

## CAJ's Submission no. S287

### CAJ's response to the Department of the Environment'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 Edwin Poots MLA

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cc Bob Collins and Evelyn Collins, Equality Commission NI

16 February 2011

Dear Minister

**Budget 2011-15: Inadequate assessment of equality impacts**

Thank you for the letter of 21 January 2011, sent by your private secretary, and for further explaining the Department of the Environment's ('DOE') approach to its equality duties in relation to the budget. Thank you also for sending us a copy of your High level Impact Assessment ('HLIA') on DOE's spending and savings proposals.

However, despite access to these documents, we feel unable to respond in a meaningful way to DOE's budget 2011-15 consultation exercise. The HLIA sent to us in response to our Freedom of Information request, and the 'Equality Impact Assessment and HLIA' Annexed on to the draft budget 2011-15 consultation document do not fulfil the equality duties set out in s75 Northern Ireland Act 1998 ('s75'). Further, DOE's draft budget 2011-15 and its associated HLIA provide insufficient information on the likely equality impacts to scrutinise the proposals in full.

Insufficient s75 impact assessment

We strongly believe that DOE has not discharged its s75 duties. Your private secretary's letter maintains that '*the completion of [the HLIA] standard form*

*ensures compliance with the s75 requirements*'. However, as set out in our previous correspondence, HLIAs do not fulfil the s75 duties. This has been confirmed by the Chief Executive of the ECNI. Indeed, impact assessment cannot be completed by merely ticking boxes, as appears to be the case in DOE's HLIA. The courts have stated that *'the duty must be exercised in substance, with rigour and with an open mind.'*<sup>1</sup>

Further, the HLIA summary annexed to the DOE draft budget 2011-15 consultation document claims in its title to be an *'Equality Impact Assessment and High Level Impact Assessment'*. However, it does not contain all of the seven elements required in an equality impact assessment ('EQIA'), further to the ECNI Procedure for Conduct of Equality Impact Assessments,<sup>2</sup> including the consideration of available data and research. This also runs contrary to the clear statement in DOE's equality scheme that it *'will carry out impact assessments in accordance with the procedure set out in Annex 1 of the Guidelines'* (at para 3.10).

We note the advice in the HLIA standard forms that *'[w]here the topic under consideration is a policy, it MUST be subject to equality screening and, if necessary, impact assessment at a later stage'* (at note 2). However, this would be too late to allow full consideration of the equality impacts of the DOE budget.

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 DOE's ability to amend its proposals later in the budget process.

As such, we believe it is essential for DOE to assess equality impacts, as required by s75, before the draft budget is approved. Furthermore, we cannot respond fully to the consultation process without access to this information and its underlying evidence. As we have stated in our previous

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<sup>1</sup> Brown v SOS for Defence [2006] IRLR 934, at para 92.

<sup>2</sup> ECNI Procedure for Conduct of Equality Impact Assessments, Annex 1 to Guidelines on s75, found at <http://www.equalityni.org/archive/pdf/GuidetoStatutoryDuties0205.pdf>.

correspondence, caselaw in GB<sup>3</sup> has underlined the need for advance consideration of the promotion of equality of opportunity<sup>4</sup>, as opposed to 'rearguard action'.<sup>5</sup> The courts have warned that '*it is unlawful to adopt a policy contingent on an assessment*,<sup>6</sup> and that such an equality impact assessment would amount to '*policy-based evidence rather than evidence-based policy*.'<sup>7</sup>

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.<sup>8</sup> 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*.<sup>9</sup>

### Insufficient information

Unfortunately, we have received insufficient information to comment on DOE's draft budget 2011-15, as the potential equality impacts are unclear. In order to engage in meaningful consultation, consultees must be provided with

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<sup>3</sup> 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.

<sup>4</sup> R (Elias) v Secretary of State for Defence [2006] WLR 321, [2006] EWCA Civ 1293.

<sup>5</sup> R (BAPI and Another) v Sec of State for the Home Department and for Health, supra.

<sup>6</sup> R (Kaur and Shah) v London Borough of Ealing [2008] EWHC 2062, at para 36.

<sup>7</sup> Ibid, at para 37.

<sup>8</sup> Such as the International Covenant on Economic, Social and Cultural Rights, ratified by the UK in 1976.

<sup>9</sup> 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>.

sufficient information to understand, scrutinise and comment on the policies proposed. In the BERR Code of Practice on Consultation,<sup>10</sup> *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’.<sup>11</sup>

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’.<sup>12</sup> Also, in common law, the need for sufficient information in any consultation process is set out in the “Sedley Requirements”<sup>13</sup>, 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. In the HLIA received, scarce information is provided on the equality impacts, or the underlying evidence on which conclusions were reached. Indeed, every single HLIA form has exactly the same results, even though they relate to 24 different policies. Each HLIA found neutral equality impacts, no further adjustments which could increase equality of opportunity and no impacts on those suffering social disadvantage. Each of these conclusions was reached without reference to any evidence base.

Given that each of the 24 HLIA forms address very different policies, it is surprising that identical results have been found for each assessment. We remind you that merely ticking boxes is not sufficient to discharge the s75

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<sup>10</sup> Department for Business, Enterprise and Regulatory Reform, July 2008, found at <http://www.berr.gov.uk/files/file47158.pdf>.

<sup>11</sup> Ibid at page 9.

<sup>12</sup> 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>.

<sup>13</sup> R v London Borough of Barnet, ex parte B [1994] ELR 357, 372G.

duty. The courts have found that an *'equality impact assessment should be an integral part of the formation of a proposed policy, not justification for its adoption... a record will not aid those authorities guilty of treating advance assessment as a mere exercise in the formulaic machinery. The process of assessment is not satisfied by ticking boxes.'*<sup>14</sup>

Furthermore, not all policies listed in the DOE draft budget 2011-15 consultation document have been included in the HLIA. An obvious omission is the plastic bag levy. As stated above, those policies which were subject to the HLIA found neutral impacts without any reference to an evidence base. Particularly given the extent of cuts suffered, some of these policies could, potentially, have equality impacts.<sup>15</sup> Indeed, many are within the areas highlighted in DOE's equality scheme as having potential equality impacts.<sup>16</sup> Ultimately, we cannot know if there are equality impacts, and what these may be, without further information.

Therefore, we are not confident that all of the proposals in DOE's draft budget have neutral equality impacts, as stated in the HLIA. Without further details or an evidence base, the HLIA does not provide sufficient information to respond to DOE's budget consultation in a meaningful way.

Given the points above, we repeat our request that DOE 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.

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<sup>14</sup> R (Kaur and Shah) v London Borough of Ealing [2008] EWHC 2062, at paras 24 and 25.

<sup>15</sup> Such as Local Government reform bid (Annex H), general grant to District Councils (Annex O), reduction in road safety grants (Annex U) and reduction in planned recruitment (Annex V).

<sup>16</sup> <http://www.doeni.gov.uk/doeequalityscheme.pdf>, at pages 13, 15 and 16.

We also request that any future consultation run for at least the 12 week period recommended in OFMDFM,<sup>17</sup> BERR<sup>18</sup> and ECNI<sup>19</sup> Guidance.

We look forward to hearing from you.

Yours sincerely



Mike Ritchie

Director

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<sup>17</sup> 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>.

<sup>18</sup> 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.*’

<sup>19</sup> 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.*’