



Northern Ireland Council for Voluntary Action

Response to the Department of Education's Revised Policy Screening and Timetable

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Introduction

The Northern Ireland Council for Voluntary Action (NICVA) welcomes the opportunity to respond to the Department of Education's review of its policy screening and timetable. Our comments are informed by NICVA's role as the representative body for the voluntary and community sector and by a vision of society where all citizens are treated fairly, where sectarianism and discrimination are not tolerated and where respect for human rights and equality is regarded as the norm.

Context for the review of screening policy

We note that the department has decided to reduce the proposed programme of equality impact assessments (EQIAs) because progress has been slow and it 'appears to have substantially more EQIAs than other departments, which suggests that the initial screening of the Department's policies was perhaps not as rigorous as it might have been.' As a result of re-screening each of the 30 plus EQIAs included in the EQIA timetable published in December 2001, the department states that it proposes to exclude 19 and include two new policies. 'The screening exercise has informed us that there are a total of 14 policies that should be included in the revised EQIA timetable. The proposed EQIA timetable, which shows our intended EQIA programme for the next two years is included at Appendix 3.'

However the document and summary list 13 policies to be included and 23 to be screened out – a total of 36 policies. (Implementation of National Qualification Framework is included in Appendix 3 but has already been completed.)

NICVA disagrees with the proposed review not due to quibbles about numbers but because the department has failed to follow the procedures laid down by the ECNI. We appreciate the need for efficiency but we do not agree that it should excuse 'screening out' important policies with potential adverse impact. Our main argument is that the department fails to make any attempt to explain or justify its decisions. It states that it has followed ECNI guidance by using the four criteria specified in the guidelines, namely:

Is there any evidence of higher or lower participation or uptake by different groups?

Is there any evidence that different groups have different needs, experiences, issues and priorities in relation to the particular policy?

Have previous consultations with relevant groups, organisations or individuals indicated that particular policies create problems that are specific to them? Is there an opportunity to better promote equality of opportunity or good relations by altering the policy or working with others in government or in a larger community?

But it is apparent that it has ignored the ECNI guidance on the need for evidence (NICVA's emphasis). Furthermore, the department should be proactive in getting the evidence. 'The absence of evidence or indicators does not mean there is no impact on equality. Arrangements must be made to obtain relevant information, whether quantitative or qualitative, so that an authority can clearly demonstrate why a policy is screened in for impact assessment or screened out as not requiring an equality impact assessment.' (NICVA's emphasis)

According to ECNI, evidence may include information from the public authority's own information management systems, engagement in research and consultations, anecdotal evidence, feedback from service users and affected groups, or ongoing experience within the authority which may indicate equality impacts. Moreover the guidelines emphasise that 'public authorities should be alert to the fact that the statutory duties are positive duties. Whilst the main purpose of screening is to identify adverse impact, it also offers the opportunity to identify how to better promote equality of opportunity and good relations.'¹

Moreover we would argue that not only has the department 'screened out' most of its policies, but it has also undermined its commitment to assess the 'screened in' policies by introducing a range of caveats. These include 'pending the outcome of the review', 'pending the publication of the review', 'pending the outcome of the consultation process', 'any subsequent EQIA that may be required', 'the revised policy will be screened for any adverse impacts and a decision taken as to whether a full impact assessment should be carried out'. We would argue that these qualifications have rendered the EQIA timetable virtually meaningless. Surely the whole point of the screening exercise is to assess policies for potential adverse impacts on certain Section 75 categories, hence the reason for an EQIA. Therefore it doesn't make sense to add the caveats. The department provides a definition of screening at page 60 of the document but does not seem to have taken it seriously: 'The procedure for identifying those policies that will be the subject to a full equality impact assessment and how these will be prioritised. Its purpose is to identify those policies that are likely to have a significant impact on equality of opportunity so that greatest resources can be devoted to these. It requires a systematic review of existing and proposed policies.'

In fact the only policies with a firm commitment to assessment are the Revision of Religious Education Core Syllabus, the School Building Programme and the Recovery of Capital Grant from Schools, (the commitment to an EQIA of the

¹ Guidance for implementing Section 75 of the Northern Ireland Act 1998, ECNI 2005, p 62-63

Common Funding Formula seems like a post hoc rationalisation since the minister 'has decided to proceed with the implementation of Common Funding with effect from April 2005.' And we describe below an example of adverse impact on children with EAL.)

We would also like to draw the department's attention to the rationale for Section 75 - 'the new statutory duties make equality central to the whole range of public policy decision-making.....Mainstreaming equality is essentially concerned with the integration of equal opportunities principles, strategies and practices into the every day work of Government and other public bodies from the outset...'²

The department provides its own definition at page 60: 'Ensuring that an equality perspective is systematically incorporated into all policies at all levels and at all stages.' Therefore it would appear that the department has ignored its own advice.

NICVA also would like to express disappointment with the apparent lack of consultation with affected groups and individuals. Compliance with Section 75 and Article 12 of the UN Convention on the Rights of the Child (UNCRC) obliges the state to consult with children and young people about policies that affect them. We would also expect acknowledgement of consultation with other affected groups including teachers as well as the S75 categories.

In view of the department's own definition of screening it is surprising that there is no evidence of a procedure for prioritising the assessments. There is only a vague proposal to assess the policies over 2005/6. According to ECNI guidance, priorities should be established based on factors such as social need, effect on people's daily lives, effect on economic, social and human rights, significance of the policy in terms of expenditure and significance of the policy in terms of strategic importance.

Comments on Specific Proposals

NICVA will confine itself to comment on a selection of the proposals which we feel are most relevant to the sector. Organisations in the education field and children's sector inter alia will be in a better position to provide specialist knowledge in other areas.

Selective Structure of Post-Primary Education

NICVA would be able to understand the rationale for excluding this policy if the proposed new transfer arrangements had been subject to an EQIA. However the 'New Admission Arrangements for Post-Primary Schools' was not equality proofed despite assurances contained in this document that 'the Transfer Policy that replaces the current Test will be equality proofed throughout its development and implementation and equality issues mainstreamed into the new policy.'
NICVA's response to the new transfer arrangements argued the case for an

² Guidance for Implementing Section 75 of the Northern Ireland Act 1998, ECNI, 2005 p 6

integrated impact assessment to highlight the equality, human rights, good relations and new TSN implications of the proposals. We argued that the admission arrangements, especially the design of criteria for oversubscribed schools, represent an opportunity to build a more equitable education system. We called for an addition of a principle about ensuring equality of opportunity for every child and the addition of a TSN objective (since education is a key lever in bringing about social change to improve the life chances of every member of society). We also urged that the new government policy *A Shared Future* take a central place in new educational arrangements. Therefore we strongly recommend that the department reconsider its decision and include the policy in its EQIA timetable.

Pre-School Education Expansion Programme

As stated above we are concerned by the department's interpretation of mainstreaming and tendency to pre-empt outcomes of any proposed EQIA. Stating that 'preliminary work indicates that there are no adverse impacts within the current arrangements' contradicts the experience of many commentators. As NICVA wrote last year in response to the review of pre-school education: 'We urge the department to carry out an EQIA in view of the proposals' potential differential impacts..... on children of lone parents, children with special needs, children from rural areas, Traveller children and other ethnic and linguistic minorities.' We therefore recommend inclusion of this policy in the EQIA timetable.

Promotion of Child Protection Policies and Procedures in Schools

The department has excluded this policy but we would argue for its inclusion in light of the increasing incidence of bullying and the varying standards of child protection reported by the ETI and NICCY.

Promotion of Positive Pupil Behaviour

In keeping with the advice from ECNI, equality considerations should have been an integral part of the original consultation and they should be a matter of urgency now rather than merely a possibility 'pending the outcome of the consultation process.' The experience of NICCY and the Children's Law Centre points to differential adverse impacts of suspensions and exclusions and it is clear that more work is needed to meet the obligations of the UNCRC.

Maximising Learning Opportunities for Children with Learning Difficulties/Special Educational Needs

The department has proposed to exclude this policy despite the existing well-publicised problems – resource problems, lack of early intervention to meet the needs of many children, the tortuous statementing process, inadequate training of many teachers, which will be compounded by further funding cuts. Therefore we call for this range of policies to be 'screened in'.

English as an additional language

The department provides figures that show the dramatic increase in the number of children who have English as an additional language and there is no disputing that these numbers will continue to rise. However the department has commissioned an independent review of EAL support to be completed by Spring 2005 and states that the next stage will be the formulation of a draft EAL policy which will be issued for consultation later in 2005. 'Given that the aim of this policy is to have a positive equality impact, the Department proposes that a separate EQIA is not required.' NICVA would argue that the department has committed the error of confusing good intentions with proper consideration of a policy's potential impact on equality of opportunity. It is our view that an EQIA is essential especially since major decisions have already been made in advance of the proposed EAL policy. As a consequence of the Common Schools Funding Formula, the EAL budget has already been decentralised to individual schools and is no longer ringfenced at board level for EAL provision. Teachers employed in this service have been made redundant and there is no guarantee that children with English as an additional language will receive this service. Moreover since schools are not 'public authorities' for the purposes of Section 75, they are not under a legal requirement to comply with Section 75. In view of research that highlights the lack of adequate training for teachers about the needs of children with English as an additional language, NICVA urges that the independent review of EAL be circulated and used to inform consultation on an equality impact assessment of this policy. It already looks as if it will be necessary to introduce mitigating measures to avoid adverse impact. If the department refuses to 'screen in' this policy, we would suggest that it will be in breach of its Equality Scheme.

Community Relations Policies

The department proposes to 'screen out' its community relations policies. We would like to draw its attention to the ECNI's recommendation that policies specific to the promotion of good relations or which have an impact on good relations are 'screened in' for further assessment.³

Concluding remarks

NICVA recognises the need for efficiency and the department's good intentions but we do not believe they should preclude serious consideration of the potential differential impacts of these policies.

We have been increasingly concerned about the position adopted by some public authorities on EQIAs. They argue that they have integrated equality considerations from the outset, that this is 'mainstreaming' and that there is no need for an EQIA. We would argue strongly that this is a misinterpretation of mainstreaming and that public authorities need to show how the policy started,

³ Guidance for Implementing Section 75, ECNI, 2005 p 63

show what equality considerations were taken into account, show who the authority talked with during consultation, show what changes were made as a result of this process and show the reasons for the final decision. The whole purpose of Section 75 is to enable policy-making to be made on the basis of objective evidence – provided by an EQIA – in order to establish objectively whether certain policies are going to result in greater or less equality. We therefore recommend closer attention to the ECNI's guidance on screening and to the department's obligations to comply with UNCRC. We hope our comments have been useful and look forward to hearing about the development of the review.