



Budgets and Section 75 – A Short Guide

The Northern Ireland Budget

This short guide does **NOT** provide guidance in respect of the setting of the Northern Ireland Budget by the Northern Ireland Executive and the Northern Ireland Assembly. That subject is addressed in a separate advice note to the Department of Finance.

The aim of this guide

This short guide aims to provide practical guidance as to how the duties under section 75 of the Northern Ireland Act 1998, and their associated equality scheme arrangements, apply to budgetary processes and decisions; that is, to the setting and managing of organisational budgets by public authorities that are duty-holders under section 75.

It replaces an earlier guide on this subject that the Equality Commission issued in June 2015.

Who is this guide aimed at?

The guide is aimed at public authorities that are duty-holders under section 75 and who set and manage their own organisational budgets. That includes a wide range of bodies such as: district councils, the Education Authority and other educational bodies, the health and social care trusts, the PSNI, the NIHE and the housing associations, and many other non-governmental and independent public bodies.

Although it does not apply to the making of the Northern Ireland Budget, the short guide **does apply** to each of the individual **Northern Ireland government departments**, such as the Department of Health, the Department for Communities, and the Department of Finance, **when they are managing their own departmental**

budgets; i.e. the budgets that have been allocated to them by the Northern Ireland Executive and the Northern Ireland Assembly through the annual Budget Acts.

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 you are familiar with these already.

If you are not familiar with these principles and concepts, or if you need a reminder, we strongly encourage you 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 you 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)

Section 75 applies to budgetary processes and decisions

There is no doubt that the setting and management of organisational budgets is a **function** that is carried-out by public authorities, either under discretionary powers and/or under statutory duties. As such it is a function that is subject to section 75 where the relevant decision-making body is a section 75 duty-holder.

The significance of this function to the goals of section 75, *the need to promote equality of opportunity and the desirability of promoting good relations*, and to the need to comply with section 75 cannot be overstated. This is especially so where a budgetary proposal, if adopted and implemented, will result in the withdrawal of funding to public services. It has been noted judicially that-

“Even where the context of decision making is financial resources in a tight budget, that does not excuse compliance with the [public sector equality duties] and indeed there is much to be said for the proposition that even in straightened times the need for clear, well-informed decision making when assessing the impacts on less advantaged members of society is as great, if not greater.”

**R (Rahman) –v- Birmingham City Council [2011] EWHC 944 (Admin),
paragraph 46**

Equality scheme arrangements

The Equality Commission considers that budgetary proposals constitute **proposed policies** for the purposes of the arrangements for assessing the equality impacts of proposed policies that are outlined in every public authority’s equality scheme, i.e. the arrangements known as **‘screening’** and **‘equality impact assessment’** (‘EQIA’).

The need to comply with section 75, and the associated equality scheme arrangements, when making budgetary decisions does not prevent difficult decisions being taken (e.g. making cuts to services), nor does it preclude decisions 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 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 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 – check your own organisation’s equality scheme for information relevant to you. However, training takes time, and should, when possible, be delivered to the 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 (e.g. in a district council that may be the councillors for most budgetary decisions (perhaps the most important ones), and in an independent non-governmental body it may be the board members).

The decision-maker cannot delegate, or pass on, the fulfilment of their organisation'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 your 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 budget

to be conducted before the final decision is made. This is a consequence of the stage in the process at which relevant decisions are made.

The absence of information or assessments which cannot reasonably be obtained or made in the circumstances does not prevent a public authority from proceeding to finalise its budgetary decision. 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

As a general observation, when assessing the likely impacts of any policy decision, including a budgetary one, the regard due 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.

This means that such budgetary proposals are more likely to need assessment by way of EQIAs (and public consultation), rather than through screening alone.

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 relevant decision-maker 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 a public authority's equality scheme, are flexible enough to encompass the assessments of such cumulative impacts, where they exist and can reasonably be identified, without the need to name them expressly 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, 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 decision-maker to consider the potential for adverse impact.

However, a detailed assessment of impact may wait until such time as the consequences of the proposal or decision crystallises.

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

Finally, even though there is an onus on decision-makers 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.

The continuing element of the section 75 duty obliges public authorities to monitor the ongoing adverse impacts of the decisions that they made previously, and to continue to consider how they might mitigate those impacts should subsequent improvements in financial circumstances allow for it.

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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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