

EQUALITY COMMISSION FOR NORTHERN IRELAND
Paragraph 10 Investigation – Final Investigation Report
January 2017

Office of the First and deputy First Minister
(now The Executive Office)

complaint by

Northern Ireland's Commissioner for Children and Young People

1. Background

- 1.1 Northern Ireland's Commissioner for Children and Young People (NICCY) lodged a formal complaint with the Equality Commission under paragraph 10, Schedule 9 of the Northern Ireland Act 1998 in respect of an alleged failure by the Office of the First and deputy First Minister (now The Executive Office –TEO) to comply with its 2013 Equality Scheme. The complaint relates to *the consultation* on proposals to extend age discrimination legislation to include protection from discrimination in the provision of goods, facilities and services.
- 1.2 The policy proposal is to extend protections to all those over the age of 16 years. Children and young people under the age of 16 years will not be included in the scope of the legislation, as it was proposed in the consultation document. The proposals were consulted upon and the complaint that is the subject of this investigation is an alleged failure by TEO to comply with its approved Equality Scheme in consulting on the proposed legislation.
- 1.3 In its formal complaint to the Commission, NICCY alleged breaches of five paragraphs of TEO Equality Scheme, namely 3.3, 3.5, 3.11, 3.12 and 4.7. The Commission's Statutory Duty Investigation Committee (SDIC) agreed that the complaint was about the failure of a public authority to comply with an approved equality scheme; that it had been made in writing; by a person who claims to be directly affected; and it was made within the statutory time limit. The Committee agreed to investigate breaches of the TEO Equality Scheme at paragraphs 3.3, 3.5 and 3.11.

The parties were advised of the decision. NICCY sought a review of the decision not to investigate an alleged breach of paragraph 4.7 and this review request was considered by the SDIC. The Committee decided to uphold the original decision. The Investigation proceeded as originally agreed, to examine alleged breaches of paragraphs 3.3, 3.5 and 3.11.

1.4 Another complaint regarding alleged breaches of Equality Scheme commitments in respect of the TEO consultation on age discrimination legislation was received from the Children's Law Centre (CLC). The SDIC decided not to authorise an investigation on foot of that complaint.

1.5 This Report sets out:

- the relevant Equality Scheme commitments which the complainant alleges were breached;
- the investigation meetings and evidence reviewed;
- the information obtained from TEO in relation to how it considered it met each of the Equality Scheme commitments with regard to consultation;
- an assessment of the adequacy of the consultation in meeting Equality Scheme commitments;
- findings that TEO breached its Equality Scheme commitments in relation to:
 - paragraph 3.3 – Seeking the views of those directly affected;
 - paragraph 3.5 – Accessibility and removing barriers to consultation;
 - paragraph 3.11 – Making relevant information available.
- Recommendations

2. OFMDFM Equality Scheme Commitments

2.1 The relevant Equality Scheme for this Investigation was approved by the Commission on 25 September 2013. Chapter 3 of the Scheme relates to arrangements for consulting on matters to which the duties are likely to be relevant (including details of person's to be consulted) and on the likely impact of policies adopted or proposed on the promotion of equality of opportunity. This Investigation focuses on the

alleged breaches of paragraphs 3.3 3.5 and 3.11. The full text of the commitments by the Office of the First and Deputy First Minister (now The Executive Office) in paragraphs 3.3, 3.5 and 3.11 of its approved Equality Scheme are set out at **Appendix 1**.

3. The Investigation – meetings and evidence review

3.1 During this Investigation, the Investigating Team met with:

- The Northern Ireland Commissioner for Children and Young People, the Chief Executive and members of her staff;
- Staff of TEO (formerly OFMDFM).

3.2 The Investigation reviewed the formal consultation documents of TEO (see link below).

<https://www.executiveoffice-ni.gov.uk/consultations/proposals-extend-age-discrimination-legislation-age-goods-facilities-and-services#skip-link>

3.3 Further documentation was sought from TEO including notes, memos, minutes of meetings, correspondence, emails reports and other relevant documentation which the Department considers would demonstrate its compliance with its approved Equality Scheme commitments.

3.4 TEO identified and provided a range of documents. It also produced a summary narrative report which it considers demonstrated how it complied with its approved Equality Scheme commitments in relation to the consultation. The narrative report and the index of supporting documentation are attached at **Appendix 2**.

3.5 In addition, the Investigation viewed the following evidence: a Briefing provided by the Junior Ministers to the NI Assembly Committee meeting on 15 April 2015 (see link below).

<http://www.niassembly.gov.uk/assembly-business/committees/archive/office-of-the-first-minister-and-deputy-first-minister/listen-again/15-april-2015/>

and the Hansard official record of evidence provided by NICCY (see link below).

- 3.6 The Investigation assessed whether or not the Equality Scheme was breached in respect of the commitment in three paragraphs. These can be summarised as follows:

Paragraph 3.3 – Seeking the views of those directly affected;

Paragraph 3.5 – Accessibility and removing barriers to consultation;

Paragraph 3.11 – Making relevant information available.

This Report will address each of these in turn.

4. Information obtained from TEO regarding commitments under paragraph 3.3 of the Equality Scheme.

- 4.1 The Department's Equality Scheme makes the following commitments at paragraph 3.3:

All consultations will seek the views of those directly affected by the policy/matter, the Equality Commission, representative groups of section 75 categories, other public authorities, voluntary and community groups, our staff and their trade unions and such other groups who have a legitimate interest in the matter.

Initially all Section 75 consultees (see appendix 3) as a matter of course will be notified by email or post of the matter/policy being consulted upon to ensure they are aware of all consultations.

Thereafter to ensure the most effective use of our and our consultees' resources, we will take a targeted approach to consultation for those consultees that may have a particular interest in the matter/policy being consulted upon and to whom the matter/policy is of particular relevance. This may include for example regional or local consultations, sectoral or thematic consultation etc.

- 4.2 With respect to meeting its commitments under paragraph 3.3, the Department drew particular attention to the pre-consultation engagement with key stakeholders and to the arrangements for the full consultation.

- 4.3 Key stakeholders were invited to a pre-consultation meeting with Department officials on 20 April 2015 to discuss the outline policy proposals. The attendees were representatives of the Equality Commission (ECNI); the Commissioner for Older People NI (COPNI); NI Commissioner for Children and Young People (NICCY); the Children’s Law Centre (CLC); NI Youth Forum (NIYF); and Age Sector Platform (ASP). A “working draft” of the proposed consultation paper was shared with the participants who were invited to comment.
- 4.4 The Department noted that initially none of the organisations primarily representing the interests of young people provided written comments on the draft consultation document. A further opportunity to comment was allowed and availed of and there was also engagement with other government departments. The Department noted “comments were incorporated in the consultation document as appropriate”.
- 4.5 The arrangements for public consultation were considered by Department officials on 12 June 2015. Subsequent emails between officials confirm the duration of consultation and location of public events; that expenses for those attending would not be paid; that there would not be a separate children’s event; and that there was still some debate about whether to produce an “easy read” version of the consultation or whether the short summary document already produced would suffice.
- 4.6 The public consultation was launched by press release on 3 July 2015 and the documents provided by the Department show the distribution and range of the consultation. (*see Appendix 2 narrative report paragraphs 9 to 12*).
- 4.7 The Department advised that it did not hold any specific events targeted at particular age group. The Department noted that it has in the past carried out dedicated consultation with children and young people, but on this occasion stated

“Given the legislative and technical nature of the proposals and taking into account the need to ensure the most effective use of limited resources, it was not considered appropriate to proceed with

any events targeting stakeholders of particular age groups” (narrative report paragraph 11)

In any event, it states that *“the Department was clear that the consultation events were open to everybody and that all views were welcome.”*

- 4.8 In its ‘additional comments’ section in the narrative report (paras. 24-27), the Department set out the response to the consultation which it claims:

“. . . provides evidence of how well the consultation process worked in practice, and in particular the extent to which the consultation process attracted the views of a wide range of stakeholders”.

156 people attended consultation events. There were 222 responses to the consultation exercise of which 77 used the on-line questionnaire and 145 returned separate written submissions. Of the 145 written submissions 12 were from organisations primarily representing children and young people and 96 were individual responses submitted via the NI Youth Forum. 13 responses to the questionnaire were from individuals who stated they were 0-19 years. No breakdown was provided for those aged 16-19 years who would gain protections under the proposed legislation and those under 16 years who would not.

5. Information obtained from TEO regarding commitments under paragraph 3.5 of the Equality Scheme

- 5.1 The Department’s Equality Scheme makes the following commitments at paragraph 3.5:

We will consider the accessibility and format of every method of consultation we use in order to remove barriers to the consultation process. Specific consideration will be given as to how best to communicate with children and young people, people with disabilities (in particular people with learning disabilities) and minority ethnic communities. We take account of existing and developing good practice including the Equality Commission’s guidance Let’s Talk Let’s Listen – Guidance for public authorities on consulting and involving children and young people.

In 2010 the Junior Ministers launched the NI Standards for Children and Young People's Participation in Public Decision Making (the Ask First standards). The Ask First Standards, developed by the Participation Network, will provide useful guidance for establishing effective direct engagement mechanisms, as well as a benchmark for measuring effectiveness across all government departments and their agencies.

Information will be made available, on request, in alternative formats, including child friendly versions, in a timely manner, usually within four to six weeks. We will ensure that such consultees have sufficient additional time to respond.

- 5.2 With respect to meeting its commitments under paragraph 3.5, the Department drew particular attention to a number of matters – accessible documents, time for consultation and accessible venues. When the consultation was launched on 3 July 2015, an ‘easy read’ version was not produced. This was raised by the NI Youth Forum at the pre-consultation meeting in April 2015 and again by Age NI in written submissions. The Department concluded at the outset that the summary document was sufficient to address their concerns.
- 5.3 However, on 8 July 2015, after the consultation had been launched, the Children’s Law Centre requested a “child accessible version” of the consultation document. The Department placed an order for such a document with Participation Network, an organisation which has expertise in producing child friendly versions of consultation documents for Government. The order for such a document was placed on 9 July (one day after the request) and delivered on 28 July 2015, when it was placed on the website alongside the other consultation documents. The Department deferred to the Participation Network’s judgement on the area covered and on the level of information provided in the children and young person friendly version, which was based on the entire consultation documents including the EqIA.
- 5.4 The Department also addressed the issue of the time allowed for consultation. The consultation was extended from the usual 12 weeks to 14 weeks due to potential periods of unavailability over the summer holiday period. The Department judged that the 10-week period allowed, during which the “child accessible version” was available, was

sufficient. There were a few requests for extra time and these were all granted.

- 5.5 With regard to accessibility and removing barriers at consultation events, the Department took steps to ensure that each venue had a hearing loop system in place, was on the ground floor and was accessible by public transport. All particular individual requests were also accommodated. The format of each event enabled discussions to be tailored to the interests of the group, ensuring that each attendee was able to participate fully.

6. Information obtained from TEO regarding commitments under paragraph 3.11 of the Equality Scheme

- 6.1 The Department's Equality Scheme makes the following commitments at paragraph 3.11:

We will make all relevant information available to consultees in appropriate formats to ensure meaningful consultation. This includes detailed information on the policy proposal being consulted upon and relevant quantitative and qualitative data.

- 6.2 With respect to meeting its commitments under paragraph 3.11, the Department drew particular attention to the following matters
- the need for balance between the delivery of a clear, concise and accessible consultation and the need to provide evidence and examples to allow consultees to contextualize the proposals and understand how these proposals might apply in practice;
 - the initial assessment in the draft EQIA that young people under 16 would **not** be directly impacted by the policy proposals.
- 6.3 The Department has stated that it made all relevant information available to consultees in appropriate formats to ensure meaningful consultation. The consultation document was illustrated with examples of potential age discrimination; available evidence was referenced with a list of sources; and the list of references included web-links for easy access. In addition, the Department welcomed any additional evidence

from stakeholders in relation to both the main policy proposals and the draft EQIA.

- 6.4 The Department considers that the draft EQIA was carried out in line with Equality Commission Guidance. The Department considered that children and young people under the age of 16 would

“not be directly impacted by the policy proposals on the grounds that the status quo for this age group would remain in the event that the policy proposals were agreed and put into legislation”

- 6.5 The consultation document on the Draft EqIA clearly sets out as follows

“This draft Equality Impact Assessment represents our current thinking based on the available information and evidence. This may change when we analyse your views and review any additional evidence and information. We are open to hearing all your views and these will help us to revise and finalise the policy proposals and the draft Equality Impact Assessment”

- 6.6 The Department has noted that responses to the consultation show that many stakeholders disagreed with the assessment of the impacts of the policy on children and young people. The Department is aware of the interests of the complainant NICCY and other bodies representing the views of children and young people. It noted that *“65% of respondents were opposed to the proposed scope of the legislation and many questioned the rationale for such a position.”*

- 6.7 With respect to commitments in para 3.11 of its Equality Scheme regarding making relevant information available, the Department asserts that the EqIA clearly identified potential adverse impact on children and young people and sought to identify mitigation measures. The Department further noted that those representing the interests of older people felt that the proposals *“would provide an important first step to ensure protection for older people.”*

7. Assessment of adequacy of consultation – seeking the views of those directly affected

- 7.1 Paragraphs 4.1 to 4.8 above set out the Department’s position on how it sought the views of those directly affected by the proposed new legislation. The Department had pre-consultations with key stakeholders, including children’s advocacy groups and the NI Children’s Commissioner, prior to giving consideration as to the arrangements for consultation. On 12 June 2015, officials considered a number of matters including an event specifically for children and young people and an ‘easy read’ consultation document. The Department noted “*These discussions took place within the context of limited resources to carry out the consultation and the need to ensure value for money*”. The consultation as launched on 3 July 2015 contained neither of these proposals.
- 7.2 Detail was provided of the wide-ranging consultee lists and the efforts to ensure notification to stakeholders. However, there was no direct consultation with children and there was no targeting of children and young people through schools or youth groups. The Children’s Commissioner has stated that it was insufficient to include young people’s organisations but not children or young people themselves.
- 7.3 Consultation events were well advertised in newspapers and in the social media sites of the NI Executive. This is an ‘adult-focused’ method of advising of the consultation, although it is also noted that the Department had asked the key stakeholders, including young people’s organisations, to share the consultation notification with their mailing lists.
- 7.4 The Department did not arrange events targeted at any particular age group, but they did attend events held by other organisations to provide information about the consultation. This included for example, events held by the Equality Commission, the Housing Executive and the Retired Workers Committee of the Irish Congress of Trade Unions. The Department drew attention to a dedicated consultation it carried out with children and young people in relation to the childcare strategy at a cost of £4K. However, in relation to the proposed age legislation the Department’s rationale for not having a dedicated consultation is “*Given the legislative and technical nature of the proposals and taking into account the need to ensure the most effective use of limited resources,*

it was not considered appropriate to proceed with any events targeting stakeholders of a particular age group”.

7.5 It is a finding of this Investigation that the consultation did not adequately seek the views of those directly affected by the policy proposal. While it is correct that the age discrimination proposals are about legislation, it is not inherently difficult to explain the intention to grant new rights and to seek the views of children and young people regarding their proposed exclusion from these rights and protections. The consultation was ‘adult focused’ in its launch and it did not at the outset include children and young people friendly documents or events, even though such issues had been raised and considered by the Department at an early stage. The Department has experience of children’s consultation, but chose not to consult on this occasion. That the consultation events that were held “*were open to everybody and all views were welcome*”, as stated in the narrative report, was not adequate to seeking the views of children and young people – particularly those who would be excluded from the protections of the proposed legislation.

8. Assessment of adequacy of consultation: Accessibility and removing barriers to consultation.

8.1 In its Equality Scheme the Department notes that specific consideration be given as to how best to communicate with children and young people. The Equality Scheme refers to Equality Commission Guidance and the ‘Ask First Standards’, which are NI standards for children and young people’s participations in public decision making. These standards were developed by Participation Network and launched in 2010 by the then Junior Ministers in OFMDFM /TEO.

8.2 The issues of the accessibility to documents, meetings and venues for children and young people, as well as the timing of the consultation, have been raised in this complaint. The Department noted that two organisations had raised the issue of ‘easy read’ versions of the consultation document prior to the launch of the consultation. However, the Department considered that its Executive Summary of the consultation document was sufficient to cover stakeholders’ concerns. Indeed, this summary document may have been suitable for some

young people in the 16 to 18-year-old age bracket (who were intended to benefit from the protection of the proposed new legislation) but it appears insufficient to the needs of children and some young people under the age of 16 years. When the Children's Law Centre sought a children and young person friendly version of the consultation document after the consultation had begun, the Department officials contracted Participation Network to produce such a document.

- 8.3 A number of terms such as 'easy read', 'child accessible', 'young person friendly' have been used. The crucial thing is to develop a document that is easily understood by the target audience; for example, people with learning disabilities (of any age) may benefit from an easy read version. The 'young person friendly' version that was developed and included after the consultation began was illustrated in a cartoon style with examples of 'why we need a new law' and 'what will be covered in the new law'. By way of illustration, one of the examples used is as follows: "*Some shops don't allow older people to sign contracts unless they bring a younger person with them – they assume the older person won't be able to understand.*" This reflects older persons concerns and in a style and language, that is more suitable to older teenagers rather than children. The language of the text is not sufficient for communicating with younger children. The document contains no examples relating to anyone under 16 years and no reference to seeking views about whether or not the legislation should extend to children. The Department advised that the document attempted to convey information about policy proposal contained in the consultation document and did not attempt to explain what was not included/covered.
- 8.4 The Young Person Friendly version also omits any reference to the draft Equality Impact Assessment that was published on the Department's website alongside the main consultation document. The Department said that ". . .officials were content to defer to the *Participation Network's judgement on the areas covered and on the level of information provided in the children and young person friendly version...*" However, the duty to consult and the adequacy of that consultation remains the duty of the public authority and cannot be delegated to any other organisation.

- 8.5 The format, the venues and the timing of the consultation events were also problematic for children and young people. The Department cited hearing loops, ground floor rooms and access by public transport as steps towards removing barriers to consultation. However, the format of these events were adult focused 'roundtable' meetings which by their very nature present barriers for children and young people. The consultation closed just after the start of the new school term (Oct 2015) thereby missing opportunities to engage with children and young people through school. Potential engagement opportunities through youth groups were also missed.
- 8.6 It is a finding of this Investigation that the consultation did not adequately ensure accessibility and remove barriers to consultation for children and young people. While children's advocacy groups could and did participate, children themselves faced barriers to participation. The Department could have better engaged with NICCY – which is the statutory body set up to promote and safeguard the rights and best interests of children and young people – to ensure a meaningful and appropriate consultation directly with children and young people themselves.

9. Assessment of adequacy of consultation: Making relevant information available.

- 9.1 The Department rightly acknowledges the importance of providing sufficient evidence and illustrative fictional examples to allow consultees to contextualize the proposals and understand how those proposals might apply in practice. Both the consultation document and the draft Equality Impact Assessment (EQIA) referenced evidence and provided a list of sources. The draft EQIA was **not** included or referred to in the Young Person Friendly version. The Department considered that children and young people under the age of 16 years would not be directly impacted by the policy proposals. The Department stated that *'...the status quo for this age group would remain, in the event that the policy proposals were agreed and put into legislation.'*

9.2 The Commission, in its response to the consultation, welcomed OFMDFM's consultation on the EQIA at the same time as the consultation on the policy proposals and provided advice in relation to the depth and detail of some of the information provided in the EQIA. This included advice on assessing the potential equality impacts of the policy based on evidence; seeking opportunities to promote equality of opportunity and good relations; further consideration given to mitigating measures and alternative policies; and outlining arrangements for monitoring for adverse impact. In the context of this consultation, the draft EqIA was an important source of relevant information and this was not presented in a child or young-person-friendly way. Accordingly, it is a finding of this Investigation that the Department did not make all relevant information available to consultees in appropriate formats to ensure meaningful consultation.

10. Conclusions

- 10.1 The focus of this complaint is not on whether children and young people under 16 years old should have protection from age discrimination in the provision of goods facilities and services in Northern Ireland. The paragraph 10 complaint and the authorised Investigation focused on whether or not the consultation that was carried out, sufficiently met the commitments of the approved Equality Scheme of OFMDFM, in terms of seeking the views of those directly affected (paragraph 3.3); accessibility and removing barriers to consultation (paragraph 3.5); and making relevant information available (paragraph 3.11)
- 10.2 The Department noted that the new legislation, as proposed, would not extend coverage to children and young people under the age of 16 years. It considered that this group would **not** be directly impacted by the policy proposals. The Department stated that '*...the status quo for this age group would remain, in the event that the policy proposals were agreed and put into legislation.*' However, where provision for age discrimination legislation specifically excludes a particular age group, that age group is impacted precisely because of their exclusion from protections it is proposed to afford to others.

10.3 The consultation that was carried out was focused on meeting the consultation needs of those people of 16 years and over. While statutory and voluntary groups representing the issues and needs of children and young people were included in the consultation, it was deficient in terms of directly seeking the views of children and young people under 16, removing barriers and ensuring accessibility for this age group and making relevant information available to them. In particular, the Investigation identified:

- an adult focused method of advising of the consultation (e.g. newspaper advertisements and the social media sites of the NI Executive, as opposed to through schools and youth groups);
- an adult focused method of carrying out the consultation (e.g. meetings and roundtables, as opposed to the specialist engagement to specifically obtain children's views);
- the limitations of the 'young person friendly guide' for younger children in terms of language, style and content of the examples used;
- the limitations of the information that was provided to children and young people to ensure meaningful consultation including detail and evidence on the policy proposal.

11. Findings

For the reasons set out above, this Investigation concludes that TEO breached its Equality Scheme commitments at:

paragraph 3.3 – Seeking the views of those directly affected;
paragraph 3.5 – Accessibility and removing barriers to consultation;
paragraph 3.11 – Making relevant information available.

12. Recommendations

1. TEO should conduct a consultation specific to the needs of children and young people, on the proposals to extend age discrimination legislation to include protection from discrimination in the provision of goods, facilities and services.

This consultation should:

- a. ensure the use of appropriate mechanisms to seek the views of children and young people;
 - b. be accessible to children and young people and remove any barriers to their participation.;
 - c. provide appropriate information, including EQIA information, which is relevant to children and young people.
2. The above consultation results should be used to supplement the results of the earlier consultation in consideration of furthering the policy objective.
 3. TEO should report to the Equality Commission within 3 months on progress in consultation with the children and young people.

Extract from the approved Equality Scheme of the Executive Office

Paragraphs 3.3, 3.5 and 3.11

- 3.3 All consultations will seek the views of those directly affected by the policy/matter, the Equality Commission, representative groups of section 75 categories, voluntary and community groups, our staff and their trade unions and other such groups who have a legitimate interest in the matter.

Initially all Section 75 consultees (see appendix 3) as a matter of course will be notified by email or post of the matter/policy being consulted upon to ensure they are aware of all consultations. Thereafter to ensure the most effective use of our and our consultees' resources, we will take a targeted approach to consultation for those consultees that may have a particular interest in the matter/policy being consulted upon and to whom the matter/policy is of particular relevance. This may include for example regional or local consultations, sectoral or thematic consultation etc.

- 3.5 We will consider the accessibility and format of every method of consultation we use in order to remove barriers to the consultation process. Specific consideration will be given as to how best to communicate with children and young people, people with disabilities (in particular people with learning disabilities) and minority ethnic communities. We take account of existing and developing good practice including the Equality Commission's guidance *Let's Talk Let's Listen – Guidance for public authorities on consulting and involving children and young people*.

In 2010 the Junior Ministers launched the NI Standards for Children and Young People's Participation in Public Decision Making (the Ask First standards). The Ask First Standards, developed by the Participation Network, will provide useful guidance for establishing effective direct engagement mechanisms, as well as a benchmark for measuring effectiveness across all government departments and their agencies.

Information will be made available, on request, in alternative formats, including child friendly versions, in a timely manner usually within four to six weeks. We will ensure that such consultees have sufficient additional time to respond.

- 3.11 We will make all relevant information available to consultees in appropriate formats to ensure meaningful consultation. This includes detailed information on the policy proposal being consulted upon and relevant quantitative and qualitative data.



EXPLANATORY NARRATIVE

ECNI SECTION 75 INVESTIGATION INTO NICCY COMPLAINT RE AGE GFS CONSULTATION 2015

Background

1. On 11 December 2015, NICCY submitted a formal complaint to the Equality Commission under Schedule 9, paragraph 10 of the Northern Ireland Act 1998, alleging that the Department (then OFMDFM) had failed to comply with its approved Equality Scheme in carrying out the consultation on proposals to extend age discrimination legislation (goods, facilities and services). This followed a pre-complaint letter issued by NICCY on 21 October 2015 and a response letter issued by the Department on 27 November 2015. The complaint related specifically to paragraphs 3.3, 3.5, 3.11, 3.12 and 4.17 of the Equality Scheme.
2. On 29 April 2016, the Department received notification from the Equality Commission that the Commission intended to proceed with an investigation into the alleged failure to comply with paragraphs 3.3, 3.5 and 3.11 of the Equality Scheme. The Equality Commission requested documentation from the Department to demonstrate compliance with the Equality Scheme.
3. This document is the Department's response to this request for information and sets out the ways in which the commitments under paragraphs 3.3, 3.5 and 3.11 of the Equality Scheme were considered and met in carrying out the consultation.

Paragraph 3.3 of the Equality Scheme

4. Paragraph 3.3 of the OFMDFM Equality Scheme states:

“All consultations will seek the views of those directly affected by the matter/policy, the Equality Commission, representative groups of Section 75 categories, other public authorities, voluntary and community groups, our staff and their trades unions and such other groups who have a legitimate interest in the matter. Initially all Section 75 consultees (see Appendix 3), as a matter of course, will be notified (by email or post) of the matter/policy being consulted upon to ensure they are aware of all consultations. Thereafter, to ensure the most effective use of our and our consultees’ resources, we

will take a targeted approach to consultation for those consultees that may have a particular interest in the matter/policy being consulted upon and to whom the matter/policy is of particular relevance. This may include for example regional or local consultations, sectoral or thematic consultation etc.”

5. The Department carried out pre-consultation engagement with a number of key stakeholders representing both the interests of older people and children and young people, as well as the Equality Commission. It was considered that these stakeholders had particular interest, experience and expertise in the policy being consulted upon. These stakeholders were invited to a pre-consultation meeting with Departmental officials on 20 April 2015 to discuss the outline policy proposals and were subsequently asked to comment on a draft of the consultation document. Both oral and written comments provided by stakeholders were noted, considered and incorporated in the consultation document where it was deemed appropriate to do so. None of the organisations primarily representing the interests of children and young people provided written comments on the draft consultation document. Reference: Documents 02, 03, 04
6. These key stakeholders were also invited to take part in individual meetings with an official to discuss the development of the draft Equality Impact Assessment. Again, these organisations were asked to participate due to their experience and expertise. A meeting with Mairead McCafferty, Chief Executive of NICCY, took place in April 2015 and Children’s Law Centre also provided briefing material. Reference: Documents 05, 06.
7. The Department also consulted with other government Departments during the policy development, and met with most Departments to discuss the issues and need for any specific exceptions. The Department also shared a draft of the consultation document with Departmental representatives for comments, which were incorporated in the consultation document as appropriate.
8. Officials considered the arrangements for public consultation at a meeting on 12 June 2015. The issues discussed at this meeting included the locations for consultation events, the need to hold an event specifically for children and young people, the length of consultation period, the possible need for an easy-read version and the payment of expenses for people attending the events. These discussions took place within the context of limited resources to carry out the consultation and the need to ensure value for money. Reference: Document 07
9. The consultation was launched by press release on 3 July 2015 and a wide range of consultees were notified about the consultation on that date by post, flyer or email. The same mailing lists also received a separate flyer advertising the public consultation events. This information was distributed to the following mailing lists:
 - Political consultation list as per The Guidance on Distribution of Departmental Publications and Consultation Documents [184 MLAs, MPs MEPs etc.]

- Section 75 consultation list including voluntary and community and church groups [566 groups]
- Delivering Social Change database covering all S75 groups - relating to older people, children, equality, race, gender, sexual orientation, disability, those with dependents [865 groups]
- The key stakeholders involved in the pre-consultation engagement (Age NI, Age Sector Platform, Children's Law Centre, COPNI, ECNI, NICCY and Youth Forum) were asked to share with their mailing lists. [7 groups]
- The Active Ageing Advisory Group (Commissioner for Older People for Northern Ireland, Older Women's Network, ECNI, Volunteer Now, Age NI, Age Sector Platform, Belfast Health Development Unit, Age Sector Platform, Rural Community Network, Irish Congress of Trade Unions, Engage with Age, CARDI, Belfast Law Centre) were asked to share the letter with their mailing lists [13 groups]
- Rural Enabler network were asked to share with their mailing lists [15 groups]
- Neighbourhood Renewal Partnership were asked to share with their mailing lists [38 groups]
- Victims Groups [70 groups]
- NI Government Departments via the Equality Practitioners Group and Children's Champions

Reference: Document 08

10. The consultation events were advertised in 47 local and regional newspapers, based on the circulation of papers in each of the counties and Belfast on advice from the Executive Information Services. The consultation events were also promoted on NI Executive social media sites (Facebook and Twitter). The Department considers that the consultation was advertised as widely as possible, given the need to ensure the effective use of limited resources. Reference: Document 08
11. The Department did not hold any specific events targeted at particular age groups or other section 75 groups such as people with disabilities or people. The Department would wish to draw attention to a number of other consultations on equality and social change issues conducted recently where the views of children and young people were sought directly. For example, OFMDFM commissioned Playboard to carry out dedicated consultation with children and young people on A Ten Year Strategy for Affordable and Integrated Childcare 2015-2025 at a cost of £4k. Given the legislative and technical nature of the proposals and taking into account the need to ensure the most effective use of limited resources, it was not considered appropriate to proceed

with any events targeting stakeholders of particular age groups. Reference: Document 07

12. Officials attended a number of events held by other organisations by invitation to provide information on the consultation and to take part in discussion. These events were held by the Equality Commission, the Retired Workers' Committee of the ICTU and the Northern Ireland Housing Executive. Officials were not specifically invited to attend any other meetings or events.

Paragraph 3.5 of the Equality Scheme

13. Paragraph 3.5 of the OFMDFM Equality Scheme states:

“We will consider the accessibility and format of every method of consultation we use in order to remove barriers to the consultation process. Specific consideration will be given as to how best to communicate with children and young people, people with disabilities (in particular people with learning disabilities) and minority ethnic communities. We take account of existing and developing good practice, including the Equality Commission’s guidance Let’s Talk Let’s Listen – Guidance for public authorities on consulting and involving children and young people (2008). In 2010 the Junior Ministers launched the NI Standards for Children and Young People’s Participation in Public Decision Making (the Ask First standards). The Ask First standards, developed by the Participation Network, will provide useful guidance for establishing effective direct engagement mechanisms, as well as a benchmark for measuring effectiveness across all government departments and their agencies. Information will be made available, on request, in alternative formats, including child friendly version, in a timely manner, usually within four to six weeks. We will ensure that such consultees have sufficient additional time to respond.”

14. The need for an ‘easy-read’ version of the consultation document was raised by the Northern Ireland Youth Forum at the pre-consultation meeting with key stakeholders on 20 April 2015. The issue was raised again by Age NI in written comments on a draft of the consultation document. Following these recommendations, officials referred to other ‘easy-read’ versions prepared by Age NI and other organisations, and it was considered that the summary version of the consultation document was sufficient to cover stakeholders’ concerns. The summary version was published alongside the main consultation document. Reference: Document 09
15. The need for a young person friendly version of the consultation document was considered by officials in advance of the consultation launch and it was decided at that time that this was not required. However, a request for a child accessible version of the consultation document was made by the Children’s Law Centre on 8 July 2015. Following this request, The Department immediately asked the Participation Network to develop a child accessible/young person friendly document on the basis of the main consultation document and draft Equality Impact Assessment as published on the

Department's website. The order was confirmed on 9 July 2015 and the final document was available online on 28 July 2015. The young people's version was therefore available online within 4 weeks from the start of the consultation process, and within 3 weeks of the request from Children's Law Centre. Hard copies were made available at all of our public consultation events or by contacting the Age GFS team. Reference: Documents 07, 10

16. The Participation Network has considerable experience in producing children and young people friendly versions of consultation documents for government. In seeking their services to produce such a version of the consultation, Participation Network advised that "*young people friendly versions need to be as short as possible and hence do not cover absolutely everything in the document. Rather, they focus on summarising concrete things that may be of interest to children and young people*". While the proofs were checked for accuracy by officials prior to final approval, officials were content to defer to the Participation Network's judgement on the areas covered and on the level of information provided in the children and young people friend version, given that it was based on the entire consultation document including EQIA.
17. The consultation period was extended from the normal 12 weeks to 14 weeks, to allow for the fact that some consultees may have been less able to respond over the summer period. It was considered that the 10 week window during which the young people's version was available still gave consultees adequate time to respond and the consultation period was therefore not extended further. However, some specific requests for additional time to respond were received by the Department and these were considered and granted in accordance with the Department's Equality Scheme.
18. In relation to the public consultation events, the Department took steps to remove barriers to people attending consultation events for example by ensuring that each venue had a hearing loop system in place, was on the ground floor and/or accessible, and accessible by public transport. The Department also ensured that any particular needs were met, for example, by arranging for a registered speech-to-text reporter for an individual with hearing difficulties. The Department was clear that the consultation events were open to everybody and that all views were welcome.
19. The consultation events took the format of a short introduction to the key elements of the proposals followed by small group discussions facilitated by an official (with the exception of a few of the tables at the Belfast event). This format enabled discussions to be tailored to the interests and needs of each group and ensured that each attendee was able to participate fully in the events.

Paragraph 3.11 of the Equality Scheme

20. Paragraph 3.11 of the Equality Scheme states:

"We make all relevant information available to consultees in appropriate formats to ensure meaningful consultation. This includes detailed information on the policy proposal being consulted upon and relevant quantitative and qualitative data."

21. In relation to the information included in the children and young person version, please refer to paragraphs 15 and 16 above.
22. In drafting the consultation document, a balance was sought between the need to deliver a clear, concise and accessible document and the need to provide sufficient evidence and made-up examples to allow consultees to contextualise the proposals and understand how those proposals might apply in practice. The consultation document attempted to draw out varied examples of age discrimination across a wide range of scenarios to illustrate those proposals, while ensuring that consultees were made aware of the available evidence, by referencing evidence in the main document and draft Equality Impact Assessment and providing a full list of sources considered as part of the policy development. The list of references was provided at Annex B of the consultation document, along with web links to ensure that consultees could access these resources easily. The Department sought additional evidence from stakeholders in relation to both the main policy proposals and the draft Equality Impact Assessment.
23. The Department considers that the draft Equality Impact Assessment has been carried out in line with Equality Commission guidance. It was considered that children and young people aged under 16 would not be *directly* impacted by the policy proposals on the grounds that the status quo for this age group would remain in the event that the policy proposals were agreed and put into legislation. However, responses to the consultation indicated that many stakeholders disagreed and this will be taken into account in further developing the draft EQIA. In any case, the EQIA clearly identified a potential adverse impact on children and young people aged under 16 generally, and on those who experience other forms of discrimination or who are in vulnerable groups particularly, and sought to identify mitigation measures to address that. The Department would stress that the draft Equality Impact Assessment is a living document and will be revised and updated in light of the responses to the consultation and additional research evidence provided, and will be finalised following any agreement on a final policy position (*see Age GFS consultation document, page 93, paragraph 1.5*).

Additional comments

24. In assessing compliance with the Equality Scheme commitments highlighted above, the Department considers it important to take into account the response to the consultation process which provides evidence of how well the consultation process worked in practice, and in particular the extent to which the consultation process attracted the views of a wide range of stakeholders.
25. In total there were 222 responses to the consultation exercise. This can be broken down as follows:

- 77 responses submitted using the online consultation questionnaire, either online or in hard copy (of which 13 were from individuals who stated they were aged 0-19 years);
 - 145 responses submitted using hard copy written submissions (of which 12 were from organisations primarily representing children and young people and 96 were individual responses submitted via the NI Youth Forum, and 13 responses to the online questionnaire from individuals who stated they were aged 0-19);
 - 156 people attended the public consultation events (no age breakdown available).
26. The Department is aware that the primary concerns held by NICCY and others representing the interests of children and young people relates to the scope of the proposed legislation and the rationale for that proposal. 65% of respondents were opposed to the proposed scope (age) of the legislation and many questioned the rationale for such a position. The Department considers that, on balance, the 'result' of the consultation adequately reflects the views expressed by NICCY and others. It should also be noted that many respondents, particularly those representing the interests of older people, felt that legislation should be put in place as soon as possible and that the proposals would provide an important first step to ensure protection for older people. All views expressed during the public consultation will be considered and taken into account in the development of a robust and agreed policy position.
27. The Department understands that NICCY's complaint in relation to paragraph 3.12 of the Equality Scheme, that the consultation process was predetermined by the outset, is not covered under the current investigation. However, in light of the inclusion of this issue in a letter to the Department on 13 May 2016, the Department would take this opportunity to refute this allegation. The political compromise reached in February 2015, and announced in the Written Ministerial Statement on 19 February 2015 was to bring forward *proposals* covering those aged 16 and over for public consultation. Ministers were clear that *only* after the conclusion of a policy consultation, and agreement of a robust policy position, would options for bringing forward legislation be considered. Ministers were considering the outcome of the consultation process prior to the election on 5 May 2015 and no decision has yet been taken on how to proceed. Reference: Document 01

14 July 2016

INDEX OF SUPPORTING DOCUMENTATION

Reference	Summary
01	Letter to OFMDFM Committee enclosing briefing on outcome of Consultation.
02	Minutes of pre-consultation meeting with key stakeholders 20 April 2015.
03	Email issued to stakeholders requesting comments on enclosed draft consultation document.
04	Summary of oral and written comments provided by stakeholders during pre-consultation engagement, including action taken.
05	Email from Mairead McCafferty, NICCY, following up meeting about development of draft EQIA.
06	Documentation provided by Children's Law centre following meeting about development of draft EQIA.
07	Email between officials following meeting on arrangements for public consultation.
08	Age GFS Consultation Process Report.
09	Emails between officials regarding need for easy-read version.
10	Emails between OFMDFM and Participation Network regarding development of children and young people friendly version.