

# Making fair financial decisions

An assessment of HM Treasury's 2010 Spending Review conducted under Section 31 of the 2006 Equality Act

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# Executive summary

## Introduction

This report concerns decisions taken by Her Majesty's Treasury during the Spending Review of 2010. We consider the role of other departments only in the context of their inter-relations with HM Treasury during the Spending Review process and we have not therefore assessed the separate compliance of any other government departments.

The report is an assessment of the extent to which HM Treasury complied with the requirements of the public sector equality duties (PSEDs) in force at the time of the Spending Review 2010. These required public authorities to pay due regard to the need to eliminate unlawful discrimination and harassment and promote equality of opportunity on the grounds of race, gender and disability. The Assessment follows the decision of Mr Justice Ouseley to reject an application for judicial review of the June 2010 emergency budget, in which he asserted that an analysis of the government's spending plans would be better carried out by the Equality and Human Rights Commission (the Commission). A recent similar Assessment of the Scottish Government was found to be a mutually beneficial process.

The Commission has undertaken this Assessment with the cooperation of HM Treasury. Our principal aims were to discover to what extent and in what manner decisions were taken in accordance with the duties; to consider, with HM Treasury, whether there might be improvements in the process of decision-making; and to propose ways in which future such exercises could be more effective, more transparent, and offer greater value for money by ensuring that spending is better targeted.

Equality law does not seek a perfect process, but it does require public bodies to take steps which help them to be fair in their actions, and enables them to be seen to be fair.

## The public sector equality duty

The previous duties were consolidated into a single public sector equality duty (PSED) in the Equality Act 2010.<sup>1</sup> The new duty came into force in April 2011. The duty is above all a transparency measure intended to achieve evidence-based policy making, to encourage fairer

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<sup>1</sup> The PSED extends the duty to age, religion and belief, sexual orientation, pregnancy and maternity and gender reassignment equality. These are all areas that have not been covered or fully covered by previous equality duties.

and clearer decisions in public functions, including the allocation of public money.

The PSED is not designed to prevent necessary decisions being taken by government or other public bodies. Nor is it a way of preventing reductions in public spending. On the contrary, the duty should ensure that public spending is better targeted and that money is spent where it will have the greatest effect. The duties require public authorities to make their decision-making more transparent to the taxpayer, and if challenged, to justify their decisions before a court.

Public bodies are required to analyse the likely effects of policy on the relevant protected groups.<sup>2</sup> Where there is evidence of an adverse impact on any of the protected groups, the public authority must consider whether that policy is nevertheless justified in the light of wider aims. Even if it is justified, they should consider whether it should take proportionate steps to mitigate or avoid the adverse impact.

Under Section 31 of the Equality Act 2006 (the Act), the Commission has the power to assess and to report on public bodies' compliance with the PSED. The Commission may also make recommendations in connection with such an assessment, and bodies to whom the recommendations are addressed must have regard to them.

Where it decides that a public body has not complied with the equality duties, the Commission has the power to issue a notice requiring them to do so. Alternatively, the Commission may arrive at an agreement on a programme of action with the public body concerned.

## **The Spending Review**

Reducing the fiscal deficit was a declared priority for the incoming coalition government in 2010. Following the May election, it published an Emergency Budget in June which set out a five-year plan to 'rebuild the British economy' and reduce the deficit. The chancellor announced his spending proposals to Parliament on 20 October 2010.

The Commission has carefully analysed HM Treasury's key decisions and the process by which they were taken. We have benefited from an unprecedented degree of cooperation from ministers and officials, for which we are extremely grateful. This is the first time an exercise of this scale has been conducted under equality law.

In our Assessment we have tried to take full account of the exceptional challenges faced by ministers, in particular the scale and speed of the Spending Review.

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<sup>2</sup> Please see the glossary for an explanation of the term 'protected groups'.

Given that most of the measures announced in the Spending Review have yet to take full effect, this Assessment concentrates on the process by which decisions were made, specifically: whether HM Treasury met the requirements of the duties in force at the time; whether there was evidence of due regard being paid to the duties; and whether the process might have been improved or better supported in any way.

The Commission will work with the Government Equalities Office (GEO) and HM Treasury to ensure that there is a clear timetable for further scrutiny of the impact of the key measures, as more evidence of their real effect becomes available. Such a timetable should complement the process of post-legislative scrutiny now available to the select committees of the House of Commons.

## **Findings**

Overall, the Commission found a serious effort by ministers and officials to meet their obligations under the existing equality duties. In particular:

- The government published, for the first time, an equalities overview document, alongside the Spending Review.
- Equality ministers formally drew departments' attention to the requirements of the equality duties.
- As well as gathering equality data and assessing the impact on equality groups, HM Treasury made an attempt to analyse the effects of its proposals on different income groups and sometimes used this as a proxy for understanding impact on protected groups.
- Where they considered it relevant, ministers demanded more and better information about the equality impacts of proposals.

The Commission considers these steps commendable, particularly in the light of the pressures faced by ministers and officials.

However, the Commission found that three underlying factors made the task of formal assessment extremely difficult.

First, this is an unprecedented exercise in an unprecedented economic situation. The PSED is a relatively recent innovation; it is, so far, unique to the UK. It is the first time that any government has had to apply its requirements to such an extensive and significant project conducted in such challenging circumstances.

Second, the Spending Review involved the whole of government. Many decisions involved gathering information and analysis from several departments. Recent case law has made it clear that public bodies must pay due regard to equality, not only in the final policy decision, but to some extent in the process leading up to that decision. Some decisions

by the chancellor rested on a series of interlocking assumptions, some of which were not the responsibility of HM Treasury itself. Some proposals were made in anticipation of future detailed decisions which might formally be regarded as the province of individual government departments. Yet others were *de facto* shared decisions. Against this complex background it appeared to us that it was not always clear who should be responsible for which aspects of certain decisions, at what point the equality effects needed to be set out explicitly, and by whom.

Third, the PSED is an evidence-based duty. An assessment of adverse impact has to rest, not on opinion, but on analysis of likely outcomes for different groups, based as far as is possible on objective data. For such an analysis to be possible, the data sets should be common to all departments; and the data should be applied to a rigorously developed common model to make the analysis reliable. This is not yet the case for every area of policy.

The Commission believes that its recommendations should help to address all of these questions. Our most important proposals for the future fall into the realm of good practice. However, the Act requires the Commission sets out formally its conclusions on the extent and manner to which HM Treasury complied with the requirements of the duties.

## **Compliance**

As part of this Assessment, the Commission carried out a detailed analysis of the process by which decisions were taken for nine of the measures announced in the Spending Review 2010. We also undertook a preliminary assessment of the process for the majority of other measures in the Spending Review 2010, not including those excluded under 'public good' (please see Chapter 3 of full report).

While we did not analyse these measures in as great detail as the nine measures listed below, initial assessments indicated that the decision-making process by which they were taken met the requirements of the PSEDs. Overall, we conclude that amongst the large number of measures outlined in the Spending Review only a small number raised concerns.

Out of nine detailed case studies, we found that six were fully in accord with the PSEDs.

We were able to satisfy ourselves that HM Treasury was fully in accord with the requirements of the PSEDs in the following instances:

1. Removing Child Benefit from households with a higher rate taxpayer
2. Reform of Legal Aid

3. A £2.5 billion Pupil Premium for disadvantaged children
4. Removal of mobility component of Disability Living Allowance (DLA) from claimants in residential care homes
5. Council Tax Benefit: 10 per cent reduction in expenditure, and localisation
6. Time-limiting the contributory Employment and Support Allowance to one year for those in the Work Related Activity Group

In the circumstances – the scale of the exercise, the speed of its execution and the novelty of the process – this is a creditable record.

In three cases, the Commission's detailed examination was unable to establish whether or not the decisions were in full accord with the requirements of the duty because of a lack of clarity as to a) where the true site of the decisions lay, and b) whether or not some decisions were the responsibility of other government departments or the government as a whole.

These were:

7. **Introduction of a household benefits cap** – there is no evidence of any gender analysis or equality screening of the measure provided to HM Treasury ministers prior to the announcement of the measure on 4 October.
8. **Bus Service Operators Grant (BSOG)** – the potential impact on people with disabilities was not included in the advice provided to HM Treasury ministers.
9. **Replacing Education Maintenance Allowance with local discretionary funds** – there was no reference to ethnicity, disability or gender in information provided to HM Treasury ministers.

We are aware that in each of the nine case studies, including these latter three, HM Treasury considers all its actions wholly sufficient and in accordance with the Act. In essence HM Treasury ministers and officials have argued that where the decision was the responsibility of HM Treasury they took appropriate steps to establish due regard; and where they did not take such steps, it was because the decision was not the responsibility of HM Treasury.

The Commission does not doubt that the ministers and officials consciously and actively sought to fulfil the duties. But we do not believe that the government as a whole has fully grasped the way in which case law has elucidated the requirements of the PSED over recent years.

In the three cases in which we feel we cannot establish whether or not HM Treasury were fully in accord, it may be that further study might

reveal that some aspects of decision-making fell awkwardly between HM Treasury and other departments; or that the way in which the whole process worked meant that there might have been better documentary evidence if the government had been able to manage the process at a more normal pace. In any event, we do not consider that any of the shortcomings we have identified merit either further examination, or invocation of the formal means of censure or compliance open to us at this stage.

In addition to these three cases, the Commission's analysis suggests that for future such exercises, improvements could be made in the early stages of the decision-making processes in order to meet the requirements of the PSED more completely:

- Decisions as to whether an equality analysis is necessary in relation to the funding envelope for a whole department should be based on consideration of equality criteria relevant to protected groups. Other tests, for example, whether the department is the provider of a public good, should not pre-empt such consideration.
- Decisions such as which departments to prioritise and which to protect from spending cuts, might be more manageable and transparent if they were expressly based on their significance to a small number of defined equality objectives for the Spending Review. In this case, such objectives would probably have been derived from the Government's own declared Fairness Agenda.

We have also been assured by HM Treasury itself that both ministers and officials are fully committed to addressing the concerns we set out in this report. The Commission considers that this is a positive response to our findings, and is itself fully committed to working with government and others to building on what is good and remedying what could have been done better.

This will not just be a matter of bureaucratic box-ticking. Failure to ensure that the duties are observed has recently led to otherwise valid decisions being successfully challenged by, for example, Council Tax payers. As a consequence public bodies have been forced to revisit policies, at substantial cost to the taxpayer and inconvenience to those who work in and use public services.

### **Good practice**

The report highlights several instances of good practice, for example:

- Publication of an equalities overview document.



- Exemption of recipients of DLA from the household benefit cap, as a mitigating action.
- Use of screening tools for Annually Managed Expenditure (AME) measures.
- Department for Transport data submission to HM Treasury.

These are described further within the main body of the report.

However, in some cases a more detailed and purposeful equality effect analysis might have resulted in better targeted spending programmes, for instance:

- A more thorough and detailed consideration of the impacts of the Pupil Premium might have allowed for a more refined approach to its distribution – concentrating funds on groups of pupils whose performance most needed improvement.
- A thorough analysis by age would probably have provided stronger evidence for the government's case for the pace of deficit reduction.

### **Next steps**

The Board of the Commission considers that further formal action is not appropriate and the public interest would be better served by developing a programme of action with HM Treasury to ensure they are fully in accord with the requirements of the duties in future.

The Commission believes that future compliance and good practice in cross-government Spending Reviews could be better assured by:

- Greater transparency, including clear HM Treasury guidance on data and analytical requirements for the whole of government.
- Common rules to allow easier sharing of equality data within government, such as standardised data collection rules.
- Authoritative sources of advice and support for government departments on equality impact analysis.
- The development of a common model of analysis to predict the likely equality effects of policy.

The government should also consider:

- A single point of government responsible for monitoring and assessing the cumulative impact of future Spending Reviews and budgets.

- Independent and authoritative equality analysis of public spending policies. Since this task would conflict with the Commission's statutory role to monitor and assess non-compliance with the PSED, this role might be undertaken by a body such as the Social Mobility and Child Poverty Commission.

The Commission will also work with HM Treasury and other government departments to ensure that the impact of the 2010 Spending Review on protected groups is understood as the measures are rolled out over the next two to three years.

The full report can be found at: [www.equalityhumanrights.com](http://www.equalityhumanrights.com).

## Chapter 1: Background and introduction

Reducing the deficit was a clear priority for the incoming coalition government. Following the May 2010 election, it published an emergency budget in June which set out a five-year plan to ‘rebuild the British economy’<sup>3</sup> and reduce the deficit. Detail on the specifics of proposed public spending reductions were published in October of that year as the culmination of a Spending Review.

Equality legislation in force at the time meant that any public authority taking decisions had a duty to pay due regard to the need to eliminate unlawful discrimination and harassment and promote equality of opportunity, in all their functions in relation to race, disability and gender.<sup>4</sup>

A later section in this chapter will outline the legal expectations of the duty, particularly due regard, but, in essence, the duty means that the public authority (in the case of the Spending Review, HM Treasury) needs to analyse and understand the impact of proposed policies and decisions on the protected groups at the formative stages, in advance of the adoption of such policies. It does not mean that difficult financial decisions cannot be taken, but decision-makers need to understand potential impact, and mitigate any adverse impact, where this is possible.

This duty is not about bureaucracy. Rather, it recognises that it is not just important for society to eliminate discrimination against large groups of the population when making decisions, and to promote equality of opportunity, but that better and more cost effective decisions will emerge if detailed consideration to equality is given at an early stage.

Courts have established that, where large numbers of vulnerable people – many of whom fall within one or more of the protected groups – are affected by a policy change, the due regard necessary is very high. The size and scale of the spending reductions make it particularly important to understand the extent to which the duties in force at the time were complied with. While it is clearly significant to be able to see, in an era of transparent government, the extent to which legal obligations have been met, it is also essential that public policy makers are able to develop better tools to enable them to target resources most effectively. Used well, the public sector equality duty should do just this.

It was not only the Equality and Human Rights Commission (the primary regulator for the duties), which understood the significance of the duty in

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<sup>3</sup> [http://www.hm-treasury.gov.uk/2010\\_june\\_budget.htm](http://www.hm-treasury.gov.uk/2010_june_budget.htm)

<sup>4</sup> The Equality Act 2010 extended this duty from April 2011 to cover other additional characteristics: age, sex, gender reassignment, pregnancy and maternity, religion or belief and sexual orientation. It also covers marriage or civil partnerships with regard to eliminating discrimination in the workplace.

the context of the difficult decisions being made. In June 2010, the minister for women and equalities, wrote to government departments to remind them of their obligations when making spending proposals. This was followed by a letter to departments from the minister for equalities, reminding them of the need to 'ensure relevant equality considerations [were] being taken into account in the ongoing development of ... Department's spending plans'.

The Government Equalities Office (GEO) published guidance to departments on the three duties and how they applied to the Spending Review.<sup>5</sup> The GEO also held workshops to assist departments. The Commission itself wrote to permanent secretaries offering assistance and published a guide to fair financial decision-making.

The coalition government recognised the importance of incorporating the principle of fairness in the decisions that it was about to make. Fairness was described as one of the three key principles (along with freedom and responsibility) which would guide the review in the published Spending Review framework. This framework referred to commitments to fairness and social mobility.

However, while commitments to fairness can reasonably be interpreted as indications of good intent, the equality duty, supported by a body of case law which defines its meaning with greater precision, provides an objective basis by which to assess the steps taken by government.

As regulator for the public sector equality duties (and their unified successor) the Commission has the power to conduct a statutory assessment of the extent to which the duties have been complied with when decisions have been made. It announced in November 2010 that it would use these powers to examine the decision-making processes of the 2010 Spending Review and this report outlines the findings of that Assessment.

It is important to note that the Assessment does not look in detail at the actual impact of the measures contained within the Spending Review. In most cases the impacts on protected groups will take some time to emerge and it is therefore too early to judge. This report will suggest, however, several key areas of policy where those impacts should be monitored in future.

The focus on the process employed by HM Treasury is necessarily driven by the powers in the Equality Act. However, in a period in which public authorities will continue to be making difficult decisions for an extended time, this presents a valuable opportunity to establish an

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<sup>5</sup> The Commission recognises GEO's earlier work to raise awareness of the duties before the Spending Review, such as the Equality Guide (2009).

approach across the public sector by which such decisions can be made in a transparent and compliant way, reducing rather than increasing cost.

The terms of reference for the Assessment are outlined in Appendix 1.

In addition to the basic analysis of whether the duties were followed in carrying out the Spending Review, the Commission sought to understand whether sufficient equality information was provided to ministers, as the ultimate decision-makers. It also set out to understand who was responsible for understanding the cumulative impact of the decisions' consequent impacts on equality.

The Assessment was an opportunity for the Commission to work with HM Treasury to identify any potential areas for improvement and any lessons to be learned across government about how to meet the equality duties, by putting them at the heart of difficult decisions, while ensuring fairness and transparency.

The Commission has had evidence of increased awareness within HM Treasury of equality. For example, HM Treasury's document 'Lessons learned on equalities' circulated internally after the Spending Review referred to a published document setting out the approach taken and high level impacts, stating that 'In future, this could be planned from earlier in the process.' The chief secretary to the Treasury has also since reflected on the publication process of the Spending Review 2010, stating: '...one of the lessons from this ... for the next Spending Review ... should we be seeking to publish more information? There is a good case for that, to be honest ... Looking at whether there's more that we could publish is something that, irrespective of what you say in your report, I intend to consider.'<sup>6</sup>

The evidence base for the Assessment was built from a wide range of sources. It received over 100 documents from HM Treasury which also subsequently provided three further submissions of written evidence. Two oral evidence sessions were held with Treasury officials and one was held with the chief secretary.

External representations were received from nine organisations and further oral evidence sessions were held with expert witnesses from other government departments.

The oral evidence sessions were held in private and transcripts will not be published.

Written evidence was also provided by the Department for Education, Ministry of Justice and GEO.

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<sup>6</sup> Oral evidence session with chief secretary to the Treasury, 4 July 2011.

This report focuses on the decision-making processes leading to the following measures, in particular, in the Spending Review. We have focused on these particular measures as they are either the greatest areas of concern or show a particular learning point in the decision-making process:

- removing Child Benefit from households with a higher rate taxpayer
- introduction of a household benefits cap
- reduction to the Bus Service Operators Grant (BSOG)
- Council Tax Benefit: 10 per cent reduction in expenditure, and localisation
- reform of Legal Aid
- replacing Education Maintenance Allowance with local discretionary funds
- Pupil Premium
- removal of mobility component of Disability Living Allowance from claimants in residential care homes, and
- time-limiting the contributory Employment and Support Allowance to one year for those in the Work Related Activity Group.

### **The purpose of the duties and the meaning of due regard**

The Race Equality Duty came into force in 2001. It resulted from the Macpherson Report into the murder of Stephen Lawrence. Following the introduction of the Race Equality Duty, the Disability Equality Duty came into force in 2006, followed by the Gender Equality Duty in 2007.

Taken together, the three duties require public authorities to have due regard to the need to:

- eliminate unlawful discrimination on grounds of race, disability and gender
- promote equality of opportunity
- promote good relations between people of different racial groups
- eliminate harassment of people with disabilities that is related to their disabilities
- promote positive attitudes towards people with disabilities

- encourage participation by people with disabilities in public life, and
- take steps to take account of disabilities, even where that involves treating people with disabilities more favourably than other people.

In addition to these general duties, there were additional requirements called 'specific duties'. These involved requirements such as data publication, and consultation and involvement. Details of these can be found in Appendix 3.

The race, gender and disability duties required public bodies to have due regard in the statutory duties (outlined above) when carrying out their functions.<sup>7</sup> The weight given to race, disability and gender equality needs to be in proportion to its relevance. In a situation where the decision may affect large numbers of people, many of whom fall within one or more of the protected groups, the due regard necessary is very high.<sup>8</sup>

Case law<sup>9</sup> sets out broad principles about what public authorities need to do to have due regard to the aims set out in the general equality duties. These are sometimes referred to as the 'Brown principles' and are how courts interpret the duties. They are not additional legal requirements. The 'Brown principles' are set out in Appendix 4.

What observance of the duty requires inevitably varies considerably from situation to situation, from time to time and from stage to stage.<sup>10</sup> The following steps could form evidence of how due regard has been paid to the equality duties in accordance with the Brown principles, although they are not in themselves all legal requirements:<sup>11</sup>

- Guidance and information provided to decision-makers on their obligations under the equality duties.
- Evidence that both the potential positive and negative impacts on equality were used to drive and shape the decision-making process. This may include:
  - evidence of potential positive impact (such as increasing equality of opportunity, closing outcome gaps between protected groups, and improving good

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<sup>7</sup> Due regard is the regard that is appropriate in all the circumstances. These include on the one hand the importance of the areas of life of the members of the disadvantaged protected group that are affected by the inequality of opportunity and the extent of the inequality; and on the other hand, such countervailing factors as are relevant to the function which the decision-maker is performing.

<sup>8</sup> *R. (Hajrula) v. London Councils* [2011] EWHC 448 Admin at para 62.

<sup>9</sup> *R. (Brown) v. Secretary of State for Work and Pensions* [2008] EWHC 3158 paras 90-96.

<sup>10</sup> See para 83 *R. (Bailey) v. LBC Brent* [2011] EWCA Civ 1586.

<sup>11</sup> The specific evidence base for this Assessment is set out in Appendix 5.

- relations) as well as negative impact provided to decision-makers to help them decide between options
- evidence of policy options being considered and rejected by decision-makers, and
- the consideration of mitigating action to reduce potential adverse impact.
- Consideration of the potential impact of policy proposals on protected groups at different stages of the policy development process, including during the early stages of policy formation.
- Keeping accurate and transparent records demonstrating that consideration was given to equality during the decision-making process. This may include:
  - sharing data and evidence publicly (this may be done after the decision-making process), for example public records such as the 'equality overview document' for the Spending Review
  - evidence that equality was considered as part of the decision-making process which may help a public authority persuade a court that it has fulfilled the duty imposed, such as: formal or informal submissions to decision-makers making them aware of the potential implications of their decisions; or meeting minutes/read outs which confirm the information was available and considered, or informal evidence such as requests for further equality information from decision-makers to help them make their decisions.

For this Assessment, we have considered the actions of both HM Treasury civil servants and ministers. The Commission has also taken into account the Brown principles developed by the courts and has commissioned independent legal advice from Helen Mountfield QC, Professor Aileen McColgan and James Goudie QC.



## **Chapter 2: The Spending Review – who did what and the role of the major players**

Final decisions in a Spending Review are the product of a complex process which involves a number of different institutions. As HM Treasury officials explained: ‘You do end up having to make most of the decisions at the end, because ... the pieces have to lock together ... if you take a decision on the budget of the Department for Education, you have closed off a lot of practical options about the ... budgets elsewhere, and so you actually do end up, quite deliberately ... trying to bring a decision together simultaneously at the very end when you have as much information as possible.’<sup>12</sup>

This chapter seeks to briefly describe the role of the major players and their responsibilities as far as equality is concerned.

None of these decision-making processes are set out in statute and nor are the functions of the individual institutions precisely defined. Some conclusions can be drawn from documents such as *Managing Public Money* and the Treasury’s own single equality scheme.

It is clear from this Assessment that, while accountability and responsibility may be clear for many processes, this is not always the case. With newer legal obligations – such as the equality duties – decision-making functions would benefit from a greater degree of institutional clarity and formal allocation of responsibilities.

This would also ensure that effective equality analysis, which would sharpen the understanding of the potential impact of policy, can be more reliably carried out in a way which can be demonstrated to the public.

This chapter briefly sets out the role of HM Treasury and the ministerial decision-making bodies, known as Quad and PEX.

### **HM Treasury’s functions and their operation within the Spending Review**

HM Treasury’s functions are not set out in statute. However, HM Treasury officials told us that its functions are best described in *Managing Public Money* and in its single equality scheme. Please see Appendix 6 for extracts from HM Treasury documents which help to explain its functions.

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<sup>12</sup> HMT oral evidence session 1, 23 June 2011.

### ***Managing Public Money (October 2007)***

‘Parliament looks to the Treasury to make sure that:

- departments use their powers only as it has intended; and
- revenue is raised, and the resources raised are spent only within the agreed limits.

Hence it falls to the Treasury to:

- set the ground rules for the administration of public money; and
- account to Parliament for doing so...
- Supporting this, the Treasury: designs and runs the resource planning system and sets budgets for individual departments to meet ministers’ fiscal policy objectives.’

*Managing Public Money* says: ‘The Treasury controls public expenditure. So all legislation with expenditure implications, both primary and secondary, must have the support of the Treasury before it is introduced, laid in draft or made, as the case may be.’ HM Treasury therefore provides departments with settlements to allow for sensible planning across the whole Spending Review period.

Alongside the Spending Review documents, for the first time, HM Treasury published a separate equalities overview document which set out its role and functions:

- ‘The Treasury’s key responsibility at the Spending Review is to allocate resources across all government departments. It is then up to departments to decide how best to manage and distribute this spending within their areas of responsibility.’
- ‘The Treasury has a more direct involvement in some of the decisions made as part of the Spending Review, notably tax and areas of welfare and public service pensions.’

HM Treasury also produces the ‘Green Book’ which sets out the core principles on which all public sector economic assessment is based, and the cost-benefit analyses and criteria which should be used in deciding whether a project is value for money. The ‘Green Book’ states that equality impacts on various groups in society should be considered as part of an appraisal and points to annex 2 of the document for further information on how to take into account the wider impacts of proposals. However, this annex only addresses valuing environmental impacts and not how to value equality impacts. The Commission considers it positive that the Green Book does refer to the duties and recognises that this does indicate formal awareness of the obligations they confer. However, it also recommends that the Green Book be updated to include all the

protected characteristics, and ensure due regard is paid in value for money assessments.

## **HM Treasury's functions on equalities**

The equalities overview document sets out HM Treasury's view of its functions in relation to the Spending Review and equalities:

- 'It would not be proportionate for the Treasury to duplicate the responsibilities of other departments by undertaking equalities impact assessments of policy decisions that lie outside its core responsibilities. All government departments will further consider equalities impacts as appropriate and as they make decisions on how to pursue policy aims with the resources allocated to them.
- 'However, the Treasury does have a role to play in considering the equalities impacts of the Spending Review as a whole. In setting departmental budgets, the Treasury has considered what the overall impact of these spending decisions will be, as far as this is known from the information currently available.'<sup>13</sup>

The equalities overview document states that the approach taken is in line with that set out in HM Treasury's single equality scheme. This identifies the functions 'most relevant to equality'. In deciding relevance and importance, the scheme states that 'the key consideration was whether any policy, directly or indirectly, affected members of the public':

- 'the Treasury's key responsibilities, as the UK's economics and finance ministry, are to promote economic growth and to ensure sound public finances. The Treasury actively seeks, in setting the frameworks for economic and fiscal policy, to provide leadership within government in promoting diversity and fairness. This is achieved in part through the Comprehensive Spending Review given that, in the main, implementation of policies is the responsibility of other Departments and not the Treasury. We incorporate into the framework of targets for public expenditure the delivery of fairness and more equal outcomes for all.
- 'In policy areas where Treasury has more of a direct involvement, namely tax and welfare, we systematically analyse the diversity impacts of the measures proposed ... It would not be proportionate for the Treasury, in exercising its functions, to duplicate the responsibilities of other departments by undertaking equality assessments outside its core responsibilities. Discharging its responsibilities inevitably leads the Treasury to work with

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<sup>13</sup> [http://cdn.hm-treasury.gov.uk/sr2010\\_equalities.pdf](http://cdn.hm-treasury.gov.uk/sr2010_equalities.pdf) HM Treasury – 'Overview of the impact of Spending Review 2010 on equalities' October 2010.

Departments directly responsible for delivering services to the public and developing the policy framework within which these services are provided. This is most obviously true of the Treasury's role in controlling and setting the framework for public expenditure. But the Treasury is not itself directly responsible for these services and policies.'

### **Accountability for equality obligations in the Spending Review**

The Commission's analysis of the roles and functions laid out by HM Treasury itself in various publications, concludes that it does have a leadership role in promoting diversity and fairness when setting frameworks for major fiscal events such as Spending Reviews.

Overall leadership on equalities lies with the Government Equalities Office (GEO), which provides guidance to departments. However, while the GEO did play a part in the fiscal process and provided guidance, it does not appear to have had a formal role in making decisions. HM Treasury accepts responsibility for its equality obligations for the decisions it takes with regard to the functions such as those during the Spending Review.

HM Treasury states that it attempted to assess the cumulative impact of decisions taken in the Spending Review and that this was published in the equalities overview document. This document also explains that HM Treasury has a 'role to play in considering the equalities impacts of the Spending Review as a whole'.<sup>14</sup>

### **Decision-making bodies in the Review**

HM Treasury has responsibility for decision-making processes in the Spending Review, including decisions made by the key ministerial decision-making bodies: the Public Expenditure Committee (PEX), chaired by the chancellor; and Quad (Quadrilateral – prime minister, deputy prime minister, chief secretary to the Treasury and the chancellor of the exchequer).

The membership of PEX consisted of 'senior cabinet ministers appointed by the prime minister and chaired by the chancellor to advise the cabinet on the high-level decisions that need to be taken'<sup>15</sup> (see Appendix 7 for membership of PEX). PEX membership grew throughout the process, as once a department settled, its secretary of state was invited to join PEX. Decisions on the smaller and medium-sized departments' overall

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<sup>14</sup> Ibid.

<sup>15</sup> [http://www.hm-treasury.gov.uk/spend\\_spendingreview\\_introduction.htm](http://www.hm-treasury.gov.uk/spend_spendingreview_introduction.htm)

budgets were made by PEX, while Quad took final decisions on the large spending departments and the entire Spending Review.

The decision-making bodies, which included the chancellor and the chief secretary, took decisions on departmental settlements. A certain number of measures were announced in the Spending Review document for each department. Some were announced with a high level of detail on the measure and how it would be implemented. Others were policies at an earlier stage of development.

The most detailed measures at the time of the Spending Review were the Annually Managed Expenditure (AME) measures. The Spending Review considered key areas of AME measures as well as Departmental Expenditure Limit (DEL) measures for the first time.

AME and DEL – two different types of government expenditure:

AME: 'consists of programmes which are volatile and demand-led'.<sup>16</sup> Examples include social security benefits such as Jobseeker's Allowance, spending on which varies unpredictably depending on the number of unemployed. Such programmes are therefore not subject to the same multi-year limits as those under DEL.

DEL: This spending is planned and set at Spending Reviews as a fixed sum, with departments receiving separate DEL resource and capital budgets. Examples of DEL areas of spend include Legal Aid and the Pupil Premium.

The chief secretary reported that the equality information provided by officials to the decision-making bodies was helpful. He explained that the paper on equality provided in advance of the final decision point of Quad, was 'a key part of that discussion' and that 'We had at that stage to say in the round had we made the right sorts of adjustments, are there final adjustments we want to make?'<sup>17</sup> This is evidence that the equality information informed the final decision point, at a time when meaningful changes could have been made.

As well as the decision-making bodies, HM Treasury appointed the Independent Challenge Group (ICG) to 'act as independent challengers and champions for departments'<sup>18</sup> throughout the Spending Review process. This consisted of 38 people, mostly from within the civil service, with three external experts from the financial sector and one from the voluntary sector. The ICG was given a remit to 'think innovatively about

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<sup>16</sup> [http://www.hm-treasury.gov.uk/psr\\_spend\\_plancontrol.htm](http://www.hm-treasury.gov.uk/psr_spend_plancontrol.htm)

<sup>17</sup> Equality and Human Rights Commission oral evidence session with chief secretary to the Treasury, 4 July 2011.

<sup>18</sup> [http://www.hm-treasury.gov.uk/d/spending\\_review\\_framework\\_080610.pdf](http://www.hm-treasury.gov.uk/d/spending_review_framework_080610.pdf), p. 17 – 'The Spending Review Framework', June 2010

the options for reducing public expenditure and balancing priorities to minimise the impact on public services'.<sup>19</sup>

The ICG established smaller sub-groups that reported on seven departments (DWP, DH, DfE, HMRC, BIS, DCLG and the criminal justice system [CJS]) and four cross-cutting topics including one on distributional impact.<sup>20</sup> The ICG and sub-groups were not specifically briefed to consider the impact of measures and spending decisions in these departments on equality.

## **Decision-making processes**

A major consideration throughout the report is the separation of decision-making responsibility between HM Treasury and departments, and the extent to which HM Treasury is required to have regard to equality for measures contained in the Spending Review.

HM Treasury ministers agreed both DEL and AME measures, as part of the decision-making process to agree overall departmental settlements. For measures recorded in the Spending Review document, and where measures are presented to HM Treasury ministers for decision as part of the overall departmental settlement agreement, we consider HM Treasury as having decision-making responsibility as part of their Spending Review function. This Assessment considers HM Treasury's regard to equality for these measures.

In its equalities overview document, HM Treasury state that they have 'a more direct involvement in some of the decisions made as part of the Spending Review, notably tax and areas of welfare and public service pensions'.<sup>21</sup>

In discussions with the Commission, HM Treasury have made it clear that it accepts responsibility for overall departmental budget allocations for DEL, but that measures within these departmental allocations, even those published in the Spending Review, are the responsibility of departments. HM Treasury accepts direct responsibility for some AME measures, and shared responsibility for others.

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<sup>19</sup> Ibid.

<sup>21</sup> [http://cdn.hm-treasury.gov.uk/sr2010\\_equalities.pdf](http://cdn.hm-treasury.gov.uk/sr2010_equalities.pdf) – 'Overview of the impact of Spending Review 2010 on equalities', October 2010.

## **Record-keeping of the decision-making process**

While an authority is not legally obliged to keep a record of its consideration of the general equality duty in making decisions, it is good practice to do so and it encourages and enables public transparency.

HM Treasury explained during oral evidence sessions that for the final meeting of Quad, HM Treasury officials received notification of the decisions made by telephone but did not receive a written readout.

The Commission has been informed that PEX decisions were minuted, but has not received these minutes. HM Treasury has explained that they were at a high level and would not always be expected to include reference to specific consideration, including equality.

Such documents, confirming that equality information was considered, and what impact this had on the final decision-maker, would have made it easier for HM Treasury to demonstrate to the public how it had used the duties to make fairer decisions. The Commission recognises however that the unprecedented pressure under which the Spending Review process was carried out made this difficult to achieve consistently.

## **Conclusions**

As no department or body has clear responsibility for working out the cumulative equality impact of separate departmental measures within a Spending Review, then this analysis does not happen in any meaningful or comprehensive way. This means that no one has any clear idea as to how these measures will work together and what their combined impact on protected groups might be. Thus, an opportunity to make better policy and to mitigate impact is being missed.

While the Commission is reluctant to propose additional processes at a time of restraint, nonetheless, government should consider formalising for spending decisions, the process of assessing cumulative impact of spending decisions and ensuring that a specific named body – central to the process and with sufficient resource or expertise – is given the clear responsibility to fulfil government's obligations around the assessment of cumulative impact under the equality duties.

While the obligations on individual spending departments are clearer, the role of a central body is essential in analysing the cumulative impact of measures to ensure that the implications of government policy are understood across the board, as a package of measures.

## Chapter 3: Early decision-making and public good

### Equality of opportunity and policy development

This chapter considers HM Treasury's actions at the early stages of the Spending Review process and assesses whether due regard was had to the equality duties at that point.

If HM Treasury had considered the relevance that a department or a proposal has with regard to equality, and of how to promote equality of opportunity, during the early stages of decision-making, this could have led to a clearer rationale for prioritisation and protection of areas of spend by HM Treasury and across departments.

While not a legal requirement, this consideration could, for example, have taken the form of government agreeing a small number of key equality outcome gaps as part of its own fairness agenda, that it wished to close during the period of the Spending Review. This could then enable HM Treasury to consider the prioritising of departmental spend.

#### 1) Prioritisation and planning assumptions

The first decisions taken by HM Treasury concerned the scale of spending reductions for different departments. Departments were given 'planning scenarios' at the end of June, with most asked to model reductions of 25 and 40 per cent by the final year of the Spending Review. Both the Department for Education (DfE) and the Ministry of Defence (MOD) were given scenarios of reductions of 10 per cent and 20 per cent to model, and the Department of Health (DH), Olympic Delivery Authority and Department of Energy and Climate Change (DECC) were given 'bespoke assumptions'.<sup>22</sup>

Departments were not asked for equality data until after the deadline for their initial bids to HM Treasury. Previous HM Treasury guidance to departments, which set out the process of and format of departmental submissions, did not include reference to the equality duties.

HM Treasury stated in its oral evidence session that 'the effort to promote equality of opportunity was shown by the priority given to the education budget'.<sup>23</sup> The DfE started with a lower level of spending reduction (see above) compared to many other departments and 'through a lot of difficult decisions taken elsewhere', the final reduction to their overall settlement was 3 per cent, 'with a focus on strengthening provision for the disadvantaged at different stages', in order to help

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<sup>23</sup> HMT oral evidence session 1, 23 June 2011.



‘people who have been historically ... disadvantaged in the labour market and in other aspects of their life chances’.<sup>24</sup>

The deadline for departments to submit their initial spending plans to HM Treasury was 16 July 2010. HM Treasury admitted that the initial submissions ‘were not as good on equalities as [they] had originally hoped’ and it was ‘clear that people wanted further guidance on how to put this information forward’.

Public authorities must ensure that the duty is complied with before, and at the time that, a particular policy that will, or might affect, an equality group is under consideration.<sup>25</sup> Due regard therefore needs to be had from the formative stages and not just at the final decision-making point. The Court of Appeal recently found that merely producing an equality impact assessment (EIA) prior to the decision being made is not sufficient to discharge the duty as it must be kept in mind throughout the decision-making process.<sup>26</sup>

Importantly, the level of due regard should be proportionate to the relevance of the activity being undertaken.

Political decisions, for example manifesto commitments taken by parties prior to the formation of the government, are outside the scope of the public sector equality duties (PSEDs). However, a party could usefully anticipate the duties by setting clear equality objectives in its manifesto, which could then be translated into concrete priorities by officials once in government.

Then, at the stage where such commitments were beginning to be developed, the law would expect information to be provided to the ministers by civil servants ensuring that they understand the equality implications of their decisions.

The Commission has not been provided with any formal written evidence regarding the formulation of these initial planning assumptions, including

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<sup>24</sup> Ibid.

<sup>25</sup> *R. (Brown) v. Secretary of State for Work and Pensions* [2008] EWHC 3158 (Admin).

<sup>26</sup> See *R. v. L.B. Brent and others* [2011] EWCA Civ 1586 in which the Court said that ‘[t]here must be an analysis of the material “with the specific statutory consideration in mind.” The thought processes of the decision makers need to include having regard for the duties in the 2010 Act. The s149 duty must be kept in mind by decision makers throughout the decision making process. It should be embedded in the process...’, para 84. Further, the Court said that ‘[i]t is necessary that consideration of the duty required to be regarded ... properly informs the decision making process before the ultimate decision is made. There may, for example, be cases ... where the very late and unheralded production of an EIA immediately prior to a final scheduled meeting may, depending on the circumstances, not suffice. To the extent that the judge [in the lower court hearing this case] may at one stage in his judgment have indicated that a full EIA will always suffice provided only that it is produced prior to the decision finally being made may be going too far’, para 104.

any decisions to prioritise certain areas of spending. While HM Treasury set out in oral evidence sessions that the effort to promote equality of opportunity was shown by the priority given to the education budget, because of a lack of clarity as to a) where the true site of the decisions lay, and b) whether or not some decisions were the responsibility of other government departments or the government as a whole, the Commission was therefore unable to establish whether or not decisions at this early stage were in full accord with the requirements of the duties.

## **2) Public good**

HM Treasury uses the economic concept of 'public good' to decide which departments should provide distributional and equality data. As a result, not all departments were included in HM Treasury's distributional and equality analysis.

The phrase 'public good' is used to a product or service which is for the use and benefit of all. National defence, police and fire services, sewer systems, public parks and basic radio and television broadcasts are considered 'public goods' by economists.

HM Treasury stated in its equalities overview document that: 'Outputs of several government departments may be regarded as public goods – of equal benefit to everyone in society, such as defence. For these departments, it would not be meaningful to consider the equalities impacts of their resource allocations. This is also true for some major spending areas within departments, such as science. Therefore, not all departments have been included in the high-level qualitative assessment of the Spending Review's impact on equalities.'<sup>27</sup>

HM Treasury excluded several departments from its equality data gathering and analysis on this basis.<sup>28</sup> This was broadly similar to those excluded from the distributional analysis, apart from the Department of Energy and Climate Change (DECC) which was included under distributional analysis but excluded under the equality analysis.

### **Examples of how this decision affected the analysis of different departments**

Department for Energy and Climate Change

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<sup>27</sup> [http://cdn.hm-treasury.gov.uk/sr2010\\_equalities.pdf](http://cdn.hm-treasury.gov.uk/sr2010_equalities.pdf) – 'Overview of the impact of Spending Review 2010 on equalities', October 2010.

<sup>28</sup> A full list is available in Appendix 10.

DECC was included under distributional analysis but excluded under the equality analysis. However, it provided both qualitative and quantitative equality information on the Warm Front scheme<sup>29</sup> to HM Treasury. The qualitative data noted the positive impact of this scheme on health outcomes, child poverty, and pensioner income. The quantitative data broke down the users of the scheme by age, gender, ethnicity and disability. This showed that Warm Front is used disproportionately by households with a disabled or long-term sick member (64 per cent compared to the average (England) of 16 per cent), women and pensioners.

The Spending Review stated that 'Extra support to reduce energy bills and help to improve heating and insulation will be provided by energy companies to combat fuel poverty. This will allow the Warm Front public spending programme to be phased out over time, saving £345 million by 2013-14.'<sup>30</sup>

According to the equality information provided by DECC, changes to the scheme could have had an impact on women, pensioners and households with a disabled member. The HM Treasury equality paper on small and medium departments, which went to PEX, included a section on DECC but did not mention Warm Front and states that DECC 'benefits are public goods and therefore it is not possible to consider equality impacts'. The summary of this PEX paper also states that 'the impact of budget reductions for the Department for Energy and Climate Change ... cannot be meaningfully broken down'.

Although some of DECC's functions may have no impact on equality, the exclusion of the whole of DECC's work meant that equality was not considered by HM Treasury ministers for those functions which were potentially relevant, such as Warm Front.

#### Ministry of Justice (MoJ)

HM Treasury excluded some of the MoJ's functions under 'public good', including courts and prisons. However, the MoJ did provide equality data to HM Treasury on its main Spending Review areas: Legal Aid, Criminal Injuries Compensation Scheme (CICS), Criminal Justice Reform, including victims of crime, offenders and prison population, and the MoJ workforce.

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<sup>29</sup> The Warm Front scheme provides heating and insulation improvements to households on certain income-related benefits living in properties that are poorly insulated and/or do not have a working central heating system

[http://www.direct.gov.uk/en/Environmentandgreenerliving/Energyandwatersaving/Energygrants/DG\\_10018661](http://www.direct.gov.uk/en/Environmentandgreenerliving/Energyandwatersaving/Energygrants/DG_10018661)

<sup>30</sup>[http://cdn.hm-treasury.gov.uk/sr2010\\_completereport.pdf](http://cdn.hm-treasury.gov.uk/sr2010_completereport.pdf), p. 62 'Spending Review 2010'.

The MoJ conducts equality screenings, and full assessments if required, on policies around changes to probation, sentencing, court closures and working with offenders, and does not follow the exclusion of these areas under the principle of 'public good' used by HM Treasury.

Changes to services provided by courts or policies on prisons have the potential to impact on equality groups. The Commission's *Triennial Review*, reported that, on average, proportionately five times more black people than white people in England and Wales are imprisoned.<sup>31</sup> The MoJ reflected this in its submission: 'The prison population is disproportionately young men, reflecting the characteristics of offenders. Ethnic minorities are also more likely to be in prison compared to the population overall, as their characteristics are associated with a higher risk of offending.'

Policies which impact on prisoners can therefore have a disproportionate impact on black people and men. However, equality data in relation to these issues was not made available to HM Treasury ministers by HM Treasury officials when the overall settlement for the MoJ was being considered. This contained decisions about reducing reoffending, reforming sentencing and resolving more disputes out of court.<sup>32</sup>

## Home Office

HM Treasury did not ask the Home Office for any data on the potential impact of any of its measures on different income groups on the grounds that statistical analysis on income quintiles is not possible for services that are a 'public good in nature'. The Home Office did, however, provide a brief written analysis to HM Treasury of the potential impact of its spending plans on different income groups and whether the plans might be viewed as 'progressive or regressive in nature'.

The Home Office undertakes equality assessments on many of its policies and strategies, and the results of these are published on its website. For example, there are published assessments on the 'Review of counter-terrorism and security powers' in 2011 and on several measures within the Police Reform and Social Responsibility Bill. These demonstrate that there are many areas of the Home Office's work with links to equality. However, the potential impact on equality of reductions to the Home Office's settlements<sup>33</sup> was not considered by HM Treasury, because of the application of the 'public good' approach.

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<sup>31</sup> Equality and Human Rights Commission, *Triennial Review 2010: 'How fair is Britain?'*, p. 124.

<sup>32</sup> [http://cdn.hm-treasury.gov.uk/sr2010\\_completereport.pdf](http://cdn.hm-treasury.gov.uk/sr2010_completereport.pdf), p. 55 'Spending Review 2010'.

<sup>33</sup> A settlement is an agreement between HM Treasury and the departments on the level of monies they will be allocated under the Spending Review.

HM Treasury, therefore, did not have any data or analysis on the potential impact of any of the Home Office's measures on race, gender or disability equality to take into consideration when deciding on the Home Office's settlement.

HM Treasury did not provide any evidence to the Commission to demonstrate that there was any specific consideration of the relevance of these departments or functions to equality before excluding them from distributional and equality analysis.

The work of several of these departments, such as MOJ's responsibility for courts and prisons, has clear implications for equality. Therefore, no subsequent analysis and information on equality was provided to HM Treasury ministerial decision-makers. We recognise that such work may have been conducted by lead departments and shared with their ministers. However, in certain circumstances this may have led to HM Treasury ministers having inadequate information as to the potential impact of their decisions.

The Commission understands that the details of the measures in the Spending Review are worked out by the department, and that with time the impact of the decisions on equality becomes clearer. However, the equality duties required that HM Treasury ministers should have relevant information on the impact on equality of policy proposals before decisions are made. There is no basis for exclusion of departments and policy functions under the 'public good' argument in the equality legislation. We note with concern that the same 'public good' approach was used in the Budget 2012.

## **Conclusion**

The Commission understands that during the early stages of the Spending Review process it may not have been feasible or proportionate for HM Treasury to undertake detailed consideration of the equality impacts of all the decisions being proposed. However, it would have been appropriate for HM Treasury in their planning assumptions, and for departments in their initial submissions, to have given broad consideration to possible disproportionate impact on protected groups. This could have been done by considering for example:

- the significance of the departmental function to gender equality, people with a disability, or a particular ethnic group
- any disproportionate representation of equality groups among departmental service groups, and
- the potential role of departments in the promotion of equality.

Starting the process in this way would have allowed HM Treasury ministers to understand which areas were likely to be significant for equality, which would have then enabled them to decide what action would be proportionate to further analyse the potential impact for equality groups.

This approach could have been used to inform initial decisions on planning assumptions and might have changed the application of 'public good' to exclude departments and functions from equality assessments.

All departmental functions or services under consideration for change under future Spending Reviews should be subject to an initial screening for their relevance to equality and potential impact on the different protected characteristics as set out under the Equality Act 2010. This would ensure that HM Treasury ministers are better informed on whether it may be necessary to gather further evidence on which to base their final decision.

# Chapter 4: HM Treasury's process for gathering data

## Introduction

For decision-makers to have due regard to the statutory equality duties, they have to be able to properly consider the likely impact on equality groups of the proposals under consideration.

Case law confirms that there is an obligation to properly 'assess the risk and extent of any adverse impact and the ways in which such risk may be eliminated'.<sup>34</sup> This requires an evidence base.

HM Treasury engaged in a process to gather equality data, evidence and information from other government departments to build their evidence base.

This chapter explores the process used to collect the data and the issues that arose, including:

- the timeliness of returns
- the quality of returns, and
- the relationship between HM Treasury and departments.

## HM Treasury's responsibilities under the equality duties

HM Treasury's *Managing Public Money* explains: 'The Treasury delegates to departments authority to enter into commitments and to spend within predefined limits without specific prior approval from the Treasury.'<sup>35</sup>

HM Treasury views its equality responsibilities differently for the two types of expenditure, and followed two separate processes to gather evidence, depending on whether the area of spend was Annually Managed Expenditure (AME) or Departmental Expenditure Limit (DEL). The two types of expenditure and the Treasury's different approach to each are outlined in Chapter 2.

## Data collection for AME measures

Although AME expenditure covers a wide range of areas such as climate change agreements and enterprise zones, for the purposes of this Assessment, we will concentrate on the AME welfare measures. Lead

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<sup>34</sup> *R. (Kaur) v. London Borough of Ealing* [2008] EWHC 2062 [22], per Moses LJ.

<sup>35</sup> [http://www.hm-treasury.gov.uk/d/mpm\\_annex2.3.pdf](http://www.hm-treasury.gov.uk/d/mpm_annex2.3.pdf) – 'Managing Public Money', October 2007.

responsibility for these measures is divided between DWP and HM Treasury.<sup>36</sup>

To gather data for AME measures HM Treasury developed an equality screening tool. The headings for sections to be completed included 'Policy intent of the measure', 'Impact on protected groups', 'Interaction with other measures', 'Gaps in the evidence base' and 'Mitigating action'. The screening tool was circulated to HM Treasury spending teams on 5 October, with the request that these should be completed and returned by 7 October, and were provided to HM Treasury ministers as a source of information.

In the oral evidence session with the DWP, officials stated that 'the process of them [HM Treasury] developing that [the screening tool] from our analysis was commissioned sort of late July, early August, so there was a process during August, early September, of iteration with us to build that up'. DWP officials described the development of this tool as 'helpful'. It was 'DWP analysis of information generally that fed into those screening documents ... So those documents are theirs [HM Treasury's], but based on our [DWP's] information.'

In addition to the screening documents, there was an iterative process between HM Treasury and the DWP which was not always recorded. A DWP official explained, 'My sense all the way through was that most of the time there was good communication and close working with Treasury. There are always times in negotiations when things go quiet between the two of you, but then you re-engage. So I think, on the whole, pretty well all the way through, we were working closely with Treasury on the key policy areas; sharing information, sharing analysis.'<sup>37</sup>

## Data gaps

For AME areas of spend, data gaps for race are cited as an issue in the HM Treasury screening documents for a number of measures. For example, the screening documents raise this issue in relation to ethnicity for the following measures:

- Housing benefit: increase age limit for shared room rate from 25 to 35
- Household benefit cap
- Freezing 30 hour element and basic element of Working Tax Credit (WTC)

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<sup>36</sup> Appendix 9 shows the full list of AME measures and departmental responsibility.

<sup>37</sup> DWP oral evidence session, 28 June 2011.



- Reducing percentage of childcare costs which can be claimed through childcare element of WTC
- Council Tax Benefit

In the documentation provided to the Commission there is no reference to how these data issues will be addressed after the Spending Review, to enable better analysis in future.

In the representation received by the Commission from the Institute for Fiscal Studies (IFS) (detailed in the approaches to analysis section below), they conclude that data was available to analyse the impact of changes to personal taxes, tax credits and benefit varied by ethnicity, as well as age, disability and gender.

An understanding of the relationship between race and low income can also be useful in assessing the impact on individuals. For example, around two-fifths of people from ethnic minorities live in low-income households, twice the rate for white people.<sup>38</sup>

### **Quality of information on screening tools**

The screening tool used for the AME measures was an effective way to provide information to decision-makers in a clear and concise manner, the sections gave a focus to the collection of data and provided a narrative behind the data collected, allowing a more consistent approach. However, there are examples within the screening tools where sections were not filled in or were missed out.

### **Data collection for DEL measures**

HM Treasury did not use a screening tool template for DEL measures as it had with AME measures, and sent blank spreadsheets to departments with instructions for completion.<sup>39</sup> The information requested included the impact on equality and distributional analysis. HM Treasury have explained that when it became clear that departments wanted further guidance in relation to equality, this was provided, and further data was requested.

In order to understand the impact of the proposals on households, HM Treasury requested information on user groups by income and standard

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<sup>38</sup> <http://www.poverty.org.uk/06/index.shtml>

<sup>39</sup> Departments with spend considered a 'public good' were not asked to provide this information.

household types, and spending on services per household and per consumer.

This request for information had been shaped by input from departmental chief economists and the Government Equalities Office (GEO).<sup>40</sup> The instructions stated 'Where there is data we would like to know the likely impact on different groups (gender, ethnicity, disability) if there is no data on this then please leave the columns blank.'

Departments were instructed to provide qualitative and quantitative evidence of the impact on gender, ethnicity and disability, as well as the implications for social mobility, child and pensioner poverty.

The template included reference to the protected groups (including religion and belief, and sexual orientation as well as gender, disability and ethnicity). Transgender was included in the quantitative spreadsheet as 'LGBT' (lesbian, gay, bisexual and transsexual), but not as a separate characteristic.

### **Quality and timeliness of DEL returns by departments**

The deadline for data returns from departments was 13 August 2010 and on the same day HM Treasury gave a presentation at a GEO workshop for spending departments, explaining their approach to equality analysis in the Spending Review process.

The response to the request for data varied both in the quality of information provided and in the time taken to respond. The earliest information on equality was returned on 16 July<sup>41</sup> with others received as late as 14 and 15 October.<sup>42</sup> Some returns focused on expenditure, others on outcomes and those departments that HM Treasury regarded as providing 'public goods' were not required to provide data at all.

The timeline in relation to changes to Legal Aid shows that equality data was returned to HM Treasury from the Ministry of Justice on 14 October, two months after the deadline and only days before the Spending Review was published. (Please see Appendix 10 for a full list of departmental data returns.)

Other significantly late returns include:

- Department for Energy and Climate Change on 23 September

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<sup>40</sup> Meeting on 5 July 2010 between departmental chief economists and the GEO.

<sup>41</sup> 16 July date refers to DCLG return, date provided to the Commission by HM Treasury.

- Department for Education on 10 September (although DfE states some evidence was returned as late as 15 October).

There is no formal return from the Department for Business, Innovation and Skills (BIS), only emails which include information on the potential impact of abolishing Train to Gain. The Ministry of Justice (MoJ) submitted its data in its own format.

HM Treasury reminded departments of their outstanding submissions on equality in emails sent in late August, September and early October.

While some of the returns were significantly late, and not all followed HM Treasury's requirements to complete the spreadsheets, all of the departments that were not excluded under the 'public good' approach, submitted some data to HM Treasury prior to HM Treasury ministers taking the final decisions on these departments.

Late returns, however, may have meant that there was limited time for the data to inform the decision-making process.

While departments undertook their own quality control processes, and their chief economists signed off their departmental submissions, the lateness of returns left little time for HM Treasury officials to chase any missing data or to query conclusions in order to ensure that HM Treasury ministers had the best available information regarding the equality implications, on which to base their decisions.

The Commission recognises the particular time constraints of the 2010 Spending Review, for both HM Treasury requesting equality data, and departments providing their completed equality returns. HM Treasury agree that for future Spending Reviews, taking place in less pressured circumstances than the 2010 review, it would be good practice to aim to request such information at an earlier stage.

The development of a cross-government evidence base relating to equality, available for HM Treasury and departments to use at times such as Budgets and Spending Reviews, would be a way of reducing the pressure within future processes and would allow for departments and HM Treasury to gather more specific data on the implications of the decisions being taken for equality groups, outside the time pressures of the Spending Review or budget process. Authoritative sources of advice and support for government departments on equality impact analysis, would also assist departments in ensuring that they have sufficient data and take appropriate approaches in relation to understanding equality impacts.

## **Inconsistency of approach to DEL returns by departments**

The quality of the returns from departments were inconsistent. Some considered specific policies, while others focused on broad areas of spend.

An example of a good return, which was provided on time, came from the Department for Transport (DfT) whose analysis was referred to as 'rigorous and qualitative' by the Independent Challenge Group (ICG) sub-group on distributional impact.

On 13 August the DfT returned its analysis. This included:

- quantitative and qualitative spreadsheets, which considered the potential impact of policy proposals
- a narrative which explored the potential impacts of policy options on equality groups, low income groups and regional balance
- the percentage of users of a service with a protected characteristic, as well as consideration of other barriers which might increase the impact from a particular measure more than the numbers alone would suggest
- consideration of the impact from changes to public transport on people's ability to access employment, services and training. This tended to be related to low income, but reference was made to the 'intrinsic link between low income groups and disadvantaged groups'
- evidence on the three equality groups.

The data returned to HM Treasury from DfT considers the potential impact of their proposed changes, however, other departments' returns do not. Departments are perhaps best placed to do this analysis and it may be that in future HM Treasury should request that departments provide qualitative information on policy proposals as well as current data, to enable better understanding by HM Treasury ministers of the potential impact of decisions.

Another inconsistency was that some departmental spreadsheets were returned but not fully completed, with no reference to how these gaps would be addressed. Where the impact was not known, or there were data limitations, solutions were not necessarily identified.

BIS did not return the spreadsheets, and the evidence shows that they provided some limited information on the potential impact of Train to Gain with reference to protecting the most vulnerable learners. An email attachment of a template on the impact of BIS's areas of spend has not

been fully completed and includes the sentence, 'As a result we have considered x, x and x mitigation options.'

Although there is evidence of HM Treasury reminding BIS of the need to provide equality data, an HM Treasury email states that BIS 'are doing their own impact assessments', but there is no explanation of why this was agreed for this department.

The evidence shows that HM Treasury did send out general reminder emails to departments asking that they return the data that had been requested. HM Treasury report requesting further information on the reduction to the Bus Service Operators Grant, and the Chancellor's office asked for a note on the impact of the household benefit cap.

HM Treasury have explained that the detail of the DEL spending decisions are taken by departments, with only the high-level settlement decisions being taken within the Spending Review process.

### **Misunderstanding of the duties**

There are some occasions where there seems to be a misunderstanding of the duties. For example, one email regarding the BIS settlement states: 'It is only areas which are used disproportionately by affected groups which are being cut by more than average which are of concern.' This suggests a misunderstanding of the equality duties on the part of HM Treasury, which then impacted on the quality and breadth of the data returned from BIS. The reply from BIS explains: 'The only participation budget being cut by over 25 per cent is Train to Gain.'

A briefing paper to PEX for their meeting of 11 October implies a similar misunderstanding. It states that, 'Within Transport, areas being cut by more than average will not have significant equality impacts and therefore, against the baseline of average budget reductions, there are no disproportionate effects.'

Despite this, HM Treasury have explained that there is evidence that departments do understand the duties, and that there are no systemic problems. However, the Commission's analysis suggests that this misunderstanding may have been presented to ministers, and could have influenced the decision regarding which pieces of information to provide to them.

Correspondence between GEO and HM Treasury officials, and GEO guidance, appears to be based on the mistaken view that transsexual people were not already protected under the existing gender duty stating instead that transsexual people would be covered as part of the forthcoming equality duty covering sexual orientation.

## **What should happen next?**

HM Treasury should consider extending the use of the screening tool template to DEL measures as well as for AME measures. In developing this it should include all of the protected characteristics as well as the different statutory obligations under the duty and be used for future Spending Reviews and major fiscal events. They agree that 'it might be possible to apply a screening tool to the Department as a whole but the distinction between DEL and AME needs to be understood' and state that 'we will develop a screening tool for those areas (essentially most areas other than tax, welfare and public sector pay and pensions) where HM Treasury simply sets the high level budgets'.

Stronger quality control processes should be introduced to ensure data and information gathered from departments is provided in a consistent way and is sufficient to enable HM Treasury ministers to take an informed decision. Commencing data gathering earlier would help achieve this. HM Treasury has explained that it was perfectly reasonable to rely on quality assurance by departments. However, for the steps where HM Treasury has responsibility, they must have due regard; if the information provided is not adequate to enable them to discharge their duties then they have to take proportionate steps to ensure their ministers have the information required to make an informed decision, for example, by quality checking information from departments.

An evidence base should be developed relating to current consumption and participation for equality groups, in order to reduce pressure within the Spending Review process and to ensure that the focus of analysis can be on the proposed changes.

Authoritative sources of advice and support for government departments on equality impact analysis, would help to ensure the quality of the data received by HM Treasury (as well as them having their own quality control processes).

## **Chapter 5: Approaches to analysis**

### **HM Treasury approach**

The equalities overview document accompanying the Spending Review explains that HM Treasury takes a qualitative approach to determining the equality impact. The document provides a narrative of potential impacts from various Annually Managed Expenditure (AME) and Departmental Expenditure Limit (DEL) measures.

A distributional impact analysis (DIA), which was a quantitative assessment, was included in Annex B of the Spending Review document. This included the impact on households by income (but not equality group) of changes to:

- departmental and public services spending
- taxes, tax credits and benefits, and
- tax and spending combined.

### **Distributional impact analysis: the case for including equality groups**

HM Treasury looked at both distributional and equality impact. Equality analysis was conducted separately, but findings from the DIA (which assessed impact on households by income) were used to inform the equalities analysis, as one component. The DIA did not consider impact by equality group.

HM Treasury explain that 'Analysis by equality group cannot robustly be undertaken at household level, since members of the protected groups are often in households that also contain people not in the protected groups.' They also refer to data issues for ethnic minorities and people with disabilities because of issues with sample size.

### **Alternative views**

Representations made to the Commission from the Institute for Fiscal Studies (IFS), the National Equality Panel (NEP) and the Women's Budget Group (WBG) assert that it would have been possible for HM Treasury to have used techniques similar to that employed for the DIA analysis, to examine wider equality impacts. This conclusion was supported by a report commissioned from the National Institute of Economic and Social Research (NIESR).

### **NIESR report**

'To extend HMT's distributional analysis to the relevant protected groups would have been an additional major innovation ... Our own exploration, however, suggests that considerably more detailed impact analysis of proposed policy changes on protected groups may have been possible and that this analysis could have been feasible within the timeframe set by the Spending Review, although it might have required a certain amount of additional resources...

Our analysis suggests that a quantitative assessment of Spending Review impacts on protected groups would have faced a number of challenges. Inevitably, such an analysis would have had limitations in methodological terms and coverage (as did HMT's published distributional analysis). The task would nonetheless have been feasible insofar as the data that would have been required for it are available and would have allowed, at least, an exploratory, but systematic examination and estimation of impacts on protected groups.'

### **IFS representation**

Tax and benefits: 'we consider that data was available to HM Treasury to analyse the impact of changes to personal taxes, tax credits and benefits varied by age, disability, ethnicity and gender'.

Public spending: 'there seems little reason for them not to have carried out a similar analysis broken down by other characteristics **where the data was available**' (their emphasis). The IFS goes on to explain that sufficient data for ethnicity is unlikely, but 'Data sets typically record ... the age and gender of respondents (and often the presence of disabilities).'

### **Women's Budget Group's representation**

'The methods used by the Treasury to conduct its distributional impact analysis, differentiating households by levels of income, could have been used to differentiate households by their gendered characteristics. This would have alerted the Treasury to the fact that the households hardest hit (proportionate to their incomes) by the expenditure cuts, were lone parents (95 per cent of whom are women) and single female pensioners, two groups that are already subject to multiple disadvantages.'

The relationship between equality and income disadvantage can be useful in understanding potential equality impact. Distributional impact analysis is helpful in addressing the indirect effect on an equality group



of being in a low income group because of the established relationship between the two. For example, income poverty remains persistent for some groups such as women who have been lone parents, some ethnic minority groups and families with disabled children:

- Over 1 in 4 families with disabled people live below 60 per cent median income.<sup>43</sup>
- Half of all lone parent families in the UK are on low incomes, more than twice the rate for couples with children.
- 19 per cent of individuals who live in a household in which the head of the household is White British live below the 60 per cent median income poverty threshold, compared to 56 per cent for the Bangladeshi and Pakistani population.

However, the two concepts of income disadvantage and general equality are not interchangeable (a fact recognised by HM Treasury) and equality analysis should be clear about whether the identified effects are directly or indirectly linked to the protected characteristic.

Also, while there are some circumstances in which it may be appropriate to use analysis of impact on income-disadvantaged groups (for example where no data currently exists for a specific group), consideration of the direct impact on equality groups should also be included in order to give a more complete and nuanced picture.

The importance of non-economic equality impacts are also important to the process of assessment. For example, the impact of reduced access to health services because of changes in public transport could lead to a (non-economic) health equality impact (which in turn might have an (economic) impact on equality of participation in employment).

Using this evidence could result in more effective practical policies, targeted at outcome gaps, by understanding the specific needs of particular groups, such as lone parents of disabled children who want to work. A tailored policy could include work incentives which incorporate affordable and accessible childcare.

The Commission concludes that, taking into account the caveats above regarding data issues, the distributional impact analysis should be extended to consider impact on equality groups (and sub-groups). We recognise that there are limitations and technical issues with distributional analysis. However, this should not necessarily prevent an equality analysis from being undertaken, that assesses the risks of detrimental impact.

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<sup>43</sup> Equality and Human Rights Commission, *Triennial Review 2010*.

## **Modelling the impact on individuals**

Certain policy measures are delivered at the household level, such as means-tested benefits based on the overall household income. This poses a difficulty in understanding the potential impact of measures on **individuals** within couple households. HM Treasury states that in order to assess the impact on individuals, knowing the protected characteristics of the claimant is insufficient, as it would be 'necessary to know how families share their income between themselves and their children (if any)'.<sup>44</sup>

This issue is of relevance to gender assessments, as there may be significant differences between individuals within the household in relation to income and employment, which could be missed. Work incentive measures, for example, could impact differently on individuals in couple households. It is also an issue in relation to other equality strands. For example, mixed race households are the fastest growing ethnic groups.

The equality duty requires that consideration should be given to the need to promote equality of opportunity and this should influence how HM Treasury and departments shape and prioritise the analysis they undertake. For example, if a desired outcome of government policy was to increase the employment rates of women, HM Treasury's current approach would be that because work incentives, such as Tax Credits, are paid at the household level, they cannot be subject to any meaningful gender impact assessment. However, work incentives may operate differently for second earners in a household and gender-based analysis could give vital insights to enable the government's policy aims to be more successful.

## **Alternative views to understanding the impact on gender of measures delivered at the household level**

There are long-standing debates regarding the issue of splitting income within the household. For example, the NEP approach assumes that each individual within the same household receives the same share of household income, but they acknowledge that this is 'likely to be wrong when considering multi-person households'.<sup>45</sup>

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<sup>44</sup> [http://cdn.hm-treasury.gov.uk/sr2010\\_equalities.pdf](http://cdn.hm-treasury.gov.uk/sr2010_equalities.pdf) – 'Overview of the impact of the Spending Review 2010 on equalities', October 2010.

<sup>45</sup> <http://sticerd.lse.ac.uk/dps/case/cr/CASEREport60.pdf> – 'An Anatomy of Economic Inequality in the UK Report of the National Equality Panel', January 2010.

The WBG, in its assessment of the Spending Review,<sup>46</sup> refer to the 'rich insights' produced by social science research 'into how incomes are distributed within households'.<sup>47</sup>

### **Assessing the impact on sub-groups dominated by a particular gender**

Another way of understanding the potential gender impact of such measures, is to consider the impact on sub-groups of women or groups where women are over-represented (for example, just over 90 per cent of lone parents are women).

However, HM Treasury states that 'The aggregate impact for the protected group cannot be assumed to be positive (or negative) simply on the basis of impacts on an unrepresentative sub-group. There is no reason to suppose that the reverse is not equally likely.'

The documentary evidence, including the equality overview document, shows that HM Treasury recognises that any changes to single households with children will affect more women due to the higher percentage who are lone parents. Information is provided to the ministers on the impact on lone parents for some measures, for example, in relation to the freezing of the 30 hour element of Working Tax Credit and the reduction of the childcare element, which includes some consideration of the impact on work incentives. However, this is not done consistently. For example, prior to the Spending Review ministers did not receive information on lone parents in relation to the benefits cap. Where information on lone parents was provided to the decision-maker, such as for Child Benefit, it is not clear what impact this had.

While HM Treasury's argument that the aggregate impact cannot be assumed based on assessment of a sub-group is true, gender impact is not confined to an aggregate group comparison. Having due regard requires analysis which includes indirect discrimination. For example, a policy which puts part-time workers at a particular disadvantage would be unlawful (unless it could be objectively justified as outlined in the 2010 Equality Act) as proportionately more part-time workers are women. The law treats this as an example of indirect discrimination even though not all women are part-time, and not all part-timers are women.

Other departments, such as the DWP, conduct analysis of sub-groups as part of their equality assessments. For example, the assessment of

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<sup>46</sup> [http://www.wbg.org.uk/RRB\\_Reports\\_4\\_1653541019.pdf](http://www.wbg.org.uk/RRB_Reports_4_1653541019.pdf) – 'The Impact on Women of the Coalition Spending Review 2010', November 2010.

<sup>47</sup> Ibid.

the household benefit cap, published in March 2011, considers the impact on single households with reference to the impact on lone parents, concluding that DWP 'expect around 60 per cent of customers who are likely to have their benefit reduced by the cap to be single females but only around 3 per cent to be single men. Most of the single women affected are likely to be lone parents, this is because we expect the vast majority of households affected by this policy (around 90 per cent) to have children.'<sup>48</sup> We also note that HM Treasury published information relating to work incentives for lone parents and second earners along with the 2012 Budget, which demonstrates how consideration of such groups is useful to policy making.

Consideration of sub-groups is useful to the understanding of potential impact, particularly where data issues mean that analysis of the whole group is difficult, such as in relation to how income is shared within households, or how groups experience disadvantage due to their protected characteristics.

HM Treasury has explained that modelling hypothetical individuals cannot answer questions about the impacts on groups. However, while it is true that analysis of sub-groups, perhaps through such modelling (which is a technique used by the DWP), does not give the decision-maker a complete picture of the overall impact on gender, it does enable understanding of whether a package of incentives could create the desired behavioural change and subsequently help to close the identified outcome gaps – resulting in better and more effective policies.

Similar approaches could be used for assessing the impact of measures on outcomes for:

- households where a person with a disability lives
- pensioners' households, and on older single female pensioners, and
- other significantly disadvantaged groups.

The Commission concludes that in order to fully meet the duties, HM Treasury and others produce an agreed approach to equality analysis for use across government. This could then be built to improve understanding of the combined impact of measures across government departments.

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<sup>48</sup> <http://www.dwp.gov.uk/docs/eia-benefit-cap-wr2011.pdf> – 'DWP Household Benefit Cap Equality Impact Assessment', October 2011.

## **Public spending: understanding of outcomes**

HM Treasury's analysis of changes to public spending focuses on the cost to the government of delivering a benefit or service (the input costs). HM Treasury recognises the limitations of this approach, which does not reflect the value people place on the service, its effectiveness, or any opportunities for efficiency and reform (i.e. where services could achieve the same or better outcomes with less money). For example, a person with low skills may gain disproportionately more benefit from employment support services than someone with moderate skills, even though the spend for both is the same. Also, services such as Sure Start may disproportionately benefit a particular group in ways which would not be evident from analysis of flat-rate participation costs per child.

Conversely, certain groups may gain no additional benefits from government spend, and therefore a reduction in spend may appear regressive but actually lead to no difference in outcomes for a group. Understanding the complexity of the relationship between spending on services and what benefits they deliver to the individual could help build more targeted service provision, ensuring better value for money (a key HM Treasury function) by reducing costs to government and improving outcomes for individuals. HM Treasury's Value for Money responsibilities require at least a qualitative consideration of actions.

HM Treasury report that it consulted with the IFS and the Office for National Statistics (ONS), but that neither could suggest an approach for addressing this issue.

## **Good practice recommendations**

The distributional impact analysis should be extended to consider impact on equality groups (in addition to their representation in low income groups). This would help the formulation of more effective and efficient policy solutions.

Assessment of potential impact should include both indirect and direct aspects of equality.

Non-economic impacts should be included in analysis.

HM Treasury should work with the Commission, other government departments and independent analysts to develop appropriate approaches to assessing the impact on individuals from measures that work at the household level. This could include techniques such as hypothetical modelling.

Future compliance and good practice could be better assured by the development of a common model of analysis to predict the likely equality impacts of policy.

Given that outcome impacts often differ markedly from the implied impacts when only input costs are considered, techniques for qualitatively and quantitatively understanding likely outcome impacts should be developed and incorporated into future spending analysis.

Where full assessment is not possible, it would be useful to develop an approach that will determine whether the risk of any unassessed impact being significant is high or low. This would assist officials and HM Treasury ministers in determining whether further data collection or analysis prior to a decision being taken is proportionate.

## Chapter 6: Case studies

### Introduction

This chapter considers a selection of measures in the Spending Review 2010 in detail. The Commission has assessed HM Treasury's compliance with the race, gender and disability equality duties from the evidence provided to the Commission. Please see Appendix 5 for further details on the material HM Treasury provided to the Commission and on the evidence on which we based this assessment.

As part of this Assessment, the Commission carried out a detailed analysis of the process by which decisions were taken for nine of the measures announced in the Spending Review 2010. We also undertook a preliminary assessment of the process for the majority of other measures in the Spending Review 2010, not including those excluded under 'public good' (please see Chapter 3).

While we did not analyse these measures in as great detail as the nine measures presented here, initial assessments indicated that the decision-making process by which they were taken was fully in accord with the public sector equality duties (PSEDs).

Out of the nine detailed case studies which follow, we found that six were fully in accord with the PSEDs. Therefore, only three measures raised concerns around whether or not HM Treasury were fully in accord with the duties.

In these three cases, the Commission's detailed examination was unable to establish whether or not the decisions were in full accord with the requirements of the duty because of a lack of clarity as to a) where the true site of the decisions lay, and b) whether or not some decisions were the responsibility of other government departments or the government as a whole. These measures were:

- **Introduction of a household benefits cap** – no evidence of any gender analysis or equality screening of the measure provided to HM Treasury ministers prior to the announcement of the measure.
- **Bus Service Operators Grant (BSOG)** – the potential impact on people with disabilities was not included in the advice provided to HM Treasury ministers.
- **Replacing Education Maintenance Allowance with local discretionary funds** – there was no reference to ethnicity, disability or gender in information provided to HM Treasury ministers.

The Commission has powers to apply for judicial review or issue a compliance notice where we identify that equality obligations have not been met. However, in this case we have come to the decision not to take such steps. Firstly, and most importantly, we endeavour to resolve compliance issues through informal action and cooperation, as set out in our Enforcement and compliance policy, and consider that such action would be disproportionate particularly given the constructive response from HM Treasury.

Formal action is now inappropriate, particularly as many of the measures have now been approved by Parliament. Instead, the Commission will work with relevant government departments to monitor the impact of measures as they are implemented to understand the impact on equality groups over the next two to three years.

The remaining case studies focus on measures where we consider the decision-making process for the measure to be fully in accord with the equality duties but where other issues are raised which, for example, demonstrate a particular learning point in the decision-making process or show good practice. These are:

- **Removing Child Benefit from households with a higher rate taxpayer** – this measure was announced before the Spending Review date, and raises issues about gender impact analysis.
- **Reform of Legal Aid** – the data return for this measure by the department was very late and the Commission considers only one of the three proposed mitigating actions as an effective mitigation for the identified adverse impact.
- **A £2.5 billion Pupil Premium for disadvantaged children** – The case study looks at consideration of equality of opportunity.
- **Removal of mobility component of Disability Living Allowance from claimants in residential care homes** – this measure highlights the importance of consultation in identifying potential risk.
- **Council Tax Benefit: 10 per cent reduction in expenditure, and localisation** – this measure highlights the need to use existing data even at the early stage of policy development to identify potential impact.
- **Time-limiting the contributory Employment and Support Allowance to one year for those in the Work Related Activity Group** – this measure demonstrates the importance



of considering the effectiveness of a suggested mitigating action.

Within the case studies the Commission has considered what has happened regarding these measures since the Spending Review, this is set out in the sections below. This did not inform the formal Assessment of HM Treasury, but enables us to understand the current context, and ensure that the recommendations we make on matters arising from the assessment take account of the current situation. Within this context, we have made recommendations to lead departments in relation to monitoring the impact of measures as they are implemented. Although they do not relate directly to our formal assessment of HM Treasury, under our Section 31 powers we are able to make recommendations 'to any class of person', and we hope that taking such actions will help to ensure that the duties are met in future across government.

## Total household benefit payments capped

HM Treasury submission sent to chancellor/chief secretary on welfare. Includes information on household benefit cap. Reference to disability and ethnicity, but not gender.

16 September 2010



Household benefit cap announced by HM Treasury.

4 October 2010



Chancellor's office request further information on the impact for larger families.

8 October 2010



HM Treasury submission for chancellor/chief secretary on equality impacts of welfare package. Includes household benefit cap.

13 October 2010



Outstanding decision note on welfare package to chancellor/chief executive. Includes household benefit cap.

HM Treasury screening document provided to chancellor/ chief secretary. Stated impact on gender not known.

14 October 2010



Spending Review 2010 published

20 October 2010

## **Measure as announced in the Spending Review**

'Cap household benefit payments from 2013 at around £500 a week for couple and lone parent households and around £350 a week for single adult households, so that no workless family can receive more in welfare than median after tax earnings for working households. All Disability Living Allowance (DLA) claimants, War Widows, and working families claiming the working tax credit will be exempt from the cap.'<sup>49</sup>

## **How this policy was developed**

This measure was first mentioned (according to the documentary evidence received by the Commission) on 16 September in a submission sent to HM Treasury ministers (chancellor and chief secretary). This document included a proposal to cap total welfare payments for households, and included a mitigating action to exclude DLA claimants. Information was provided by HM Treasury officials to HM Treasury ministers showing the potential impact on those affected by the proposal, including for race and disability, with a disproportionate impact on ethnic minorities identified. No information was provided on gender.

The benefits cap was then announced by HM Treasury on 4 October, prior to the Spending Review, with an HM Treasury press release stating that: 'Total household benefit payments will be capped on the basis of average take-home pay for working households (estimated to be around £500 per week in 2013).'<sup>50</sup> Household benefit payments would be capped at around £500 a week for couple and lone parent households and around £350 a week for single adult households.<sup>51</sup>

On 8 October, after the announcement of this measure, HM Treasury reported that the chancellor requested further information of the impact of this policy on larger families. The Commission has not received documentary evidence of this request, or any information that may have subsequently been provided.

An equality screening document, as well as further submissions containing information on the potential impact of the cap, was provided to HM Treasury ministers on 13 and 14 October, prior to the final welfare settlement being agreed on 18 October by Quad and the work and pensions secretary. This included some information on the three equality groups:

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<sup>49</sup> [http://cdn.hm-treasury.gov.uk/sr2010\\_completereport.pdf](http://cdn.hm-treasury.gov.uk/sr2010_completereport.pdf) – 'Spending Review 2010'.

<sup>50</sup> [http://www.hm-treasury.gov.uk/press\\_48\\_10.htm](http://www.hm-treasury.gov.uk/press_48_10.htm)

<sup>51</sup> [http://cdn.hm-treasury.gov.uk/sr2010\\_completereport.pdf](http://cdn.hm-treasury.gov.uk/sr2010_completereport.pdf) – "Spending Review 2010'.

- Gender: Reference was made to gender within these documents, with the potential impact described as 'not known'.
- Race: Potential disproportionate impact was again identified. Data difficulties were raised but there was no reference to how they would be addressed. A section on ethnicity included reference to a mitigating action: 'funding streams to support those with a rent shortfall'.
- Disability: There was a contradiction within these documents regarding the potential impact on disabled people, with one document stating that there was an impact and another stating that there was not.

### **Is the Commission assured the decisions were in full accord with the duties?**

While HM Treasury ministers were not provided with information regarding the potential impact on gender prior to the announcement of this measure by HM Treasury on 4 October, because of a lack of clarity as to a) where the true site of the decisions lay, and b) whether or not some decisions were the responsibility of other government departments or the government as a whole, the Commission was therefore unable to establish whether or not this decision was in full accord with the requirements of the Gender Equality Duty.

The Commission believes that it would have been possible to provide some analysis at that point. We recognise that where measures are delivered at the household level it can make it difficult to understand the potential equality impact for individuals within the household, which has particular relevance to gender. However, consideration can be given to sub-groups of the equality group (in this case, single women), in order to provide useful information regarding potential impact. As stated previously, it is true that the aggregate impact cannot be assumed on the basis of assessment of a sub-group. However, having due regard includes the analysis of indirect discrimination, which can include sub-groups where one equality group dominates, such as lone parents.

Documents provided to the HM Treasury ministerial decision-maker after the benefits cap was announced state that the potential impact on gender was 'not known'.

Information was provided to the HM Treasury decision-maker on the potential impact of this measure on race and disability.

## **What actions would have fully assured the Commission?**

In order for the decision-making process to have been fully in accord with the Gender Equality Duty, the HM Treasury decision-maker should have received information relating to gender prior to the final decision and subsequent announcement of this measure.

While it may not, at that time, have been possible to provide information on the gender impact in couple households, a later equality assessment by the DWP on this measure showed that<sup>52</sup> information could have been provided on the potential impact on single female households. This is of particular importance because the DWP's data showed a potential disproportionate impact on single women.

Also, this measure did not follow the timeline of the majority of measures in the Spending Review, as it was announced earlier on 4 October. After the announcement, and prior to the Spending Review publication, the decision-maker received a screening document which stated that the impact on gender was not known. However, given that this measure had been publically announced by HM Treasury, it is clear that a decision was taken in relation to this measure, without reference to gender analysis.

## **How could policy making have been improved?**

The inclusion of the mitigating action for disabled people is viewed by the Commission as an example of good practice, as this was included in the information to the decision-maker prior to the announcement of this measure, and will help to address the potential impact on disabled people.

In relation to race, a mitigating action was also included, 'funding streams to support those with a rent shortfall', and sent to the chancellor and chief secretary. However, it would have been useful to include information relating to its effectiveness, for example, by considering the level of funding, and the access criteria.

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<sup>52</sup> Published March 2011.

## Activity post-Spending Review

An equality impact assessment (EIA) was published by DWP in March 2011, which was updated in October. This document estimated that:<sup>53</sup>

- Approximately 50,000 households stand to receive lower benefit payments.
- Around 60 per cent of customers who are likely to have their benefit reduced by the cap are single females but only around 3 per cent are single men.
- Approximately 40 per cent of households who are likely to be affected by the cap will consist of five or more children while over 80 per cent will consist of three or more children.
- Approximately half of the households capped contain somebody who is disabled as defined by the DDA. Although the government makes provision for those who have extra costs as a result of a disability through DLA, and households with a member entitled to DLA will be exempt from the cap, not everyone defined as disabled by the DDA will have the sort of extra costs that the government would expect to meet through the benefit system.
- A large proportion of those affected by the benefit cap are likely to be large families, suggesting that households from ethnic minority backgrounds with a high prevalence of large families will be affected most.

It also included consideration of mitigating actions, explaining that 'the government is looking at ways of easing the transition for families and providing assistance in hard cases'.<sup>54</sup> References to the Work Programme and the availability of personal advisers were made in relation to supporting people back into work.

The cap is part of the Welfare Reform Act which received Royal Assent in March 2012.

## What should happen next?

The cap will be introduced from 2013, and the 'DWP is committed to monitoring the impacts of its policies and we will use evidence from a

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<sup>53</sup> <http://www.dwp.gov.uk/docs/eia-benefit-cap-wr2011.pdf> – 'DWP Household Benefit Cap Equality Impact Assessment', October 2011.

<sup>54</sup> Ibid.

number of sources on the experiences and outcomes of the protected groups'.<sup>55</sup>

The Commission agrees that ongoing monitoring should continue in order to: understand the actual impact on equality groups whether there are any unintended consequences; and the effectiveness of the mitigating actions, particularly for the groups that have been identified as at risk of adverse impact.

In order to understand the impact on equality groups and to gauge the success of the policy for the outcomes of equality groups, DWP should consider certain issues in their monitoring, including:

- the impact on individuals within households, which could involve using techniques such as hypothetical modelling
- the impact on sub-groups, such as lone parents and second earners
- the impact on work incentives of this measure individually or on the actual increase in employment of those affected, but also cumulatively as part of the welfare reform package
- the impact on people with a disability as defined under the Equality Act 2010, but who are not in receipt of DLA, and
- the need to address identified data issues, particularly for race.

It would be helpful for DWP to report on the findings from their monitoring once the policy has been in place for one year, ensuring that the data is disaggregated by equality group. Universal Credit is being introduced from 2013, and so it will be useful to understand the impact on equality groups from the interaction of those measures.

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<sup>55</sup> Ibid.

## Department for Transport settlement

DfT provided qualitative and quantitative equality data,  
including a narrative of distribution and impact.

13 August 2010



HM Treasury requested additional information from  
DfT on the impact of changes to bus subsidy.

20 August 2010



HM Treasury and DfT officials met Passenger Transport Executive Group, to discuss impact of potential savings.

6 October 2010



PEX took decision on Transport settlement, with reference to an equality paper which included information on the Transport settlement.

11 October 2010



Submission to chancellor/chief secretary on equality impact of welfare package. Includes section on Transport.

13 October 2010



Chief secretary and DfT secretary of state agree the level of savings from Bus Service Operators Grant following advice about the distributional and spatial impacts, particularly in rural areas.

14 October 2010

HM Treasury officials met representatives of external bodies including passenger groups.

Throughout summer 2010.

Informal iterative contact between HM Treasury and DfT.

Throughout Spending Review process.





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Paper on equality impact to Quad, which  
includes  
a section on Transport.

16/17 October 2010

## **Measure as announced in the Spending Review**

The level of the Bus Service Operators Grant (BSOG) was considered in the Spending Review and ministers announced a 20 per cent reduction from April 2012.

BSOG is a scheme that refunds some of the Fuel Duty incurred by operators of registered local bus services in the UK. It gives funding to bus operators which allows them to operate more services (at lower fares) than would otherwise be the case. This change did not affect the statutory national concession which offers free travel on local bus services throughout England to older and disabled people.<sup>56</sup>

## **How this policy was developed**

The Department for Transport (DfT) provided HM Treasury with a detailed equality data return. This return recorded a negative impact of reducing the BSOG for equalities groups, stating that 'Key negative impacts will be on those in low income households, those with mobility issues, women and ethnic minorities (notably those in low income households).'

The decision on the DfT settlement was taken by the Cabinet Committee on Public Expenditure (PEX), with agreement on the level of the BSOG decided by the chief secretary and the DfT secretary of state. Prior to this decision, equality information regarding the transport settlement was provided by HM Treasury to PEX on the 8 October and to the chancellor and chief secretary in a submission on the 13 October.

In addition to this HM Treasury and DfT officials met with the Passenger Transport Executive Group to discuss the impact of potential savings, including on bus subsidy, and throughout the summer they also met representatives of external bodies including passenger groups.<sup>57</sup>

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<sup>56</sup> There are two broad categories of people eligible for a statutory concession: men and women who have attained the state pension age for women and eligible disabled people (where no age limits apply). There are seven categories of disabled people who are entitled to the statutory minimum concession and these are set out in section 146 of the Transport Act 2000 and section 240(5) of the Greater London Authority Act (in relation to London). See: <http://assets.dft.gov.uk/publications/guidance-for-travel-concession-authorities-on-the-england-national-concessionary-travel-scheme/travelconcession.pdf> – 'Guidance for Travel Concession Authorities on the England National Concessionary Travel Scheme', December 2010.

## **Is the Commission assured the decisions were in full accord with the duties?**

Despite the DfT equality data return being of a high standard the subsequent HM Treasury information to ministers did not include reference to all the potential adverse impacts which had been highlighted in the DfT analysis.

While information on the potential impact on people with disabilities was not included in the advice to HM Treasury ministers because of a lack of clarity as to a) where the true site of the decisions lay, and b) whether or not some decisions were the responsibility of other government departments or the government as a whole, the Commission was therefore unable to establish whether or not this decision was in full accord with the requirements of the Disability Equality Duty.

The briefing paper on equality impacts for small and medium departments was provided to PEX on 8 October which included reference to the DfT settlement, but not all of the relevant potential adverse impacts were highlighted. For example, no information was provided that people with disabilities would be potentially affected by changes to bus service grants.

On 13 October a submission was sent to the chancellor and chief secretary regarding the equality impact of the welfare package. Regarding transport it stated that 'Black and minority ethnic groups have significantly higher than proportional use of local transport, including buses ... so any cuts to services or subsidy may disproportionately affect these groups.' The document included a table which recorded an impact on both gender and ethnicity but stated that there was no impact on disability.

This shows that relevant information on the potential adverse impact on people with disabilities and 'mobility issues' highlighted by the DfT was not presented to the HM Treasury ministers.

## **What actions would have fully assured the Commission?**

The DfT equality return was an example of thorough and comprehensive analysis, and it was highlighted as a good example by the Independent Challenge Group (ICG) sub-group on distributional impact.<sup>58</sup> Quantitative and qualitative spreadsheets were provided by DfT within the deadline set by HM Treasury, along with a narrative of the potential impacts on equality groups, low income groups and regional balance.

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<sup>58</sup> HM Treasury appointed ICG to 'act as independent challengers and champions for departments' throughout the Spending Review process. [http://www.hm-treasury.gov.uk/press\\_10\\_10.htm](http://www.hm-treasury.gov.uk/press_10_10.htm)

This information was available to HM Treasury and could have been presented in more detail to ministers. While we appreciate that it is not realistic to expect extensive detail to be presented, the information that went should have included data on disability as well as gender and ethnicity. Bus transportation and the possibility of increased fares has a potential impact on all three of these groups and were all considered in the information provided to HM Treasury by DfT.

### **Activity post-Spending Review**

An EIA was completed on 20 October 2010. This concluded that the risk of negative impact on women, disabled people and ethnic minorities was low:

- 'Women use buses more frequently than men ... Women are also less likely to have access to a car...
- given the existence of the concessionary travel scheme, disabled people will be insulated from the impacts of fare rises given they are entitled to travel for free, though they may be affected by changes in service levels...
- adults from ethnic minorities are more likely to live in a household without a car compared to a white British adult ... adults from ethnic minorities make twice as many local bus trips per year than white British adults.<sup>59</sup>

The document went on to conclude that no further action would be taken to minimise the identified potential adverse impact, due to the fact that bus operators are private companies, and without fundamental reform to BSOG, 'better targeting by central government is not possible'. There is reference to the approximately 1,500 community transport operators offering transport to disadvantaged groups, and the fact that 'local authorities have a statutory duty ... to consider whether there are any public transport requirements which are not being met by commercial operators and, where they consider it appropriate, to secure those services'.<sup>60</sup>

The Transport Select Committee's report on 'Bus Services after the Spending Review' raised concerns about the combination of changes, including the 20 per cent BSOG reduction, which affect 'some of the

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<sup>59</sup> <http://webarchive.nationalarchives.gov.uk/+/http://www.dft.gov.uk/adobepdf/165220-/cuts.pdf> – 'DfT Initial Equality Impact Assessment Screening Proforma', October 2010.

<sup>60</sup> Ibid.

most vulnerable people in society'.<sup>61</sup> However, the government's response explained that they have 'made a firm commitment to retain in full the entitlement to concessionary travel in England for elderly and disabled people at a cost of around £1bn per year, benefiting eleven and a half million older and disabled people'.<sup>62</sup>

### **What should happen next?**

This policy is due to be implemented in 2012/13. Given the potential risk of adverse impact on certain groups, it is recommended that DfT take forward the good work that it has already produced, and monitor the new arrangements in order to: understand the actual impact on equality groups; whether there are any unintended consequences; and how these could be mitigated. Given the potential adverse impacts identified in the impact assessment, particular consideration should be afforded to issues such as:

- The impact of this policy on the ability of the protected groups to participate in public life, or any other activity where their participation is disproportionately low. This could include looking at any changes in bus use by these groups, and whether alternative provision is available and used.
- The impact on bus use by protected groups, and any unintended consequences, for example, on the ability to access employment.

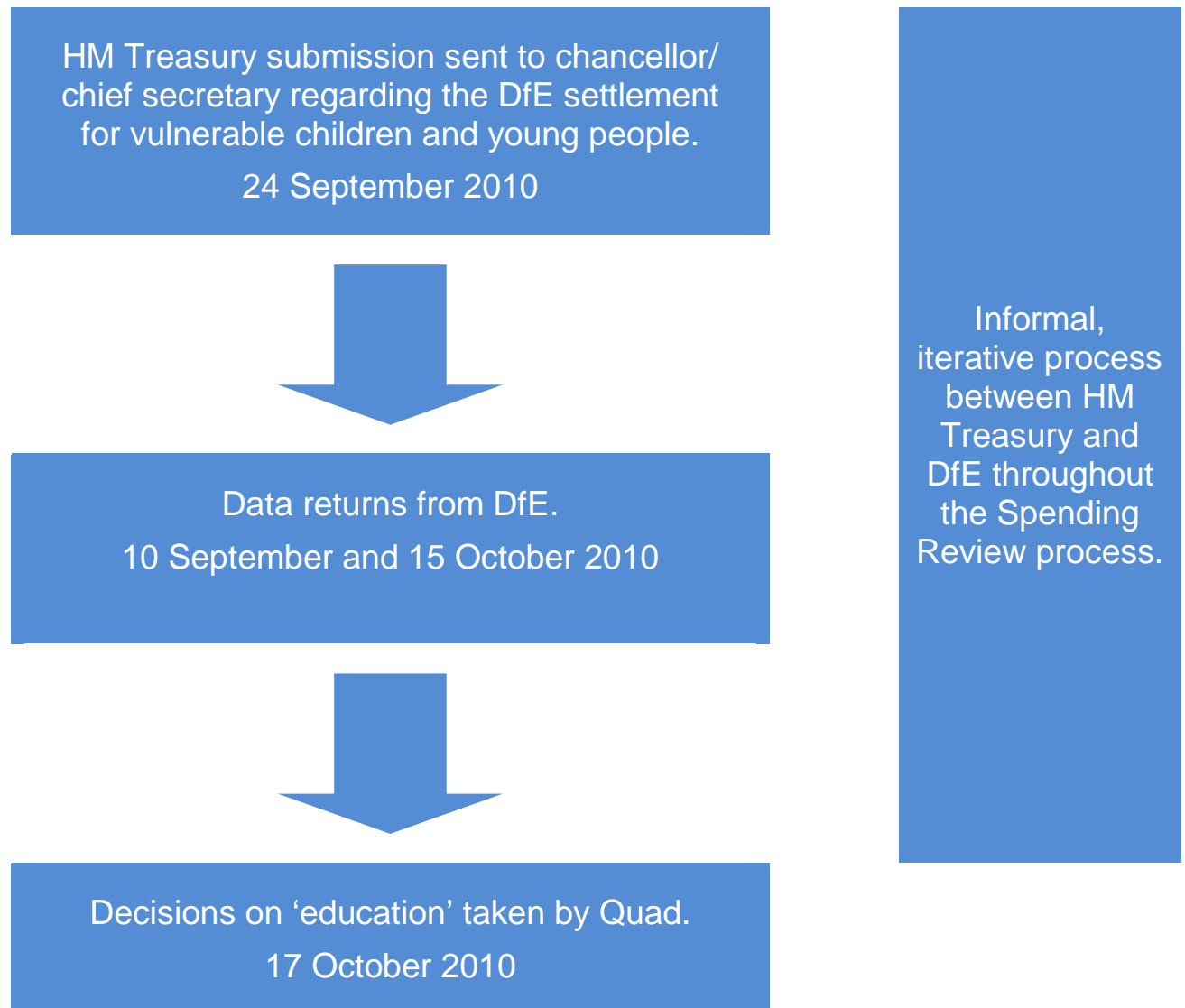
It would be helpful for DfT to report on its ongoing monitoring of the policy one year after its implementation, disaggregating the data by equality group. This will allow the impacts of the policy to be understood, and where there is a disproportionate adverse effect on equality groups, consideration can then be given to mitigating actions.

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<sup>61</sup> <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmtran/750/750.pdf> – 'Transport Committee Bus Services after the Spending Review: Government Response to the Committee's Eighth Report of Session 2010–12 Ninth Special Report of Session 2010–12', October 2011.

<sup>62</sup> <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmtran/1550/1550.pdf> – 'Transport Committee Bus Services after the Spending Review: Government Response to the Committee's Eighth Report of Session 2010–12 Ninth Special Report of Session 2010–12', October 2011.

# The measure to replace Education Maintenance Allowance (EMA) with local discretionary funds



## **Measure as announced in the Spending Review**

It was announced that 'The Spending Review ... replaces EMAs with locally managed discretionary funds to target support.'<sup>63</sup>

EMAs were payments of up to £30 a week given to students from low-income households. The aim of EMA was to encourage more young people to participate and progress in age 16-19 education. It was paid directly to the young person and not affected by any other benefits the family received.

## **How this policy was developed**

HM Treasury report that, on 10 September, the Department for Education (DfE) provided it with spreadsheets covering distributional analysis and equality impacts covering all areas of education where there was 'enough evidence to judge this'.

Within the spreadsheet the section covering education for 16-19 year olds highlights SEN/disabled children and ethnic minorities, stating that 'Disadvantaged groups are less likely to participate post-16.'

The DfE also refer to 'Vulnerable groups such as NEET [not in education, employment or training], young people with SEN [special educational needs] /LDD [learners with disability and dyslexia] and those in deprived areas' as 'disproportionately ... affected by this spending' on 'Targeted support to vulnerable young people.' We see no further investigation or data to identify what percentage of equality groups are represented within these groups.

Under the heading 'Targeted financial support for young people to participate', additional information is given that 'EMA evaluation found that it benefited young people who would have been NEET or in a job without training'.

On 24 September a submission<sup>64</sup> was sent to the chancellor and chief secretary stating that 'A portion of the savings from EMAs ... will be targeted more effectively on learners facing genuine financial barriers to learning.' The document does not contain specific reference to equality groups in relation to this measure.

The DfE report that further information was provided to HM Treasury on 15 October<sup>65</sup> which set out the proportion of EMA recipients by equality group. It showed that 23 per cent of recipients are from ethnic minority

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<sup>63</sup> [http://cdn.hm-treasury.gov.uk/sr2010\\_completereport.pdf](http://cdn.hm-treasury.gov.uk/sr2010_completereport.pdf) – 'Spending Review 2010'.

groups (compared to an overall population of 15-19 year olds in England from ethnic minority groups of 14 per cent).

22 per cent of EMA recipients are in receipt of free school meals; 20 per cent have special educational needs (SEN) (with and without a statement).

On 17 October the education settlement was agreed by Quad, who were provided with a paper entitled *Equality implications of the Spending Review*. This paper included no reference to EMA.

In documentation provided to the Commission, HM Treasury<sup>66</sup> state that 'Narrowing attainment gaps – particularly by economic disadvantage – was a key theme throughout the process, and a core part of ongoing discussions between officials and conversations with advisers and ministers. The formal submission of data on equalities by DfE was helpful in informing these discussions, but they were rooted in pre-existing knowledge and work already done by the department and the HMT education team.'

During the oral evidence session, DfE officials stated that the final decision to replace EMA was not actually taken until spring 2011, with the Spending Review more of a 'planning assumption' about what would happen.

However, the wording used in the Spending Review<sup>67</sup> does not reflect this and in December 2010 in answer to a parliamentary question Nick Gibb (minister for schools) said: 'The Government took the decision to end the education maintenance allowance (EMA) on the basis of evaluation and other research evidence which indicates that the scheme does not effectively target those young people who need financial support to enable them to participate in education and training.'

The Commission therefore considers the inclusion of the replacement of EMA in the Spending Review document to have been a decision and would have expected proportionate consideration to have been given to the three equality groups, and where potential adverse impact was identified, for this to be highlighted to HM Treasury ministers at the final decision point for 'education' on 17 October and for mitigating actions to have been considered.

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<sup>67</sup> Ibid.



## **Is the Commission assured the decisions were in full accord with the duties?**

While the Commission has not been provided with documents demonstrating that information on the potential impact of the measure on equality groups was provided to the HM Treasury ministers prior to the decision being taken to withdraw EMA, because of a lack of clarity as to a) where the true site of the decisions lay, and b) whether or not some decisions were the responsibility of other government departments or the government as a whole, the Commission was therefore unable to establish whether or not this decision was in full accord with the requirements of the Race, Gender or Disability Equality Duties.

An earlier EIA carried out by the previous government found that 'The impact [of EMA] on participation at 16 is higher for males than females, probably reflecting the lower base for males to start with', 'Teenage mothers and young people with special needs appear to have been influenced in a positive way by EMA', 'EMA had a positive impact on participation at 16 for young people from ethnic minority backgrounds', and 'EMA has had a positive impact on attainment, particularly for some ethnic groups and those in more deprived areas'. This would have been sufficient to require that a full and rigorous equality analysis be carried out in advance of any decision to replace the EMA.<sup>68</sup>

## **What actions would have fully assured the Commission?**

HM Treasury ensuring that their HM Treasury ministers receive information on the potential impact of proposals on each of the protected groups.

## **How could policy making have been improved?**

One reason put forward by government for the removal of EMA is that it was badly targeted and that a high percentage of recipients would have carried on with their education regardless of whether or not they had qualified for EMA. They state that it is a 'a very expensive way of supporting young people to participate'.<sup>69</sup>

More detailed interrogation of the equality evidence around recipients of EMA from DfE could have put government in a stronger position to support this argument and would also have helped them to better target

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<sup>68</sup><http://media.education.gov.uk/assets/files/pdf/e/equia%20education%20maintenance%20allowance.pdf> – Equality Impact Assessment. EMA Replacement Scheme: 16-19 Bursaries and associated transitional arrangements.

<sup>69</sup> 'Equality Impact Assessment. EMA Replacement Scheme:16-19 Bursaries and associated transitional arrangements', p. 7.

the replacement bursaries for young people in protected groups, for example, through consideration of alternative policy options.

### **Activity post-Spending Review**

The EMA scheme closed to new applicants on 1 January 2011. A full EIA for the 16-19 Bursary was published in March 2011. This states that certain groups (such as care leavers) will be guaranteed support greater than was available under EMA, and disabled young people and ethnic minorities are over-represented within these groups.<sup>70</sup>

In September 2011 the new 16-19 Bursary Fund was introduced to replace EMA. This fund has been distributed directly to schools, colleges and work-based training providers to provide financial support to young people aged 16-19 participating in full-time education or training.<sup>71</sup>

The EIA makes general reference to reform of the school system, 'specifically to address the educational attainment gaps created by gender, disability, race, social class and any other factor unrelated to ability'.

### **What should happen next?**

Given the findings of the EIA, it would be useful for the implementation of the measure to be closely monitored. With any locally managed and discretionary fund there is a risk of inconsistency in their practical application and also of uncertainty for young people about whether an application they make for financial support will be approved or not. A subsequent risk is a negative impact on the participation rates for equality groups in post-16 education.

The Young Persons Learning Agency<sup>72</sup> (YPLA) state that 'Providers are responsible for developing their own arrangements for the administration of the 16-19 Bursary Fund within their organisation ... providers should develop a statement on how they will administer and distribute their funds. As part of this, providers will want to consider undertaking their

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<sup>70</sup><http://media.education.gov.uk/assets/files/pdf/1/ema%20replacement%20scheme%20%20%20equality%20impact%20assessment.pdf> – 'Equality Impact Assessment. EMA Replacement Scheme: 16-19 Bursaries and associated transitional arrangements'.

<sup>71</sup> 'Equality Impact Assessment. EMA Replacement Scheme: 16-19 Bursaries and associated transitional arrangements', p. 2.

<sup>72</sup> [http://www.ypla.gov.uk/financial\\_support\\_for\\_learners/16-19-bursary/](http://www.ypla.gov.uk/financial_support_for_learners/16-19-bursary/) launched in April 2010, and sponsored by the DfE, exists to support the delivery of training and education to all 16-19 year olds in England and part of their remit is to fund learning opportunities for this age group.

own Equality Analysis of their emerging Bursary Fund administration policies.<sup>73</sup>

Providers will also be asked to submit a Management Information return about 16-19 Bursary Fund activity at the end of the 2011/12 academic year and the information collected will inform the DfE evaluation of the impact of the scheme and may also be used to inform future years' allocations of the Bursary Fund.

In its EIA<sup>74</sup> the DfE stated that it 'will monitor the impact of new arrangements generally and with particular reference to young people who are disproportionately likely, currently, not to participate in post-16 education. In order to do this we will want to consider how to monitor the applications and approvals for financial support and evaluate the equality of opportunity between certain groups with characteristics protected by equality law.'

However, although the information that will be reported back to the YPLA covers the defined vulnerable groups, such as a young person in care or in receipt of income support,<sup>75</sup> it does not ask for information to be disaggregated by equality group.

Such disaggregation of data in the monitoring and review of the uptake of the Bursary Fund would allow the DfE to fully understand the impact on these groups.

This information would be useful in highlighting any unintended consequences of the new measure and enable government to assess whether the new arrangements have achieved their desired outcomes.

The information gained from this monitoring could be fed into any future proposals to continue to fund participation for vulnerable young people in anticipation of government's commitment to raising the participation age to 18 by 2015.

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<sup>73</sup> [http://readingroom.lsc.gov.uk/YPLA/nat-1619\\_Bursaries\\_ProviderQA-gn-17Jan12-\\_v2.pdf](http://readingroom.lsc.gov.uk/YPLA/nat-1619_Bursaries_ProviderQA-gn-17Jan12-_v2.pdf) – "16-19 Bursary Fund Questions & Answers for Schools, Academies, Colleges, Training Providers and Local Authorities v.10", 17 January 2012.

<sup>74</sup> <http://media.education.gov.uk/assets/files/pdf/1/ema%20replacement%20scheme%20%20%20equality%20impact%20assessment.pdf> – "Equality Impact Assessment. EMA Replacement Scheme: 16-19 Bursaries and associated transitional arrangements'.

<sup>75</sup> For more information on the defined vulnerable groups and which groups will be awarded discretionary bursaries please see: [http://readingroom.lsc.gov.uk/YPLA/nat-1619\\_Bursaries\\_ProviderQA-gn-17Jan12-\\_v2.pdf](http://readingroom.lsc.gov.uk/YPLA/nat-1619_Bursaries_ProviderQA-gn-17Jan12-_v2.pdf)

## Child Benefit

Interim report of Independent Challenge Group sub-group – discusses proposals to change Child Benefit.

24 August 2010



HM Treasury submission to chancellor/chief secretary on welfare. Outlined two options for removing Child Benefit from higher rate tax payers.

16 September 2010



HM Treasury submission to chancellor/chief secretary – highlighted that officials would need to work up an equality impact assessment before any change was made to Child Benefit.

28 September 2010



HM Treasury equality screening document provided to chancellor for the policy proposals on Child Benefit – withdrawing Child Benefit from higher rate taxpayers and from 16-19 year olds.

1 October 2010



Child Benefit change announced by HM Treasury.

4 October 2010



HM Treasury submission to chancellor/chief secretary on equalities impacts of welfare reform package. Discusses impact of changes to Child Benefit.

13 October 2010



HM Treasury 'Outstanding decisions note' sent to chancellor/chief secretary.

Covers an outstanding decision on removing Child Benefit from 16-19 year olds and three options on removing Child Benefit from higher rate taxpayers.

14 October 2010

## **Measure as announced in the Spending Review**

The Spending Review document refers to ‘withdrawing Child Benefit from families with a higher rate taxpayer from January 2013 so that people on lower incomes are not subsidising those who are better off, saving £2.5 billion a year by 2014-15’.<sup>76</sup>

This measure is an HM Treasury AME policy measure, as part of a package of reforms to the welfare system to deliver net AME savings of £7 billion a year by 2014-15. HMRC administer Child Benefit.

## **How this policy was developed**

It is not clear when the policy was first proposed; the first documentary evidence which mentions Child Benefit is the ICG’s sub-group interim report on distributional impact which was submitted to the chief secretary on 24 August 2010. The report discusses taxing or means-testing Child Benefit in order to protect services for vulnerable children and young people, and to invest in pre-school education and parenting support for disadvantaged children, to help increase social mobility.

On 16 September, HM Treasury officials sent information to the chancellor and chief secretary on welfare. This submission outlined two options on how to remove Child Benefit from higher rate tax payers and recognised the impact on women.

A further submission to the chancellor and chief secretary from HM Treasury officials on 28 September 2010 highlighted that officials would need to work up an equality impact assessment before any change was made to Child Benefit. A submission the next day by HM Treasury officials to the chancellor and chief secretary contained an early version of the equality screening document, as set out below.

On 1 October 2010, an HM Treasury screening document on Child Benefit went to the chancellor, which covered final policy and delivery advice on proposals relating to Child Benefit – withdrawing Child Benefit from higher rate taxpayers, and from 16-19 year olds (this latter proposal was not implemented).

The screening document was completed in more detail than for other similar AME measures. The screening document identified that: women are more likely to claim Child Benefit than men; are more likely to be lone parents; and lone parent households where the parent is a higher rate taxpayer are likely to be disproportionately disadvantaged by the

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<sup>76</sup> [http://cdn.hm-treasury.gov.uk/sr2010\\_completereport.pdf](http://cdn.hm-treasury.gov.uk/sr2010_completereport.pdf) – ‘Spending Review 2010’.

policy compared to two earner households. The screening document acknowledges the difficulties in understanding how income is shared within a household, and the impact on individuals. The screening document concludes that a full equality impact assessment was not needed as 'it is not possible to produce a robust gender impact assessment of such changes that would be sufficiently reliable for policy making'. This suggests that no attempt at analysis is better than one where a conclusion relies on assumptions or probabilities. Although HM Treasury state that decision-making needs to be based on robust evidence, it appears that the difficulties in analysing gender impact at the individual level sometimes overly restrict the level of analysis conducted on gender equality.

The screening document refers to evidence that income expenditure within households is gendered (i.e. men are less likely than women to spend it on children). The screening document concludes that removing Child Benefit from higher income households means that even if women no longer receive Child Benefit on behalf of their children, their household income of £44,000 reduces the risk that the children will fall into poverty. However, this finding on child poverty does not address the issues raised in relation to the potential adverse impact on gender.

The screening document notes that the policy is sensitive to the needs and cultures of people with disabilities and different racial groups and that these groups do not have different participation rates for Child Benefit. It also states that for disability and race there is no evidence to suggest those with disabilities or people of different racial groups are more or less likely to have children.

The removal of Child Benefit from higher rate taxpayers was announced on 4 October 2010 by HM Treasury.

Removing Child Benefit from 16-19 year olds was still an option under consideration, and was listed in an outstanding decision note sent to the chancellor and chief secretary on 14 October. The final decision was made by Quad and the Work and Pensions Secretary on the welfare package on 18 October 2010, including Child Benefit. Removing Child Benefit from 16-19 year olds was not taken forward as a measure.

HM Treasury stated that it 'decided not to go ahead with the 16 to 19 year-old [policy option], partly on the basis that the cumulative impact of doing that and reforming EMA would have had a disproportionate impact on that group of young people and their families and that is a stage at which when a number of people are at a particularly vulnerable part of their lives – care leavers, disabled young people again – and therefore we didn't want, in the end, to have that sort of cumulative impact on that

group'.<sup>77</sup> Child Benefit is an example where cumulative impact of certain measures was taken into consideration during the Spending Review process by HM Treasury.

The equalities overview document published alongside the Spending Review stated that it is 'difficult to assess the impact on gender equality of changes to Child Benefit which is paid to an individual claimant on behalf of the child, and not for the personal benefit of the claimant'.<sup>78</sup>

### **Is the Commission assured the decisions were in full accord with the duties?**

The first mention of changes to Child Benefit was in the report of the ICG which included discussion of taxing or means-testing Child Benefit in order to protect services for vulnerable children and young people, and to invest in pre-school education and parenting support for disadvantaged children, to help increase social mobility.

Later documents show that policy options on Child Benefit were provided to HM Treasury ministers, with reference to equality. Officials highlighted that no changes could be made without an equality impact assessment, which was provided prior to this policy being announced, and included information on the three equality groups. The Commission received confirmation from a HM Treasury official at an oral evidence session that the chancellor took account of that information. We therefore conclude that due regard was had throughout the process and that this decision was fully in accord with the duties.

### **How could policy making have been improved?**

#### ***Impact of changes to Child Benefit on children***

The Commission believes that certain improvements could have been made to the policy making process. HM Treasury explains that Child Benefit is paid on behalf of the child. However, the HM Treasury screening document on Child Benefit provided to the HM Treasury decision-maker includes no consideration of the potential impact on children by equality group, for example, on disabled children; this could be done by using HMRC data on households where DLA is claimed for a child.

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<sup>77</sup> Oral evidence session with DA, 8 July.

<sup>78</sup> HM Treasury – 'Overview of the Impact of the Spending Review on Equalities', p. 7.



## **Family size**

The screening document provided to the chancellor on 1 October 2010 by HM Treasury officials states that for disability and race there is no evidence to suggest those with disabilities or people of different racial groups are more or less likely to have children. However, there are known differences in family size by ethnicity. For example, the Office for National Statistics (ONS) finds that 'Asian households are larger than households of any other ethnic group'.<sup>79</sup> 'Three-quarters (74 per cent) of Bangladeshi households contained at least one dependent child. This was the highest proportion for any ethnic group and was nearly three times that of White British households (28 per cent). Households headed by a Pakistani or Indian person were also more likely than non-Asian households to contain at least one dependent child – 66 per cent of Pakistani and 50 per cent of Indian households did so.'<sup>80</sup> In order to establish whether among households with higher rate taxpayers, there is likely to be a disproportionate impact on ethnic minorities, data on family size for higher rate taxpayers should have been considered.

To improve analysis, it is important to consider family size as Child Benefit is paid per child. Therefore, there will be a differential impact per household for larger families, in terms of the percentage of their total household income that a reduction in the level of Child Benefit would affect. HM Treasury stated in an oral evidence session that potential impact for race and disability was generally taken as an unknown.

## **What should happen next?**

The Budget 2012 announced that:

'Child Benefit will be withdrawn through an income tax charge, and that the charge will only apply to households where someone has an income over £50,000 a year.

'For households where someone has an income between £50,000 and £60,000 the charge will apply gradually, preventing a cliff edge effect. Only households where someone has an income in excess of £60,000 a year will no longer gain from Child Benefit.

'This means that Child Benefit will continue to be paid universally to all those who claim it and are entitled to it, typically mothers, and that 90 per cent of all families with children will continue to gain from receiving Child Benefit.'

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<sup>79</sup> ONS, Focus on Ethnicity and Identity, March 2005, p. 5.

<sup>80</sup> Ibid.

This measure will be implemented from January 2013.

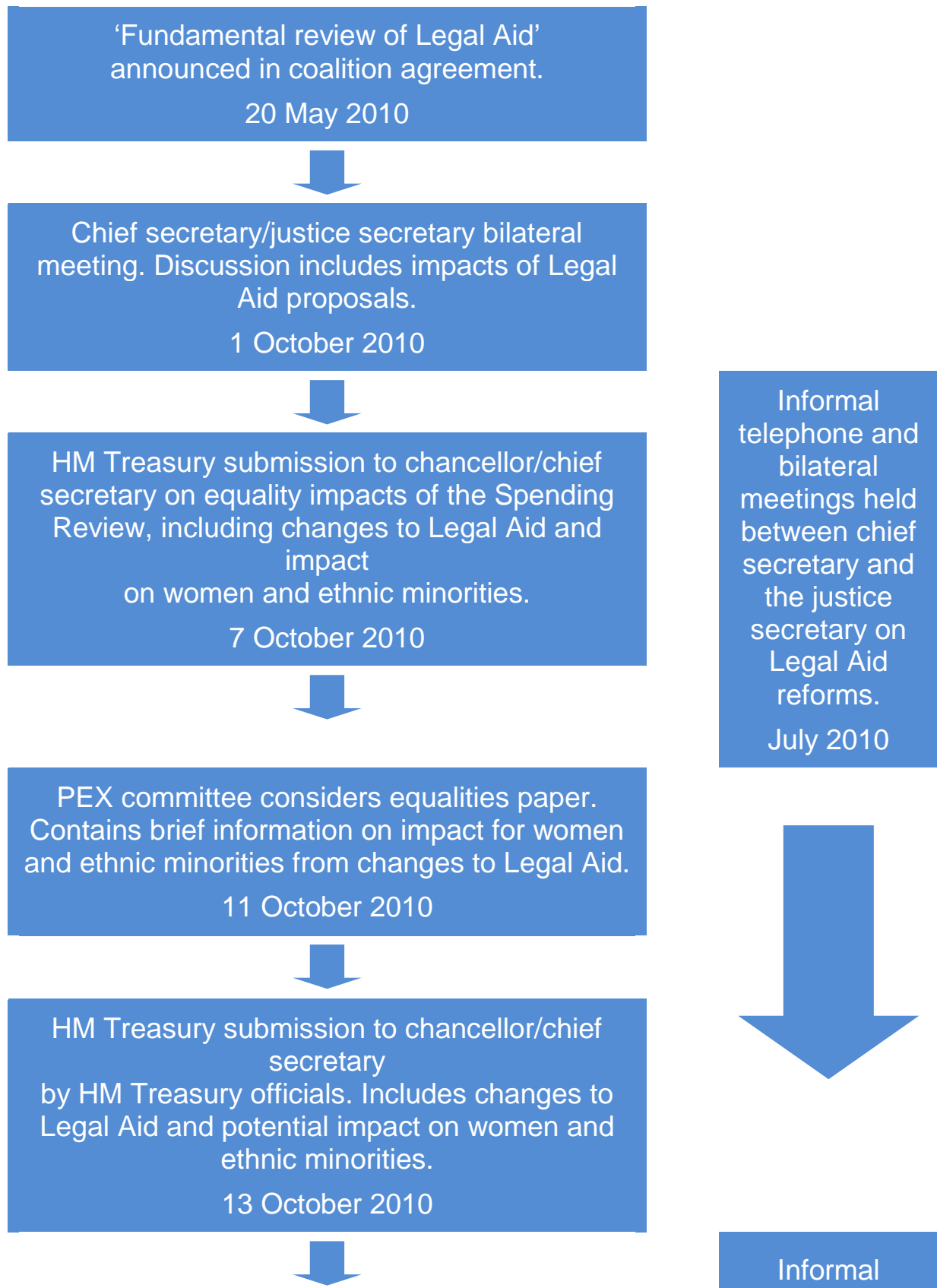
As recommended in Chapter 5, HM Treasury should work with the Commission, other government departments and independent analysts to develop appropriate approaches to analysis, which are proportionate, relevant and focused on helping inform the decision-maker. Although there are some analytical difficulties concerning the analysis of household behaviour, this is an important area if outcomes for women are to be understood and it is possible to undertake some analysis to inform decision-making. It is the Commission's view that further exploration should be undertaken by HM Treasury and others in order to produce an agreed approach for use across government. This should feed into the implementation of this particular policy.

Once the policy is implemented, impact on equality groups (including where a policy would put people sharing a protected characteristic at a particular disadvantage compared to others, for example, lone parents or second earners who are predominantly women), should be monitored and reviewed. Where adverse impact is identified, consideration should be given to whether the measure is justified and, if so, whether any mitigating actions could be put in place.

HMRC should look to improve data collection for race and disability and how existing data could be better used, for example, using HMRC's data on households where DLA is claimed for a child to understand the impact on disabled children.

Once the policy is implemented it would be helpful for a report on the impact on equality groups to be produced, disaggregated by equality groups, including relevant sub-groups.

## Legal Aid



Equality data return from MoJ to HM Treasury includes data on Legal Aid claimants by protected groups.

14 October 2010



Quad meeting – decision made on MoJ settlement. Advice to decision-maker contains high-level paragraph on Legal Aid – highlights disproportionate impact on women, ethnic minorities and people with disabilities.

17 October 2010

discussions end.  
October 2010

## **Measure as announced in the Spending Review**

Spending Review: 'Government will consult on major reforms to the Legal Aid system to deliver access to justice at lower cost to the taxpayer. This will involve taking tough choices about the types of case that should receive public funding, and focusing support on those who need it most. The reforms will also increase competition in the market and reform remuneration for providers to ensure the legal aid system is effective and affordable.'<sup>81</sup>

## **How this policy was developed**

In May 2010 the coalition government announced a 'fundamental review of Legal Aid to make it work more efficiently'.<sup>82</sup> Between July and October, several informal telephone and bilateral meetings were held between the chief secretary and the justice secretary on the Spending Review, including potential Legal Aid reforms. The Ministry of Justice (MoJ) also sent several briefing notes and submissions (the first of these on 16 July) to HM Treasury on Spending Review proposals and changes to Legal Aid during this period.

HM Treasury decided to exclude some of the MoJ's functions using the 'public good' approach. This meant the MoJ did not have to provide equality data on some areas to HM Treasury (although the MoJ did still provide evidence on these issues to HM Treasury). Legal Aid was not excluded under 'public good' by HM Treasury.

In early October 2010, several formal submissions were made to the chancellor and chief secretary and to PEX by HM Treasury officials which included information on Legal Aid proposals. The proposals included changing the scope of civil and family Legal Aid, changes to eligibility and taking some jurisdictions out of scope, introducing an exceptional funding regime and a reduction in fees and the introduction of price-based competition for criminal Legal Aid. These papers highlighted the disproportionate impact of potential changes to Legal Aid on women and ethnic minorities. No potential adverse impact on disabled people was identified at this stage.

The MoJ provided equality data on 14 October to HM Treasury on its main Spending Review areas, including Legal Aid, two months after the deadline and three days before the decision was taken on their department settlement.

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<sup>81</sup> [http://cdn.hm-treasury.gov.uk/sr2010\\_completereport.pdf](http://cdn.hm-treasury.gov.uk/sr2010_completereport.pdf), p. 56 – 'Spending Review 2010'.

<sup>82</sup> [http://www.cabinetoffice.gov.uk/sites/default/files/resources/coalition\\_programme\\_for\\_government.pdf](http://www.cabinetoffice.gov.uk/sites/default/files/resources/coalition_programme_for_government.pdf) – 'The Coalition: our programme for government', May 2010.

The MoJ equality data submission to HM Treasury contained information on different equality groups, including race, gender and disability. It showed that compared with the population overall, community Legal Aid recipients are more likely to be women, in an ethnic minority group and to have a disability. There were some data gaps in the MoJ submission, particularly around transgender.

The final paper for PEX from HM Treasury officials on 11 October outlined some mitigations for the potential adverse impact of Legal Aid reforms including:

- Conducting public consultation (although this is an appropriate step, the Commission does not consider this to be a mitigating action).
- Reducing scope (for civil and family) where alternative support is available and where court action is not the best solution (this is a policy option rather than a mitigating action).
- Ensuring an exceptional funding mechanism is available where there is strong public interest or where access to justice might be undermined (a potential mitigating action if the funding mechanism takes into account equality considerations).

The decision was taken on the final settlement for Justice on 17 October by Quad. Quad had a paper provided by HM Treasury officials on the equalities implications of the Spending Review in front of them. This included information on Legal Aid. It stated that there was a potential disproportionate impact of changes to Legal Aid on women, people from ethnic minorities and people with disabilities (updated from previous advice to ministers) and outlined possible mitigations, as described above, that take into account equality considerations.

### **Is the Commission assured the decisions were in full accord with the duties?**

Informal consideration was given to the Legal Aid proposals by HM Treasury officials and the chief secretary between July and October. Several formal submissions were made to the chancellor, chief secretary and PEX by HM Treasury officials in October which included information on Legal Aid proposals and highlighted the disproportionate impact of potential changes on protected groups. High-level information on the proposed Legal Aid reforms, the potential disproportionate impact on gender, race and disability and consideration of mitigating actions was in front of Quad at the point they took their decision. Taking the early consideration of equality impact during the development of the proposed changes to Legal Aid into account, along with HM Treasury ministers receiving equality information relating to the policy, prior to the final

decision being made, which considered potential impact on gender, race and disability, we conclude that due regard was had throughout the process and that this decision was therefore fully in accord with the duties.

### **How could policy making have been improved?**

The Commission believes that certain improvements could have been made to the policy making process. For example, the MoJ did not submit their equality data return to HM Treasury until 14 October – three days before the final decision. An early submission would have given more time for HM Treasury officials to ensure that the data return met their obligation to ensure that Quad was fully informed of the equality implications of their decisions. For example, the documentary evidence shows that there was no consideration of the potential impact of different options for reforming Legal Aid, or of the actual outcomes of the proposed cuts on equality. If the data was provided earlier in the process, this could have been given further attention. HM Treasury have since commented that they did not see the information as insignificant, but that they had to work harder to incorporate it given that it was late.

Several actions were proposed in the submissions to HM Treasury ministers and PEX to mitigate against the adverse impact on protected groups of reforming Legal Aid. This shows that some consideration of mitigating actions at the early stages of policy development is possible.

Mitigating actions were not always considered for other measures, although they should be considered at the early stages where adverse impact is identified. Consideration of mitigating actions is a useful process for HM Treasury ministers when faced with making difficult financial choices. Considering what actions could be taken to avoid or reduce identified negative impacts or to better advance equality of opportunity is helpful, not only to reduce the likelihood that difficult decisions will create or perpetuate unintended inequalities, but also as a transparent and evidence-based way of targeting resources on particularly disadvantaged groups.

In the Commission's view only the exceptional funding mechanism could in fact be characterised as a mitigating action. However, the information relating to this does not consider the effectiveness of the proposal by considering, for example:

- the current level of funding provided to protected characteristics under the existing policy
- the level of funding proposed as a mitigating action

- criteria for accessing the fund.

The proposed mitigating actions were quite general, due to the early stage of development of this policy. Therefore, further analysis would be required, at a later stage, of the potential impact of the alternative support to understand whether these proposals mitigate effectively. However, even this general level of consideration of mitigating actions helps to inform the decision-maker that risk has been identified and that mitigation is being considered by officials.

HM Treasury officials explained in oral evidence sessions that the settlement letters emphasised the need for departments to follow the statutory duties when developing and implementing their policies.

The Commission agrees that responsibility to roll out policy details lies with lead departments, as HM Treasury set out. However, for some measures the effective implementation of a mitigating action may be crucial to ensuring that any identified potential negative impact on a protected group is minimised. As the mitigation forms part of the consideration by HM Treasury of whether or not the measure is agreed, it needs to be implemented effectively to ensure the identified negative impact is reduced in practice. In order to ensure this, HM Treasury should consider how this can be agreed with the department.

### **What should happen next?**

Following the Spending Review, the MoJ published a consultation paper on *Proposals for the Reform of Legal Aid in England and Wales* (Green Paper), which included several equality impact assessments.

The Legal Aid, Sentencing and Punishment of Offenders Act received Royal Assent on 1 May 2012. The legislation is expected to take effect in October 2012.

There are several equality impact assessments which cover various aspects of the Act; the EIA relating to Legal Aid is the same one which accompanies the MoJ's response to the Legal Aid consultation. The Commission's response to the consultation can be found at: <http://www.equalityhumanrights.com/legal-and-policy/consultation-responses/response-to-consultation-on-reform-of-legal-aid/>.

The secretary of state for Justice announced, in December 2011, that implementation of some aspects of the Legal Aid reforms will be pushed back six months, from October 2012 to April 2013. The elements to be postponed include:

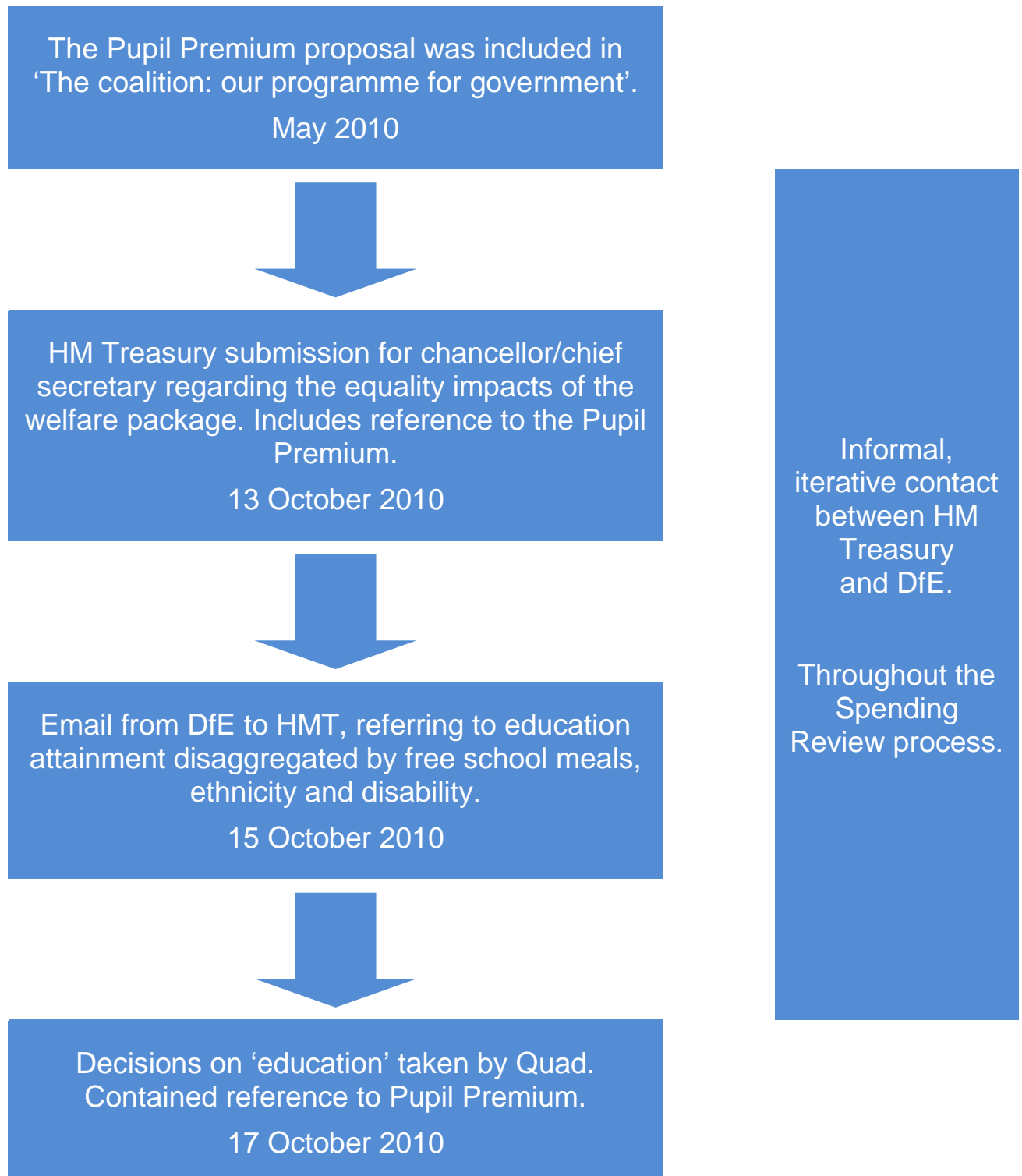
- the abolition of the Legal Services Commission (LSC) and the establishment of an executive agency to replace it



- introduction of new contracts for the delivery of civil Legal Aid reflecting the future scope of the scheme
- implementation of a mandatory telephone gateway to access civil Legal Aid advice, and
- introduction of revised eligibility criteria to access civil Legal Aid.

When the Legal Aid reforms are implemented, the Commission recommends that the MoJ should monitor actual outcomes of reforms and any mitigating actions, by protected group. It would be helpful for the MoJ to report on the findings from their monitoring once the policy has been in place for one year, ensuring that the data is disaggregated by equality group. In the Commission's view, the MoJ should also ensure measures are put in place to address data gaps for any of the protected groups. The MoJ stated in their oral evidence session that they plan to commission a survey of Legal Aid clients and providers to get better information and to establish a baseline to help with the delivery of the Legal Aid reform programme. The Commission recommends that this data should be disaggregated by equality group in order to inform policy development and decision-making.

# A £2.5 billion pupil premium for disadvantaged children



## Measure as announced in the Spending Review

The Spending Review document refers to 'a new £2.5 billion pupil premium will support the educational development of the most disadvantaged, and provide incentives for good schools to take on pupils from poorer backgrounds'. The document goes on to state that this policy (and the extension of the childcare offer for disadvantaged two year-olds) is 'aimed at supporting children from the lowest income households to reach their potential and narrow the attainment gap'.<sup>83</sup>

## How this policy was developed

Pupil Premium was included in *The Coalition: our programme for government* (published in May 2010) stating: 'We will fund a significant premium for disadvantaged pupils from outside the schools budget by reductions in spending elsewhere.'<sup>84</sup>

Data was provided by the DfE on 10 September (although the DfE report providing the information on 2 September, and as late as 15 October). This did not specifically refer to the Pupil Premium, but there was a general heading of 'schools'.

On 13 October 2010, HM Treasury officials provided HM Treasury ministers (chancellor and chief secretary) with a submission regarding the equality impacts of the welfare package. This included reference to the Pupil Premium, and stated that disabled pupils and ethnic minority pupils were likely to benefit from this measure. The document concludes that DEL spend on measures, in the Spending Review, relating to schools has an impact on disability and race, but not gender.

An email of 15 October 2010 from DfE to HM Treasury contained information regarding educational attainment in relation to ethnicity, disability and free school meals (FSM), which is used as an indicator of economic disadvantage.

Reference was made in the documents to the lower take-up of FSM by ethnic minorities (i.e. amongst those who would be eligible), but despite this the measure was seen to positively impact on equalities overall compared to not introducing it.

The decisions on education were taken by Quad on 17 October 2010, with reference to a paper setting out the potential impact of proposals. On Pupil Premium, this stated that the measure would be focused on the bottom 20 per cent of pupils in terms of income, and referred to the overlap between income, disability and ethnicity. There was no

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<sup>83</sup> [http://cdn.hm-treasury.gov.uk/sr2010\\_completereport.pdf](http://cdn.hm-treasury.gov.uk/sr2010_completereport.pdf) – 'Spending Review 2010'.

<sup>84</sup> [http://www.direct.gov.uk/prod\\_consum\\_dg/groups/dg\\_digitalassets/@dg/@en/documents/digitalasset/dg\\_187876.pdf](http://www.direct.gov.uk/prod_consum_dg/groups/dg_digitalassets/@dg/@en/documents/digitalasset/dg_187876.pdf) – 'The Coalition: our programme for government', May 2010.

reference to gender within this paper, or consideration of how effective this measure is likely to be in addressing educational attainment or whether the effectiveness might vary between different groups or in different areas in relation to the population mix or the mix of schools.

The chief secretary explained that HM Treasury made a number of decisions around education, including the Pupil Premium, early years education and changes to tax credits 'all of which affect that same sector of the population, where the cumulative impact of those things, in a positive way, was very much in our minds'. Considering the cumulative impact of measures in this way, allows HM Treasury ministers to understand the overall impact of a package of measures on a particular group, highlighting potential impact in a way that might not be apparent through consideration of individual measures in isolation.

### **Is the Commission assured the decisions were in full accord with the duties?**

Evidence provided to the Commission on the timeline of the decision-making process for education decisions, states that 'Narrowing attainment gaps – particularly by economic disadvantage – was a key theme throughout the process, and a core part of ongoing discussions between officials and conversations with advisers and ministers. The formal submission of data on equalities by DfE was helpful in informing these discussions, but they were rooted in pre-existing knowledge and work already done by the department and the HMT education team.'

HM Treasury ministerial decision-makers also received equality information relating to the policy prior to the final decision being made, which shows consideration of the potential impact on race, disability and gender.

One of the submissions from HM Treasury officials to the chancellor and chief secretary states that the Pupil Premium 'may disproportionately benefit pupils with disabilities as low income families are more likely to have a disabled child'. For ethnic minorities, the submission also states that 'Raising the Participation Age is likely to disproportionately benefit young people from some ethnic groups as they are less likely to be in education after 16 at present.'

This measure is an example of consideration being given to 'equality of opportunity', rather than just the identification of potential adverse impact, and it demonstrates how the public sector equality duties can work in a positive, proactive way to close current outcome gaps for protected groups.

Given the consideration of the impact on equality groups, and equality of opportunity, we conclude that due regard was paid throughout the

process and that this decision was therefore fully in accord with the duties.

### **How could policy making have been improved?**

The Commission believes that certain improvements could have been made to the policy making process. This measure is an example of consideration of equality of opportunity. However, as shown above, information to the HM Treasury decision-maker concluded that there was no impact on gender from DEL spend for measures in the Spending Review relating to schools. This is a missed opportunity as given the different attainment levels of boys and girls (including in different ethnic groups), consideration could have been given to how this measure could have been developed to address issues such as:

- Why poor white British girls do badly relative to poor girls from other ethnicities including poor black Caribbean girls and what support they need.
- Whether there is a difference in the nature of support needed by poor black boys and that needed by poor white boys.
- Whether anything can be learned from looking at why Chinese boys and girls who are poor still achieve the highest levels of attainment unlike poor pupils from any other ethnic group.

Also, given that the Pupil Premium has a budget of £2.5 billion, it would have been proportionate for the HM Treasury ministers to be presented with policy options by civil servants examining whether the Pupil Premium is the most effective way of promoting equality of opportunity in educational attainment. This consideration of options may have identified better ways to close overall gaps in educational achievement and more effective targeting of money to tackle barriers faced by specific groups.

The ICG sub-group on distributional impact was critical of the consideration of policy options generally, for example, the lack of cross-departmental thinking.

The Commission notes that the deprivation indicator of FSM does not necessarily directly correlate to protected characteristics. Although we recognise the overlap between some equality groups and being in low income, the two concepts of income disadvantage and general equality are not interchangeable (which is recognised by HM Treasury), and consideration of the direct impact on equality groups should always be included in this type of analysis.

## Activity post-Spending Review

Between July and October 2010, the DfE ran a consultation<sup>85</sup> to seek views on how best to operate the Premium.

In a written ministerial statement on 13 December 2010 the education secretary explained 'We have chosen this indicator [FSM eligibility] because it directly targets pupils and because the link between FSM eligibility and low attainment is strong. However, we aim from 2012-13 to extend the reach of the premium to those who have previously been on free school meals ... This additional funding will be passed straight to schools and because we have not ring-fenced it at school level, schools will have freedom to employ the strategies that they know will support their pupils to increase their attainment.'<sup>86</sup>

The Pupil Premium was introduced in April 2011 and was allocated to all pupils known to be eligible for FSM<sup>87</sup> in January 2011. Government have since decided that eligibility for the Pupil Premium in 2012-13 will be extended to pupils who have been eligible for FSM at any point in the last six years. This means that an extra half a million children will qualify for the premium. The Pupil Premium will also be worth £600 per pupil from 2012, up from £488 per year for each eligible child.

## What should happen next?

The Commission fully supports the aim of this measure to support children from the lowest income households to reach their potential and narrow the attainment gap. Monitoring the outcome of this measure on the attainment of disadvantaged children is therefore crucial when assessing the success of Pupil Premium. We recommend that government also monitors the impact of this measure by protected group to enable it to consider further how to discharge the duty to have due regard to the need to advance equality of opportunity.

As eligibility for Pupil Premium is directly linked to pupils taking up FSM, the Commission recommends that take up is monitored and disaggregated by equality groups as part of the monitoring of achievement by pupils who have received additional support via Pupil Premium. We would hope that this data is already being collected in anticipation of the first full year since implementation (April 2012), if not

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<sup>85</sup><http://www.education.gov.uk/consultations/downloadableDocs/School%20Funding%20Consultation%20Document.pdf> – 'Consultation on school funding 2011-1012 Introducing a pupil premium'.

<sup>86</sup><http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/101213-wms0002.htm#1012139001133>

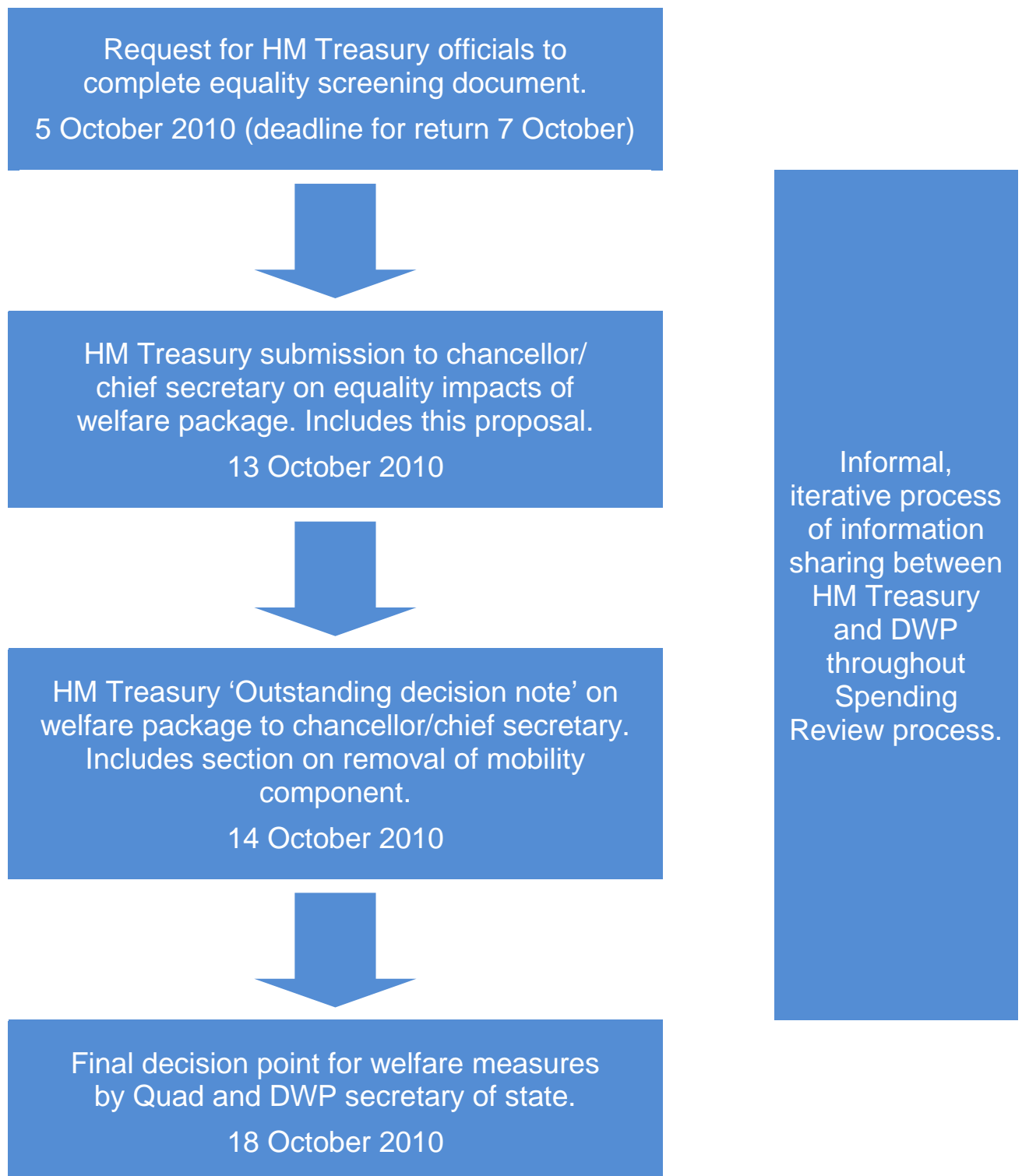
<sup>87</sup>You are eligible for free school meals if you are in receipt of Income Support, Income-Based Job Seeker's Allowance, Income related Employment Support Allowance or the Guarantee part of Pension Credit or if you have an annual income (as assessed by the HM Revenue & Customs) of less than £16,190 each year (but not Working Tax Credit).

the Commission recommends that a method for recording equality data for FSM take up or for eligibility for Pupil Premium be put in place immediately.

There is evidence that ethnic minority groups for instance are under-represented in take up of FSM, and as children from some ethnic minority groups are currently not achieving good GSCE results then achieving better take up rates for these groups may be significant.

Schools will be expected to report to parents annually from September 2012 about how they have used the Pupil Premium. The impact of Pupil Premium on the attainment of equality groups may, however, be difficult to judge in the short term. Consistent and detailed monitoring of: which schools are receiving the additional funding; for which groups of pupils; and what short-term and long-term effects this is having on pupil attainment, will be needed in order to assess whether the policy is having the desired effect.

## Disability Living Allowance – remove mobility component for claimants in residential care





## **Measure as announced in the Spending Review**

Remove 'the mobility component of Disability Living Allowance (DLA) for people in residential care, where such costs are already met from public funds'.<sup>88</sup>

DLA is a non-contributory, non-means tested, tax-free contribution towards the disability-related extra costs of severely disabled people. It is made up of two components: care and mobility, and is also available at different rates.

The care component of DLA has always stopped if an individual was in a hospital or care home, unless the person was paying for their own care, and so the change announced in the Spending Review was seen to align the rules.

This is an AME measure for which the DWP has responsibility.

## **How this policy was developed**

The proposal to remove the DLA mobility component for people in residential care homes was proposed by the DWP as there were concerns that there was some 'dual provision'. There were inconsistencies in how this worked, for example, people whose care was funded by the NHS did not get the mobility component but those funded by the local authority did.

HM Treasury officials provided HM Treasury ministers with the following information relating to the potential impact of this proposal:

- An equality screening document (deadline for completion was 7 October 2010).
- A document setting out a narrative of the equality implications of the welfare package (13 October 2010).
- An outstanding decision note from HM Treasury officials (14 October 2010).

Within these documents, there was equality information relating to the three protected groups, and this was available to the HM Treasury decision-maker prior to the final agreement on social security decisions, which was taken on 18 October by Quad and the work and pensions secretary.

Potential impact was identified on disabled people. The outstanding decision note of 14 October asserts that 'mobility costs for those in a residential home are likely to be very low and usually covered by the

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<sup>88</sup> [http://cdn.hm-treasury.gov.uk/sr2010\\_completereport.pdf](http://cdn.hm-treasury.gov.uk/sr2010_completereport.pdf) – 'Spending Review 2010'.

home itself, such as transport to medical appointments. Meals are provided by the home, therefore transport to buy food is not required.' No supporting evidence was included for this statement.

Within these documents, mitigating actions were not seen to be possible without undermining the policy intent 'of aligning the rules with the care component', which is removed from people in residential care, and contributing to fiscal consolidation.

### **Activity post-Spending Review**

Following the announcement of this measure, strong concerns were raised by disability stakeholders.

On 6 December 2010, the government launched a consultation on DLA reform, which closed on 18 February 2011.

The government responded to this in April 2011, and stated that, as a result of the consultation, the measure to remove the mobility component from those in residential care would not be implemented as planned in 2012, and that it would continue 'reviewing existing and gathering further evidence' to inform its decision. The government stated that it 'listened to the strong concerns raised by individuals and organisations [and] ... Meeting the mobility needs of people in residential care will now be considered as part of the wider reform of DLA.'<sup>89</sup>

On 1 December 2011 a DWP press release stated that 'Following months of consultation with disabled people and disability organisations and reflecting on the findings on the Low Review ... disabled people in residential care will continue to receive any mobility component of PIP [Personal Independence Payment – the replacement for DLA] they are entitled to.'<sup>90</sup>

### **Is the Commission assured the decisions were in full accord with the duties?**

HM Treasury ministers were provided with equality information relating to the three protected groups prior to the final agreement on social security decisions, which was taken on 18 October by Quad and the Work and Pensions Secretary. We conclude that due regard was paid throughout the process and that this decision was therefore fully in accord with the duties.

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<sup>89</sup> <http://www.dwp.gov.uk/docs/dla-reform-response.pdf> – 'DWP Government's response to the consultation on Disability Living Allowance reform', April 2011.

<sup>90</sup> <http://www.dwp.gov.uk/newsroom/press-releases/2011/dec-2011/dwp136-11.shtml>

## **How could policy making have been improved?**

The Commission believes that certain improvements could have been made to the policy making process.

### **The importance of consultation to identifying potential risk.**

As stated above, HM Treasury ministers received information relating to the potential impact of this measure on the three equality groups. However, the Disability Equality Duty includes the aims to have due regard to the need to take steps to take account of disabled persons' disabilities, even when that involves treating disabled persons more favourably than others, and to encourage participation by disabled persons in public life, in addition to promoting equality of opportunity between disabled persons and others.

Consideration could therefore have been given to how recipients use their mobility component, and how this compares to the transport provision provided by residential care homes. This would have allowed the decision-maker to understand the potential impact of this measure. Such consideration is not included in the documentary evidence, and where assertions are made, concluding that the transport needs of disabled people in a care home are likely to be low, there is no reference to any supporting evidence.

One way of gaining this understanding would have been through involving disabled people when assessing impact and gathering evidence, which is critical to the successful implementation of the duty. The fact that the government later reversed their decision to remove the mobility component from those in residential care homes following consultation with stakeholders, demonstrates how consultation with equality groups can identify issues and concerns that formal research, or statistical data, may not reveal.

The Commission recognises the constraints of the Spending Review process, such as the need for confidentiality, and the particularly short timeframe for this Review in particular, which could have meant that detailed consultation was not possible or appropriate prior to publication. However, if consultation was not possible prior to the Spending Review, it might have been more appropriate to announce that the government was considering the removal of the DLA mobility component for people living in residential care homes, but that this would be subject to consultation post-Spending Review, rather than announcing it as an agreed policy change. In discussions, HM Treasury have indicated that they consider measures announced in the Spending Review to be 'planning assumptions' and it is then for the department to decide how they spend this money. However, this is not made clear in the Spending Review document. Also, where a measure is included in the Spending

Review it is the Commission's view that HM Treasury have taken the decision to include it. This is particularly relevant for AME measures such as this, where HM Treasury accepts greater responsibility for decision-making. As set out in their single equality scheme, HM Treasury have 'more of a direct involvement' in tax and welfare policy.'

## **The current status**

In December 2011, the government announced that the mobility component of DLA would not be removed from people living in residential care homes and that the mobility component of the Personal Independence Payment PIP, which will replace Disability Living Allowance, will also be payable at both the standard or enhanced rate to people in residential care homes provided they satisfy the entitlement conditions.<sup>91</sup> PIP will have two components, the Daily Living component and the Mobility component.

They stated that this change of policy had been due to the concerns raised about the proposal and that their aims had always been to ensure that 'disabled people who live in residential care homes retain their independence and are not prevented from getting out and about'.<sup>92</sup>

## **What should happen next?**

Lessons can be learned from this process which could help to improve decision-making processes more generally. Where the evidence base is not available or would not allow robust conclusions, the Commission recommends that policy proposals are announced in a different way. For example, the Spending Review document could highlight where decisions are preliminary, subject to consultation or further investigation.

As regards the reassessment process for everyone currently on DLA<sup>93</sup> the Commission would recommend that the results of reassessment are disaggregated by protected characteristics but particularly by type of disability, and broken down by eligibility for receipt of the Daily Living component and the Mobility component and, if possible, by residential type i.e. private home or residential care.

The impact on individuals of losing the mobility component of their claim could be significant and detailed monitoring will enable the DWP to

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<sup>91</sup><http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm111201/wmstext/111201m0001.htm>

<sup>92</sup>Ibid.

<sup>93</sup>The work to reassess people who get DLA for Personal Independence Payment will start in Autumn 2013.

properly assess the impact of the reassessment process on protected groups and ensure that due regard is had to the need to encourage participation by disabled persons in public life.

## Council Tax Benefit: 10 per cent reduction in expenditure and localisation

HM Treasury equality screening document produced on the proposal to 'Reduce spending on council tax benefit and localisation from 2013-14'.  
7 October 2010 (deadline for completion)



Decisions on welfare measures taken by Quad and DWP secretary of state.  
18 October 2010

Informal, iterative contact between HM Treasury and DWP.  
October 2010

## **Measure as announced in the Spending Review**

Council Tax Benefit is a benefit for people on a low income to help them pay their Council Tax. The Spending Review announced ‘...reducing spending on Council Tax Benefits by 10 per cent and localising it, saving £490 million a year from 2013-14, while protecting the most vulnerable’.<sup>94</sup>

Currently funding for this measure is paid by the DWP out of their AME budget to local authorities. In future, funding will be paid from the DEL budget at the DCLG, and the devolved administrations.<sup>95</sup>

## **How this policy was developed**

This policy was first mentioned in a screening document sent to the chancellor and chief secretary. The deadline for completion of this document was 7 October 2010. There was informal and iterative contact between HM Treasury and the DWP.

The screening document states that the potential impact is not known for gender, race and disability, as this will depend on the detailed design of the policy and choices made by local authorities. It states that statistics are held on the numbers of Council Tax Benefit recipients in protected groups by the DWP and that the data covers disability, gender and age. It notes that there are limitations to the data on ethnicity.

However, even though the existence of this data is acknowledged, this data is not presented in the information to the decision-maker even at a high level, or used to give any preliminary understanding of potential impact by consideration of current recipients.

The screening document states under ‘mitigating actions’ that in designing the policy the government will look at how best to protect the most vulnerable groups, and they will consider providing greater flexibilities for local authorities to manage pressures on Council Tax from 2013-14.

Decisions on welfare measures were made by Quad and by the DWP Secretary of State on 18 October 2010. The screening document was provided to the HM Treasury ministers.

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<sup>94</sup> [http://cdn.hm-treasury.gov.uk/sr2010\\_completereport.pdf](http://cdn.hm-treasury.gov.uk/sr2010_completereport.pdf) – ‘Spending Review 2010’.

<sup>95</sup> <http://www.communities.gov.uk/documents/localgovernment/pdf/19510253.pdf> – ‘Localising Support for Council Tax in England Consultation’, August 2011.

## **Is the Commission assured the decisions were in full accord with the duties?**

Although the screening document provided to the HM Treasury ministerial decision-makers noted an unknown impact on race, disability and gender and referred to the existence of data on Council Tax recipients which was not included in the advice to decision-makers, in the Commission's view the decision taken was on a policy which was not sufficiently formulated at that stage to conduct an equality assessment. While there was data, given that the policy was at an early stage of development, it was too early to understand what the data means about potential impact. Therefore, we conclude that the information provided to the decision-maker was proportionate to the early stage of development of the policy, and was fully in accord with the duties.

## **What should happen next?**

The DCLG consulted on *Localising Support for Council Tax in England* from 2 August 2011 to 14 October 2011. The DCLG secretary of state presented the Local Government Finance Bill 2010-2011 to Parliament on 19 December 2011.

The Bill outlines a framework for local authorities to localise support for Council Tax in England. It will allow local authorities to set up local schemes of support for Council Tax, replacing Council Tax Benefit, and enabling them to deliver a saving of 10 per cent on the current Council Tax Benefit expenditure bill. The Bill requires local authorities to establish a Council Tax reduction scheme by 31 January 2013 and the first financial year to which that scheme relates must be the year beginning with 1 April 2013. There is also provision in the Bill to allow the secretary of state to amend the date upon which the scheme must start.

An EIA for localising support for Council Tax was published by DCLG on 10 January 2012. Local authorities will be required, under powers the DCLG is taking in the Local Government Finance Bill, to consult publicly on their draft local schemes. On the issue of monitoring, this stated: 'The Department will consider, in designing regulations, whether certain information will be required from local authorities to support future evaluation of the policy. The Department is also taking powers to issue guidance, which could be used to support local authorities in designing schemes in ways which avoid unnecessary impacts on vulnerable groups, if this is considered necessary.'

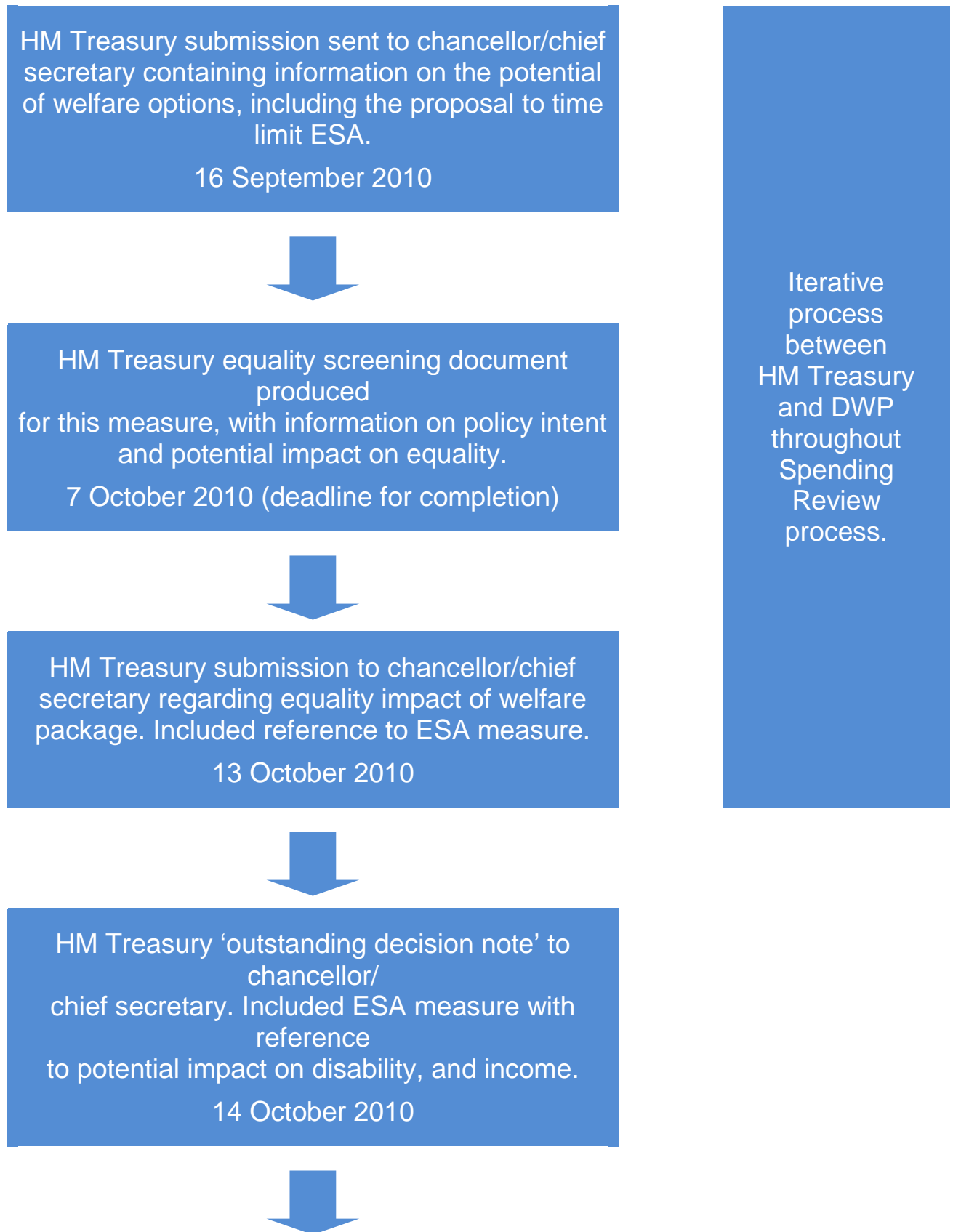
The Commission recommends that local authorities should consult publicly on their draft local schemes by autumn 2012, prior to the establishment of their scheme by 31 January 2013. The DCLG should



consider the provision of guidance at the local level to help local authorities target support to disadvantaged groups.

The DCLG should ensure that any risk is properly identified as the policy is developed and rolled out, and monitor the impact of the measure by protected group. Reporting of the data collected from this monitoring should ideally take place one year after local authorities' schemes are implemented, April 2014, and continue on an annual basis. Where possible, any adverse impact should be mitigated. This monitoring should ideally take place one year after local authorities' schemes are implemented (April 2014), and continue on an ongoing basis. Where appropriate and proportionate, adverse impact should be mitigated.

# Time limit contributory Employment and Support Allowance (ESA) for those in the Work Related Activity Group (WRAG)



Decisions on welfare measures taken  
by Quad and DWP secretary of state.

18 October 2010

## **Measure as announced in the Spending Review**

The Spending Review announced ‘time limiting contributory Employment and Support Allowance for those in the Work Related Activity Group to one year, to improve work incentives while protecting the most severely disabled and those with the lowest incomes, saving £2 billion a year by 2014-15’.<sup>96</sup>

Employment and Support Allowance (ESA) provides financial help to people who are unable to work because of illness or disability. It also provides personalised support to those who are able to work. Employment and Support Allowance involves a medical assessment called the Work Capability Assessment. This assesses what a person can do, rather than what they cannot, and identifies the health-related support they might need. Most people claiming Employment and Support Allowance will be expected to take steps to prepare for work. This includes attending work-focused interviews with their personal adviser.<sup>97</sup> This is a DWP AME measure.

## **How this policy was developed**

A submission by HM Treasury officials was sent to the chancellor and chief secretary on 16 September 2010 which contained information on the potential impact of welfare options, including the proposal to time limit ESA.

An equality screening document was completed for this measure by HM Treasury officials with information on policy intent and potential impact on equality. The deadline for completion of this document was 7 October 2010. The screening document sets out the intent of the measure as contributing to fiscal consolidation and to ‘further develop the policy aim of the benefit. ESA is a temporary benefit for the majority of claimants, all but the most severely ill or disabled will be expected to return to work.’

The screening document states that the policy will impact on disabled people. Accessing other funds, such as the DLA, is suggested as mitigation. The document also notes that the policy is likely to affect more men than women and it will impact slightly more on white British claimants than those from an ethnic minority. It states that a full EIA will be carried out by the DWP when the primary legislation is introduced.

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<sup>96</sup> [http://cdn.hm-treasury.gov.uk/sr2010\\_completereport.pdf](http://cdn.hm-treasury.gov.uk/sr2010_completereport.pdf) – ‘Spending Review 2010’.

<sup>97</sup> [http://www.direct.gov.uk/en/MoneyTaxAndBenefits/BenefitsTaxCreditsAndOtherSupport/Illorinjured/DG\\_171894](http://www.direct.gov.uk/en/MoneyTaxAndBenefits/BenefitsTaxCreditsAndOtherSupport/Illorinjured/DG_171894)

Actions following the screening document, include:

- A submission by HM Treasury officials to the chancellor and chief secretary on 13 October 2010 included reference to the ESA measure.
- HM Treasury's outstanding decision note to the chancellor and chief secretary on 14 October 2010 included a reference to potential impact on disability, and income of ESA measure.
- Decisions on welfare measures were made by Quad and the DWP secretary of state on 18 October 2010. The screening document was provided to HM Treasury ministers.
- Equalities overview document, published alongside the Spending Review, states that disabled people will be negatively affected by the policy but that actions have been taken to mitigate this.

### **Is the Commission assured the decisions were in full accord with the duties?**

The impact on equality groups was considered by the DWP in relation to the development of this issue, with variants of the policy being modelled along with the subsequent potential impact. Information was provided to HM Treasury, and a screening tool was completed for this measure which included analysis in relation to gender, race and disability, and reference to mitigating actions. This was provided to the HM Treasury decision makers, along with other papers on equality in relation to this measure.

Given that consideration was given to equality from an early stage in the development of this policy, and information was provided to the decision-maker, we conclude that due regard was had throughout the process and that this decision was therefore fully in accord with the duties.

### **How could policy making have been improved?**

The Commission believes that certain improvements could have been made to the policy making process. DWP officials stated in their oral evidence that a number of policy variants were considered for reforming ESA, some of which were not progressed because of the potential negative impact on equality groups. Only one option was provided by HM Treasury to the final decision-maker.

The screening document for this proposal includes a section on mitigating actions, stating that many people may be able to access other funds such as the DLA. This is not a mitigating action as these funds were already in place prior to the proposed policy change, and so action was not taken to mitigate the identified potential risk. However, the availability of DLA may mean that the adverse impact on disabled people may not be as significant as it would have been without it. Recipients of DLA will also be exempt from other measures, such as the household benefit cap.

No data is provided regarding the extent to which this proposal to access other funds, such as the DLA, reduces the identified impact. Assessment of the effectiveness of accessing other funds could have included, for example: considering how many people affected by the change will be eligible for DLA; the average loss of ESA income compared to DLA rates; and how these factors interact with the associated benefits of DLA, such as exemption from the household benefit cap.

Such consideration would have enabled HM Treasury ministers to have greater understanding of the potential adverse impact of this measure with the alternative sources of funding in place.

### **Activity post-Spending Review**

The DWP published an EIA for this measure alongside the Welfare Reform Bill. The EIA estimated the potential impact on protected groups stating that the policy is:

- 'more likely to affect men more than women ... [However,] when the time limit is applied, more men would qualify for income-related ESA than women ... As a result the average loss in household net income for women is around £10 per week higher than for men...
- more likely to affect disabled people because ESA is directly targeted at people with health conditions that limit their ability to work...
- maybe more likely to affect white recipients more than people in other ethnic groups'.<sup>98</sup>

The EIA contains no reference to DLA (or its replacement) as a mitigating action. It does reference income-related ESA as mitigation, stating that 'overall it is expected that 60 per cent of people losing their

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<sup>98</sup> <http://www.dwp.gov.uk/docs/eia-esa-time-limit-wr2011.pdf> – 'Time limiting contributory Employment and Support Allowance to one year for those in the work-related activity group', equality impact assessment, October 2011.

contributory ESA will be wholly or partially compensated by income-related ESA'; as well as the fact that people can access the Work Programme to help them enter employment.<sup>99</sup>

The EIA does state that 'DWP is committed to monitoring the impacts of its policies and we will use evidence from a number of sources on the experiences and outcomes of the protected groups.'<sup>100</sup>

### **What should happen next?**

In March 2012 the Welfare Reform Act received Royal Assent. As the reforms come into force, the Commission expects the DWP to monitor the impact of the measure, by protected group, as they are developed, to ensure that the desired outcome of improved work incentives for those in this group is achieved.

The DWP should also monitor the effectiveness of the mitigating actions and make any changes if they are not working. We would expect that the DWP would report annually on the data collected from the monitoring process. Ideally this should take place one year after the reforms are implemented and should continue annually.

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<sup>99</sup> Ibid.

<sup>100</sup> Ibid.

## Conclusions

The Commission has identified a number of areas of key learning through the case studies which we set out here, aimed at public authorities, as a way of ensuring that lessons can be learned more widely. They do not indicate any systemic failure to comply on behalf of HM Treasury. We would like to draw attention particularly to the importance of:

- The continuing nature of the duties and how this can be woven into an often complex cross-government decision-making process, including consideration of where responsibility lies at different stages, such as during early development stages and the final decision point.
- Developing an approach (at the stage where a full assessment is not possible) that will determine the levels of risk in order to anticipate whether the impact being significant is high or low, this may help to determine whether further data collection or analysis prior to a decision being taken is proportionate.
- Using existing data better and improving data collection, to help inform policy development and decision-making.
- Developing new approaches to analysis where appropriate, particularly in the area of understanding the potential impact on individuals of a change that affects household resources. This is particularly important for gender and should be focused on helping inform the decision-maker.
- Considering the use of techniques such as modelling hypothetical individuals to help inform the decision-maker and public debate.
- Considering the effectiveness of proposed mitigating actions during policy development and continuing to monitor their effectiveness after policy implementation.
- Ongoing monitoring of policies in order to understand the actual impact on equality groups; whether there are any unintended consequences; and how these could be mitigated.
- Consultation as a way of identifying risk of adverse impact or possible mitigation.
- Identifying and considering options that may be more effective for meeting policy aims, for instance improving equality of opportunity for protected groups, as well as being better value for money.



The public sector equality duty can help policy makers and decision-makers in public authorities make better decisions. The duty does not prevent public authorities from making difficult decisions such as reorganisations and relocations, redundancies, and service reductions, nor does it stop public authorities from making decisions which may impact on one group more than another group. However, understanding outcome gaps and barriers faced by different equality groups can allow policy makers to target measures more effectively, improving equality of opportunity between different groups of people and saving money as a result. Assessing the impact on equality of proposed changes to policies, procedures and practices is not just something the law requires, it is a positive opportunity for public authorities to ensure they make better decisions based on robust evidence.

## Chapter 7: Cumulative impact

### Introduction

It is clear that the decisions taken by individual departments around policies and measures do not operate in isolation. Thus, when making policy, it is important not just to look at the potential impact of individual measures, but also to ensure that their interaction is properly understood and that the cumulative impact is taken into account.

Understanding the cumulative impact on protected groups should be a pre-requisite of any policy making process. It is extremely important from an equality perspective and the Commission recommends that it should be taken into account in future Spending Reviews as a matter of good practice.

For example, changes made to public transport provisions have a particular impact on disabled people and may interact with changes to disability benefits to have a disproportionate impact in a way which is far removed from the original intentions of ministers.

HM Treasury acknowledge the importance of assessing cumulative impact in its document 'Overview of the impact of Spending Review 2010 on equalities'. This states 'It may not always be possible to mitigate the impacts within a single policy while delivering savings. However, savings in one area allow for higher spending elsewhere, potentially on the same groups of people. It is important therefore to consider the overall set of choices made in the Spending Review, rather than simply each individual decision, when considering mitigations.'<sup>101</sup>

This chapter considers what was done during the Spending Review process to take into account the cumulative impact of the measures on groups with protected characteristics. It also makes recommendations on how to ensure cumulative impact is considered in future Spending Reviews and major fiscal events.

### Consideration of cumulative impact during the Spending Review

#### ***HM Treasury approach to cumulative impact***

The HM Treasury equality overview document highlights HM Treasury's obligations under the public sector equality duties and states that 'HM

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<sup>101</sup> [http://cdn.hm-treasury.gov.uk/sr2010\\_equalities.pdf](http://cdn.hm-treasury.gov.uk/sr2010_equalities.pdf) – 'Overview of the impact of the Spending Review 2010 on equalities', October 2010.

Treasury does have a role to play in considering the equalities impacts of the Spending Review as a whole'.<sup>102</sup>

HM Treasury separately states in advice to the chancellor and chief secretary that, 'no department has responsibility for keeping track of the cumulative impact of decisions'. It advises that this role 'could be fulfilled by the Treasury, the Cabinet Office or the Government Equalities Office' but 'if mitigation were required this would probably need to be administered by the Treasury'. HM Treasury also states that, given the nature of the Spending Review, 'it is likely to be extremely difficult to keep track of the cumulative impact'. It expresses concern that 'departments would use this to argue that additional funding is required to mitigate any equalities impacts' and recommends that HM Treasury 'do not maintain an ongoing role in this area'.

The Commission notes that HM Treasury did take steps to consider the cumulative impacts of certain measures during the Spending Review process.

For example, on 11 June 2010, HM Treasury issued guidance requesting that departments work closely together where the success of a government objective depends on more than one department and asks departments to ensure that they 'provide analysis on the distributional impact of spending decisions across income groups'. It would be helpful however if the guidance explicitly extended this cross-income group consideration to protected equality groups.

In setting departmental budgets, the Treasury considered the overall impact of these spending decisions, as far as this was known from the information available, taking a qualitative approach. This analytical approach is discussed further in Chapter 5.

A high-level qualitative assessment of the cumulative impact on protected groups was in the papers that went to PEX on 11 October and Quad on the 17 October.

During the Commission's oral evidence session with the chief secretary to the Treasury a few examples were highlighted where the cumulative impact of certain measures had been taken into consideration during the Spending Review process:

There were a number of options on Child Benefit and HM Treasury 'decided not to go ahead with the 16 to 19 year-old, partly on the basis that the cumulative impact of doing that and reforming EMA would have had a disproportionate impact on that group of young

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<sup>102</sup> Ibid.

people and their families, and that is a stage at which when a number of people are at a particularly vulnerable part of their lives – care leavers, disabled young people again – and therefore we didn't want, in the end, to have that sort of cumulative impact on that group'.<sup>103</sup>

HM Treasury made a number of decisions around education, including the Pupil Premium, early years education and changes to tax credits 'all of which affect that same sector of the population, where the cumulative impact of those things, in a positive way, was very much in our minds'.<sup>104</sup>

HM Treasury took a decision to 'increase Child Tax Credit to offset the impact of some of the other measures on child poverty'.<sup>105</sup> It considered what the potential impact of decisions would be on child poverty and made the decision to 'make a further adjustment elsewhere in the system, in this case the Child Tax Credits, to try to offset [the impact on child poverty]'.<sup>106</sup>

### **Cross-departmental work**

The GEO's guidance issued to departments on 2 July 2010 advises that government departments not only work together to 'deliver objectives in the most cost effective manner', but also for government departments to work closely together in order to make it easier for the government to 'understand the overall impact on a particular group'.

As far as can be seen from the documentary and oral evidence, there was limited cross-government work during the Spending Review. HM Treasury spending teams worked with departments but there are few examples of cross-departmental work on measures impacting on similar groups. There was some reference in the oral evidence sessions to departments working closely together on certain issues in order to understand the impact across different departments.

For example:

The DfE worked with HM Treasury on early years' education and the effect of tax credits. The DfE provided its analysis as part of a larger piece of work by HM Treasury but these discussions have not been provided to the Commission, presumably because they did not cover equality issues.<sup>107</sup>

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<sup>103</sup> DA oral evidence session, 8 July 2011.

<sup>104</sup> Ibid.

<sup>105</sup> Ibid.

<sup>106</sup> Ibid.

<sup>107</sup> DfE oral evidence session, 30 June 2011.

The MoJ stated in its oral evidence session that it had discussions with the Department for Health and DfE where there was overlap with proposed reforms on Legal Aid and shared equality data with them.<sup>108</sup>

In an oral evidence session with HM Treasury, officials stated that: 'the majority of welfare was seen as ... a package with all the individual measures alongside each other ... so there was a visibility across a piece, across both DWP and the Treasury'.<sup>109</sup> However, the DWP was unaware of all other measures in the Spending Review which could impact on its own Spending Review package and stated in an oral evidence session with the Commission that 'when we were working on ... costings in Universal Credit, we didn't know about the Working Tax Credit changes that were coming down the road'.<sup>110</sup> DWP only knew about its own package and Child Benefit.

There was also criticism from the ICG sub-group in their interim report: 'There was little or no evidence of cross-Departmental thinking about the impacts, and still less that Departments had considered new ways of working together to mitigate these impacts.'

Cross-departmental thinking would aid efficient and effective government. Looking across government, rather than just within a department, may enable identification of cost-neutral or cost-efficient mitigations, thus achieving deficit reduction while minimising potential negative impact.

### **Confidentiality of the process**

The level of confidentiality required throughout the Spending Review process meant that departments were making bids to HM Treasury in isolation. Departments told the Commission that the context in which the Spending Review was being undertaken and 'the need for the avoidance of leaks and things ... [constrained], however well intentioned, the ability for departments to openly talk across'.<sup>111</sup> This level of confidentiality made it difficult for departments to have an understanding of the full impact their measures might have on protected groups when combined with other departmental measures.

Departmental finance directors in the government Finance Leadership Group 'had high-level conversations, which were about trying to ensure we were considering and keeping checks' but departments said to the Commission that it would have been 'inappropriate to share widely some

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<sup>108</sup> MoJ oral evidence session, 27 June 2011.

<sup>109</sup> HMT oral evidence session 2, 20 July 2011.

<sup>110</sup> DWP oral evidence session, 28 June 2011.

<sup>111</sup> DfE oral evidence session, 30 June 2011.

of the detailed proposals<sup>112</sup> that were being developed owing to the sensitivity of the work.

Future compliance and good practice in Spending Reviews could be better assured by greater transparency, including clear HM Treasury guidance on data and analytical requirements for departments. Common rules to allow easier sharing of data within government would also aid transparency.

### **How cumulative impact could be considered in future Spending Reviews or other major fiscal events**

The Commission understands the difficulties faced by HM Treasury in trying to make an assessment of cumulative impact, given that the Spending Review was a complex, multi-dimensional and fast-paced iterative process, and appreciates that consideration of the cumulative impact of the measures during this time would have been difficult given the time constraints.

The level of confidentiality required around departmental bids and the complexity of the process means that HM Treasury is the only part of government which can take this overview role of considering the cumulative impact of the measures and proposals on protected groups during a Spending Review process.

Although other departments do have oversight of more than one measure and are able to work closely with other departments on individual measures, HM Treasury is best placed overall to be able to consider how the different measures proposed by departments work together in order to achieve positive outcomes for protected groups and to ensure that policy is meeting its objectives. This information and understanding can then be provided to the ministers, along with the information on each proposal or series of options, to inform better decision-making.

HM Treasury assert that it would be difficult to undertake a 'meaningful cumulative analysis of the entirety'<sup>113</sup> of the Spending Review package.

However, as an alternative a more targeted assessment of cumulative impact could help inform ministers. For example, a series of aggregate qualitative assessments of the combined impact of a small group of measures, such as those focused on employment outcomes (training support, work incentive measures, child care provision etc), may indicate

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<sup>112</sup> Ibid.

<sup>113</sup> HMT oral evidence session 2, 20 July 2011.

an adverse impact which could then be mitigated by actions elsewhere. This information would help to inform the decision-maker.

The DWP informed the Commission that the 'ODI [Office for Disability Issues] is developing a cross-Government strategy document which will set out the Government's vision for disabled people to fulfil their potential and have opportunities to play a full role in society. It will focus the need for continued action across Government and externally. The strategy will set out the priorities as we move towards the realisation of the vision. We want disabled people, as well as people and organisations that support them, to be partners in developing the strategy, so we are publishing a Disability Strategy Discussion Document in December.'<sup>114</sup>

Government could utilise such strategies to help identify priorities and opportunities in a small number of defined areas for future Spending Reviews and fiscal events in order to help to mitigate adverse impact or better advance equality of opportunity.

### **Using cumulative impact assessment to achieve desired equality outcomes**

As discussed in Chapter 3, cross-government agreement on a small number of equality priorities would enable departments to give focus to these priorities in their initial bids to HM Treasury and assist with the early prioritisation of departmental spend. This would also enable cross-departmental work to achieve these common goals.

Understanding how departmental proposals join up to advance equality of opportunity, including mitigation of adverse impacts where this is appropriate and necessary, is central to assisting HM Treasury ministers to understand the impact of their decisions on protected groups and leads to more informed decision-making.

Starting this process with a desired outcome would enable a clear focus on which potential measures are relevant. This would define the scope and shape of the cumulative impact assessment.

For example, increasing the employment rate of parents, and particularly lone parents, has been one of government's main methods of tackling child poverty and many of the measures in recent Welfare Reform legislation have been aimed at supporting more parents to take up work.

Lone parents could be affected by many of the measures in the Spending Review, for instance: a reduction in the childcare element of Working Tax Credit; a freeze on Working Tax Credits; reforms to

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<sup>114</sup> Quote from DWP comments on Draft S31 report, 23 November 2011.

Housing and Council Tax Benefit and a freeze on Child Benefit. They may also be more likely to be adversely affected by public sector job cuts as local authority spending cuts are implemented, both as employees and service users.

Reference was made to lone parents by HM Treasury, when, on 13 October, an equalities impact paper was sent to the chancellor, chief secretary and others. It stated 'Specifically, female lone parents will be disproportionately affected by the changes to Working Tax Credits.' The summary at the beginning of the paper states that 'a number of measures within the package have an adverse impact on groups protected by equalities legislation' and that 'Universal Credit, when introduced, will better support those only able to work a few hours a week ... including women and those with caring responsibilities.'

Also on 14 October an outstanding decision note was sent to the chancellor and chief secretary and refers to the impact on lone parents of the measure to reduce the childcare element of Working Tax Credit from 80 per cent to 70 per cent. The note states that 60 per cent of recipients are lone mother households, compared with 40 per cent in the tax credit population, and that the measure also 'Reduces work incentives for lone parents and second earners.'

Around 90 per cent of lone parents are women<sup>115</sup> and 70 per cent of lone parents live in poverty.<sup>116</sup> Therefore, consideration of outcomes for this group is a positive opportunity for government to actively promote equality of opportunity for a disadvantaged group. It also addresses government's obligations under the public sector equality duty and its commitment to reducing child poverty.

In order to achieve a clear understanding of the potential overall impact of such a combination of measures a qualitative scorecard approach could be used that would help HM Treasury ministers evaluate, even if only on a qualitative basis, whether the proposed measures would achieve their overall aim.

If improving outcomes for this group had been a specific target for government then a more detailed consideration of the barriers to work faced by lone parents might have been presented to HM Treasury ministers, taking into account both qualitative and quantitative data, leading to a more informed decision.

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<sup>115</sup> Derived from Families and Households in the UK, 2001 to 2010, Table 1. ONS, Statistical Bulletin, April 2011.

<sup>116</sup> *Impact of family breakdown on children's well-being: evidence review*, Ann Mooney, Chris Oliver, Marjorie Smith June, 2009.



## **Implementation of the Spending Review**

This Assessment has examined the consideration of cumulative impact during the Spending Review process. Post-Spending Review responsibility for the implementation and subsequent monitoring of outcomes for individual measures lies with the lead spending department.

When departments have been provided with settlements by HM Treasury and the measures are publicly announced, the responsibility for monitoring or assessing cumulative impact of those measures on different groups falls to the departments. They can then work up the proposals in detail and are able to share data and discuss measures without the confidentiality of the Spending Review process restricting this.

As it stands it is not clear where responsibility for the assessment of cumulative impact of government policies outside the measures contained in the Spending Review rests.

As set out previously HM Treasury states in advice to the chancellor and chief secretary that 'no department has responsibility for keeping track of the cumulative impact of decisions' and the Commission has not yet identified any other government department with responsibility for the cumulative assessment of the impact of government policies on protected groups.

However, the Commission's analysis indicates that this ongoing assessment is an important means of understanding the success of government policy in improving the equality of opportunity between protected groups and shaping future Spending Reviews.

The Commission recommends that the government considers formalising, for spending decisions, the process of equality analysis and ensuring that a specific named body – central to the process and with sufficient resources and expertise – is given the clear responsibility of assessing the cumulative impact of the Spending Review measures in order to identify any potential disadvantage caused by the collective impact of the decisions taken.

The government should also consider independent and authoritative equality analysis of public spending policies; since this task would conflict with the Commission's statutory role as a monitor and assessor of non-compliance with the PSED, this role might be undertaken by a body such as the Independent Social Mobility and Child Poverty Commission.

## Chapter 8: Findings and recommendations

The Commission has based its findings in this Assessment on the Race, Disability and Gender Equality Duties in place at the time of the 2010 Spending Review. Our recommendations would not just assist compliance with the original duties, but will also help policy makers work in the new single equality duty introduced under the 2010 Act.

As outlined in section 16(2), Schedule 2 of the Equality Act 2006, which applies to assessments under Section 31, the Commission has the power to make recommendations as part of an assessment and these recommendations may be 'addressed to any class of person'.<sup>117</sup>

### Findings

Overall, the Commission found a serious effort by ministers and officials to meet their obligations under existing equality duties. In particular:

- The government published, for the first time, an equalities overview document, alongside the Spending Review.
- Equality ministers formally drew departments' attention to the requirements of the equality duties.
- As well as gathering equality data and assessing the impact on equality groups, HM Treasury made an attempt to analyse the effects of its proposals on different income groups and sometimes used this as a proxy for understanding impact on protected grounds.
- Where they considered it relevant, ministers demanded more and better information about the equality impacts of proposals.

The Commission considers these steps commendable, particularly in the light of the pressures faced by ministers and officials.

However, the Commission found that three underlying factors made the task of formal assessment extremely difficult.

First, this is an unprecedented exercise in an unprecedented economic situation. The public sector equality duty (PSED) is a relatively recent innovation; it is, so far, unique to the UK. It is the first time that any government has had to apply its requirements to such an extensive and significant project conducted in such challenging circumstances.

Second, the Spending Review involved the whole of government. Many decisions involved gathering information and analysis from several

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<sup>117</sup> Section 16, Schedule 2, Equality Act 2006.

departments. Recent case law has made it clear that public bodies must pay due regard to equality, not only in the final policy decision, but in the process leading up to that decision. Some decisions by the Chancellor rested on a series of interlocking assumptions, some of which were not the responsibility of HM Treasury itself. Some proposals were made in anticipation of future detailed decisions which might formally be regarded as the province of individual government departments. Yet others were *de facto* shared decisions. Against this complex background it appeared to us that it was not always clear who should be responsible for which aspects of certain decisions, at what point the equality effects needed to be set out explicitly, and by whom. Third, the PSED is an evidence-based duty. An assessment of adverse impact has to rest, not on opinion, but an analysis of likely outcomes for different groups, based as far as is possible on objective data. For such an analysis to be possible, the data sets should be common to all departments; and the data should be applied to a rigorously developed common model to make the analysis reliable. This is not yet the case for every area of policy.

The Commission believes that its recommendations should help to address all of these questions. Our most important proposals for the future fall into the realm of good practice. However, the Act requires the Commission sets out formally its conclusions on the extent and manner to which HM Treasury complied with the requirements of the duties.

### **Compliance**

As part of this Assessment, the Commission carried out a detailed analysis of the process by which decisions were taken for nine of the measures announced in the Spending Review 2010. We also undertook a preliminary assessment of the process for the majority of other measures in the Spending Review 2010, not including those excluded under 'public good' (please see Chapter 3).

While we did not analyse these measures in as great detail as the nine measures listed below, initial assessments indicated that the decision-making process by which they were taken met the requirements of the PSEDs. Overall, we conclude that, among the large number of measures outlined in the Spending Review, only a small number raised concerns.

Out of nine detailed case studies, we found that six were fully in accord with the PSEDs.

We were able to satisfy ourselves that HM Treasury was fully in accord with the requirements of the PSEDs in the following instances:

1. Removing Child Benefit from households with a higher rate taxpayer

2. Reform of Legal Aid
3. A £2.5 billion Pupil Premium for disadvantaged children
4. Removal of mobility component of Disability Living Allowance (DLA) from claimants in residential care homes
5. Council Tax Benefit: 10 per cent reduction in expenditure, and localisation
6. Time-limiting the contributory Employment and Support Allowance to one year for those in the Work Related Activity Group

In the circumstances – the scale of the exercise, the speed of its execution and the novelty of the process – this is a creditable record.

In three cases, the Commission's detailed examination was unable to establish whether or not the decisions were in full accord with the requirements of the duty because of a lack of clarity as to a) where the true site of the decisions lay, and b) whether or not some decisions were the responsibility of other government departments or the government as a whole.

These were:

7. **Introduction of a household benefits cap** – there is no evidence of any gender analysis or equality screening of the measure provided to HM Treasury ministers prior to the announcement of the measure on 4 October.
8. **Bus Service Operators Grant (BSOG)** – the potential impact on people with disabilities was not included in the advice provided to HM Treasury ministers.
9. **Replacing Education Maintenance Allowance with local discretionary funds** – there was no reference to ethnicity, disability or gender in information provided to HM Treasury ministers.

We are aware that in each of the nine case studies, including these latter three, HM Treasury considers all its actions wholly sufficient and in accordance with the Act. In essence Treasury ministers and officials have argued that where the decision was the responsibility of the HM Treasury they took appropriate steps to establish due regard; and where they did not take such steps, it was because the decision was not the responsibility of HM Treasury.

The Commission does not doubt that the ministers and officials consciously and actively sought to fulfil the duties. But we do not believe that the government as a whole has fully grasped the way in which case law has elucidated the meaning of the PSED over recent years.

In the three cases in which we feel we cannot establish whether or not HM Treasury were fully in accord, it may be that further study might reveal that some aspects of decision-making fell awkwardly between HM Treasury and other departments; or that the way in which the whole process worked meant that there might have been better documentary evidence if the government had been able to manage the process at a more normal pace. In any event, we do not consider that any of the shortcomings we have identified merit invoking any of the formal means of censure or compliance open to us at this stage.

In addition to these three cases, the Commission's analysis suggests that for future such exercises improvements could be made in the early stages of the decision-making processes to be fully in accord with the requirements of the PSED:

- Decisions as to whether an equality analysis is necessary in relation to the funding envelope for a whole department should be based on consideration of equality criteria relevant to protected groups. Other tests, for example, whether the department is the provider of a public good, should not pre-empt such consideration.
- Decisions, such as which departments to prioritise and which to protect from spending cuts, might be more manageable and transparent if they were expressly based on their significance to a small number of defined equality objectives for the Spending Review. In this case, such objectives would probably have been derived from the Government's own declared Fairness Agenda.

We have also been assured by HM Treasury itself that both ministers and officials are fully committed to addressing the concerns we set out in this report. The Commission considers that this is a positive response to our findings, and is itself fully committed to working with government and others to building on what is good and remedying what could have been done better.

This will not just be a matter of bureaucratic box-ticking. Failure to ensure that the duties are observed have recently led to otherwise valid decisions being successfully challenged by, for example, Council Tax payers. As a consequence public bodies have been forced to revisit policies, at substantial cost to the taxpayer and inconvenience to those who work in and use public services.

In addition, although not a breach of the duties:

- HM Treasury produced a document setting out the overview of the impact on equality. However, this was a qualitative exercise, was very high level, and did not set out the overall impact on groups of the Spending Review package. This, along with the lack of

transparency between departments when developing their bid proposals, meant that there was a limited understanding as to how different policy measures would impact when working in aggregate. The consideration of mitigating actions was inconsistent. For some measures, there was no assessment of possible mitigating actions as it was considered that mitigating would undermine the policy intent, and for others the effectiveness of the proposed mitigating action was not considered.

- The quality of returns from departments was inconsistent; some were provided with data on all the protected groups and others not fully completed. The late return of the data left little time to inform the decision-making process.
- There were technical limitations with HM Treasury's distributional analysis. However, these limitations should not necessarily prevent distributional impact analysis from being extended to equality impact analysis.
- Guidance provided by HM Treasury to departments did not address all of the obligations on public authorities under the Race, Gender and Disability Equality Duties, including the duty to promote equality of opportunity. In certain cases this may have led to HM Treasury ministers having inadequate information as to the potential impacts of their decisions.

### ***Good practice***

There were several instances of good practice. These are described within the main body of the report:

- Publication of an equalities overview document.
- Exemption of DLA recipients from the household benefit cap as a mitigating action.
- Use of screening tools for Annually Managed Expenditure (AME) measures. This allowed for clear information to be provided to the ministers in a consistent way.
- Department for Transport data submission to HM Treasury.

However, in some cases a more detailed and purposeful equality effect analysis might have resulted in better targeted spending programmes, for instance:

- A more thorough and detailed consideration of the impacts of the pupils premium might have allowed for a more refined approach to its distribution – concentrating funds on groups of pupils whose performance most needed improvement.

- A thorough analysis by age would probably have provided stronger evidence for the government's case for the pace of deficit reduction.

### **Next steps**

The Board of the Commission considers that further formal action is not appropriate and the public interest would be better served by developing a programme of action with HM Treasury to ensure they are fully in accord with the requirements of the duties in future.

The Commission believes that future compliance and good practice in cross-government Spending Reviews could be better assured by:

- Greater transparency, including clear HM Treasury guidance on data and analytical requirements for the whole of government.
- Common rules to allow easier sharing of equality data within government.
- Authoritative sources of advice and support for government departments on equality impact analysis.
- The development of a common model of analysis to predict the likely equality effects of policy.

The government should also consider:

- A single point of government responsible for monitoring and assessing the cumulative impact of future Spending Reviews and budgets.
- Independent and authoritative equality analysis of public spending policies; since this task would conflict with the Commission's statutory role as a monitor and assessor of non-compliance with the PSED, this role might be undertaken by a body such as the Independent Social Mobility and Child Poverty Commission.

The Commission will also work with HM Treasury and other government departments to ensure that the impact of the Spending Review on protected groups is understood as the measures are rolled out over the next two to three years.

### **Additional recommendations**

- Case law confirms that public authorities need to analyse and understand the impact of proposed policies and decisions on the protected groups at the formative stages of policy development, in advance of the adoption of such policies. For future Spending

Reviews HM Treasury should bear this in mind during the early stages of policy development. This allows HM Treasury ministers to judge what actions would be considered proportionate, and should also inform the prioritisation of objectives and policies.

- All departmental functions or services under consideration for change under future Spending Reviews should be subject to an initial screening for their potential impact on the different protected characteristics as set out under the Equality Act 2010. This would ensure that HM Treasury ministers are better informed on whether it may be necessary to gather further evidence on which to base their final decision.
- An evidence base relating to current consumption and participation by equality groups would help to reduce pressure within the Spending Review process and to ensure that the focus of analysis can be on the proposed changes. Government could make better use of existing data and improve data collection processes, to help inform policy development and decision-making.
- Ministers should be provided with information about the potential impact of decisions that they are taking. Where complete analysis is unavailable, for example due to data gaps or policy not yet being fully defined, the best possible proportionate analysis should be provided, with the necessary caveats.
- When potential adverse impact is identified for a protected group, consideration should be given at the early stages to mitigation and to the effectiveness of any proposed mitigating actions.



## Appendix 1: Terms of Reference

The Commission announced its intent to conduct a formal Section 31 Assessment of HM Treasury on 25 November 2010 in order to assess the extent to which HM Treasury met its obligations when considering the impact of the decisions contained in the Spending Review on protected characteristics. As outlined in section 4 (a-e), Schedule 2 of the Equality Act 2006 which applies to assessments under Section 31, 'before conducting an assessment of a person's compliance with a duty the Commission shall—

- (a) prepare terms of reference,
- (b) give the person notice of the proposed terms of reference,
- (c) give the person an opportunity to make representations about the proposed terms of reference,
- (d) consider any representations made, and
- (e) publish the terms of reference once settled.'

The Commission settled the Terms of Reference with HM Treasury on 12 January 2011. These explain the scope and the purpose of the Assessment:

1. Assess the extent to which, and the manner in which, HM Treasury has met the public sector equality duties<sup>118</sup> in carrying out its functions in relation to the 2010 Spending Review, but having regard to any relevant prior fiscal events and analysis, including the government's Emergency Budget, where appropriate.
2. Assess the extent to which, and the manner in which, HM Treasury has taken into account equality considerations when assessing policy options in relation to the functions referred to in TOR 1 (above).
3. Determine at what stages of policy formation, refinement, development and implementation the public sector equality duties are relevant and whether HM Treasury has taken proportionate action, within the context of its functions, to:
  - ▶ gather evidence to enable it to make decisions which have due regard to the need to promote equality of opportunity;
  - ▶ use relevant data to analyse the impact on diversity of public

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<sup>118</sup> The general public sector equality duties include the duties under s. 71(1) of the Race Relations Act 1976, s. 76A of the Sex Discrimination Act 1975, and s. 49A of the Disability Discrimination Act 1995 (as amended).

spending, of tax and of policies for promoting productivity and growth;

▶ consider policy options or mitigating actions.

4. Consider whether and to what extent it is within HM Treasury's functions to assess the cumulative impact of government policies, and if so, whether it has had due regard to the public sector equality duties in that function.
5. Where HM Treasury relies on any other department to identify and consider any disproportionate impact of any of its proposals or policies in relation to the functions referred to in TOR 1 and take such mitigating steps as are necessary, to assess:
  - ▶ the extent to which it is proportionate, appropriate and/or timely, to leave that assessment to that other department or departments;
  - ▶ the extent to which, within the context of HM Treasury's functions, it has aided and facilitated that other department or departments to do so.
6. Identify areas of good practice, if any, in complying with the public sector equality duties.
7. Identify areas of non-compliance, if any, with the public sector equality duties.

## **Appendix 2: Relevant sections of the Equality Act 2006**

Under Section 31 of the Equality Act 2006 the Equality and Human Rights Commission has the power to assess public bodies' compliance with the public sector equality duties. Details of these powers are listed below:

### **31 Public sector duties: assessment**

- (1) The Commission may assess the extent to which or the manner in which a person has complied with a duty under or by virtue of—
  - (a) section 76A, 76B or 76C of the Sex Discrimination Act 1975 (c. 65) (public authorities: duty to eliminate discrimination, &c.),
  - (b) section 71 of the Race Relations Act 1976 (c. 74) (public authorities: duty to eliminate discrimination, &c.), or
  - (c) section 49A or 49D of the Disability Discrimination Act 1995 (c. 50) (public authorities: duty to eliminate discrimination, &c.).
- (2) Schedule 2 makes supplemental provision about assessments.
- (3) This section is without prejudice to the generality of sections 16 and 20.

### **Schedule 2**

#### **SCHEDULE 2 INQUIRIES, INVESTIGATIONS AND ASSESSMENTS**

##### **Introduction**

- 1 This Schedule applies to—
  - (a) inquiries under section 16,
  - (b) investigations under section 20, and
  - (c) assessments under section 31.

##### **Terms of reference**

- 2 Before conducting an inquiry the Commission shall—
  - (a) publish the terms of reference of the inquiry in a manner that the Commission thinks is likely to bring the inquiry to the attention of persons whom it concerns or who are likely to be interested in it, and
  - (b) in particular, give notice of the terms of reference to any persons specified in them.
- 3 Before conducting an investigation the Commission shall—
  - (a) prepare terms of reference specifying the person to be investigated and the nature of the unlawful act which the Commission suspects,

- (b) give the person to be investigated notice of the proposed terms of reference,
- (c) give the person to be investigated an opportunity to make representations about the proposed terms of reference,
- (d) consider any representations made, and
- (e) publish the terms of reference once settled.

4 Before conducting an assessment of a person's compliance with a duty the Commission shall—

- (a) prepare terms of reference,
- (b) give the person notice of the proposed terms of reference,
- (c) give the person an opportunity to make representations about the proposed terms of reference,
- (d) consider any representations made, and
- (e) publish the terms of reference once settled.

5 Paragraphs 2 to 4 shall apply in relation to revised terms of reference as they apply in relation to original terms of reference.

## **Representations**

6(1) The Commission shall make arrangements for giving persons an opportunity to make representations in relation to inquiries, investigations and assessments.

(2) In particular, in the course of an investigation, inquiry or assessment the Commission must give any person specified in the terms of reference an opportunity to make representations.

7 Arrangements under paragraph 6 may (but need not) include arrangements for oral representations.

8(1) The Commission shall consider representations made in relation to an inquiry, investigation or assessment.

(2) But the Commission may, where they think it appropriate, refuse to consider representations—

(a) made neither by nor on behalf of a person specified in the terms of reference, or

(b) made on behalf of a person specified in the terms of reference by a person who is not **[F1a relevant lawyer]**.

**[F2(2A)**“Relevant lawyer” means—

(a) an advocate or solicitor in Scotland, or

(b) a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation (within the meaning of that Act).]

(3) If the Commission refuse to consider representations in reliance on sub-paragraph (2) they shall give the person who makes them written notice of the Commission's decision and the reasons for it.

## **Evidence**

9 In the course of an inquiry, investigation or assessment the Commission may give a notice under this paragraph to any person.

10(1) A notice given to a person under paragraph 9 may require him—

- (a) to provide information in his possession,
- (b) to produce documents in his possession, or
- (c) to give oral evidence.

(2) A notice under paragraph 9 may include provision about—

- (a) the form of information, documents or evidence;
- (b) timing.

(3) A notice under paragraph 9—

- (a) may not require a person to provide information that he is prohibited from disclosing by virtue of an enactment,
- (b) may not require a person to do anything that he could not be compelled to do in proceedings before the High Court or the Court of Session, and
- (c) may not require a person to attend at a place unless the Commission undertakes to pay the expenses of his journey.

11 The recipient of a notice under paragraph 9 may apply to a county court (in England and Wales) or to the sheriff (in Scotland) to have the notice cancelled on the grounds that the requirement imposed by the notice is—

- (a) unnecessary having regard to the purpose of the inquiry, investigation or assessment to which the notice relates, or
- (b) otherwise unreasonable.

12(1) Sub-paragraph (2) applies where the Commission thinks that a person—

- (a) has failed without reasonable excuse to comply with a notice under paragraph 9, or
- (b) is likely to fail without reasonable excuse to comply with a notice under paragraph 9.

(2) The Commission may apply to a county court (in England and Wales) or to the sheriff (in Scotland) for an order requiring a person to take such steps as may be specified in the order to comply with the notice.

13(1) A person commits an offence if without reasonable excuse he—

- (a) fails to comply with a notice under paragraph 9 or an order under paragraph 12(2),

- (b) falsifies anything provided or produced in accordance with a notice under paragraph 9 or an order under paragraph 12(2), or
- (c) makes a false statement in giving oral evidence in accordance with a notice under paragraph 9.

(2) A person who is guilty of an offence under this paragraph shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

14(1) Where a person is given a notice under paragraph 9 he shall disregard it, and notify the Commission that he is disregarding it, in so far as he thinks it would require him—

- (a) to disclose sensitive information within the meaning of paragraph 4 of Schedule 3 to the Intelligence Services Act 1994 (c. 13) (Intelligence and Security Committee),
- (b) to disclose information which might lead to the identification of an employee or agent of an intelligence service (other than one whose identity is already known to the Commission),
- (c) to disclose information which might provide details of processes used in recruiting, selecting or training employees or agents of an intelligence service,
- (d) to disclose information which might provide details of, or cannot practicably be separated from, information falling within any of paragraphs (a) to (c), or
- (e) to make a disclosure of information relating to an intelligence service which would prejudice the interests of national security.

(2) In sub-paragraph (1) “intelligence service” means—

- (a) the Security Service,
- (b) the Secret Intelligence Service, and
- (c) the Government Communications Headquarters.

(3) Where in response to a notice under paragraph 9 a person gives a notice to the Commission under sub-paragraph (1) above—

- (a) paragraphs 12 and 13 shall not apply in relation to that part of the notice under paragraph 9 to which the notice under sub-paragraph (1) above relates,
- (b) the Commission may apply to the tribunal established by section 65 of the Regulation of Investigatory Powers Act 2000 (c. 23) for an order requiring the person to take such steps as may be specified in the order to comply with the notice,
- (c) the following provisions of that Act shall apply in relation to proceedings under this paragraph as they apply in relation to proceedings under that Act (with any necessary modifications)—
  - (i) section 67(7), (8) and (10) to (12) (determination),

- (ii) section 68 (procedure), and
- (iii) section 69 (rules), and
- (d) the tribunal shall determine proceedings under this paragraph by considering the opinion of the person who gave the notice under sub-paragraph (1) above in accordance with the principles that would be applied by a court on an application for judicial review of the giving of the notice.

(4) Where the Commission receives information or documents from or relating to an intelligence service in response to a notice under paragraph 9, the Commission shall store and use the information or documents in accordance with any arrangements specified by the Secretary of State.

(5) The recipient of a notice under paragraph 9 may apply to the High Court (in England and Wales) or the Court of Session (in Scotland) to have the notice cancelled on the grounds that the requirement imposed by the notice is undesirable for reasons of national security, other than for the reason that it would require a disclosure of a kind to which sub-paragraph (1) above applies.

## **Reports**

15 The Commission shall publish a report of its findings on an inquiry, investigation or assessment.

## **Recommendations**

16(1) The Commission may make recommendations—

- (a) as part of a report of an inquiry, investigation or assessment under paragraph 15, or
- (b) in respect of a matter arising in the course of an inquiry, investigation or assessment.

(2) A recommendation may be addressed to any class of person.

## **Effect of report**

17(1) A court or tribunal—

- (a) may have regard to a finding of the report of an inquiry, investigation or assessment, but
- (b) shall not treat it as conclusive.

18 A person to whom a recommendation in the report of an inquiry, investigation or assessment is addressed shall have regard to it.

## **Courts and tribunals**

19 An inquiry, investigation or assessment may not question (whether expressly or by necessary implication) the findings of a court or tribunal.  
Intelligence services

20(1) An inquiry may not consider—

(a) whether an intelligence service has acted (or is acting) in a way which is incompatible with a person's human rights, or

(b) other matters concerning human rights in relation to an intelligence service.

(2) In this paragraph “intelligence service” has the same meaning as in paragraph 14.



## Appendix 3: Specific duties for race, disability and gender

Please note on 5 April 2011 the public sector equality duty (the equality duty) came into force in England, Scotland and Wales. This duty replaced the race, disability and gender equality duties.

Prior to April 2011 and at the time of the Assessment the specific duties for race, disability and gender were as follows:

### Race

A public authority specified in Schedule 1, The Race Relations Act 1976 (Statutory Duties) Order 2001, SI 2001/3458S has a specific duty to publish a Race Equality Scheme showing how it intends to fulfil its duties under Section 71(1) of the Race Relations Act and under that Order.

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The Order goes on to provide:

Race Equality Scheme:

2. (2) A Race Equality Scheme shall state, in particular –
  - (a) those of its functions and policies, or proposed policies, which that person has assessed as relevant to its performance of the duty imposed by section 71(1) of the Race Relations Act; and
  - (b) that person's arrangements for –
    - (i) assessing and consulting on the likely impact of its proposed policies on the promotion of race equality;
    - (ii) monitoring its policies for any adverse impact on the promotion of race equality;
    - (iii) publishing the results of such assessments and consultation as are mentioned in sub-paragraph (i) and of such monitoring as is mentioned in sub-paragraph (ii)

- (iv) ensuring public access to information and services which it provides; and
  - (v) training staff in connection with the duties imposed by section 71(1) of the Race Relations Act and this Order.
- (3) Such a person shall, within a period of three years from 31st May 2002, and within each further period of three years, review the assessment referred to in paragraph (2)(a).

### ***Employment***

Public authorities included in Schedule 1A Race Relations Act 1976<sup>119</sup> also have the following specific duties relating to employment under the Statutory Duties Order:

5. (1) A person to which this article applies shall,
- (a) before 31st May 2002, have in place arrangements for fulfilling, as soon as is reasonably practicable, its duties under paragraph (2); and
  - (b) fulfil those duties in accordance with such arrangements.
- (2) It shall be the duty of such a person to monitor, by reference to the racial groups to which they belong,
- (a) the numbers of –
    - (i) staff in post, and
    - (ii) applicants for employment, training and promotion, from each such group, and

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<sup>119</sup> As amended by (General Statutory Duty) Order 2001 (SI 2001/3457) and subject to the exceptions set out in Article 5(5) of SI 2001/3458.

- (b) where that person has 150 or more full-time staff, the numbers of staff from each such group who -
  - (i) receive training;
  - (ii) benefit or suffer detriment as a result of its performance assessment procedures;
  - (iii) are involved in grievance procedures;
  - (iv) are the subject of disciplinary procedures; or
  - (v) cease employment with that person.
  
- (3) Such a person shall publish annually the results of its monitoring under paragraph (2).

### ***Educational bodies***

**Article (4) of the Statutory Duties Order also provides that the Department of Skills and Education (and other public bodies) have specific duties as set out in Schedule 2.** The DES's specific duties were as follows:

(1) to have in place arrangements for fulfilling, as soon as is reasonably practicable, its duties under paragraph (2), (3) or (4), as the case may be, and shall fulfil those duties in accordance with such arrangements.

(2) ....

(3) It shall be the duty of a body specified in Part IV of Schedule 2 to this Order to—

(a) monitor, by reference to the racial groups to which they belong, the numbers of teaching staff from each such group at all maintained schools in respect of which it exercises its functions; and

(b) take such steps as are reasonably practicable to use, for that purpose, data provided by Local Education Authorities.

(4) ....

(5) Such a body shall take such steps as are reasonably practicable to publish annually the results of its monitoring under this article.

## Disability

**The Disability Discrimination (Public Authorities)(Statutory Duties) Regulations 2005, SI 2005/2966 provides as follows:**

### ***Preparation and publication of a Disability Equality Scheme***

2. — (1) A public authority listed in Schedule 1 shall, on or before the relevant publication date, publish a Disability Equality Scheme ("Scheme"), that is, a scheme showing how it intends to fulfil its section 49A(1) duty and its duties under these Regulations.

(2) Such an authority shall involve in the development of the Scheme disabled people who appear to that authority to have an interest in the way it carries out its functions.

(3) A Scheme shall include a statement of —

- (a) the ways in which such disabled people have been involved in its development;
- (b) that authority's methods for assessing the impact of its policies and practices, or the likely impact of its proposed policies and practices, on equality for disabled persons;
- (c) the steps which that authority proposes to take towards the fulfilment of its section 49A(1) duty;
- (d) that authority's arrangements for gathering information on the effect of its policies and practices on disabled persons and in particular its arrangements for gathering information on —
  - (i) their effect on the recruitment, development and retention of its disabled employees,

- (ii) their effect, in the case of an authority specified in Part II, III or IV of Schedule 1, on the educational opportunities available to, and on the achievements of, disabled pupils and students, and
  - (iii) the extent to which, in the case of an authority specified in Part I of Schedule 1, the services it provides and those other functions it performs take account of the needs of disabled persons; and
- (e) that authority's arrangements for making use of such information to assist it in the performance of its section 49A(1) duty and, in particular, its arrangements for —
  - (i) reviewing on a regular basis the effectiveness of the steps referred to in sub-paragraph (c), and
  - (ii) preparing subsequent Schemes.

(4) Such an authority shall review its Scheme and publish a revised Scheme —

- (a) not later than the end of the period of three years beginning with the date of publication of its first Scheme; and
- (b) subsequently at intervals of not more than three years beginning with the date of publication of the last revision of the Scheme.

(5) Such an authority may comply with the duty to publish under paragraph (1) or (4) by setting out its Scheme as part of another published document or within a number of other published documents.

(6) In this regulation, "the relevant publication date" means —

- (a) in the case of a public authority listed in Part I or II of Schedule 1, 4th December 2006;
- (b) in the case of a public authority listed in Part III of Schedule 1, 3rd December 2007;
- (c) in the case of a public authority listed in Part IV of Schedule 1, 1st April 2007.

## ***Implementation of the Disability Equality Scheme***

3. — (1) A public authority listed in Schedule 1 shall within the period of three years beginning with the date when a Scheme prepared for the purposes of regulation 2 is published —

- (a) take the steps which it has been required to set out in the Scheme by virtue of regulation 2(3)(c); and
- (b) put into effect its arrangements, which it has been required to set out in the Scheme by virtue of regulations 2(3)(d) and (e), for —
  - (i) gathering information, and
  - (ii) making use of such information.

(2) Nothing in this regulation imposes any duty on an authority where, in all the circumstances, it would be unreasonable or impracticable for it to perform the duty.

## ***Annual reporting***

4. — (1) A public authority listed in Schedule 1 shall publish a report —

- (a) not later than the end of the period of one year beginning with the date of publication of its first Scheme; and
- (b) subsequently at intervals of not more than one year beginning with the date of publication of the last report.

(2) The report shall contain a summary of —

- (a) the steps the authority has taken for the purposes of regulation 3(1)(a);

- (b) the results of the information-gathering it has carried out for the purposes of regulation 3(1)(b)(i); and
- (c) the use it has made of such information it has gathered for the purposes of regulation 3(1)(b)(ii).

(3) Such an authority may comply with the duty to publish under paragraph (1) by setting out its report within another published document.

### ***Duty on public authorities listed in Schedule 2***

5. — (1) A reporting authority shall, in respect of its policy sector, publish a report —

- (a) not later than 1st December 2008; and
- (b) subsequently not later than the end of each successive period of three years beginning with 1st December 2008.

(2) The report shall —

- (a) give an overview of progress towards equality of opportunity between disabled persons and other persons made by public authorities operating in the policy sector; and
- (b) set out the reporting authority's proposals for the coordination of action by public authorities operating in that sector so as to bring about further progress towards equality of opportunity between disabled persons and other persons.

(3) In paragraph (1) —

"reporting authority" means a person specified in Schedule 2;

"policy sector" means the sector of public activity in which the reporting authority carries out public functions.

## **Gender**

**The Sex Discrimination Act (public authorities)(Statutory Duties) Order 2006, SI 2006/2930 provides:**

### ***Preparation and publication of a Gender Equality Scheme***

1. (1) A listed authority shall by 30th April 2007 prepare and publish a Gender Equality Scheme (a "Scheme"), that is a scheme showing how it intends to fulfil its section 76A(1) duty and its duties under this Order.

(2) In preparing a Scheme, a listed authority shall consult its employees, service users and others (including trade unions) who appear to it to have an interest in the way it carries out its functions.

(3) In preparing a Scheme, a listed authority shall take into account any information it has gathered of the kind described in paragraph (6)(a) and any other information it considers to be relevant to the performance of its section 76A(1) duty and its duties under this Order.

(4) A listed authority shall ensure that its Scheme sets out the overall objectives which it has identified as being necessary for it to perform its section 76A(1) duty and its duties under this Order.

(5) A listed authority shall, when formulating its objectives for the purposes of paragraph (4), consider the need to have objectives that address the causes of any differences between the pay of men and women that are related to their sex.

(6) A listed authority shall ensure that its Scheme sets out the actions which it has taken or intends to take to -



(a) gather information on the effect of its policies and practices on men and women and in particular -

(i) the extent to which they promote equality between its male and female staff, and

(ii) the extent to which the services it provides and the functions it performs take account of the needs of men and women;

(b) make use of such information and any other information the authority considers to be relevant, to assist it in the performance of its section 76A(1) duty, its duties under this Order and in particular its regular review of -

(i) the effectiveness of the actions identified for the purposes of sub-paragraph (e), and

(ii) its arrangements for the preparation of subsequent Schemes;

(c) assess the impact of its policies and practices, or the likely impact of its proposed policies and practices, on equality between women and men;

(d) consult relevant employees, service users and others (including trade unions); and

(e) achieve the fulfilment of the objectives set out for the purposes of paragraph (4).

### ***Implementation of the Gender Equality Scheme***

3. (1) A listed authority shall, within the period of three years beginning with the date when a Scheme or a revised Scheme is prepared and published under article 2 or 4, put into effect the actions identified for the purposes of -

article 2(6)(a);

article 2(6)(b); and

article 2(6)(e).

(2) Nothing in this article imposes any requirement on a listed authority where, in all the circumstances, it would be unreasonable or impracticable for it to perform the requirement.

### ***Review of a Gender Equality Scheme***

4. A listed authority shall review its Scheme and prepare and publish a revised Scheme –

(a) not later than the end of the period of three years beginning with the date of publication of its first Scheme; and

(b) subsequently at intervals of not more than three years beginning with the date of publication of the last revision of a Scheme.

### ***Publication of a Gender Equality Scheme as part of another document***

5. A listed authority may comply with the duty to publish under article 2 or 4 by setting out its Scheme as part of another published document or within a number of other published documents.

### ***Annual reporting***

6. (1) A listed authority shall take such steps as are reasonably practicable to publish annually a report summarising the actions that the authority has taken towards the achievement of the objectives identified for the purposes of article 2(4).

(2) Such an authority may comply with the duty to publish under paragraph (1) by setting out its report within another published document.

These are for England (and non devolved public authorities in Scotland and Wales).

## Appendix 4: Due regard – Brown principles

Case law<sup>120</sup> sets out broad principles about what public authorities need to do to have due regard to the aims set out in the general equality duties. These are sometimes referred to as the 'Brown principles' and are how courts interpret the duties. They are not additional legal requirements.

In summary, the principles say that:

- Decision-makers must be made aware of their duty to have 'due regard' to the aims of the duty.
- Due regard is fulfilled before and at the time a particular policy that will or might affect people with protected characteristics is under consideration, as well as at the time a decision is taken.
- Due regard involves a conscious approach and state of mind. A body subject to the duty cannot satisfy the duty by justifying a decision after it has been taken. Attempts to justify a decision as being consistent with the exercise of the duty, when it was not considered before the decision, are not enough to discharge the duty. General regard to the issue of equality is not enough to comply with the duty.
- The duty must be exercised in substance, with rigour and with an open mind in such a way that it influences the final decision.
- The duty has to be integrated within the discharge of the public functions of the body subject to the duty. It is not a question of 'ticking boxes'.
- The duty cannot be delegated and will always remain on the body subject to it.
- It is good practice for those exercising public functions to keep an accurate record showing that they had actually considered the general equality duty and pondered relevant questions. If records are not kept it may make it more difficult, evidentially, for a public authority to persuade a court that it has fulfilled the duty imposed by the equality duties.

The relevant paragraphs from the case are set out below.

### ***R. (Brown) v. Secretary of State for Work and Pensions* [2008] EWHC 3158**

90. Subject to these qualifications, how, in practice, does the public authority fulfil its duty to have "due regard" to the identified goals that are set out in section 49A(1)? An examination of the

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<sup>120</sup> *R. (Brown) v. Secretary of State for Work and Pensions* [2008] EWHC 3158 paragraphs 90-96.

cases to which we were referred suggests that the following general principles can be tentatively put forward. First, those in the public authority who have to take decisions that do or might affect disabled people must be made aware of their duty to have "due regard" to the identified goals: compare, in a race relations context ***R. (Watkins – Singh) v. Governing Body of Aberdare Girls' High School*** [2008] EWHC 1865 at paragraph 114 per Silber J. Thus, an incomplete or erroneous appreciation of the duties will mean that "due regard" has not been given to them: see, in a race relations case, the remarks of Moses LJ in ***R. (Kaur and Shah) v. London Borough of Ealing*** [2008] EWHC 2062 (Admin) at paragraph 45.

91. Secondly, the "due regard" duty must be fulfilled before and at the time that a particular policy that will or might affect disabled people is being considered by the public authority in question. It involves a conscious approach and state of mind. On this compare, in the context of race relations: ***R. (Elias) v. Secretary of State for Defence*** [2006] 1 WLR 3213 at para 274 per Arden LJ. Attempts to justify a decision as being consistent with the exercise of the duty when it was not, in fact, considered before the decision, are not enough to discharge the duty: compare, in the race relations context, the remarks of Buxton LJ in ***R. (C) v. Secretary of State for Justice*** [2008] EWCA Civ 882 at paragraph 49.
92. Thirdly, the duty must be exercised in substance, with rigour and with an open mind. The duty has to be integrated within the discharge of the public functions of the authority. It is not a question of "ticking boxes". Compare, in a race relations case the remarks of Moses LJ in ***R. (Kaur and Shah) v. London Borough of Ealing*** [2008] EWHC 2062 (Admin) at paragraphs 24-25.
93. However, the fact that the public authority has not mentioned specifically section 49A(1) in carrying out the particular function where it has to have "due regard" to the needs set out in the section is not determinative of whether the duty under the statute has been performed: see the judgment of Dyson LJ in ***Baker*** at paragraph 36. But it is good practice for the policy or decision maker to make reference to the provision and any code or other non-statutory guidance in all cases where section 49A(1) is in play. "In that way the [policy or] decision maker is more likely to ensure that the relevant factors are taken into account and the scope for argument as to whether the duty has been performed will be reduced": ***Baker*** at paragraph 38.

94. Fourthly, the duty imposed on public authorities that are subject to the section 49A(1) duty is a non-delegable duty. The duty will always remain on the public authority charged with it. In practice another body may actually carry out practical steps to fulfil a policy stated by a public authority that is charged with the section 49A(1) duty. In those circumstances the duty to have "due regard" to the needs identified will only be fulfilled by the relevant public authority if (1) it appoints a third party that is capable of fulfilling the "due regard" duty and is willing to do so; and (2) the public authority maintains a proper supervision over the third party to ensure it carries out its "due regard" duty. Compare the remarks of Dobbs J in ***R. (Eisai Limited) v. National Instituted for Health and Clinical Excellence*** [2007] EWHC 1941 (Admin) at paragraphs 92 and 95.
95. Fifthly (and obviously), the duty is a continuing one.
96. Sixthly, it is good practice for those exercising public functions in public authorities to keep an adequate record showing that they had actually considered their disability equality duties and pondered relevant questions. Proper record-keeping encourages transparency and will discipline those carrying out the relevant function to undertake their disability equality duties conscientiously. If records are not kept it may make it more difficult, evidentially, for a public authority to persuade a court that it has fulfilled the duty imposed by section 49A(1): see the remarks of Stanley Burnton J in ***R. (Bapio Action Limited) v. Secretary of State for the Home Department*** [2007] EWHC 199 (Admin) at paragraph 69, those of Dobbs J in ***R. (Eisai Ltd) v. NICE*** (*supra*) at 92 and 94, and those of Moses LJ in ***Kaur and Shah*** (*supra*) at paragraph 25.

NB: Case law is developing, for information on further developments please refer to our website: <http://www.equalityhumanrights.com/>

## **Appendix 5: Building the evidence base**

The power to conduct a Section 31 Assessment in relation to compliance with the previous or current equality duties is one of the Commission's unique powers as a regulator and enables the Commission to gain access to the information and documentation required to make a full assessment.

The Commission used its powers in several ways in order to obtain evidence on which to base the Assessment. These are listed below:

### **Evidence received from HM Treasury:**

- 14 January 2011: The Commission sent formal written notice to HM Treasury requesting documentation that demonstrated how it had complied with the Race Equality Duty, the Disability Equality Duty and the Gender Equality Duty relating to the matters set out in the Terms of Reference
- 15 February 2011: The Commission received the first batch of documentation from HM Treasury. This contained over 100 documents
- February 2011 and September 2011: the Commission made subsequent requests for further information and documentary evidence and HM Treasury provided three further submissions of additional written evidence
- 23 June 2011: Initial oral evidence session with HM Treasury officials
- 4 July 2011: Oral evidence session with the chief secretary to the Treasury
- 20 July 2011: Further oral evidence session with HM Treasury officials

The information provided to the Commission by HM Treasury was material that related to the Spending Review process and that specifically referred to equality issues. Within some of these documents, material that was not linked to equality issues has been redacted.

HM Treasury did not provide the Commission with:

- routine emails and correspondence relating to the process of the Spending Review (such as meeting requests and enquiries about availability) that HM Treasury considered would not have assisted the Commission with the Assessment in accordance with the TORs

- material relating to the timing and manner of publication of documents, and
- material that is legally privileged on the basis that HM Treasury could not be compelled to disclose this in proceedings before the High Court.

Within the report, the Commission has highlighted some relevant points or stages in the Spending Review process where HM Treasury have not provided documentary evidence to show that equality was considered.

The lack of documentary evidence may be because either:

- written documents exist relating to this part in the process, but no reference was made to equality
- written documents do not exist for this part in the process, for example where meetings were not minuted or issues were considered in informal discussions.

### **Representations:**

Between the 18 January and 14 March 2011 the Commission made arrangements for third parties to make representations relating to the Section 31 Assessment. This information was published on our website.

The Commission received nine external representations from the organisations listed below:

- The National Equalities Panel (NEP)
- The Runnymede Trust
- Disability Charities Consortium (DCC)
- Disability Law Association
- BARAC and The 1990 Trust
- The Women's Budget Group
- The Fawcett Society
- The TUC
- The Institute for Fiscal Studies (IFS)

### **Oral evidence sessions:**

Between 23 June and 12 September 2011 the Commission conducted eight oral evidence sessions with expert witnesses from HM Treasury and other government departments. These sessions were held in private



and the full transcripts will not be published. Information gained from them has fed into our assessment of HM Treasury's compliance.

### **List of dates and participants:**

Session one: HM Treasury, Thursday, 23 June 2011

#### **Commission panel**

- Trevor Phillips – EHRC Chair and lead Commissioner for the Section 31 Assessment
- Christina Barnes – Head of Section 31 Assessment
- Sheila Kumar – Group Director, Regulation
- John Wadham – Group Director, Legal

#### **HM Treasury's representatives**

- Andrew Hudson – Director General, Public Services
- James Richardson – Director, Public Spending
- Indra Morris – Director, Personal Tax, Welfare & Pensions

Session two: Ministry of Justice, Tuesday, 27 June 2011

#### **Commission panel**

- Trevor Phillips
- Christina Barnes
- John Wadham

#### **Ministry of Justice representatives**

- Ann Beasley – Director General, Finance
- Rebecca Endean – Director, Analytical Services Corporate Performance Group
- Catherine Lee – Director, Access to Justice

Session three: Department for Work and Pensions, Wednesday, 28 June 2011

#### **Commission panel**

- Trevor Phillips
- Christina Barnes
- Sheila Kumar

#### **Department for Work and Pensions representatives**

- Adam Sharples – Director General, Employment Group

- Susan Owen – Director General, Welfare & Well Being Group
- Peter Searle – Director, Planning and Performance Management

Session four: Department for Education, Friday, 30 June 2011

### **Commission panel**

- Trevor Phillips
- Christina Barnes
- Sheila Kumar

### **Department for Education representatives**

- Sue Higgins – Director General, Finance and Corporate Services
- Lucy Smith – Director, Strategy and Performance

Session five: Right Honourable Danny Alexander MP – Chief Secretary to the Treasury, Monday, 4 July 2011

### **Commission panel**

- Trevor Phillips
- Christina Barnes
- Sheila Kumar
- John Wadham

### **HM Treasury panel**

- Danny Alexander MP
- Andrew Hudson

Session six: HM Treasury, Wednesday, 20 July 2011

### **Commission panel**

- Christina Barnes
- Sheila Kumar
- John Wadham

### **HM Treasury representatives**

- Andrew Hudson
- Indra Morris
- James Richardson

Session seven: Office for Disability Issues, Monday, 5 September 2011

### **Commission panel**

- Sheila Kumar
- Christina Barnes
- John Wadham

### **Office for Disability Issues representatives**

- Tim Cooper – Director, Office for Disability Issues

Session eight: Government Equalities Office, Monday, 12 September 2011

### **Commission panel**

- John Wadham
- Andrea Murray – Director of Policy
- Christina Barnes

### **Government Equalities Office representative**

- Jonathan Rees – Director General, Government Equalities Office

Following on from the oral evidence sessions further written evidence was provided by DfE, MoJ and GEO.

### **Section 31 seminar**

On 13 September we held an informal seminar with interested groups to consider whether HM Treasury could have extended their distributional analysis in order to consider equality impacts.

### **List of attendees at Section 31 seminar event**

Claire Annesley	Manchester University	Women's Budget Group (WBG)
Anna Bird	Acting CEO	Fawcett
Sally Brett	Senior Equality Policy Officer	TUC
Barbara Cohen	Vice Chair	Discrimination Law Association
Prof Diane Elson	Chair	UK WBG
Caroline Gooding	Exec Committee	Discrimination Law

	Member	Association
Lorraine Gradwell	CEO	Breakthrough UK
Paolo Lucchino	Research Officer	NIESR
Jonathan Portes	Director	NIESR
Hilary Metcalf	Director	NIESR
Gay Moon	CEO	Equality & Diversity Forum
Angela O'Hagan	Convenor	Scottish WBG
Christina Sarb	Policy Advisor	Scope
Janet Veitch		WBG
James Browne	Senior Research Economist	Institute for Fiscal Studies
Claire McDonald	Head of Equality	Welsh Assembly Government
Sue Himmelweit	Director	UK WBG

## Appendix 6: HM Treasury functions

HM Treasury consider that their publications 'Managing Public Money' and 'Consolidated Budgeting Guidance' explain their functions in respect to public expenditure. HM Treasury provided the following extracts from these documents to the Commission in order to help explain their functions:

### Managing Public Money (MPM 2007)<sup>121</sup>

- “The relationship between the government, acting on behalf of the Crown, and Parliament, representing the public, is central to how public resources are managed. Ministers seek to implement government policies, and deliver public services, through public servants; but are able to do so only when Parliament grants the right to raise, commit and spend resources. It falls to the Treasury to respect and secure the rights of both government and Parliament in this process.” (MPM 2007, p. 7)
- “...In the absence of a written constitution, the powers used to deploy public resources are a blend of common law, primary and secondary legislation, Parliamentary procedure, the duties of ministers, and other long-standing practice. This mix may of course change from time to time. Parliament looks to the Treasury to make sure that:
  - departments use their powers only as it has intended; and
  - revenue is raised, and the resources so raised spent, only within the agreed limits.

Hence it falls to the Treasury to:

- set the ground rules for the administration of public money; and
- account to Parliament for doing so.” (MPM 2007, p. 9)
- “The key requirements [required of departments] are regularity, propriety [see box 2.4 on page 13 of the full version of MPM at annex F] and value for money [see 3.3.3 in the same annex]. Supporting this, the Treasury:
  - designs and runs the resource planning system and sets budgets for individual departments to meet ministers' fiscal policy objectives

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<sup>121</sup> [http://www.hm-treasury.gov.uk/d/mpm\\_whole.pdf](http://www.hm-treasury.gov.uk/d/mpm_whole.pdf) HM Treasury Managing Public Money October 2007.

- oversees the operation of the Estimates presented by departments to obtain authority to Spend year by year
- maintains the Financial Reporting Manual (FReM), setting the standards to which departments, non-departmental public bodies (NDPBs) and other parts of the public sector publish annual reports and accounts; and
- sets Accounts Directions for the different kinds of central government organisations whose accounts are laid in Parliament.

Within the standards expected by Parliament, and subject to the overall control and direction of their ministers, departments have considerable freedom about how they organise, direct and manage the resources at their disposal. It is for the Accounting Officer in each department, acting within ministers' instructions, to control and account for the department's business. Within a department, its staff, resources and assets should be organised to deliver ministers' policies. There should be adequate delegations, controls and reporting arrangements to provide assurance to the board, the Accounting Officer and ultimately ministers about what is being achieved, to what standards and with what effect. In turn these arrangements should provide the management information to enable delivery plans to be adjusted as necessary. Similar feedback should enable ministers to reconsider their policies where the evidence shows that this is appropriate... ” (MPM 2007, p. 9)

- “Parliament expects the Treasury to oversee the operation of these controls. Parliament consents in principle to the use of public funds through legislation to enable specified policies. It approves use of public resources to carry out those policies year by year. Only in very limited circumstances can lesser authority suffice. Where there are uncertainties Parliament should be given meaningful information about what is likely to be involved.

At the close of each financial year, Parliament expects a clear account of the use of the public funds it has authorised for use. The Public Accounts Committee (PAC) may investigate specific issues further.” (MPM 2007, p. 11)

- “Ministers have very broad powers to control and direct their departments. In general, they may do anything that legislation does not prohibit or limit, including using common law powers to continue business as usual. But they must normally seek Parliamentary authority for specific legislation to empower any significant new commitment which seems likely to persist. In the

Concordat of 19326 [see ‘annex 2.1’ in the full version of MPM at annex F of this document] the Treasury undertook to aim that departments respect this requirement.

The Treasury controls public expenditure. So all legislation with expenditure implications, both primary and secondary, must have the support of the Treasury before it is introduced, laid in draft or made, as the case may be.” (MPM 2007, p. 11)

- “Formally the Accounting Officer is someone who may be called to account in Parliament for the stewardship of the resources within the organisation’s control.

The standards the Accounting Officer is expected to deliver in the organisation are summarised in box 3.1 [as found in the full version of the MPM at annex F of this document]. The senior business managers of other public sector organisations are expected to deliver similar standards. The Treasury appoints the permanent head of each central government department to be its Accounting Officer.” (MPM 2007, p. 17)

### **Consolidated Budgeting Guidance 2011-12 (CBG)<sup>122</sup>**

- “... To support the achievement of macro-economic stability by ensuring that public expenditure is controlled in support of the Government's fiscal framework; and

To provide good incentives for departments to manage spending well so as to provide high quality public services that offer value for money to the tax-payer

The Treasury is responsible for the design of the budgeting system. We will always be happy to explain the budgeting rules. It is only the Treasury who may finally determine the budgeting treatment of a transaction.” (CBG 2011-12, p. 6)

- “Both DEL and AME programmes need to be managed to maximise effectiveness, efficiency and economy in the use of public funds. For programmes in DEL that is well understood. Because DEL programmes compete for resources within a fixed envelope departments are under a clear pressure to review programmes, re-prioritise and pursue efficiency measures.

It is therefore important that departments produce and share with the Treasury accurate in-year forecasts of DEL spending and risks.

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<sup>122</sup> [http://www.hm-treasury.gov.uk/d/consolidated\\_budgeting\\_guidance201112.pdf](http://www.hm-treasury.gov.uk/d/consolidated_budgeting_guidance201112.pdf) HM Treasury Consolidated Budgeting Guidance 2011-12.

The key elements of the monthly financial data submitted onto the Combined Online Information System (COINS)<sup>123</sup> must be consistent with internal financial management information, such as Board reports and management accounts.

Departments are reminded that with AME programmes also, just as with DEL, they need to:

- Put in place processes to monitor spending in year, to identify longer-term trends in spending, and to provide robust projections of future spending. Early identification of changes in AME spending is needed to allow risks to be managed effectively.
- Review AME programmes regularly to ensure that they are helping to achieve Government objectives effectively and efficiently. Departments should discuss with the Treasury proposals for optimising AME spending programmes.
- Get Treasury approval in advance for any changes which would increase AME spending (this includes both policy reforms and any administrative changes which impact on expenditure, for example measures to promote take-up) or if AME is likely to rise above expectation". (CBG 2011-12, p. 9/10).
- "as part of the SR settlement, some spending might be subject to specific ring-fences. If so, departments may not move money across the ring-fence, except as specified in the SR settlement." (CBG 2011-12, p. 11).

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<sup>123</sup> The Combined Online Information System (COINS) is a database of UK Government expenditure provided by government departments. The data is used to produce reports for Parliament and the public including: expenditure data in the Budget report; Supply Estimates; Public Expenditure Statistical Analyses (PESA); Whole of Government Accounts (WGA); the monthly Public Sector Finance Releases. It is also used by the ONS for statistical purposes.



## **Appendix 7: Membership of PEX**

As set out in Chapter 2 the membership of PEX consisted of ‘senior cabinet ministers appointed by the Prime Minister and chaired by the Chancellor to advise the Cabinet on the high-level decisions that need to be taken’.<sup>124</sup> PEX membership grew throughout the process, as once a department settled, their secretary of state was invited to join PEX.

### **Membership of the PEX Committee as of 7 June 2010 (Date of establishment by the Prime Minister)**

- George Osborne – Chancellor of the Exchequer (Chair)
- William Hague – First Secretary of State and Secretary of State for Foreign and Commonwealth Affairs
- Danny Alexander – Chief Secretary to the Treasury (Deputy Chair)
- Francis Maude – Minister for the Cabinet Office, Paymaster General
- Oliver Letwin – Minister of State Cabinet Office

### **Membership of the PEX Committee as of 30 September 2010 (first meeting new members attended)**

- George Osborne – Chancellor of the Exchequer (Chair)
- William Hague – First Secretary of State and Secretary of State for Foreign and Commonwealth Affairs
- Chris Huhne – Secretary of State for Energy and Climate Change
- Eric Pickles – Secretary of State for Communities and Local Government
- Caroline Spelman – Secretary of State for the Environment and Rural Affairs
- Danny Alexander – Chief Secretary to the Treasury (Deputy Chair)
- Francis Maude – Minister for the Cabinet Office, Paymaster General
- Oliver Letwin – Minister of State Cabinet Office

### **Membership of the PEX Committee as of 11 October 2010**

- George Osborne – Chancellor of the Exchequer (Chair)
- William Hague – First Secretary of State and Secretary of State for Foreign and Commonwealth Affairs
- Theresa May – Secretary of State for the Home Department and Minister for Women and Equalities
- Chris Huhne – Secretary of State for Energy and Climate Change
- Eric Pickles – Secretary of State for Communities and Local Government

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<sup>124</sup> [http://www.hm-treasury.gov.uk/spend\\_spendingreview\\_introduction.htm](http://www.hm-treasury.gov.uk/spend_spendingreview_introduction.htm)

- Caroline Spelman – Secretary of State for the Environment and Rural Affairs
- Michael Moore – Secretary of State for Scotland
- Danny Alexander – Chief Secretary to the Treasury (Deputy Chair)
- Francis Maude – Minister for the Cabinet Office, Paymaster General
- Oliver Letwin – Minister of State Cabinet Office

## Appendix 8: Membership of the Independent Challenge Group<sup>125</sup>

As set out in the Spending Review Framework of June 2010, the government appointed an Independent Challenge Group (ICG) of civil service leaders, complemented by a handful of external experts, to bring independent challenge to the Spending Review process.

The group's remit was to think innovatively about the options for reducing public expenditure and balancing priorities to minimise the impact on public services. The ICG established smaller sub-groups that reported on seven departments (DWP, DH, DfE, HMRC, BIS, DCLG and the criminal justice system) and four cross-cutting topics including one on distributional impact. The ICG and sub-groups were not specifically briefed to consider the impact of measures and spending decisions in these departments on equality.

The group membership list was as follows:

- Adrian Beecroft – Former Apax Chief Investment Officer and Senior Managing Partner
- Alexis Cleveland – Director General for Corporate Services Group, Cabinet Office
- Andrew Campbell – Acting Director General, Local Government and Regeneration, Communities and Local Government
- Andrew McCully – Director for Supporting Children and Young People, Department of Education
- Anita Charlesworth – Chief Information Officer, Department for Culture, Media and Sports
- Antonia Romeo – Director, Foreign and Commonwealth Office
- Bill Crothers – Executive Director of CIO and Commercial, Home Office
- Carolyn Downs – Chief Executive, Legal Services Commission, Ministry for Justice
- \*Christopher Whitty – Chief Scientific Advisor and Director of Research, Department for International Development
- David Barrass – Former Interim Chief Executive, Royal Mint
- David Goldstone – Director of Finance at GOE, Department for Culture, Media and Sports
- David Payne – Director of Finance and Planning, Department for Transport
- Douglas Flint – Executive Director, HSBC

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<sup>125</sup> <http://www.hm-treasury.gov.uk>

- \*Hunada Nours – Director General, Finance, Department for Work and Pensions
- Joanna Killian – CEO, Essex/Brentwood Council
- John Nash – Chair and Founder, Sovereign Capital
- Jon Day – Principle Advisor, Ministry of Defence
- \*Jonathan Portes – Chief Economist, Cabinet Office
- Jonathan Powell – Finance Director, Government Communications Headquarters
- Kate Mingay – Corporate Finance Director, Department for Transport
- Keith Luck – Director of General Finance, Foreign and Commonwealth Office
- Kevin Curley – Chief Executive, NAVCA
- \*Kevin White – Director General of HR, Home Office
- Oliver Robbins – Deputy National Security Adviser to the Prime Minister (Intelligence, Security and Resilience), Cabinet Office
- Paul Kirby – Partner, KPMG
- Paul Martin – CEO, Sutton Council
- Philip Pavitt – Chief Information Officer, HM Revenue and Customs
- Philip Rutnam – Director General, Department for Business, Innovation and Skills
- Ravi Gurumurthy – Strategy Director, Department of Energy and Climate Change
- Richard Douglas – Finance and Chief Operating Officer, Department for Health
- Richard Sharp – Former Chairman of Goldman Sachs’ Principal Investment area in Europe
- Robin Mortimer – Director, Climate Change Adaption, Air Quality, Landscape and Rural Affairs, Department for Environment, Food and Rural Affairs
- Sarah Davidson – Director of Public Service Reform, Scottish Government
- Sharon White – Director General, Strategy, Ministry of Justice
- Stephan Wilcke – Chief Executive Officer, Asset Protection Agency
- Stephen Marston – Director of Higher Education and Skills, Department for Business, Innovation and Skills
- Stephen Meek – Director of Young People: Qualification, Strategy and Reform, Department for Education
- Terry Moran – Chief Executive of the Pensions, Disability and Carers Service, Department for Work and Pensions
- William Jordan – Chief sustainability and Operating Officer, Office of Government Commerce

\* Members of the ICG sub-group on distributional impacts, means-testing and charging.

## **Appendix 9: List of Annually Managed Expenditure (AME) measures in the Spending Review 2010 and the responsible department**

### **AME measures announced in the Spending Review**

HM Treasury has 'a more direct involvement'<sup>126</sup> for AME measures ('notably tax and areas of welfare and public service pensions')<sup>127</sup> given the associated volatility and risk, and is the policy lead for some AME measures.

### **HM Treasury Spending Review AME measures**

- Child and Working Tax Credits: use real time information.

Working Tax Credit:

- Freeze basic and 30 hour elements for three years from 2011/12.
- Reduce the percentage of childcare costs that parents can claim through the childcare element from 80 per cent to its previous 70 per cent level in April 2011.
- Increase working hours requirement for couples with children to 24 hours.

Child Tax Credit:

- Increase the child element above indexation by a further £30 in 2011 and £50 in 2012.

Child Benefit:

- Withdraw from families with a higher rate taxpayer from January 2013.

### **DWP Spending Review AME measures**

- Time limit contributory Employment and Support Allowance for those in the Work Related Activity Group to one year.
- Increase the age threshold for the Shared Room Rate in Housing Benefit from 25 to 35.
- Total household benefit payments capped at around £500 per week for couple and lone parent households and around £350 per week for single adult households.

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<sup>126</sup> [http://cdn.hm-treasury.gov.uk/sr2010\\_equalities.pdf](http://cdn.hm-treasury.gov.uk/sr2010_equalities.pdf)

<sup>127</sup> Ibid.

- Remove the mobility component of Disability Living Allowance for people in residential care.
- Pension Credit: freeze maximum award of Savings Credit for four years from 2011-12.
- Extend for a further year the temporary change to the Support for Mortgage Interest scheme, to reduce the waiting period for new working age claimants to 13 weeks and increase the limit on eligible mortgage capital to £200,000, both of which were due to expire in January 2011.
- Make permanent the temporary increases to Cold Weather Payments provided in the past two winters.
- Reduce spending on Council Tax Benefits by 10 per cent and localise it.

State Pension Age measures:

- Uprate the Basic State Pension by a triple guarantee of earnings, prices, or 2.5 per cent, whichever is highest.
- Speed up the pace of State Pension Age equalisation for women from April 2016 so that Women's State Pension Age reaches 65 in November 2018. The State Pension Age will then increase to 66 for both men and women from December 2018 to April 2020.

## Appendix 10: Data collection for Departmental Expenditure Limit (DEL) measures from departments

As set out in the HM Treasury's process for gathering data report, HM Treasury requested data from departments on the equalities impact of their spending plans for the DEL measures. On 29 July 2010 blank spreadsheets were sent to departments with instructions for completion. The deadline for departmental returns on distributional impact of spending decisions was 13 August 2010.

As part of the evidence received from HM Treasury a list of dates of the department's returns was supplied to the Commission,<sup>128</sup> this is listed below:

<b>Government departments</b>	<b>Date of return</b>
Department for Education	10 September
Department of Health	25 August
Department for Transport	13 August
Department for Communities and Local Government (DCLG) – Communities	16 July
DCLG – Local Government	*Not asked
Department for Business, Innovation and Skills	11 October
Home Office	*Not asked
Ministry of Justice	14 October
Law Officers' Departments	*Not asked
Ministry of Defence	*Not asked
Foreign and Commonwealth Office	*Not asked
Department for International Development	*Not asked
Department of Energy and Climate Change	23 September
Department for Environment, Food and Rural Affairs	24 August

<sup>128</sup> Annex A: Timeline for departmental returns on distributional/equalities assessments.



Department for Culture, Media and Sport	13 August
Department for Work and Pensions	20 August
Devolved Administrations	*Not asked
HM Revenue and Customs	*Not asked
HM Treasury	*Not asked
Cabinet Office	*Not asked
Single Intelligence Account 11	*Not asked
Small and Independent Bodies	GEO – 17 August

\* In the HM Treasury document supplied to the Commission several departments were listed as ‘not asked’. The explanation for this was that ‘Outputs of several Government departments may be regarded as public goods – of equal benefit to everyone in society, such as defence. For these departments, it would not be meaningful to consider the equalities impacts of their resource allocations. This is also true for some major spending areas within departments, such as science. Therefore, not all departments have been included in the high-level qualitative assessment of the Spending Review’s impact on equalities.’ Further information on the ‘public goods’ approach can be found in Chapter 3, Early decision-making and public good.

## Appendix 11 : Detailed timeline

Key: HM Treasury action  GEO action  Decision making 

For explanation of abbreviations and committees please see Glossary.

Spending Review Framework.  
8 June 2010



Minister for women and equalities sends letter to Departments about their responsibilities under the equality duties.



Spending Review guidance issued to departments by HM Treasury.  
11 June 2010



Emergency Budget.  
22 June 2010



PEX meeting to decide approach to Departments initial planning assumptions.  
28 June 2010



GEO sends guidance to Departments on 'Reducing the deficit fairly', setting out equality duties obligations.  
2 July 2010

Parliamentary under secretary of state (minister for women and equalities) writes to Departments to remind them of the need to consider equality.



HM Treasury request data from Departments on distributional impact and equalities impact of their spending plans. Data returns come back from Departments between 16 July and 15 October.



GEO workshop with HM Treasury and Departments on 'Reducing the deficit fairly'. Attended by departmental finance directors.



Deadline for departmental returns on distributional and equalities impact of spending plans.  
13 August 2010



'A Fair Spending Review' – Interim Report of the Independent Challenge Group sub-group on Distributional Impacts submitted to chief secretary.



Email from HM Treasury to spending departments highlighting HM Treasury's approach to equality issues and responsibility of departments to ensure that 'equality issues are considered when

PEX meeting – to agree early settlements.  
Decision taken on DCLG Communities, FCO,  
Defra, HM Treasury and Cabinet Office.

2 September 2010



Final decision at Bilateral meeting: CST and  
DCLG secretary of state on Fire Service.

8 September 2010



Permanent Secretaries Spending Review  
Group – consideration of equality impacts  
raised in discussion.

24 September 2010



Equalities Roundtable with chief secretary  
and key stakeholders.

29 September 2010



PEX Meeting – Decision regarding  
capital expenditure.

30 September 2010



Request by HM Treasury to PSG (Principal  
Spending Group) Spending Principals for main  
areas of departments' spending and which  
areas disproportionately benefit groups by  
race, gender and disability. Deadline next day.

29 September 2010

Permanent Secretaries Spending  
Review Group – discussed  
Departments equalities duties.  
6 October 2010



Submission to chancellor and chief  
secretary by HM Treasury civil servants  
on equality impacts of Departments  
DEL settlements.



PEX sub-committee meeting: Pay and  
pensions. Discussed Lord Hutton's  
interim report and agreed increases in  
public service pensions member  
contributions.



PEX Meeting – Decision on  
capital expenditure.  
11 October 2010



Outstanding Decision Note on welfare  
measures sent to the chancellor and  
chief secretary. Decisions taken 17  
October.



PEX Meeting – Discussions on  
education  
and local government, decision on  
Police.

Final Quad meeting before  
Spending Review.  
17 October 2010



Decision made on social  
security by Quad plus Work  
and Pensions secretary of state.  
18 October 2010



Cabinet sign off final  
Spending Review Package.  
19 October 2010



Spending Review published.  
20 October 2010

## Appendix 12: Glossary

<b>Annually Managed Expenditure (AME)</b>	AME typically consists of spending programmes which are volatile and demand-led, and which are therefore not subject to firm multi-year limits in the same way as Delegated Expenditure Limits. The biggest single element is social security spending.
<b>BIS</b>	Department for Business, Innovation and Skills
<b>Bilateral</b>	Bilateral meetings are when two parties come together for discussion and agreement.
<b>Brown principles</b>	The six broad principles relating to what public authorities need to do to have due regard to the aims set out in the general equality duties. See Appendix 4 for further details.
<b>Bus Service Operators Grant (BSOG)</b>	The BSOG (formerly Fuel Duty Rebate) is a scheme that refunds some of the Fuel Duty incurred by operators of registered local bus services in the United Kingdom.
<b>Chancellor of the Exchequer (CHX)</b>	The title held by the British Cabinet minister who is responsible for all economic and financial matters, with overall responsibility for the work of Her Majesty's Treasury. At the time of the Spending Review and throughout this Assessment this position has been held by the Right Honourable George Osborne MP.
<b>Chief Secretary to the Treasury (CST)</b>	A senior ministerial post whose responsibilities include negotiating with departments about budget allocations, public sector pay, welfare reform, and procurement policy. At the time of the Spending Review and throughout this Assessment this position has been held by the Right Honourable Danny Alexander MP.
<b>Child Benefit</b>	Child Benefit is a tax free payment that can be claimed from HMRC by a parent or carer who has responsibility for the upbringing of a child. It can usually be claimed until a child is 16 years old or older if the child remains in education or training.
<b>Child Tax Credit (CTC)</b>	Child Tax Credit can be claimed by an individual who has responsibility for at least one child or young person who normally lives with them. A person does not have to be working to claim Child Tax Credit.
<b>Spending Review or Comprehensive Spending Review (CSR)</b>	The Spending Review is a HM Treasury led process to allocate resources across all government departments, according to the Government's priorities. Spending Reviews set firm and fixed spending budgets over several years for each department.
<b>Council Tax Benefit (CTB)</b>	Council Tax Benefit can be claimed by an individual who is on a low income, whether in work or not.
<b>Criminal Injuries Compensation Scheme (CICS)</b>	A government funded scheme that allows blameless victims of violent crime to get a financial award.
<b>Cumulative impact</b>	The overall impact of a package of measures, rather than a single measure.
<b>DCLG (CLG)</b>	Department for Communities and Local Government



<b>DECC</b>	Department for Energy and Climate Change
<b>Departmental Expenditure Limits (DEL)</b>	DEL spending is planned and set at Spending Reviews. Departments receive separate DEL resource and capital budgets.
<b>DfE</b>	Department for Education
<b>Defra</b>	Department for Environment, Food and Rural Affairs
<b>DfT</b>	Department for Transport
<b>DH</b>	Department of Health
<b>Disability Equality Duty (DED)</b>	A legal duty on all public sector organisations to have due regard to the need to promote equality of opportunity for disabled people. Introduced in December 2006, this has since been replaced by the public sector equality duty, which came into force in April 2011. See Appendix 2 for further details.
<b>Disability Living Allowance (DLA)</b>	Disability Living Allowance is a tax-free benefit for disabled children and adults to help with extra costs incurred due to a disability.
<b>Distributional impact analysis</b>	The impact on households (by income) of tax, welfare and spending proposals of measures in the Spending Review.
<b>Due regard</b>	Under equality legislation, public authorities have legal duties to have 'due regard' to the need to eliminate discrimination and promote equality. This duty requires public authorities, when developing a policy, to give equality considerations the weight which is proportionate in the circumstances, given the potential impact of the policy on equality. See Appendix 4 for further details.
<b>DWP</b>	Department for Work and Pensions
<b>Education Maintenance Allowance (EMA)</b>	The EMA was a payment made to students aged 16 to 19 from low-income households.
<b>Emergency Budget</b>	The Budget is the economic and financial statement made each year by the Chancellor to Parliament and to the nation. It usually takes place every March. The "Emergency" Budget took place in June 2010 after the formation of the coalition government.
<b>Equality Act 2010</b>	An Act of Parliament which includes a new single public sector equality duty covering the following protected characteristics: age, disability, gender, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation.
<b>Equality Impact Assessments (EIA)</b>	An analysis of a proposed policy or change to an existing policy to determine whether it has a disparate impact on a protected group.
<b>Employment and Support Allowance (ESA)</b>	ESA provides financial help to people who are unable to work because of illness or disability. It also provides personalised support to those who are able to work.
<b>FCO</b>	Foreign and Commonwealth Office

<b>Free School Meals (FSM)</b>	Free School Meals are provided to a child or young person during a school break and paid for by Government. For a child to qualify for a Free School Meal, their parent or carer must be receiving particular qualifying benefits as stated by Government. These qualifying benefits include: <ul style="list-style-type: none"> <li>• Income Support</li> <li>• Income-based Jobseeker's Allowance</li> <li>• Income-related Employment and Support Allowance</li> </ul> NB Eligibility criteria correct at time of printing.
<b>Gender Equality Duty (GED)</b>	A legal duty on all public sector organisations to have due regard to the need to eliminate sex discrimination and harassment and to promote equality for women and men. Introduced in April 2007, this has since been replaced by the public sector equality duty, which came into force in April 2011. See Appendix 2 for further details.
<b>Government Equalities Office (GEO)</b>	The GEO works within government and is responsible for the government's overall Equality Strategy, Building a Fairer Britain. It aims to improve equality and reduce discrimination and disadvantage for all, at work, in public and political life, and in people's life chances.
<b>The Green Book</b>	The Green Book is HM Treasury guidance for central government, setting out a framework for the appraisal and evaluation of all policies, programmes and projects.
<b>Her Majesty's Revenue and Customs (HMRC)</b>	HMRC is a non-ministerial department of the UK Government responsible for the collection of taxes and the payment of some forms of state support.
<b>Housing Benefit</b>	Housing Benefit can be claimed by people paying rent whose income and capital is below a certain level.
<b>Independent Challenge Group (ICG)</b>	Appointed by government in June 2010 to 'act as independent challengers and champions for departments' throughout the Spending Review process. See Appendix 8 for further details.
<b>IFS</b>	Institute for Fiscal Studies
<b>Jobseekers Allowance (JSA)</b>	Jobseeker's Allowance is the main benefit for people of working age who are out of work or work less than 16 hours a week on average.
<b>Legal aid</b>	Legal aid is a scheme that helps people pay for legal advice.
<b>LGBT</b>	Lesbian, Gay, Bisexual and Transsexual
<b>MoJ</b>	Ministry of Justice
<b>MOD</b>	Ministry of Defence
<b>National Equality Panel (NEP)</b>	Established in October 2008 at the invitation of the Rt. Hon. Harriet Harman MP, the then Minister for Women and Equality. The Panel was asked to investigate the relationships between the distributions of various kinds of economic outcome and people's characteristics and circumstances.
<b>NIESR</b>	The National Institute of Economic and Social Research

<b>NEET</b>	NEET is a government acronym for young people (age range 16 to 24) currently 'not in education, employment, or training'.
<b>ODI</b>	The Office for Disability Issues leads the government's vision of achieving equality for disabled people.
<b>Permanent Secretaries Spending Review group (PSSR)</b>	A group of senior civil servants (mainly Permanent Secretaries) that met throughout the process of preparing the Spending Review with the objective of building the government's understanding of the issues, ensuring support for the overall principles and approach and discussing cross-cutting issues.
<b>Planning assumptions</b>	The initial budget reduction scenarios that departments were asked by HM Treasury to model. They varied by department.
<b>Protected groups (sometimes referred to as protected characteristics)</b>	<p>At the time of this Assessment protected groups were:</p> <p><b>Race</b> – A group of people defined by their race and nationality (including citizenship), ethnic or national origins.</p> <p><b>Disability</b> – A person has a disability if s/he has a physical or mental impairment which has a substantial and long-term adverse effect on that person's ability to carry out normal day-to-day activities.</p> <p><b>Sex (including transsexual men and women)</b> – A man or a woman.</p> <p><b>Gender</b> – The wider social roles and relationships that structure men's and women's lives. These change over time and vary between cultures.</p> <p><b>As of April 2011 the following additional protected characteristics were covered under the Equality Act 2010 but will remain outside the scope of this assessment.</b></p> <p><b>Age</b> – Where this is referred to, it refers to a person belonging to a particular age (e.g. 32 year olds) or range of ages (e.g. 18-30 year olds).</p> <p><b>Religion and belief</b> – Religion has the meaning usually given to it but belief includes religious and philosophical beliefs including lack of belief (e.g. Atheism). Generally, a belief should affect your life choices or the way you live for it to be included in the definition.</p> <p><b>Sexual orientation</b> – Whether a person's sexual attraction is towards their own sex, the opposite sex or to both sexes</p> <p><b>Pregnancy and maternity</b> – Pregnancy is the condition of being pregnant or expecting a baby. Maternity refers to the period after the birth, and is linked to maternity leave in the employment context. In the non-work context, protection against maternity discrimination is for 26 weeks after giving birth, and this includes treating a woman unfavourably because she is breastfeeding.</p> <p><b>Marriage and civil partnership</b> – Public authorities also need to have due regard to the need to eliminate unlawful discrimination against someone because of their marriage or civil partnership status. This means that the first arm of the duty applies to this characteristic but that the other arms (advancing equality and fostering good relations) do not apply.</p> <p>Marriage is defined as a 'union between a man and a woman'.</p>

	Same-sex couples can have their relationships legally recognised as 'civil partnerships'. Civil partners must be treated the same as married couples on a wide range of legal matters.
<b>Public Expenditure Committee (PEX)</b>	A group of senior Cabinet Ministers, chaired by the Prime Minister. They advised the Cabinet on the high level decisions taken in the Spending Review. See Appendix 7 for further information.
<b>Public sector equality duties (PSEDs) or the equality duties or the duties</b>	Used throughout this report when referring to all three of the previous duties (Race, Disability and Gender) together.
<b>Public sector equality duty (PSED)</b>	Used throughout this report when referring to the new single equality duty, which covers age, disability, gender, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation.
<b>Pupil Premium</b>	Pupil Premium is a payment made directly to educational establishments, funds are allocated per child from low-income families who are known to be eligible for Free School Meals (FSM); to children who have been looked after continuously for more than six months and to children whose parents are currently serving in the armed forces.
<b>Quadrilateral (Quad)</b>	The Government quadrilateral or 'quad', were a decision-making body for the 2010 Spending Review comprised of the Prime Minister, Deputy Prime Minister, Chancellor and Chief Secretary to the Treasury.
<b>Qualitative Data</b>	Qualitative methods are ways of collecting data which are concerned with describing meaning, and are illustrative, rather than necessarily statistically representative. They can include case studies and interviews and provide insight on people's views and perceptions.
<b>Quantitative Data</b>	Quantitative methods are those which focus on numbers and frequencies rather than on meaning and experience. They can include experiments, questionnaires and psychometric tests and provide information which is easy to analyse statistically.
<b>Race Equality Duty (RED)</b>	A legal duty on all public sector organisations to have due regard to the need to eliminate unlawful racial discrimination and to promote equality of opportunity and good relations between people of different racial groups, introduced into legislation in 2001. This has since been replaced by the public sector equality duty, which came into force in April 2011. See Appendix 2 for further details.
<b>Section 31 (S31) Assessment</b>	The Commission has a unique power as a regulator to assess the extent to which or the manner in which a public authority has complied with one or any of the duties under Section 31 of the Equality Act 2006.
<b>Single Equality Scheme (SES)</b>	Under the previous duties for race, disability and gender, 'due regard' was met through the development and implementation of an equality scheme. Many organisations created a single equality scheme, which covered the three protected groups in one document.

	HM Treasury, at the time of the 2010 Spending Review, had a Single Equality Scheme in place for the period 2009-11, covering gender, disability and race, with reference to wider groups.
<b>Socio-economic group</b>	Socio-economic classification is based on occupation and employment status.
<b>Spending Review Framework</b>	The Spending Review 2010 process was publicly launched on 8 June 2010 with the publication of 'The Spending Review Framework' by HM Treasury. This set out: the overall approach; the scope of the Spending Review; the timetable and process for how the government would carry out the Spending Review; and how the public and experts were to be engaged in the process.
<b>Terms of Reference (TOR)</b>	TOR define the scope and parameters of the Assessment and are a formal part of the process that the Commission is required to follow when setting up a Section 31 Assessment under the Equality Act 2006. See Appendix 1 for further details.
<b>Train to Gain (T2G)</b>	A government-funded initiative for employees to get new skills that will help them succeed at work.
<b>Transgender</b>	The term 'transgender' is an inclusive word that covers both transsexual and transvestite people.
<b>Transsexual</b>	Transsexual people are not comfortable in their birth gender and feel that they were born in the wrong body. This is a medical condition known as gender dysphoria. Some transsexual people undergo surgery and other treatment to re-assign their gender.
<b>Triennial Review</b>	Under the Equality Act 2006 the Commission has a responsibility to report every three years on the progress that society makes towards becoming one that is more equal, where every individual has the opportunity to achieve their potential, and where people treat each other with dignity and respect. The first review, How Fair is Britain? focused on equalities, and was published in October 2010.
<b>Value for money</b>	The process under which organisations' procurement, projects and processes are systematically evaluated and assessed to provide confidence about suitability, effectiveness, prudence, quality, value and avoidance of error and other waste, judged for the public sector as a whole
<b>Work Capability Assessment (WCA)</b>	WCA is the main assessment for Employment and Support Allowance claims and may include a medical assessment before a decision can be made on an individual's capability for work.
<b>Work Related Activity Group (WRAG)</b>	After claiming Employment Support Allowance if the Work Capability Assessment shows that an illness or disability does limit an individual's ability to work they would be placed in one of two groups, one of which is the Work-Related Activity Group. (The other is the Support Group.)
<b>Working Tax Credit (WTC)</b>	Tax credits are payments from the government and are aimed at people who are working but are on a low income. Eligibility for Working Tax Credit is based on hours worked and paid for.

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