

CAJ's Submission no. S.289

CAJ's response to the Department for Regional 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 Conor Murphy MLA

Department for Regional Development
Clarence Court
10-18 Adelaide Street
Belfast
BT2 8GB
Northern Ireland

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 your letter of 31 January 2011 and for further explaining the Department for Regional Development's ('DRD') approach to its equality duties in relation to the budget. Thank you also for sending us a copy of your High Level Impact Assessments ('HLIA') on DRD's spending proposals.

We recognise the efforts that have been made by DRD to comply with the equality duties of by s75 Northern Ireland Act 1998 ('s75'). However, despite this effort, the DRD draft budget 2011-15 consultation document contains insufficient information on the equality assessments undertaken to scrutinise the proposals. Further, the timing of the proposed EQIA does not allow its findings to inform public input to the budget 2011-15 consultation exercise. Therefore, it is difficult to respond to DRD's consultation on its draft budget 2011-15 in a meaningful way.

As a result, we have not been able to incorporate the findings of DRD's draft EQIA into this consultation response. We suggest that DRD extend its draft budget 2011-15 consultation deadline to allow full consideration of the equality impacts.

Late publication of s75 EQIA

DRD's budget 2011-15 consultation document states that an EQIA will be published shortly (at Appendix 2) and your letter of 31 January 2011 states that '*[t]he Draft Budget 2011-15 Spending and Savings proposals and the associated draft EQIA have now issued for consultation until 16 February.*' However, we did not find the draft EQIA on the DRD website until 15 February 2011, which only left one day to incorporate it into our consultation response (alongside the 12 other budget consultations).

Although we recognise DRD's efforts in carrying out an EQIA of its draft budget, its publication is too late to inform the entire consultation 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 '*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

Also, at 3.5 of DRD's equality scheme, it states that '*[t]he Department will carry out impact assessments in accordance with the procedure set out in Annex 1 of the Equality Commission Guidelines.*' That procedure requires public authorities to check that sufficient time has been given for consultation⁶ and '*in making any decision with respect to a policy adopted or proposed to be adopted by it, the public authority shall take into account any Equality Impact Assessment and consultation carried out in relation to the policy (Schedule 9 paragraph 9 (2)).*'⁷ DRD has not allowed sufficient time for consultation on the EQIA or, consequently, for that consultation to be taken into account in deciding whether to adopt its draft budget.

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

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

⁵ Ibid, at para 37.

⁶ ECNI Procedure for Conduct of Equality Impact Assessments, Annex 1 to Guidelines on s75, at page 42, found at <http://www.equalityni.org/archive/pdf/GuidetoStatutoryDuties0205.pdf>.

⁷ Ibid, at page 44.

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 DRD's ability to amend its proposals later in the budget process. As such, we believe it is essential for DRD to extend the deadline for its consultation, to allow consultees to consider more fully the equality impacts and their 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.⁸ 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.*⁹

Insufficient information

DRD's main consultation document contains insufficient information to comment on its draft budget 2011-15, as the potential equality impacts are unclear. We acknowledge the work undertaken in DRD's HLIAs of its spending proposals, and also the EQIA of DRD's savings proposals.

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

⁹ 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>.

However, the HLIAs are not available in the main consultation document and the EQIA was published too late to inform the consultation process.

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,¹⁰ *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'.¹¹

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.*'¹² Also, in common law, the need for sufficient information in any consultation process is set out in the "Sedley Requirements"¹³, 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 recommend that DRD includes in the main consultation document, either a summary of impacts found and evidence used, or reference to the underlying screening forms and the best way to access them. This would help ensure that the public has sufficient information to respond to DRD's budget consultation in a meaningful way.

Given the points above, we request that DRD extend the draft budget 2011-15 consultation deadline to allow for review of its EQIA. It is only with recourse to such a thorough, evidence-based assessment that we can fully understand

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

¹¹ *Ibid* at page 9.

¹² 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>.

¹³ *R v London Borough of Barnet, ex parte B* [1994] ELR 357, 372G.

the actual impacts of DRD's draft budget on the promotion of equality of opportunity.

We also request that any future consultation run for at least the 12 week period recommended in OFMDFM,¹⁴ BERR¹⁵ and ECNI¹⁶ Guidance.

We look forward to hearing from you.

Yours sincerely



Mike Ritchie

Director

¹⁴ 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>.

¹⁵ 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.*'

¹⁶ 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*'.