

Equality and Human Rights Unit
Department of Health
Room D3
Castle Buildings
Stormont Estate
BELFAST
BT4 3SQ

10th April 2017

Dear Sir / Madam,

The Office of the Commissioner for Children and Young People (NICCY) was created in accordance with 'The Commissioner for Children and Young People (Northern Ireland) Order' (2003) to safeguard and promote the rights and best interests of children and young people in Northern Ireland. Under Articles 7(2) and (3) of this legislation, NICCY has a mandate to keep under review the adequacy and effectiveness of law, practice and services relating to the rights and best interests of children and young people by relevant authorities. **Under Article 7(4), NICCY has a statutory duty to advise any relevant authority on matters concerning the rights or best interests of children and young persons.** My remit includes children and young people from birth up to 18 years, or 21 years, if the young person has a disability or has been/is in the care of social services. In carrying out my functions, my paramount consideration is the rights of the child or young person, having particular regard to their wishes and feelings. In exercising my functions, I also have regard to all relevant provisions of the United Nations Convention on the Rights of the Child (UNCRC).

NICCY welcomes the review of the Department of Health's Equality Scheme. While we do not intend to comment on the scheme in great detail, we do wish to make a number of points for consideration during the consultation process on the draft scheme.

NICCY warmly welcomes the inclusion in the Department's draft Equality Scheme of consideration at the screening stage to taking into account whether a policy will disproportionately affect those on lower incomes. Child poverty is one of NICCY's priority areas and it is vital, given current and future predicted rates of child poverty, that poverty is a central consideration in all public policy development in Northern Ireland. According to government statistics, in 2014-15 more than a quarter of children (28%) were in relative

poverty, After Housing Costs.¹ This equates to 122,000 children. While there have been annual fluctuations in child poverty since the data was first collected in 2002/3, there has not been a sustained decrease. Also child poverty rates have consistently been significantly higher than poverty rates of any other group.² Child poverty rates in Britain have seen a dramatic increase since the introduction of welfare reform and the same rise is predicted in NI with the phased introduction of Welfare Reform.³ Also, while child poverty rates may be comparative overall with other parts of the UK, most household costs are higher in NI than in Britain, including fuel, utilities, food and clothes. Child poverty has a devastating impact on children's ability to access lifetime opportunities. It is therefore entirely appropriate that the potential impact of a policy on those on low incomes should be considered at the screening stage.

We also welcome the inclusion of the consideration of whether as a result of the policy there will be a variable impact across geographical areas. Inconsistencies in the availability and accessibility of public services across geographical areas is an issue which NICCY is acutely aware of. The Children's Services Co-operation Act (Northern Ireland) Act 2015 provides a statutory framework to improve the well-being of children and young people in a manner which realises their rights. The Act places obligations on Departments and Agencies to co-operate with each other in order to contribute to the improvement of specified well-being outcomes for children and young people. This, if comprehensively implemented, should ensure the delivery of consistent services to all children and young people across Northern Ireland, regardless of where they live. It is therefore vital that public policy begins to consider issues such as geographical consistency at the earliest possible stage in development.

We would be supportive of the inclusion of a related clear commitment that where a disproportionate impact on those on low incomes or a variable impact across geographical areas has been identified, mitigating measures will be expediently adopted to address these inequalities.

NICCY is also very supportive of the proposed amendments to the screening questions in the Department's draft Equality Scheme to include consideration of opportunities through the development of policies to promote positive attitudes towards people with disabilities and to encourage the participation of people with disabilities in public life. We recommend the inclusion of a reference to multiple identities to act as a reminder to officials tasked with the

¹ NI Poverty Bulletin 2014-2015, Department for Communities

² NI Poverty Bulletin 2014-2015, Department for Communities

³ Child and working-age poverty in Northern Ireland over the next decade: an update, James Browne, Andrew Hood and Robert Joyce The Institute for Fiscal Studies, January 2014

application of the screening questions that this should include children with disabilities and children from all linguistic groups. Children with disabilities are a particularly marginalised group who face multiple challenges across a range of aspects of their lives. NICCY actively promotes the rights and best interests of children and young people with disabilities, by highlighting gaps in policy and practice, promoting the voice of children and young people with disabilities and providing advice to Government to effect improvements in service provision. NICCY has highlighted a range of issues which must be addressed in the protection and realisation of the rights of children with disabilities in Northern Ireland in its recent Alternative Report to the UN Committee on the Rights of People with Disabilities.⁴ These include the full participation of children with disabilities in decision making and in society generally, equal access to health, education, play and leisure, criminal justice, recognition before the law, employment and training opportunities, an adequate standard of living and social protection and freedom from exploitation, violence and abuse.

We also support the amendment to the screening questions to include consideration of opportunities through the development of public policy to promote mutual understanding between all linguistic groups and respect, understanding and tolerance. Northern Ireland is becoming an increasingly diverse society and research shows that new migrants have joined longstanding communities of people from minority ethnic groups during the last decade, making a positive contribution to the local economy.⁵ Racist attacks and racially motivated crimes are being reported in Northern Ireland with increasing frequency. Between 2013 and 2014 there was a 43% increase in racially-motivated offences.⁶ It is therefore vital to the protection and promotion of children's rights that opportunities to promote respect, understanding and tolerance are considered through the development of public policy at the earliest possible stage. We must respond to the needs of all of our children and young people and embrace diversity in a manner which allows us to move forward as a more inclusive and open society and it is extremely welcome to see commitments to doing so being translated into Departmental Equality Schemes. We also welcome the inclusion of statement in the draft scheme that the promotion of equality of opportunity entails more than the elimination of discrimination. It requires proactive measures to be taken to secure equality of opportunity between the groups

⁴ 27th February 2017, <http://www.niccy.org/media/2734/niccy-submission-to-uk-uncrpd-examination-27-feb-17.pdf>

⁵ A. Wallace, R. McAreavey and K. Atkin, Joseph Rowntree Foundation, (2013) <http://www.jrf.org.uk/publications/poverty-ethnicity-northern-ireland>

⁶ Public Prosecution Service for Northern Ireland (PPS) (2014) 'Statistical Bulletin: Cases Involving Hate Crime 2013/14. 1 April 2013 to 31 March 2014.

www.ppsni.gov.uk/Branches/PPSNI/PPSNI/Files/Documents/Stats%20and%20Research/Statistical%20Bulletin%20on%20Cases%20Involving%20Hate%20Crime%202013-14.pdf

identified in Section 75 (1). Children are one of the most disadvantaged groups in society and because of their inherent vulnerabilities, very often the promotion of equality of opportunity requires a proactive approach to be taken to ensure equality of opportunity. This is particularly the case when considering marginalised groups of children and young people. We are very supportive of the inclusion of this statement within the Department's draft Equality Scheme.

We do however have serious concerns about the proposed amendments within the Department's draft Equality Scheme to the statutory consultation period. We note that on page 22 of the Department's draft scheme that it states that,

"In line with ECNI guidance, where an EQIA is required, a 12-week consultation period should take place. This is not affected by the 'Fresh Start Agreement' reduction in policy consultations to 8 weeks."

Consultation is a central component to the implementation and effective operation of the statutory equality duties under section 75. It is also extremely important regarding the Government's compliance with its obligations under Article 12 of the UNCRC which places an obligation on States to assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, with their views being given due weight in accordance with the age and maturity of the child. In the first round of Equality Schemes all designated public bodies committed to consulting on matters to which a duty under section 75 is likely to be relevant and on the likely impact of policies adopted or proposed to be adopted by the authority on the promotion of equality of opportunity for a period of eight weeks. The obligation to do so can be found in Schedule 9, Para 9 (4) (2) of the NI Act 1998. There was a strong sense at that time that this was too short a time frame to allow groups to consult among themselves, particularly where groups were intending to facilitate individuals who they represented to contribute to consultations. This is certainly true with regard to children and young people as meaningful consultation with children and young people takes time.

The Equality Commission carried out a consultation on its Revised Guidance on Section 75 in November 2008 and a number of changes were made to the Equality Commission's Guidance on Section 75, which was revised in April 2010. One positive change from the perspective of those working with and for children and young people was the extension of the consultation period for public authorities from 8 to 12 weeks. This was in line with a number of other Government and European consultation guidance and in recognition, following the recommendations of the Effectiveness Review of Section 75, that there

should be a greater focus on direct consultation with those likely to be impacted upon by policy decisions and the need for better and more effective engagement with the voluntary and community sector.

This commitment which was written in to the next round of Equality Schemes which binds all designated public authorities to consulting on matters to which a duty under section 75 is likely to be relevant and to consulting on the likely impact of policies adopted or proposed to be adopted by the authority on the promotion of equality of opportunity for a minimum period of twelve weeks. These are the Equality Schemes which are currently being revised. We are therefore disappointed, that despite the cross-sectoral engagement and subsequent agreement which, resulted in the extension of the consultation period from a minimum of 8 to 12 weeks, to note reference in the Department's draft Equality Scheme to a reduction in the timeframe for policy consultations to 8 weeks for policies which do not include an EQIA.

From discussions with the Equality Commission for Northern Ireland NICCY understands that if a consultation on a policy is issued by a public authority which is not considered to be relevant to the statutory equality and good relations duties, the twelve week consultation period does not apply. NICCY is concerned about this for two reasons. Firstly, the intention of section 75 of the Northern Ireland Act 1998 was to make equality considerations central to all policy making in recognition of the need for a clear and critical focus on the promotion of equality of opportunity and good relations in all policy making and legislation in moving forward to a peaceful and stable future in Northern Ireland. The Equality Commission's Guidance on Section 75 concurs with this and states that,

*"Section 75 of the Northern Ireland Act 1998 was intended to be transformative. Its aim was to change the practices of government and public authorities so that equality of opportunity and good relations are central to policy making, policy implementation, policy review and service delivery."*⁷

Also the Guidance is clear about the intention of section 75 to mainstream equality considerations across all policy development in Northern Ireland. It states that,

*"The new statutory duties make **equality central to the whole range** of public policy decision-making. This approach is often referred to as "mainstreaming". The Council of Europe has defined mainstreaming as:*

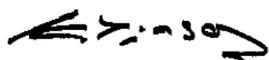
⁷ Section 75 of the Northern Ireland Act 1998 A Guide for Public Authorities, ECNI April 2010

*“the (re)organisation, improvement, development and evaluation of policy processes, so that a[n] ... **equality perspective is incorporated in all policies at all levels and at all stages, by the actors normally involved in policy-making**”.*⁸ (Our emphasis)

NICCY is therefore very concerned by the clear implication that policy development can occur in Northern Ireland without being relevant to the statutory equality and good relations duties. We believe this to be a significant erosion of the very rationale for section 75 which fundamentally undermines the equality duty. We therefore wish to see a clear commitment within the Department’s Equality Scheme to all consultations taking place over a minimum twelve week period.

I look forward to the advice contained in this submission being taken into account in the finalisation of the Department’s Equality Scheme. Please do not hesitate to get in touch if you require clarification or further information on anything contained in this submission.

Yours sincerely



Koulla Yiasouma
Commissioner

⁸ Section 75 of the Northern Ireland Act 1998 A Guide for Public Authorities, ECNI April 2010