

Advice to the Northern Ireland Executive on its Programme for Government Equality Impact Assessment

27th January 2017

Introduction

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, and it is under the fulfilment of this duty that we make this submission.

The Commissioner's remit includes children and young people from birth up to 18 years, or 21 years, if the young person is disabled or in the care of social services. In carrying out her functions, the Commissioner's paramount consideration is the rights of the child or young person, having particular regard to their wishes and feelings. In exercising her functions, the Commissioner has regard to all relevant provisions of the United Nations Convention on the Rights of the Child (UNCRC).

Consultation on the Equality Impact Assessment of the Programme for Government

NICCY welcomes the fact that an equality impact assessment (EQIA) on the Programme for Government (PfG) is currently being consulted on as this has not always been the case with high-level policies produced by the Northern Ireland Executive. We also welcome the extended deadline for comments due to the obligation to consult on EQIAs for 12 weeks as per section 75 of the Northern Ireland Act 1998 and consequent Government Department Equality Scheme commitments. However, we do have a number of concerns about the variances in the consultation deadlines between the consultation on the PfG and on the EQIA on the PfG. NICCY believes that it is regrettable that these two consultation

processes are occurring in isolation of each other and it that it would have been preferable if the consultation on the EQIA was carried out at the same time as the consultation on the PfG. It is fundamental to the proper and effective operation of section 75 of the Northern Ireland Act 1998 that EQIA's and views expressed in consultation on an EQIA centrally inform the development of policies and legislation. The intention of section 75 is to mainstream equality of opportunity and make it central to policy decision making. In order for an equality perspective to be central to policy making it needs to be incorporated in all policies at all levels and stages. This would involve incorporation of the principles of equality of opportunity from the beginning of this process and throughout the development and implementation of the policy for future impact assessment by Government of all high level strategic policy development.

It is extremely important to compliance with section 75 of the Northern Ireland Act 1998 that final decisions about the PfG are not made prior to the end of the consultation and analysis of responses on the EQIA. This would have the impact of totally undermining the section 75 process as the views expressed in consultation on and the findings of an EQIA must contribute to the policy decision making process. If policy decisions are made and adverse impact is identified after decisions are made, the scope for mitigation and alternatives are nil as decisions have already been taken without regard to the equality obligations. **NICCY therefore seeks unequivocal assurances that the views expressed in response to the EQIA consultation on the PfG will be taken full cognisance of in formulating the final PfG document.**

Given the impact that the PfG will have on the lives of children and young people, direct consultation with this group is vital in ensuring compliance with section 75 and Article 12 of the UNCRC. Children and young people comprise approximately a quarter of the population in Northern Ireland and are service users of all of the services which will be impacted upon by the PfG proposals, including education, health, youth services, housing, social services and others. Given the likely impact that the PfG proposals will have on the lives of children and young people, direct consultation with this group will be central to ensuring this large group of vulnerable citizens are consulted in respect of the EQIA on the PfG.

The Equality Commission's, "*Guidance for Implementing Section 75 of the Northern Ireland Act 1998*"¹ states that consultation should take place in accordance with its stated Guiding Principles on Consultation and that,

¹ April 2010.

“...specific consideration is given to how best to communicate information to children and young people...”²

Despite this obligation, NICCY has been unable to access a child accessible version of the EQIA on the PfG. NICCY would expect the Northern Ireland Executive to carry out a comprehensive engagement and consultation exercise with children and young people in line with section 75 of the Northern Ireland Act 1998. **The Commissioner requests that information about the measures which have been or are being taken to ensure the full and meaningful participation of children and young people in the consultation process on the EQIA of the PfG be made available.**

General Comments

As stated above, NICCY welcomes the consultation on the EQIA of the PfG. This is particularly the case given that both the Screening Template on the PfG and the Summary of Outcomes of the Screening Exercise on the PfG documents state that the PfG will be screened out for an EQIA. Given the significance of the PfG in terms of its strategic importance, NICCY would have expected all relevant screening documentation to conclude that the potential impact on enjoyment of equality of opportunity as a result of the policy proposals contained in the PfG is major and therefore should be screened in for an EQIA. This would be in line with the Equality Commission’s, *“Guidance for Implementing Section 75 of the Northern Ireland Act 1998”*.³ With regard to the screening documentation on the PfG, it is extremely concerning that the conclusions reached with regard to consideration of equality implications for members of all of the nine section 75 categories are that the question is either not applicable or that there will be no impact on equality of opportunity or good relations as a result of the PfG. The screening decision in the screening template states that,

“The PfG Framework has no differential impact on any s.75 group, and no direct impact on equality of opportunity or good relations.”

The PfG is the NI Executive’s overarching strategy for the work of Government for the period 2017 – 2021. It sets the strategic context for the associated delivery plans, related strategies (Investment, Economic and Social) for Northern Ireland and subsequent

² Chapter 7.

³ Pg 64, *Op cit* 1.

budgetary decisions. The PfG will have an impact on the lives of every person in Northern Ireland and we are extremely challenged as to how it can be concluded that the policy proposals contained in the PfG will have no impact on enjoyment of equality of opportunity or good relations on any of the members of any of the nine section 75 categories. NICCY does not agree with this conclusion and believes that the screening exercise has not been correctly carried out.

Despite this finding in the screening documentation, and the decision to screen the PfG out for an EQIA, it is welcome that an EQIA has been carried out. We do however have some serious concerns about the focus of the EQIA, as the potential impacts on the enjoyment of equality of opportunity of the policy proposals contained in the PfG have not been considered and assessed for members of each of the nine section 75 categories. While NICCY appreciates the challenge of the proper application of the section 75 of the Northern Ireland Act 1998 statutory duty to high level policies, it is important to note that the Equality Commission's, "*Guidance for Implementing Section 75 of the Northern Ireland Act 1998*"⁴ makes no distinction depending on the level of the policy in question. The Guidance is clear that,

*"Whatever status or label is accorded to an amended or new policy, for example, 'draft', 'pilot', 'high level strategy' or 'sectoral initiative', the equality and good relations implications must be considered in terms of assessing the likely impact of a policy and the Commission recommends applying the screening procedure (Annex 1) and, if necessary, subjecting the policy to an equality impact assessment"*⁵

The section 75 statutory equality duty therefore does apply to the PfG and all associated Departmental delivery plans submitted as part of this process and must be adequately complied with in the same way as all other policies. This should be done in a manner which ensures full compliance with section 75 of the Northern Ireland Act 1998 at a high strategic policy level. Unfortunately this is not the case with the EQIA of the PfG.

Consideration of Available Data and Research

The Equality Commission has produced detailed Guidance on carrying out EQIAs⁶ which all designated public authorities should use when carrying them out. The Guidance details

⁴ *Ibid.*

⁵ Pg 31, *Ibid.*

⁶ Practical Guidance on Equality Impact Assessments, Equality Commission for Northern Ireland, February 2005

the seven step process which should be followed when carrying out EQIAs. The second step of the process is the Consideration of available data and research. The way in which this step has been carried out in the EQIA of the PfG is an apparent misunderstanding of the entire EQIA process and this step in particular. The purpose of consideration of data and research is to allow for a thorough examination of data across all of the nine section 75 categories in order to assess the likely impact on the enjoyment of equality of opportunity by members as a result of the policy proposals contained in the PfG. However, this section of the EQIA does not examine any data in relation to any of the section 75 categories, but rather lists the titles of a range of data sources which are currently gathered in relation to people across each of the nine categories.

Compliance with the section 75 obligations with regard to consideration of data and research should have entailed a comprehensive examination of the lives of members of the nine section 75 categories through an analysis of existing data and research on each of the categories. An assessment should then have been made of the likely impacts that implementation of the policy proposals contained in the PfG will have on the enjoyment of equality of opportunity of members of the nine section 75 categories. No examination of how the policy proposals in the PfG will impact on any of the members of each of the categories has been carried out and resultant assessment of potential impacts on enjoyment of opportunity. It is the lack of this assessment which leads us to conclude that while the consultation document is called an EQIA of the PfG, no EQIA of the PfG has actually been carried out.

We also wish to refer to the statement in the EQIA document that it is *anticipated* that the outcomes-focus of the PfG has significant potential to support greater equality of impact across Section 75 categories.⁷ While this may be the case, the purpose of an EQIA is to carry out an assessment of the implications of the policy proposals in the PfG on the enjoyment of equality of opportunity by members of the nine section 75 categories. The EQIA, if carried out correctly should allow for a conclusion to be arrived at for members of each of the section 75 categories with regard to the impact the PfG policy proposals will have on their enjoyment of equality of opportunity. The fact that in the EQIA it is anticipated that there will be a positive impact on equality of opportunity illustrates that the EQIA of the PfG has not allowed for definitive conclusions to be made about the equality impacts of the PfG, the EQIA has not succeed in achieving what it should have done. In addition, through the identification of priorities there will be equality implications and it is

⁷ Pg 11, *Programme for Government Equality Impact Assessment*, Northern Ireland Executive, 28th October 2016.

not sufficient to state that the impact on all section 75 groups will be positive. **We would therefore recommend that the Northern Ireland Executive carried out a comprehensive EQIA which allows for reliable conclusions to be drawn about the impact of the policy proposals contained in the PfG on the enjoyment of opportunity of members of the nine section 75 categories.**

Reference to the data which is being and will be collected as part of the PfG process is welcome and we note that the document states that this data, when published, is generally disaggregated on the basis of section 75 identities. It is extremely important that data is collected across all of the nine section 75 categories. In the Equality Commission's "*Practical Guidance on Equality Impact Assessments*"⁸, the mandatory elements of an EQIA are extremely clear as they are contained in a shaded box at the beginning of each step of the seven step process. With regard to consideration of data and research, the Guidance states that existing quantitative data should be collected and analysed by relevant equality category as a minimum base from which to judge outcomes; qualitative or evaluative research or information gathered by government and bodies such as voluntary, community and trade union organizations should be relied upon; gaps in available information for equality categories should be identified and where more detailed data are needed, steps including commissioning data should be taken. It goes on to state that,

*"Relevant, reliable and up-to-date information is essential... Public authorities must therefore institute a system of information gathering **across all nine equality categories** to supplement available statistical and qualitative research."*⁹

The PfG EQIA outlines the indicators for which equality data is available for the delivery of the PfG. Of the 48 PfG indicators, the EQIA states that data is available by equality grounds for the following categories: gender (24 indicators); religion (19); age (18); disability (14); race (6); political opinion (1); and sexual orientation (0). It is clear from this that equality data is not being collated across all of the nine section 75 categories, with gaps existing in particular with regard to sexual orientation, political opinion, race and disability. The current PfG outcome framework must be able to baseline, or demonstrate progress for all individuals across the outcome indicators of the PfG. The Equality Commission's Guidance with regard to the statutory equality obligations on data is clear that data which is already in existence should be relied upon in carrying out an EQIA and where sufficient data does not exist, commissioned if necessary. This needs to be urgently addressed as we move forward on the delivery of the PfG in order to ensure that the PfG

⁸ *Op cit* 6.

⁹ Pg 11, *Ibid*.

is delivering better outcomes for all of the people of Northern Ireland, but also to ensure compliance with the statutory equality obligations under section 75 of the Northern Ireland Act 1998.

We again wish to reiterate our recommendation made in our responses to the PfG consultations in July and December 2016 that **the Northern Ireland Executive employs additional indicators and multiple datasets for each measure in order to gain a fuller, more accurate understanding of the current situation regarding the outcome areas and a greater clarity on the actions which must be undertaken to ensure improvement in children's lives.**

In addition, given that the Children and Young People's Strategy is currently being consulted on at present and is also a Northern Ireland Executive Strategy which aims to improve the lives and wellbeing outcomes for children and young people, the indicators used in the PfG must align with the indicators adopted by the Children and Young People's Strategy. The UNCRC Committee's General Comment No 5 emphasises that,

"...sufficient and reliable data collection on children, disaggregated to enable identification of discrimination and/or disparities in the realisation of rights," is an essential part of implementation.¹⁰

The UN Committee suggests that reports which offer a comprehensive overview of the state of children's rights should be produced annually.¹¹ The significance of this failure to produce such information is pertinent to the PfG in that without adequate baseline data on children's lives, progress cannot be determined and areas requiring remedial measures cannot be identified. This is extremely disappointing not only with regard to the obligations under Article 4 of the UNCRC, but also given the existing statutory obligation on Government to collect data across all nine equality categories under section 75 of the Northern Ireland Act 1998.

One of the UN Committee on the Rights of the Child's recent recommendations focussed specifically on the need for a set of child rights indicators for Northern Ireland,

"The Committee recommends that the government of Northern Ireland expedite the finalization of a Child Rights Indicator Framework, covering all areas of the Convention and taking into account the conceptual and methodological framework set out in the Office

¹⁰ CRC/GC/2003/5, Para. 48.

¹¹ *Ibid.*

of the United Nations High Commissioner for Human Rights (OHCHR) publication entitled Human Rights Indicators: A Guide to Measurement and Implementation.”¹²

NICCY recommends that the Northern Ireland Executive expediently establish systems for comprehensive disaggregated data collection on the lives of children and young people across all of the nine section 75 categories.

The consultation document also states that during the initial consultation on the PfG between May and July 2016, respondents were asked whether they felt the PfG would have either a positive or negative impact on a range of different groups across our society. A large proportion of respondents reported that the PfG may have no effect for groups of different marital status or sexual orientation. Very few responses expressed the view that any group would be impacted negatively.¹³ While it is useful to ask respondents about potential for adverse impacts on members of the nine section 75 categories as a result of the policy proposals contained in the PfG, without the provision of adequate data on each of the nine section 75 categories and a thorough assessment of equality impacts, it is not possible to make these assumptions. Unfortunately, the EQIA that has been carried out on the PfG does not provide any information to allow more reliable conclusions to be drawn with regard to the potential equality impacts on members of the nine section 75 categories as a result of the policy proposals contained in the PfG. In addition, the EQIA fails to consider the obligation on designated public authorities to promote equality of opportunity, only considering potential adverse impacts. This is particularly disappointing given that we highlighted the obligation on the Northern Ireland Executive to promote equality of opportunity in NICCY’s Advice to the Northern Ireland Executive on its Draft Programme for Government Framework.¹⁴

Fulfilment of the statutory equality obligations under section 75 of the Northern Ireland Act 1998 requires more than avoidance of adverse impact. It also requires a proactive approach to be taken to ensure the promotion of equality of opportunity. Where there are opportunities to better promote equality of opportunity, section 75 requires positive action to be taken to ensure the enjoyment of equality of opportunity by all. The Equality Commission’s Guidance for Public Authorities on Implementing Section 75 of the Northern Ireland Act 1998 states that,

¹² Para 9, CRC/C/GBR/CO/5, 3rd June 2016.

¹³ Pg 19, *Op cit* 7.

¹⁴ 22nd July 2016

“The promotion of equality of opportunity entails more than the elimination of discrimination. It requires proactive measures to be taken to facilitate the promotion of equality of opportunity between the categories identified in Section 75 (1). The equality duty should not deter a public authority from taking action to address disadvantage among particular sections of society – indeed such action may be an appropriate response to addressing inequalities.”¹⁵

It is clear from this that there is a statutory obligation on the Northern Ireland Executive to take action not only to mitigate against adverse impact or inequality but also to proactively promote equality of opportunity in order to comply with section 75. **NICCY reminds the Northern Ireland Executive of this aspect of its statutory equality obligations and firmly recommends that a comprehensive EQIA of the PfG is carried out which adequately considers actions which can be taken under the PfG to better promote equality of opportunity for members of the nine section 75 categories.**

Assessment of the Impacts

While it is encouraging to note that the delivery Plans for the PfG will be assessed for equality impact at the appropriate level,¹⁶ this does not detract from the obligation to carry out an EQIA of the overarching PfG policy. The consultation document states that the PfG provides a mechanism for the measurement, reporting and investigation of differential experiences of people based on their identities at a population level in respect of their experience of the outcomes set out in the PfG Framework.¹⁷ It is the operation of the PfG at a population level which should have been assessed for its impact on the enjoyment of equality of opportunity of members of the nine section 75 categories. It is the experience of members of the nine protected groups under section 75, as well as people coming within more than one of the equality categories, that should dictate the mitigation of adverse impact, the alternative policies and the positive action required by section 75. It is extremely disappointing that this has not been carried out in the EQIA of the PfG.

The consultation document also states that,

“...a key principle of the outcome-based approach that the Executive has adopted to the development of its Programme for Government is that it is the commitment to the

¹⁵ Pg 24, Section 75 of the Northern Ireland Act 1998, A Guide for Public Authorities, Northern Ireland Equality Commission, April 2010.

¹⁶ Pg 21, *Op cit* 7.

¹⁷ *Ibid.*

achievement of the outcomes in the Programme for Government Framework that is paramount. Commitments to particular courses of action in support of the achievement of those outcomes, in Delivery Plans or elsewhere, are contingent rather than absolute. That is, in the event that circumstances change, or where new evidence becomes available with the consequence that the committed course of action is no longer the most effective way to achieve the Outcomes, the plan will change – commitments will change – in order to achieve the best outcome in wellbeing terms.”¹⁸

While this is welcome, it is also a requirement of section 75 of the Northern Ireland Act 1998. All designated public authorities have a statutory obligation to collect and record data for the purposes of monitoring. The Equality Commission for Northern Ireland has developed Monitoring Guidance¹⁹ as a direct response to the reticence of public authorities in engaging in the mandatory monitoring element of section 75, which was reducing the impact and diminishing the effectiveness of the legislation. The purpose of monitoring is to ensure that section 75 is identifying inequalities on an ongoing basis and to indicate where designated public authorities could be doing things better or more effectively in the promotion of equality of opportunity with regard to all of its service users. As stated in the Equality Commission’s, *“Monitoring Guidance for Use By Public Authorities,”*

“Monitoring is more than data collection, it is also about analysing information that is relevant to, and necessary for, promoting equality of opportunity. Monitoring is an ongoing process, the objective of which is to highlight possible inequalities and why these might be occurring.”²⁰

Compliance with the section 75 statutory equality duties require monitoring in respect of all the groups protected under section 75 of the Northern Ireland Act 1998. This requires ongoing screening of all of the policy proposals under the PfG to mitigate against adverse impact and the introduction of alternative policies and practices where adverse impact on the enjoyment of equality of opportunity is identified and to better promote equality of opportunity across all section 75 categories. It is therefore the case that through compliance with the established statutory equality obligations, this purpose would already be served. NICCY recommends that rather than devising a new model for this purpose, the tried and tested statutory monitoring obligations are complied with under section 75.

¹⁸ *Ibid.*

¹⁹ Monitoring Guidance for Use by Public Authorities, Northern Ireland Equality Commission, 2007.

²⁰ iii, *Ibid.*

Additional Factors

This section of the consultation document is useful with regard to the intention of Government in the development and implementation of Delivery Plans as the PfG process progresses. It states that Government Departments will establish performance level outcomes-based evaluation methodologies that will enable a direct assessment of the impact of policies and programmes directly on their participants, including any differential impact on different individuals and groups based on their identity. Just as the collection, disaggregation, reporting and analysis of information at the population level will enable management and scrutiny of the work of government at that level to take direct account of outcome level impacts, including equality impacts, the population-level evaluation systems will enable the more effective management and scrutiny of policies and programmes at a performance level based on a thorough understanding of their impacts, including in equality terms.²¹ While this is welcome, adherence to the statutory equality obligations under section 75, in particular carrying out a comprehensive EQIA of the PfG and compliance with the statutory monitoring equality obligations, would achieve these aims without the need for the establishment of new systems and procedures. The purpose of section 75 of the Northern Ireland Act 1998 is to ensure the delivery of better outcomes for everyone with equality of opportunity at its core. NICCY therefore recommends that rather than devising a new model for this purpose, the established statutory equality obligations are complied with under section 75.

Conclusion

NICCY calls on the Northern Ireland Executive to take into account the recommendations made in this paper, which we provide in compliance with the Commissioner's statutory advice capacity under Article 7(4) of The Commissioner for Children and Young People (Northern Ireland) Order' (2003). It is important to make full use of the opportunities offered by a new PfG to develop a fully inclusive programme that will improve outcomes for all children and young people and realise their rights, including their right to enjoy equality of opportunity. We urge the Northern Ireland Executive to revisit the EQIA of the PfG to ensure that the delivery of equality of opportunity is a central component of the PfG framework for all of the members of the nine section 75 categories, including those with multiple identities. We would be happy to discuss any element of this submission or provide further information and clarification if required.

²¹ Pg 23, *Op cit* 7.