detail.

Insufficient impact assessment

Several proposals' HLIAs and screening documents found potentially negative impacts, and yet it is not clear what action will be taken in response to these conclusions. At the very least, it is incumbent on DARD to mitigate adverse impacts and consider any alternative policies that might better achieve the promotion of equality of opportunity (para 9(1) Schedule 9 Northern Ireland Act 1998).

DARD's budget 2011-15 consultation document states that where '*initial assessment signals the need for further work, we will undertake Equality Impact Assessment (EQIA)*' (at para 32). This has been confirmed in Gary Mitchell's letter of 27 January. However, it is not clear to which policies these will relate (particularly as not all HLIAs showing negative impact seem to have an associated screening form).

Further, these more thorough impact assessments will be too late to allow full consideration of the equality impacts of the DARD budget within the consultation period. Indeed, it is not clear when these EQIAs will be carried out, only that they will be published 'in due course'.

In this regard, the various proposals included in the budget inter-relate, given the need to balance the books. As such, each proposal cannot be considered in isolation, particularly after the draft budget has been approved. At that stage, changes to existing proposals would have an impact on those spending and/or savings plans that have already been implemented, and so cannot be changed. We understand that this would inhibit DARD's ability to amend its proposals later in the budget process.

As we have stated in our previous correspondence, caselaw in GB¹ has underlined the need for advance consideration of the promotion of equality of opportunity², as opposed to 'rearguard action'.³ The courts have warned that

¹ 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.

² R (Elias) v Secretary of State for Defence [2006] WLR 321, [2006] EWCA Civ 1293.

³ R (BAPF and Another) v Sec of State for the Home Department and for Health, supra.

'it is unlawful to adopt a policy contingent on an assessment,'⁴ and that such an equality impact assessment would amount to 'policy-based evidence rather than evidence-based policy.'⁵

Accordingly, DARD should have carried out EQIAs, where appropriate, in advance of the draft budget consultation period. This would allow responses to take account of any equality impacts found, with reference to more thorough underlying evidence.

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. This correspondence is not merely for the purpose of administrative argument. It is to focus on the process of making crucial decisions over spending for the next four years; decisions which will impact on people who already live in difficult circumstances.

The importance of these impacts is also reflected in international human rights treaties.⁶ 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.'*⁷

Insufficient information

DARD's main consultation document currently contains insufficient information to comment fully on its draft budget 2011-15, as the potential equality impacts

⁴ R (Kaur and Shah) v London Borough of Ealing [2008] EWHC 2062, at para 36.

⁵ Ibid, at para 37.

⁶ Such as the International Covenant on Economic, Social and Cultural Rights, ratified by the UK in 1976.

⁷ 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>.

are unclear. We acknowledge the work undertaken in DARD's HLIAs and screening forms, and also the intention to carry out EQIAs of some proposals in the future. However, none of these documents is currently available in the main consultation document.

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,⁸ *Criterion 3* (entitled *Clarity of scope and impact*) states that '[c]onsultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals'.⁹

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.*'¹⁰ Also, in common law, the need for sufficient information in any consultation process is set out in the "Sedley Requirements"¹¹, 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.

The overall equality assessment included at Appendix 4 of DARD's draft budget 2011-15 concludes that spending and savings proposals had a largely neutral or positive impact on s75 groups (at sections 1, 3 and 4). However, as is clear from the HLIAs and screening forms sent in response to our Freedom of Information request, several proposals do in fact have potential negative

⁸ Department for Business, Enterprise and Regulatory Reform, July 2008, found at <http://www.berr.gov.uk/files/file47158.pdf>.

⁹ *Ibid* at page 9.

¹⁰ 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>.

¹¹ *R v London Borough of Barnet, ex parte B* [1994] ELR 357, 372G.

equality impacts, such as those relating to young farmers, redundancy and the poverty action bid.

We recommend that DARD includes in the main consultation document a more thorough summary of impacts found and evidence used, or reference to the underlying HLIAs and screening forms, including the best way to access them. This would help ensure that the public has sufficient information to respond to DARD's budget consultation in a meaningful way.

Given the points above, we repeat our request that DARD carry out thorough, evidence- based impact assessments in relation to the promotion of equality of opportunity, as required by s75, before consulting upon or approving its draft budget 2011-15.

We also request that any future consultation run for at least the 12 week period recommended in OFMDFM,¹² BERR¹³ and ECNI¹⁴ Guidance.

Yours sincerely



Mike Ritchie

Director

¹² 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>.

¹³ Department for Business, Enterprise and Regulatory Reform, July 2008, *supra*. Criterion 2 states that '*Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.*'

¹⁴ Section 75 of the Northern Ireland Act 1998 A Guide for Public Authorities, April 2010, *supra*. At page 38, it states '*[w]e recommend that the consultation period lasts for a minimum of twelve weeks.*'