



Northern Ireland
Assembly

Ad Hoc Committee on Conformity with
Equality Requirements, Welfare Reform Bill

OFFICIAL REPORT (Hansard)

Equality Commission Briefing

3 December 2012

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Trevor Lunn (Chairperson)
Mr Robin Swann (Deputy Chairperson)
Ms Paula Bradley
Mr Mickey Brady
Mr Tom Elliott
Ms Bronwyn McGahan
Lord Morrow (Acting Chairperson)
Mr Alastair Ross
Mr Peter Weir

Also in attendance:

Ms Megan Fearon
Mr Conall McDevitt

Witnesses:

Mrs Evelyn Collins	Equality Commission for Northern Ireland
Ms Lisa King	Equality Commission for Northern Ireland
Mr Michael Wardlow	Equality Commission for Northern Ireland

The Chairperson: I welcome Michael Wardlow, chief commissioner; Evelyn Collins, chief executive; and Lisa King, director of policy. Michael, you can give us a presentation. I will say at the outset that I will have to disappear for a few minutes to ask a question in the House. If you do not ask the question, you get taken away to the tower, apparently. My deputy is not here at the minute, so we could have a difficult situation. We will see how it goes.

Mr Michael Wardlow (Equality Commission for Northern Ireland): We will behave ourselves. Thank you, Chair, for the opportunity to brief you. I thought that we could follow the procedures of other Committees that we have been at. I will say a few words, and I will then ask my colleague Evelyn to speak to some of the issues around the equality impact assessment (EQIA). We thought that it would be most useful, given that there have been briefings to other colleagues, if you want to ask some questions, and we can maybe have some discussion.

We welcome the opportunity to help you in this important work to consider whether the provisions of the Bill are in conformity with the requirements of equality and observance of human rights. Our colleagues from the Human Rights Commission will follow us today. You are aware that the commission has given evidence to the Committee for Social Development on, I think, two occasions.

Today, as you said, Evelyn, our chief executive, and Lisa King, who is the director of advice and compliance, are here.

The commission is an independent public body that was established under the Northern Ireland Act 1998. We have powers and duties deriving from the legislation on fair employment, sex discrimination, equal pay, race relations, sexual orientation, disability and age. It is quite a wide-ranging brief. Our remit also includes overseeing the statutory duties on public authorities to promote equality of opportunity and good relations under section 75 of the Northern Ireland Act 1998 and the positive disability duties there, too. We have also been designated to act as an independent mechanism jointly with the Human Rights Commission to promote awareness of and monitor the implementation of the United Nations Convention on the Rights of Persons with Disabilities with regard to the Government's obligations here in Northern Ireland.

As you will see from the information that you have, we provided a response last December to the Department for Social Development's (DSD) public consultation on the equality impact assessment for the Welfare Reform Bill. That response provided comments on some of the broad policy aims of the Welfare Reform Bill, particularly in the context of the implications in an economic downturn and time of austerity and the extent to which the impact assessment was carried out in a manner consistent with the Equality Commission's recommendations. The commission indicated that it agreed with the overall aim to seek to make social security fairer, more affordable and better equipped to deal with poverty and welfare dependency. So, we are in congress with you there. However, we indicated that there was a real need to properly understand, consider and respond in an appropriate manner to the impacts of the proposed reforms, and we have advised policymakers not only of those requirements to take into account the potential impact on equality of opportunity but of the criticality of doing so, particularly for marginalised groups in Northern Ireland. We raised concerns about the quality of the original impact assessment published by the Department and the final one published earlier in May this year. We have engaged with the Department to seek assurances that it will properly assess and address the potential impacts from this time on. I will ask Evelyn to address some of the issues that we raised in the equality impact assessment and give some reflections on the Bill.

Mrs Evelyn Collins (Equality Commission for Northern Ireland): As Michael said, we have particular duties regarding the equality and good relations duties that public authorities are under in the Northern Ireland Act. Schedule 9 is very explicit about our role in respect of the duties. It includes keeping under review the effectiveness of the duties, offering advice to public authorities and others in connection with the duties and carrying out a range of functions that are specified in that schedule, including approving — *[Inaudible due to mobile phone interference.]* — equality screening and initiating investigations where a complaint has been made or where we have a belief that a public authority might have failed to comply with its approved equality scheme.

You will be aware that public authorities are under an obligation to pay due regard to the need to promote equality of opportunity and to pay regard to the desirability of that. They need to promote good relations. As part of that, they are obliged to have arrangements in place for assessing and consulting on the likely impact of policies on the promotion of equality of opportunity and for publishing the results of such assessments as well as for monitoring in an ongoing way any adverse impact of policies that are adopted on the promotion of equality of opportunity.

In making any decision with respect to a policy, a public authority is obliged to take into account the impact assessment and the consultation carried out in relation to that policy. Under the terms of the Northern Ireland Act and our guidance, public authorities are also obliged to have arrangements in place to publish the results of the equality impact assessment and, in so doing, to state the aims of the policy to which the assessment relates and to give details of any consideration that is given by the authority to measures that might mitigate any adverse impact of that policy on the promotion of equality of opportunity and, indeed, any alternative policies that might better achieve the promotion of equality of opportunity.

As Michael said, we, along with many others, responded at the end of last year to the Department for Social Development's equality impact assessment public consultation on the Welfare Reform Bill. We acknowledged in our response that the structure of the document followed the majority of the steps recommended for equality impact assessments that we advise in our practical guidance, but, as the chief commissioner said, we expressed considerable concerns regarding the way that some of the steps had been completed. As I said, the aim of an equality impact assessment is to identify any potential adverse impacts that are likely to arise from a policy and to take steps to address these.

Our particular concern about the DSD equality impact assessment as consulted on is that the paper provided neither substantive analysis of the proposals or any real consideration of the potential adverse impacts. Although we noted that the consultation document recognised and endorsed the concept of parity in respect of the social security system, it did not consider any of the proposed changes in the context of Northern Ireland policy and proposals that could not be said to be subject to parity. We used in our response the example that although there is an obligation on local authorities in Great Britain to ensure the provision of childcare, there is not the same obligation here in Northern Ireland.

We also had concerns about the quality of the data that was considered by the Department. It was extremely limited, and there were areas where there was no analysis at all. We expressed concern about the high number of assumptions, expectations and vague possibilities being put forward as mitigating measures without any evidence to support these.

The Chairperson: Sorry, but I have to pause proceedings for a moment. I have to disappear to go to the Chamber, and the Committee will have to elect a temporary Chair, because the deputy Chair is not here.

Mrs Collins: It has nothing to do with anything that I said?

The Chairperson: No, I was totally fascinated. Mr McGuinness will have my life if I do not turn up.

(The Acting Chairperson [Lord Morrow] in the Chair)

The Acting Chairperson: Some people are getting their own back on me in some way. Anyway, we will carry on with the meeting. Please continue.

Mrs Collins: Thank you very much. It is great to see consensus breaking out in the Committee already.

In our consultation response at the end of last year, in addition to expressing concerns about the equality impact assessment, we took the opportunity to make a number of points about concerns that we had about some of the reform proposals from an equality perspective. For example, in relation to universal credit, we were concerned about the proposal to pay the new benefit to the main earner as opposed to women in their caring role. We had concerns about conditionality and real issues about whether people with children under five are available to work, which is restricted in Northern Ireland by the lack of available childcare. We also raised concerns about the housing benefit cap and a range of concerns about disability benefit reforms, including the eligibility.

We advised the Department at that stage to take into account the consultation on the equality impacts and said that it should assist it in ensuring that the most vulnerable in our society would not be affected to an unfair extent by the welfare reform proposals.

We remained concerned about the quality of what was called the completed equality impact assessment, which was published in May this year. Those concerns related to gaps in data, the assessment of adverse impacts and the lack of evidence of consideration of mitigating measures and alternative policies, which is at the heart of the EQIA process. Committee members will be aware that, at the time of publishing the completed EQIA, the Minister said that he would continue to look at the possible equality impacts of the Bill as it moved forward and that work was ongoing in his Department to analyse the impact of policies across the various section 75 groups.

We wrote to the permanent secretary of the Department at that time to advise that we had concerns outstanding and sought a meeting to discuss them. We met the permanent secretary in August, and we have had assurances that the Department considers the equality impact assessment to be a living document, that additional data has been received from HMRC, which should improve the Department's ability to identify potential adverse impacts, and that the Department intends to update the equality impact assessment as soon as the analysis is complete. We have also been assured, in the context of the Bill largely being an enabling one, that the proposals for regulations will be screened in or out on the basis of differential impact to assess the need or otherwise for an equality impact assessment of the various regulations.

I read in the Hansard report of last week's meeting that you asked departmental officials for copies of the correspondence between us. I trust that you have now seen our exchanges.

The Acting Chairperson: I do not think that we got that.

Mrs Collins: I have no difficulty with making it available to you, and I am sure that DSD will not either. I presumed that you had seen that.

We also provided the Social Development Committee with a briefing on equality issues and queries on 30 October. A copy of that briefing on equality issues and queries, as we saw them, arising from specific clauses in the Bill is in members' packs. I trust that that will be helpful to your deliberations, and I am happy to discuss that further.

As a commission, we will continue to monitor developments on the progress of equality impact assessing the proposals in the Bill and ensure the effective application of the duties by the Department. We are happy to provide this Committee with any further information we can to assist you in your important work.

Mr Wardlow: My colleague has just outlined the chronology of events for people who were not so familiar with it. This is something that we have been consistently working on, and we are giving you an assurance that we are — *[Inaudible due to mobile phone interference.]*

Mr Weir: Thank you for your evidence. I was listening carefully to what you said. To some extent, the concerns that you raise break down into two categories. The first category is the equality impact side of the process. From what you have said, is it fair to say that although there have been concerns raised, there is great work in progress? There seem to be discussions ongoing between yourselves and DSD to improve that and cover that point.

The second area relates to the contents side of the legislation from an equality point of view. I note that one of the major things you flag up is the payment to the primary carer and the issue of split payments. That is a very serious concern. As I understand it, the Minister made an announcement, and that is a key implementation issue, and as far as we are aware, it is starting to be catered for.

In a range of other things, it talks about seeking clarification or determining what measures are needed, etc. Are the other concerns principally issues that will ultimately be decided one way or the other through the subordinate legislation and the implementation side of it, rather than on the direct wording of the Bill?

(The Chairperson [Mr Lunn] in the Chair)

Mrs Collins: To go back to your initial comment: you are right, we have raised both queries about the application of the requirements of the equality duties in respect of the equality impact assessment. They are important ones. They are not just about process; they are important because they should help to inform policy.

Mr Weir: I was just trying to use a short answer. I did not want to minimise it.

Mrs Collins: In addition, we raised some policy concerns. We have identified payment to the primary carer as being an issue where there has been an adjustment to meet the concerns raised in the Northern Ireland context. It is one of the areas where, as we understand it, the effect of the parity principle means maintaining a single system of social security, but not necessarily one that is applied in exactly the same way here. In fact, we said that the Minister demonstrated that potential when he introduced the Bill to the House not only about the payment to the primary carer provision that is set out in clause 7 of the Bill, but about a number of other points that he made that had been agreed with Lord Freud. Those issues related to payment of universal credit on a twice-monthly basis and the housing cost element of universal credit going directly to landlords rather than to the consumer. We thought that those issues showed responsiveness to issues of concern in Northern Ireland. There is scope to make sure that concerns raised in Northern Ireland can be addressed.

Mr Wardlow: Your other point was around the process. My colleague Evelyn explained that we have been observing and commenting since the start, and the regulations will have the detail. We are saying that part of the EQIA is yet to be completed. When the HMRC material comes in —

Mr Weir: The phrase that you used was that it was a living document.

Mr Wardlow: Absolutely. It is organic. When the HMRC data is assimilated and there is further information, we will be able to see that at the same time.

Mr Weir: Is there any indication when the additional data from HMRC will be processed or is that not 100% clear?

Mrs Collins: Work is ongoing on it. We were in communication with the Department very recently, and it is trying to finalise what it is doing. It also has access to a more recent family resources survey that it is looking at. So, I do not have a clear timescale, but it is our understanding that it is working to try to ensure that it has the best use of the best available data, but it is an area where we will want to continue to be in close contact with the Department.

Mr McDevitt: I will go through your submission. Clause 7 is the basis of awards for universal credit. I declare an interest as the parent of a young lady in receipt of disability living allowance (DLA). You said that you remain concerned that the Bill does not identify the negative impact on women with respect to the payment of universal credit. That remains your position?

Mrs Collins: That was our position in respect of the original consultation on the equality impact assessment. We welcome in the Bill that there has been a shift from automatic payment to the main earner, which is what our concern had been at the end of last year, to payment to the primary carer. That is more likely to be targeted effectively in our view, but we recognise that that is usually the mother of the children.

Mr McDevitt: So, you do not have the view now that the Bill has a negative impact on women?

Mrs Collins: I think that is a very wide question. We were concerned about the quality of the available information and that the impact assessment did not fully look at the impacts on women and, indeed, some of the other categories.

Mr McDevitt: What is your opinion right now? In your opinion, right now, given the information available to you, does the Bill have a negative impact on women?

Mrs Collins: There are some areas where we have queries, and those have been set out for you to see. As much of the detail will be contained in regulations, it is hard to say in a very black and white way that there are negative impacts or whether mitigating measures will be brought to bear. It is an area that we and the Committee, I am sure, will want to continue to scrutinise.

Mr McDevitt: So, is your answer that you cannot say?

Mrs Collins: The answer is that it is difficult to say in the absence of the details of the regulations.

Ms Lisa King (Equality Commission for Northern Ireland): I just want to add to that our procedural understanding of how the EQIA should be set out. The Department looked at each of the individual policy proposals, their data and the inequalities. It is that upon which we comment. It is, therefore, very difficult to make an overarching assessment of the Bill as a whole. You would anticipate the Department looking at each of the main provisions, in and of itself, for potential inequalities. Therefore, the data would be there to support the potential adverse impact. It works through on that basis. There may be areas of the Bill where we have commented on one bit, but that does not necessarily represent the entirety of what the potential impact on women could be.

Mr McDevitt: That, as I understand it, presents the Committee with a dilemma. This Committee has a duty to look at the Bill as a whole and consider the equality and human rights implications of the Bill. The Equality Commission is the body we look to for advice about whether the Bill is discriminatory or whether aspects of the Bill do not meet the equality standards set out in law in this jurisdiction. We have a problem. I need to know whether you feel that the Bill as a whole, or aspects of the Bill, are discriminatory, or potentially discriminatory, against any of the section 75 groups.

Mrs Collins: The role of the Equality Commission is to provide advice to public authorities and others about the application of the duties. We have raised concerns about the application of the equality duties in respect of the equality impact assessment and the implications of some of the main

provisions of the proposals and, now, the Bill. Giving an overall assessment of whether the legislation is discriminatory is not straightforward because of the nature of the legislation itself — it is an enabling framework — and because we have not seen the detail of some of the regulations. The Department is under an obligation to pay due regard to the need to promote equality of opportunity. That does not necessarily dictate one particular overarching policy outcome. What the Department has to do is ensure that the equality impacts are taken into account in developing the legislation. Where there are adverse impacts, the Department must take steps to mitigate those.

Mr Wardlow: It is extremely hard. I know that very often it is hard. Even when I came here nine months ago, I was trying hard to get my head around what the groups in section 75 are. There is a perception that section 75 is a policy. It is not; it is a framework. It places a duty on statutory and public bodies to take it into consideration when they are framing policy. What we have expressed here are some concerns in some areas. We have been engaged with DSD, which will be the policy holder. We have got some assurances that, as this rolls out, each of the regulations will be taken across section 75. We will have the opportunity to comment, at that point, if an EQIA comes out. However, it is impossible to say whether this is discriminatory. It is not that we do not want to say, but it is just not possible, I am afraid, Conall, given the fact that this is enabling legislation and the detail will be in the regulations as they roll out. What we have said is that we have some concerns in some areas, and will continue to address those until there is a sense coming out the other end in the regulations of what this will actually mean to a person receiving the benefit, for example.

The Chairperson: We have other questioners. Before we move to them, let me say that Conall is, I think, on the right track here. You seem to have difficulty in giving us a yes or no answer. Bear in mind that the regulations and subordinate legislation will come later. Presumably they will be subject to the same screening and scrutiny as the Bill. We are charged with looking at the Bill in terms of human rights and equality issues. Is there any aspect of the Bill, as it stands, that you would have major concerns about and that might be in breach of the appropriate legislation?

Mrs Collins: We set those concerns out in our paper for the Committee for Social Development. I understand that you have copies. We set out some areas in which we had queries and questions. Going back to what the chief commissioner said, the application of the equality duty requires public authorities to take equality considerations into account. We need evidence from the Department that that is ongoing, and so do you. *[Inaudible due to mobile phone interference.]* However, that does not dictate a particular policy conclusion. It is a matter for the legislature to decide on the policy conclusions. On the face of it, we have set out queries around potential impacts on people with disabilities and in respect of housing, lone parent conditionality, and so on. However, as to the application of the duties, we need evidence from the Department that it is considering the equality implications properly and, where it says that there are adverse impacts, considering measures to mitigate those. To go back to what Michael said, it is not possible to say whether the whole Bill is discriminatory. That is not the purpose of the section 75 legislation. Section 75 legislation is a mainstreaming tool, if that helps.

Mr Wardlow: As I said to Conall, it would be very easy if we could say yes or no. If this had a measurable forensic outcome, we could say that. In other words, if this was a policy that should provide x, y and z, we could say that. The problem is that it is not. It says that we should present a policy in a context of the section 75 requirements on a public body. Our responsibility is to look at whether DSD, when framing the legislation and putting it forward to the Assembly, took into consideration the duties that it has under section 75. That is partly done by looking at what DSD did, and through the EQIA and engagement. We are saying that there are some areas of concern. The regulations allow you in the Assembly, and others, to make sure that some of those issues, and the concerns raised by other colleagues, are taken into consideration before the regulations of the enabling legislation roll out. That is where we will be able to see whether a plus b equals c. At the minute, this is high-level, enabling legislation. We have expressed concerns about some elements of the legislation. In a sense, that should help to form the views on what the regulations should take into consideration. We are giving you some high-level indicators of — *[Inaudible due to mobile phone interference.]*

The Chairperson: I am a simple person. *[Inaudible due to mobile phone interference.]* — as that stands at the moment, because you have raised concerns. Is there nothing you could identify to show where there is potentially a breach?

Mr Wardlow: It is not so much about a breach. We have identified the concerns that we believe we have with the Bill. Is that right?

Mrs Collins: Yes.

Mr Wardlow: I am just not sure that you understand what our role is and what we can and cannot do.

The Chairperson: I am taking your role to be that of expert witness.

Mr Wardlow: Absolutely.

The Chairperson: I do not mean to be offensive.

Mr Wardlow: No, no; not at all.

The Chairperson: We know each other too well for that. I think that we are entitled to a bit more definition from you on what we have so far. There has been a lot of talk about procedure and worries down the line about regulations, or the fact that the Department may or may not have adopted the correct procedure in bringing the Bill to this point. We are here to look at the legislation as it stands at this point and eventually make a recommendation to the Assembly as to whether we think the legislation is fit for purpose in terms of human rights and equality. You are not helping us.

Mrs Collins: I am sorry that we are not helping. We set out the requirements on the Department in relation to its equality duties to try to provide a framework in which DSD has to work under section 75 obligations. We set out, quite publicly, the concerns we raised about that. In our paper to the Social Development Committee, we set out concerns and queries about some equality issues on the face of the Bill. For example, on disability, we have indicated that we have some queries about whether the removal of the direct link between receipt of disability premium in addition to income support, and so on, should be considered and why the standard disability premium addition to income support is not considered in this clause. There are lots of questions about passported benefits for people with disabilities, such as the operation of the blue badge system. So, we have a lot of detailed queries and concerns about the Bill and the potential impact on equality groups. I was hoping that that would also help you in looking at the Bill.

As regards breach of the legislation, as you termed it, we can investigate a Department or any public authority where there is a belief that it may have breached the commitments of its equality scheme. That option is open to the commission, but it is different from saying that something is discriminatory, if that makes sense.

The Chairperson: We will move to members.

Mr Brady: Thanks very much for your presentation. Essentially, the Department came up with two EQIAs and appears to have fallen short on both of them. We are told that it is an organic, living document. Without wanting to put you on the spot, are you confident that the Department will come up with one that actually addresses the issues?

The other problem, which applies to all of us, is that this is enabling legislation. As far as we know, the regulations in Britain will not be available until sometime this month. The regulations here will probably not be available until February. Presumably, a lot of the stuff in the regulations here will be predicated on the regulations that come out in Britain. If it is enabling legislation, it is incumbent on us all to get it right because the regulations flow from that.

You have addressed the whole issue around disability fairly clearly. One of the issues is the reduction in housing benefit. People who have disabilities may have to move out of accommodation that has been adapted for a particular purpose — *[Inaudible due to mobile phone interference.]* It seems to me that, if the Department is doing an EQIA, that information is in front of them. That is easily addressed, but the Department has not addressed it. At one stage — *[Inaudible due to mobile phone interference.]* If the enabling legislation is flawed, it is reasonable to assume that everything that flows from it will be flawed. I suppose that you have not been able to — *[Inaudible due to mobile phone interference.]* The difficulty is in respect of the regulation and guidance. How the sanctions are implemented will depend a lot on the guidance that is given to social security staff, for instance. That will also flow from the regulations, and there is an inherent difficulty there. There are issues that you have addressed to some degree that the Department should have addressed. That has not changed. Nothing has changed in the fabric of the Bill. Those are issues that need to be addressed. I am not

sure that you are putting forward ideas of how they might be addressed as much as flagging up those issues. We need to look at how those issues are addressed to make sure that the Bill is compliant with equality and human rights legislation.

All the groups that came before the Social Development Committee, including yourselves and the Human Rights Commission, expressed grave concerns about the Bill. Nobody is arguing with the underlying principle that it is better to work than to be on benefit and that universal credit is a good idea in theory; although whether it will ever work is another issue. However, there is an inherent difficulty in that because of the lack of regulations and guidance. That is why it is important that we get the enabling legislation right.

Mrs Collins: That is right. Indeed, that is why we looked through the Bill when it was published to identify areas where we thought there may be issues. You mentioned the one about housing benefit and underoccupancy. We raised queries about whether any assessments for housing benefit will include or take into account the needs of tenants who are disabled or separated from their partners and may require additional rooms to accommodate carers, for example, and/or children, and we queried whether assessments for housing benefit will fully take into account the tenant's ability to move to new accommodation, given the particular patterns of social housing in Northern Ireland. So, we have raised concrete issues about the Bill, and they are important.

Going back to the equality impact assessment, the Department needs to understand that not everything is on a level playing field. Even if it is desirable that people should be working, the fact is that that is more difficult for some people than others, either because of their disability or, with lone parents, because of the lack of childcare.

Mr Brady: Can I raise a point on the issue of lone parents and the lack of childcare? The age is five, but children here start school at four. I presume that they will be at school at the age of four, but that is going down to three and then a one-year-old. So, that will magnify the problem rather than solve it, because of the lack of affordable childcare or, in some cases, any childcare. That will present huge issues as the legislation kicks in because it will go right down to a one-year-old child, and the parent will then be subsumed into the employment market — or the lack of employment market might be a better way of putting it.

Mr Wardlow: If it were possible for us to give a yes or no answer to the question of whether this is compliant, it would be a wonderful world. However, the way that our responsibilities and the legislation are framed does not allow you to do that. It is not that we do not want to but that we cannot. We said that we had concerns about the process of the EQIA, and there is still work to be done on that. We had some concerns about the Bill, and we got into some fairly detailed issues. It was not just high-level things. We expressed some concern about the detail of the legislation and made some suggestions. It is not as if this was a light touch. We have said that there is a way to go, and there was a way to go on the equality impact assessment. We made some recommendations and suggestions and said that we cannot take our eye off the regulations because that is where the detail will be. Before that happens, we have some detail in here that we think will be helpful when DSD and this Committee are looking towards developing the regulations. That is probably as far as we can go on this.

Mr Brady: If you have flagged up concerns — obviously you have — it would not be unreasonable for the Department to address those concerns and come back to you on how they might be addressed in compliance with equality legislation.

Mr Wardlow: With some of this, we do not know what the impact will be, so we do not know what the Department might say about mitigation. Some of this is at that level already, and, with other things, we are waiting for that to happen.

Mr Brady: It would be reasonable to assume that the regulations here will not be drastically different from the ones in Britain.

Mr Wardlow: Probably not.

Mr Brady: That is taken as a given. So, presumably by this month, the Department will have some idea of how the variations in the context of the regulations may impact further down the road.

Mr Wardlow: That is very reasonable.

Mr Swann: Apologies for missing the start of your presentation, folks. Has DSD actioned any of your recommendations in the EQIA?

Mrs Collins: It has certainly given us a commitment that it is looking at the data that it has and trying to go back over the equality impact assessment and do it again. It had taken on board some comments in between the original EQIA and the one that it published in April, but, in our view, that was insufficient. As I said in the presentation, we have been in correspondence and discussion with the Department about it, and one of its initial reasons for not having done a better equality impact assessment was the lack of data. The Department now has additional data that it thinks will be helpful in assessing the impact.

Mr Swann: Do you have a timeline for when you expect that to be completed?

Mrs Collins: The Department is working on it at the moment. I do not have a precise timescale.

Mr Swann: Could you estimate it?

Mrs Collins: It is ongoing. We said that it is important to do it so that the impacts of the regulations can be taken into account. I hope that it will be in early course.

Mr Swann: I want to go back to the point you made earlier about housing and access for people with disabilities and other section 75 groups. With regard to housing and the sanctions employed, is there anything in the Bill that would increase the likelihood of destitution for certain groups?

Mrs Collins: I think that there has to be a concern about the penalties for non-compliance with various elements, so that people, certainly disabled people and older people, are not unduly penalised for failing to meet requirements, and there certainly has to be concern about the most vulnerable in society.

Ms King: I have just one specific point in relation to the information presented, and it is about the issue of occupancy, which, I understand, has been of particular interest to Assembly Members.

The information contained in the impact assessment still does not take into account the nature of the housing stock and the availability of smaller-sized units with one or two bedrooms. Information is presented in ministerial statements about the housing strategy, but the final EQIA did not take into account, or did not present, any information about the likely impact, given the particular circumstances of our housing stock and social housing stock. So, there are concerns about the talk of promoting greater movement within the housing market. It is presented in those terms, rather than identifying the potential risks among certain groups of people. The occupancy requirements, and, therefore, the reduction in housing benefit, may have the impact that you are talking about.

Mr Elliott: Thank you for the presentation. I suppose that it is a wee bit difficult to get to the bottom of where we want to go as a Committee. I have just been looking at why the Committee was set up, namely to consider:

"whether the provisions of the Welfare Reform Bill are in conformity with the requirements for equality and observance of human rights."

If we cannot get an answer from the expert witnesses — as you call them, Chair — it will be very difficult for those of us who are not experts to make that decision or call. So I put that down as a marker. It is going to be very difficult for us to make a firm decision on this as a Committee.

On top of that, I will put into my own words how I think you have explained your role. You are not here to give an opinion or make a decision as to whether the legislation is competent in equality issues. Rather, you are here to say whether the outworkings of that legislation will impact on any of the section 75 groups. Is that reasonable?

Mr Wardlow: There is a wee bit more, because we have a duty with regard to the EQIA as well. I think that Lord Morrow identified that. In fact, there are two issues here. One is the Bill itself; the other is the process of the EQIA. We have a role in both. We have expressed concerns about the

process of the EQIA, and we have taken up quite a bit of time on that. We have also expressed some concerns about the detail of the Bill. So, we are here to say, from our perspective, here are our concerns about the process and here is what we remain concerned about in the Bill itself.

Mr Elliott: You have raised concerns. Setting aside the EQIA for a moment and just dealing with the Bill, if any of the concerns that you have raised are not addressed in the Bill, do you believe that they would give rise to equality issues in the outworkings of that legislation around the section 75 issues?

Mrs Collins: As I said earlier, section 75 is a policy mainstreaming tool. It does not accord individuals with rights. That is a distinction that may be helpful to the Committee. If there was a provision of the Bill that remained either unclear or had the potential to be discriminatory, we would have to look at the anti-discrimination legislation framework to see whether there would be a cause of action under it. There is different application across the anti-discrimination framework as to whether social security as a public function is covered at all. That is a whole other set of issues. The framework —

Mr Elliott: You are actually suggesting that this may not be covered by equality legislation?

Mrs Collins: Social security as a public function is covered by race and disability legislation but not by the gender equality legislation. For example, all of it is covered by the disability discrimination legislation. The Department, in developing its proposals, is covered by the duties under section 75 of the Northern Ireland Act, and that is where the mainstream equality duty kicks in.

Mr Elliott: It gets even more confusing as time goes on. If parts of it are not covered and some parts are covered, are you saying that only the parts that are covered in general terms can be looked at by the Equality Commission, or can you look at the entire process?

Mrs Collins: There are two separate processes. One is our role in advising public authorities and others on the effective application of the duties, and we also have powers and duties under separate anti-discrimination statutes. Social security is a public function for the purposes of most of the anti-discrimination statutes but not, for example, gender.

Mr Elliott: What are issues that fall outside it, such as gender, covered by? Are they covered in any respect?

Mrs Collins: In the social security legislation?

Mr Elliott: Yes.

Mrs Collins: Not under anti-discrimination legislation on the grounds of gender. There are two separate sets of provisions. There are the separate anti-discrimination pieces of legislation — disability, race, gender, fair employment, and so on — and there are the equality duties that are contained in the Northern Ireland Act.

Mr Elliott: Some members have asked about the equality impact assessment. You said that it is work in progress, and I accept that. Either in that or in the wider legislative issues, do you get the distinct impression that a lot of the issues that you have raised will be positively addressed at the end of the legislative process, either through primary legislation or through regulations?

Mrs Collins: It would be wrong to say that we have had a substantive discussion at senior level on the substantive issues that we have raised about the Bill, which came out a few weeks ago. I do not think that we can say that we are confident or not. We have a heavy reliance on Committees such as yours to raise these issues through the legislative process.

Mr Elliott: I do not even know whether it is possible, but, if a number of the regulations could be read at the same time as the primary legislation, would that be helpful in giving a better determination?

Mr Wardlow: That is the point at the minute. This all seems like a labyrinth, and you are right, because equality legislation is not sitting in one place under one enabling Act, for example. Therefore, as my colleague said, there are the duties that DSD has in framing the legislation with all of the equality impacts. If and when the legislation becomes law, other anti-discrimination legislation will apply, from race legislation to disability legislation. As Evelyn said, gender does not fall within that.

That is just out there. Obviously, the more detail that we have about what this looks like and the impact that it will have, the more there is the possibility of talking about mitigation. The more we know what falls out with parity, for example, which we have in Northern Ireland and which you as a legislative Assembly have some authority over, the more that we can say where changes can be made. For example, there have already been two cases where the Minister has made some changes. It means that things can happen, but you need to know what the outworking will be before you can make those specific recommendations. That is the problem. The problem is that there is a greyness out there, if I can put it that way.

Mr Elliott: There certainly is. There is a lot of greyness.

The Chairperson: Michael, the timescale that we have is very tight. You will not be able to give us any more firm advice on the day that the Bill receives Royal Assent than you are giving us now, because you will not know what the regulations are and what is coming down the line behind the Bill. We will be no further on. We are no further on now. Again, I do not mean any offence by that.

Mr Wardlow: I appreciate that, and none is taken.

The Chairperson: What you have told us today we could have gleaned from your original presentation to the Committee for Social Development. Nothing has been advanced, and nothing has been made clearer. Forgive me if I missed this a few minutes ago, but the equality impact assessment was to be updated, and I believe that you had some sort of assurance from DSD in August that it would be updated. Have you been consulted in any way about that?

Mrs Collins: We have not been consulted. We have had a number of conversations with departmental officials about the progress that they are making on it. It is one of the differences, potentially, if further work were done to assess the impacts and mitigating measures were considered at that stage. That is the possibility of the Department, as we understand it, trying to update its equality impact assessment.

Mr Wardlow: In answer to your question about whether you have learned anything today that you could not have learned from reading our submission, part of this is about helping those of you who are not on the Committee for Social Development and who are perhaps new to this. This is quite a complex framework, and it is impossible to say yes or no to some of the questions. What we have tried to say is, "This is what we believe you and the Committee, in your scrutiny role, need to take into consideration. These are things that we and others have highlighted, and the detail will be in the regulations". As Evelyn said, looking at the detail that was not available at the second EQIA is important in order to see what data that brings and what impact, if any, that has on the EQIA, with the potential for mitigation. When we receive that, we will have another opportunity to look at this and perhaps provide more detail; absolutely.

Mr McDevitt: I hear what you are saying about waiting for more data. Will that be local data or an analysis of the situation in GB?

Mrs Collins: I understand that HMRC released more local data to enable the Department to look at the issues.

Mr McDevitt: So, you will be able to consider the potential impact on, for example, women and children against data from Northern Ireland.

Mrs Collins: That is what we understand.

Mr McDevitt: When exactly will you see that data?

Mrs Collins: The Department has the data at the moment. We actually have not asked for the data. The duty is on the Department to undertake the assessment, but we will continue to pressurise it into concluding that.

Mr McDevitt: You said that the EQIA is an organic document, but it cannot be so organic that it is elastic. It needs to be complete before we are asked to vote at Final Stage, otherwise you cannot give us clear advice. The parliamentary timescale is pretty clear, so surely you must have a very definite view on when you need this back so that you can consider it and advise the House and others in the

policy community on whether, in light of that new data, there is a greater likelihood or less likelihood that this meets the EQIA standard. So, when will you have advice to give us?

Mrs Collins: I said earlier that we had not got a clear indication from the Department as to when it will give us an assurance that it has looked further at the data. We can go back to the Department and ask it and then communicate that back to the Committee. We are happy to come back with more detail, if the Committee would find that helpful.

The Chairperson: This Committee has 30 working days, until around 15 January.

Mr Weir: Even if the data is not ready in that time frame, the Committee for Social Development will take over, so there will be a Committee to receive it.

Ms McGahan: My comment relates to clause 38, which deals with capability for work or work-related activity. I fill out DLA forms and forms for people who have to attend tribunals, and what I have witnessed is that medical evidence is not enough; it is not given primacy. All the questions are about how a person's condition affects them, despite the fact that there is excellent medical evidence. If an individual says, "I can make a cup of tea in the morning. I can make a bite of dinner, which could be as simple as a microwaveable dinner, and I can go to bed", he has lost his case, despite the fact that he is not fit to work. Medical evidence needs to be given primacy. I witness that every single week in my constituency, and it is scary. Medical evidence is not given primacy. I do not know whether you have any views on that. I know you mentioned that a couple of different things should be taken into consideration. I have seen, at a practical level, that this does not work.

Mrs Collins: We have certainly raised concerns about the assessments and the changes in assessment for eligibility to benefits for people with disabilities. There are issues. We have seen, even in relation to the changes, that approximately a third of work capability assessments are overturned on appeal. That says that something needs to be looked at in that context. So, certainly, we agree that the overall sense of how things are assessed needs to be looked at carefully so that the process operates fairly.

Mr Wardlow: In respect of disability legislation, we have raised, in another place, the social model versus the medical model of disability, in that people should not be classified as disabled because of a medical condition. The social context in which they are disabled by other things should be the model. So, in another place, we are supporting exactly what you are saying. There is a blunt-tool approach, if you like.

Ms McGahan: I find that, with some of these interrogations that you can get — and there is no other word for it — I have to sit down and convince those people to go back to appeal their case. It is horrendous. I do not know whether you realise just how bad it is on the ground. I see this practically.

Mr Wardlow: We take that point on board, Chair.

The Chairperson: OK. Nobody else wishes to speak. Michael, Evelyn and Lisa, thank you very much. We may talk again.

Mr Wardlow: I want to close by saying that I apologise if, for whatever reason, there has not been a meeting of the expectations that you had of what we were able to say or do. However, given the fact that colleagues are now clearer about our role, we would be more than happy to come back within that level of expectation, particularly if data is available, and so on, to continue to give you and the Committee for Social Development our support. I wish you all the best in your deliberations.

The Chairperson: Thank you very much.