



Welfare Reform Bill (Northern Ireland)
Submission to the Ad Hoc Committee on Conformity with
Equality Requirements
December 2012

1. The Equality Commission for Northern Ireland welcomes the opportunity provided by the Ad Hoc Committee, established to consider and report on whether the provisions of the Welfare Reform Bill are in conformity with the requirements for equality and observance of human rights, to set out further its concerns about aspects of the Bill.
2. The Commission has concerns that the impacts and potential impacts of aspects of the Bill have not been fully considered by the Department of Social Development in bringing forward its proposals to date and that this may not be in conformity with its obligations under s75 of the Northern Ireland Act 1998 (NIA 1998) and the requirements of its Equality Scheme.
3. This submission sets out the areas where the Equality Commission has concerns about the effective application by the Department of Social Development of its equality and good relations duties; it also sets out our concerns about the potential adverse impacts of aspects of the Bill.

Equality duties

4. The duties set out in s75 NIA 1998 oblige the Department, as all public authorities, to pay due regard to the need to promote equality of opportunity across nine equality strands and regard to the desirability of promoting good relations across three strands. The Equality Scheme sets out how the Department will fulfill these duties, in line with the provisions of Schedule 9 of the NIA 1998 and the Commission's guidance on form and content of equality schemes.¹
5. In order to fulfill these duties, the Department is 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

¹ Section 75 of the Northern Ireland Act 1998, A Guide for Public Authorities, ECNI, April 2010

the results of such assessments, as well as for monitoring any adverse impact of policies adopted on the promotion of equality of opportunity.

6. In making any decision with respect to a policy, the Department is obliged to take into account the impact assessment and the consultation carried out in relation to the policy. It also obliged to have arrangements in place to publish the results of the equality impact assessment and, in doing so, to state the aims of the policy to which the assessment relates and give details of any consideration given by the authority to measures which might mitigate any adverse impact of that policy on the promotion of equality of opportunity and any alternate policies which might better achieve the promotion of equality of opportunity.
7. Schedule 9 of the NIA 1998 sets out the Equality Commission's 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 set out in the Schedule, such as approving public authorities' Equality Schemes and investigating complaints or initiating investigations where there is a complaint or the Commission forms a belief that a public authority may have failed to comply with its Equality Scheme.
8. The Ad Hoc Committee will be aware that the Department of Social Development published a Draft Equality Impact Assessment of the Welfare Reform Bill in September 2011, for public consultation, in line with the requirements of its Equality Scheme and its equality duties. In its response to the Department, the Commission considered the extent to which the impact assessment was carried out in a manner consistent with advice contained in our *Practical Guidance on Equality Impact Assessment*.²
9. In broad terms, our response to the DSD consultation concluded that it provided no substantive analysis of the proposals nor did it provide any real consideration of the potential adverse impacts, including in the Northern Ireland context.³

² Practical Guidance on Equality Impact Assessment, ECNI, February 2005

³ Response to the Department for Social Development's Consultation on the Welfare Reform Bill (Northern Ireland) 2011 Equality Impact Assessment, ECNI, December 2011

10. With regards to the way in which the EQIA was conducted, the Commission expressed considerable concerns about how some of the steps recommended in our guidance had been completed:
- we pointed out that the data considered by the Department was extremely limited and that it was essential to gather and consider a wide range of qualitative and quantitative data, in order to determine how the proposed policies will impact on people;
 - while recognising that assessing the impacts of a policy can be challenging at a strategic level, we emphasised that a proper analysis of the impacts of the proposed policy is at the core of any EQIA, the purpose of which is to identify any potential negative impacts and take steps to address these. The Commission was particularly concerned with the minimalist approach taken by the Department to this part of the EQIA. In some places, there was no assessment at all;
 - we noted with concern the high number of assumptions, expectations and vague possibilities which are put forward as mitigating measures, without any evidence to support these.⁴
 - we indicated that it was crucial that the Department was clear about the extent to which the policy options presented in the EQIA could be altered/amended in light of the outcomes of the EQIA consultation and what the possible alternative policy options are.
11. The Committee will be aware that the Final EQIA was published on 4 May 2012. We remained concerned that, while some additional data and considerations were introduced into the Final EQIA, it did not fully address the issues which had been raised through the consultation process. Indeed, the completed EQIA remained very similar to the consultation version and thus our concerns remained about the limitations of the data considered, proper analysis of the impacts of the proposals, identification of adverse impact and adequate consideration of mitigating measures and alternative policies.

⁴ for example on page 35: “the change could act as a stimulus [...]”; page 43: assumption that older recipients “will generally either have a working partner or capital over £ 16,000”); pages 46 and page 59: support to continue to move towards work assumes that jobs are readily available; page 58 : “there is a possibility that younger lone parents are likely to have more recent experience of the labour market” ; page 60: “ it is envisaged that flexibilities and operational easements in place will ensure that no one will be penalised [...]”.

12. The Minister when publishing the Final EQIA indicated he intended that the Department would continue' to look at the possible equality impacts as the Bill moves forward' and that 'Work is ongoing within my Department to analyse the impact of policies across the various Section 75 groups'.⁵
13. We raised our ongoing concerns about the EQIA with the Department of Social Development in June 2012 and have had assurances from officials that the original Equality Impact Assessment was the first part of what they consider will be a lengthy assessment process to determine the impact of the various elements of the Welfare Reform Bill, and that there will be further equality screening and possibly further EQIAs carried out on the detail of some of the reforms, particularly as the Regulations are made. Indeed, we have been assured that the intention is to update the EQIA following review of additional data received from HMRC recently, which will improve the information available and the Department's ability to identify potential adverse impacts.
14. Engagement with officials is ongoing, as we seek to ensure that the Department fulfills its obligations to consider the impact of its proposals in a timely manner and gives adequate consideration to mitigating measures and alternative policies. While the Bill is itself an enabling mechanism, there remains the requirement to consider the impact of its proposals as well as the impact of Regulations as they are developed.
15. The Commission also has the power to initiate investigation, where it believes that there has been failure to comply with an approved equality scheme or in pursuance of a complaint by a directly affected individual who considers there may have been such a failure. Determinations of whether public authorities are in compliance with their Equality Scheme follow such investigations and a report is completed by the Commission. This may include recommended actions for the public authority where a failure to comply with its scheme has been found.
16. In this instance, investigation by the Commission is an option, and if a failure to comply with its Equality Scheme was found, then a possible recommendation may be to the Department to conclude its equality impact assessment properly. The Commission is monitoring closely

⁵ Department for Social Development News Release, Publication of completed Equality Impact Assessment on Welfare Reform Proposals, 4 May 2012

what the Department is doing to address its concerns about the Equality Impact Assessment and to ensure the effective application of its duties.

17. It is crucial that the potential adverse impacts identified through the development of the Bill and evidence presented to date are addressed by the Department and any further mitigating measures or alternative options are identified and considered. This would also allow the Assembly to consider further amendments to the Bill or identify where the potential adverse impact should be considered in the screening of the Regulations.
18. It is also important, as pointed out by the Joint Committee on Human Rights in its Report of its Legislative Scrutiny of the Welfare Reform Bill in Britain, that there is consideration given to assessing the cumulative impact of the proposed reforms on individuals and groups from an equality perspective.⁶

Potential adverse impacts

19. For the purposes of the Committee's consideration of compliance with the equality requirements, the following points are made in terms of the potential adverse impact of aspects of the Welfare Reform Bill and actions that could be further considered:

Payment of Universal Credit (Clauses 2-7, Payments clauses 97- 99)

20. We are concerned that the Department has not fully considered potential equality impacts in this regard. The payment of the new Universal Credit to the main earner following joint claim and joint assessment may leave carers (usually women) and dependents, without the benefits of income. Whilst the Final EQIA (pages 40-41) states that the Department intends to retain powers to split payments and to override nomination by members of a couple and to guide payments if required, the payment of Universal Credit to the primary carer, usually the mother of the children, is not the default position. We had previously noted that the importance of payment of benefit to women in their 'caring for dependents role' was an important social

⁶ Legislative Scrutiny: Welfare Reform Bill, Joint Committee on Human Rights, HL Paper 233, HC 1704, December 2011

security reform of the 1970s, when it was considered necessary to allow certain benefits to be paid to women, including Child Benefit, recognizing that women more readily spend on children and the household essentials.⁷ The Department should carefully consider the potential equality impacts of its proposals; identify actions to mitigate potential impacts; and ensure that such actions are reflected in the Bill and/or Regulations

Housing Benefit and Under-Occupancy (Clause 69)

21. The proposals are likely to have an adverse impact on those with dependents, men and women generally, disabled people and on the grounds of religious belief/political opinion. While the Final EQIA notes *'Households containing a disabled adult and with a non-resident carer will be assessed as having a reasonable requirement for an additional room. This will have the effect of reducing the number of disabled claimants affected by the measure'* it is not clear if this extends to those with fluctuating conditions. The Department should also consider the impact on those with dependents, who are separated from their partners/family but who may require additional rooms to accommodate access to their children. There may also be impacts in regard to a tenant's ability to move, due to the segregation of social housing in Northern Ireland. The specific potential adverse impacts created through the lack of availability of smaller (1-2 bedroom) social housing in Northern Ireland are not addressed in the EQIA. The Commission considers that the implementation of welfare reform must take full account of the availability, accessibility and appropriateness of the current housing stock in Northern Ireland and include relevant mitigating measures for affected groups, whether through amendments safeguards or changes to timescales.

Standard Disability Premium (Clause 12)

22. The removal of the direct link between receipt of the 'Standard Disability Premium' addition to Income Support for those in receipt of Disability Living Allowance under Personal Independent Payments is likely to result in loss of income and therefore a potential adverse impact on disabled people. The Final EQIA identifies a cash loss of £39 per week for 29,000 disabled households but does not identify this as an adverse impact stating that 'transitional protection put in place will mean that there are no cash losses as a direct result of the move to Universal

⁷ Welfare Reform Bill (Northern Ireland) 2011 Equality Impact Assessment, Briefing for Assembly Committee for Social Development, ECNI, March 2012

Credit where circumstances remain the same' (page 35). This should be given further consideration by the Department.

Work Capability Assessment (Clause 38)

23. The EQIA does not include an assessment of the potential adverse impacts arising from measures for implementation of the Work Capability Assessments for work-related activity under the Universal Credit. Given that the transition from Incapacity Benefit to Employment Support Allowance resulted in 33% of all decisions being overturned at the First-tier Tribunal at the Social Entitlement Chamber (following a lengthy appeals process likely to cause unwanted stress and anxiety to the claimant)⁸, we consider that the Department should give clear consideration to potential adverse impacts and mitigating measures to ensure that fair, appropriate and individualised assessment processes and practices are put in place in Northern Ireland.

Lone Parent Conditionality (Clauses 13 to 18, 21 to 27 and Clauses 58 to 60).

24. The lone parent conditionality provision requires that lone parents be available for work when their child reaches the age of 5 years. The Commission is concerned about the potential for adverse impacts arising from this and the lack of appropriate, accessible and affordable childcare in Northern Ireland. The Department should consider the potential for adverse impacts and associated mitigating measures – including those that may support to parents with young children to meet the conditionality requirements of entitlement for Universal Credit / Income Support, and for those parents belonging to the Employment Support Allowance work-related activity group.
25. In addition, while recognising and endorsing parity, the DSD EQIA consultation document and thus the Welfare Reform Bill does not fully consider the proposals in the context of Northern Ireland policy and legislation not subject to parity. For example, unlike England and Wales where the Childcare Act 2006 imposes a duty on local authorities to identify and meet childcare needs, Northern Ireland has no corresponding childcare legislation. There is thus no statutory requirement for the provision of childcare in Northern Ireland where it is asserted that the situation on both availability and affordability of childcare is the worst in the UK⁹.

⁸ Department for Social Development News Release, 67% of Employment and Support Allowance appeals upheld in Department's favour, 1 August 2012

⁹ Employers for Childcare Charitable Group (2011): Northern Ireland Childcare Cost Survey 2011

Conclusions

26. The Commission trusts that this submission assists the Committee in its important role and would be happy to provide any further commentary or information related to our statutory remit considered necessary.

Annex 1: The Equality Commission for Northern Ireland

The Equality Commission for Northern Ireland (“the Commission”) is an independent public body established under the Northern Ireland Act 1998. The Commission is responsible for implementing the anti-discrimination legislation on fair employment, sex discrimination and equal pay, race relations, sexual orientation, disability and age.

The Commission’s remit also includes overseeing the statutory duties equality duties on public authorities in Section 75 of the Northern Ireland Act 1998: to pay due regard to the need to promote equality of opportunity and pay regard to the desirability of promoting good relations, as well as the duties in Section 49A of the Disability Discrimination Act 1995 (as amended).

The Commission, along with the NIHRC, has also been designated as the ‘independent mechanism’ in Northern Ireland, tasked with promoting, protecting and monitoring implementation of the United Nation Convention on the Rights of Persons with Disabilities (UNCRPD).