



## **Section 75 and the Northern Ireland Budget**

### **The Equality Commission's Advice to the Department of Finance**

#### **The aim of this advice**

This advice note aims to provide practical guidance to the Department of Finance ('the Department') as to how the duties under section 75 of the Northern Ireland Act 1998, and the Department's associated equality scheme arrangements, apply when the Department is carrying out its functions in respect of the setting of the Northern Ireland Budget and of the management of the 'in-year' monitoring process.

The issuance of the advice note follows a review of the Northern Ireland Budget process, and of how section 75 applies to it, that was undertaken by the Equality Commission in 2024. The Equality Commission is grateful for the engagement of the Department in the course of that review and for clarification of the Department's functions in that regard.

#### **Note: The role of the other departments**

Although this guidance is not directed to the other Northern Ireland departments, it still has relevance to their respective functions in the setting of the Northern Ireland Budget, in particular to their role in providing the Department of Finance with relevant, adequate and timely equality assessments regarding the indicative budget proposals for their departments as part of the Budget setting process.

The other Northern Ireland departments, as section 75 duty-holders in respect of their performance of their own functions, will be obliged to comply with section 75 regarding the information they provide to the Department at this stage. That matter falls outside the scope of this advice note, but it is enough to say that in compiling that information the departments are obliged to have due regard to the need to

promote equality of opportunity and regard to the desirability of promoting good relations.

### **Recommended preliminary reading and viewing**

This is not an elementary or introductory guide to the general legal principles and concepts that underpin section 75, and it is presumed that Departmental officials are familiar with these already.

If officials are not familiar with these principles and concepts, or need a reminder, we strongly encourage them to read our associated short guide that outlines and discusses these matters.

- [Short guide to the public sector equality and disability duties \[2015\]](#)

Further written guidance may be found in the [section 75 pages](#) of our website.

We also encourage officials to view the following videos on important aspects of the section 75 duties that we have produced-

- [Equality Screening](#) (20 mins, 15 secs)
- [Equality Impact Assessments](#) (13 mins, 48 secs)

### **The Department's functions in respect of the setting of the Northern Ireland Budget**

The Department's most significant function for the purposes of its duties under section 75 in respect of the setting of the Northern Ireland Budget under the Northern Ireland Act 1998 is-

**Advising and making recommendations to the Minister on the allocation of the Northern Ireland Budget across the Northern Ireland departments.**

The Equality Commission understands that this involves an information gathering exercise by the Department, which sees each of the other departments, including the Department of Finance, provided with an opening baseline, and a request to identify pressures above that baseline position. Departments may also be asked to detail the impact of various percentage reductions. In either case, departments are asked to provide detail of the potential impact between people in the section 75 categories. Having considered the information provided by departments, officials provide advice to the Minister, including on funding envelopes for each department. This takes into account the relative priority of pressures identified by departments and the potential impact of funding not being provided.

It is recognised that the Department is not the decision-maker in respect of setting the Northern Ireland Budget. Those decision-makers are the Executive Committee in respect of the draft Budget, and the Northern Ireland Assembly in respect of the final Budget and associated Budget Act.

It is further recognised that the Department's advice and recommendations may not be accepted in full, or at all, by the Minister, the Executive Committee or the Assembly.

The Executive Committee and Assembly are not, however, designated public authorities subject to the section 75 duties. Conversely, the Department is, and the performance of its advisory function is subject to section 75.

The Equality Commission, therefore, considers that the Department has a function in connection with the Northern Ireland budget that requires it, as part of its duties under section 75 of the Northern Ireland Act 1998, to conduct screening, and where indicated, equality impact assessment of the advice and recommendations that it will provide to the Minister of Finance. In doing so, this will require the Department to consider if there are any cumulative impacts that may result from the implementation of its Budget proposals between people in the section 75 categories - see section 6 for advice on considering the cumulative impact of policies.

Further advice in respect of this specific function is given in sections 4-7 of this advice note.

### In-year monitoring

The Department's functions in respect of the Northern Ireland Budget also include:

#### **Managing the in-year monitoring process and monitoring NI public expenditure throughout the financial year.**

This function also engages section 75, albeit at a different time. Advice in respect of this specific function is given in section 8 of this advice note.

### **Proposed policies and the application of equality scheme arrangements**

The Equality Commission considers that the **advice and recommendations** which the Department gives its Minister on the allocation of the Northern Ireland Budget across the Northern Ireland departments for a particular year constitutes a **proposed policy** (as defined in the Department's equality scheme) that the Department has decided to advance.

Consequently, that proposed policy is subject to the arrangements for assessing the equality impacts of proposed policies that are outlined in Chapter 4 of the Department's equality scheme (see in particular paragraphs 4.1 to 4.3), i.e. the arrangements known as '**screening**' and '**equality impact assessment**' ('EQIA').

The Department's need to comply with section 75 and its associated equality scheme arrangements when providing advice to the Minister does not prevent difficult decisions being taken (e.g. making proposals, or offering advice, that may subsequently lead to cuts to services), nor does it preclude making proposals, or offering advice, which may adversely affect one group (e.g. women, disabled people, children) more severely than a relevant comparator group (men, people who are not disabled, adults).

The section 75 duties are aimed at influencing decision-makers (i.e. in this case the Departmental officials who will decide what advice to offer to the Minister) and

require that a process of consideration be undertaken before decisions are taken which could have an impact on the promotion of equality of opportunity or good relations.

It is for this purpose that the equality scheme arrangements exist. They provide the necessary methods for ensuring that such decisions are taken in compliance with section 75. Equality scheme arrangements are not a mere box-ticking exercise. Conducted conscientiously, with rigour and with an open mind, they should enable decision-makers to show:

- that their decisions were properly informed by an assessment of the impacts they have, or are likely to have, between people in the relevant section 75 categories,
- that *the need to promote equality of opportunity and the desirability of promoting good relations* were properly taken into account through the consideration of mitigating measures, or alternative policies that would not have those adverse impacts, or that may even have positive impacts,
- that this was done before those decisions were made, and that
- the decision-making process was evidenced, transparent and accountable.

## **Practical guidance on applying equality scheme arrangements**

### **1. Train decision-makers and their support staff**

It is not sufficient for decision-makers (i.e. in this case the Departmental officials who decide what advice to offer to the Minister) to have a vague or general awareness of equality issues. When making decisions, they must think specifically about the statutory goals that underpin section 75, i.e. *the need to promote equality of opportunity and the desirability of promoting good relations*. They need to understand what terms such as “*due regard*” and “*regard*” and “*equality of opportunity*” entail.

Furthermore, decision-makers and/or their support staff need to understand various practical matters concerning data collection or monitoring, data analysis, and consultations, to enable them to properly complete and understand screening templates and EQIA reports as required.

They will need to be trained on these matters. Equality schemes typically make commitments in respect of this provision – the Department’s arrangements are outlined in Chapter 5 of its equality scheme. However, training takes time, and should, when possible, be delivered to relevant persons well in advance of when they will need to apply it.

## **2. Remember that the duties are non-delegable**

This means that the main duties *to have due regard to the need to promote equality of opportunity* and *regard to the desirability of promoting good relations* lie upon the relevant decision-maker (i.e. in this case the Departmental officials who decide what advice to offer to the Minister).

The decision-maker cannot delegate, or pass on, the fulfilment of the Department’s section 75 duties to their support staff or other advisors.

This ties-in with the need to make properly informed decisions. What matters is what information the decision-makers took into account and what they knew at the time they made their decision. This places a duty on support staff and advisors to ensure that decision-makers are accurately and properly informed. It has been noted judicially that-

*“[Councillors] are heavily reliant on officers for advice in taking these decisions. That makes it doubly important for officers not simply to tell members what they want to hear but to be rigorous in both inquiring and reporting to them.”*

***R (Domb) –v- London Borough of Hammersmith & Fulham [2009] EWCA***

***Civ 941***

This principle applies not just to councillors, but to all decision-makers who are section 75 duty-holders.

Decision-makers are not necessarily expected to conduct screening exercises or EQIAs themselves – in many cases that may be done by support staff – but are required to pay conscientious attention to the findings of any such exercises before making their final budgetary decisions.

### **3. Begin screening and EQIAs as early as possible**

The section 75 duties in respect of a budgetary (or any other) decision must be complied with **before** that decision is made and not merely as a ‘rearguard action’ following a concluded decision. As equality scheme arrangements, such as screening and EQIAs (and any associated consultation exercises), will take time to complete, then it would be prudent to commence these as early as possible. Make allowance for this when planning the budgetary process and in setting timeframes.

It is recognised that the development of budget proposals is a process that will take a period of time. As a matter of good practice, the Equality Commission recommends that the screening process in respect of budget proposals commence as soon as those proposals have crystallised.

### **4. Take reasonable steps to make enquiries**

As has been noted, before making decisions section 75 requires decision-makers to be properly informed by an assessment of the impacts that their decisions will have, or are likely to have, between people in the relevant section 75 categories.

Decision-makers are, therefore, under a duty to take reasonable steps to make enquiries about the consequences, or potential consequences, of their decisions.

The UK Supreme Court has noted:

*43. The meaning of the term “due regard” in the PSED [public sector equality duty] was considered in Bridges. The Court of Appeal said at para 181:*

*“We acknowledge that what is required by the PSED is dependent on the context and does not require the impossible. It requires the taking of reasonable steps to make enquiries about what may not yet be known to a public authority about the potential impact of a proposed decision or policy on people with the relevant characteristics, in particular for present purposes race and sex.”*

**R (Marouf) –v- Secretary of State for the Home Department [2023]  
UKSC 23**

It is, however, recognised that such enquiries may not provide sufficient information to enable a comprehensive assessment of all potential impacts of a proposed draft Budget to be conducted before a decision is made. This is a consequence of the stage in the process at which advice on the draft Budget is provided by the Department.

The absence of information or assessments which cannot reasonably be obtained or made in the circumstances does not prevent the Department from proceeding to finalise its proposals for the draft Budget (i.e. its advice to the Minister). As the Northern Ireland Court of Appeal has noted-

*[Section] 75 also contemplates, implicitly, that scientifically accurate evidence of the future equality effects of a policy or legislative proposal may not be available. This is consonant with the obligation being one of means and not result.*

**Stach –v- Department for Communities & Department for Work & Pensions [2020] NICA 4**

## **5. Assessing impacts – giving the appropriate level of consideration**

The Equality Commission recognises that decision making in respect of the Northern Ireland Budget is a matter of substantial complexity and is undertaken by way of a process comprising a number of stages.



In this regard it is noted that the draft Budget is subject to consultation once agreed, and to screening / equality impact assessment by departments in respect of their own proposals for spending their allocations.

This being so, it is to be borne in mind that:

*What is 'due regard' in one case will not necessarily be 'due regard' in another. It will vary, perhaps widely, according to circumstances: for example, the subject-matter of the decision being made, the timing of that decision, its place in a sequence of decision-making to which it belongs, the period for which it will be in effect, the nature and scale of its potential consequences, and so forth. When the decision comes at an early stage in a series of decisions, and will not fix once and for all the impacts on people with protected characteristics, the level of assessment required to qualify as 'due regard' is likely to be less demanding than if the decision is final or permanent. This may especially be so if the decision is also experimental, and is itself conducive to a more robust assessment of equality impacts later in the process.*

**R (Sheakh) -v- Lambeth London Borough Council [2022] EWCA Civ 457**  
at [56], cited by the Supreme Court in **R (Marouf) -v- Secretary of State for the Home Department [2023] UKSC 23** at [45]

As a general observation, when assessing the likely impacts of any policy decision, including a budgetary one, the regard due to *the need to promote equality of opportunity* and *the desirability of promoting good relations* will vary from case to case depending on all of the relevant circumstances, including the stage that the decision-making process has reached.

The amount of regard to the *equality of opportunity* and *good relations* goals that is owed in any particular case is a function of **relevance** and **proportionality**.

As a rule-of-thumb, the greater the scale of a proposed policy or decision (e.g. the closure of, or the making of significant cuts in funding to, a much used public service) and the greater its relevance to the promotion of equality of opportunity or good

relations (e.g. the service benefits many vulnerable people in relation to their health, welfare, education or employment opportunities), then the greater the degree of consideration of the likely impacts, and of any potential mitigating measures that might be taken to avoid or reduce them, which will be needed to comply with the duty.

*“In a case where large numbers of vulnerable people, many of whom fall within one or more of the protected groups, are affected, the due regard necessary is very high.”*

**R (Hajrula) -v- London Councils [2011] EWHC 448 (Admin)**

In the case of setting budgets, and especially if the proposals are likely to lead to cuts in the funding of important services, a high level of consideration is likely to be needed.

As noted above, the Department has a function of providing advice to the Minister of Finance, including by advancing a proposed policy identifying recommended funding envelopes for each department, as part of the process by which a draft Budget is laid before the Assembly by the Minister, and the Department must have due regard to the need to promote equality of opportunity in carrying out that function.

The discharge of that duty to have due regard when carrying out the function of advising the Minister in respect of the draft Budget will require an understanding on the part of the Department of the impact of its draft budget proposals. This will include the cumulative impact of those proposals within and across departments, where those can reasonably be identified – see below.

This means that it will not be enough for the Department to collate information from the other Northern Ireland departments and associated equality impacts assessments, and merely to pass that information to the Minister without consideration or comment.

In carrying out its function, the Department will have the benefit of information received in the course of its information gathering exercise from each department

about pressures, priorities and potential impacts. It will be for the Department to assess that information, recognising that the impact of proposals may be cumulative.

In the event that it considers other or further information is required in order that it is adequately informed, the Department will be required to seek such information.

In this way the Department's advice to the Minister will be informed by its discharge of its due regard duty. Relevant documentation generated in this process should be made available to the Minister for consideration.

## **6. Considering the cumulative impacts of policies**

Many policies do not operate in isolation and their effects may interact with others either to alleviate the disadvantages experienced by vulnerable people, or, conversely, to compound those disadvantages.

For example, increases in bus or rail fares will affect all service users, but may have a disproportionate adverse impact on disabled people who cannot travel by other means for reasons related to their disabilities. That impact on them may be exacerbated by cuts made simultaneously to disability benefits which may reduce the income of those disabled people.

This kind of interaction between policies is more likely to be seen where proposed budgetary decisions would have implications for and across a number of policy areas.

Given this, it will be necessary for the Department when making its proposals to its Minister in respect of the Northern Ireland Budget for a particular year to make itself aware, in so far as it is reasonably able to do so at this stage of the process, of the interaction of those proposed policies and of their potential (negative or positive) cumulative impacts.

The exercises of screening and equality impact assessment, as outlined in the Department's equality scheme, are flexible enough to encompass the assessment of such cumulative impacts, where such impacts can reasonably be identified. It is not

necessary for the exercise undertaken to be expressly named as ‘cumulative screenings’ or ‘cumulative equality impact assessments’.

If evidence of the likely cumulative impacts of budget proposals is apparent, then it must be considered.

### **7. What if the consequences of a budget are not apparent immediately?**

The consequences of a proposed budgetary decision (i.e. the advice that the Department may offer its Minister), should it take effect, may be apparent immediately. For example, it may expressly and unequivocally propose that a particular public service will close, or that its funding will be reduced significantly.

Where this is so, screening / equality impact assessment should be undertaken in respect of that proposal.

Where the consequences of a budget proposal cannot immediately be identified with sufficient clarity, even with reasonable steps taken to make enquiries, a detailed assessment of those consequences clearly cannot yet be made. In such circumstances, it will suffice for the Department to bring the potential for adverse impact to the attention of the Minister.

However, a detailed assessment of impact may wait until such time as the consequences of the proposal crystallise, at which time it will be the responsibility of the implementing department (i.e. Health or Education, as the case may be) to conduct the associated impact assessment. This will be a requirement of the section 75 duty on the relevant department.

In respect of a budget setting context, it has been noted judicially that-

*90. Careful consideration of the factual context is necessary in any public law challenge. It is always necessary to carefully examine the precise nature and extent of a decision and the surrounding circumstances. If the budget decision under challenge is sufficiently far removed from a final decision affecting the provision of an element of a service, then there is nothing wrong in principle in*

*not undertaking a detailed assessment of the impact until specific policies have been formulated. The distance may be because the budget is sufficiently high level or, as in the case of a [medium term financial plan], not set in stone. Indeed, when setting a high level national budget it would often (but not invariably) be difficult to compile a sufficiently detailed consultation document or undertake a focussed impact assessment (although as conceded in **Fawcett** it may be both possible and necessary for certain elements). Also if, as in the **JG and MB -v- Lancashire** case, the door remains open, following the future result of a targeted consultation, to avoid any cut and thus any reduction in services at all, and/or to gain funding from another service, again there is nothing wrong in principle in not undertaking a detailed assessment of the impact until the result and impact of the consultation is known. However, due regard under the PSED (and if necessary consultation) ... must be essential preliminaries to any significant, sufficiently focussed, and in financial terms apparently rigid, decision to impose a reduction in spending, even if taken as part of the setting of "a budget".*

**R (KE & others) –v- Bristol City Council [2018] EWHC 2103 (Admin)**

### **8. Remember that the duties are continuing – ‘in-year’ monitoring**

Finally, even though there is an onus on the Department, as on all section 75 duty-holders, to comply with the section 75 duty before and at the time that they make important decisions, they are also obliged to continue having due regard to *the need to promote equality of opportunity* and regard to *the desirability of promoting good relations* afterwards.

This is especially important in a budgetary context where changes in financial circumstances may allow for “in-year” adjustments to departmental or programme budgets, which in turn may allow the adverse impacts of earlier decisions to be mitigated.

This is particularly relevant to the Department in respect of the further function that it has in respect of the Northern Ireland Budget, specifically-

**Managing the in-year monitoring process and monitoring NI public expenditure throughout the financial year.**

The continuing element of the section 75 duty obliges the Department to monitor the ongoing adverse impacts of the decisions that were made previously, and to continue to consider how they might mitigate those impacts should subsequent improvements in financial circumstances allow for it. This will inform the Department in the provision of any advice given in connection with this aspect of the budget process.

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**Further information and advice**

For further information and advice, please contact the Equality Commission's **Advice and Compliance Division** at-

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