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# Equality Impact Assessments

*Briefing from the UK Women's Budget Group on equality impact assessments and the Public Sector Equality Duty.*

*October 2019*

## Equality Impact Assessments and the Public Sector Equality Duty

*Background briefing from the UK Women's Budget Group*

### Key points

- Women still face structural inequality throughout their lives. Inequality based on gender intersects with other structures of inequality including class, race and disability.
- This means that policy impacts differently on women and men, and on different groups of women and men.
- Equality Impact Assessments are a way to ensure that policy makers take account of these different impacts when developing policy.
- Meaningful equality impact assessments should consider cumulative impact, intersectional impact, the impact on individuals as well as households, impact over a lifetime and the impact on unpaid care.
- They should be based on evidence and consultation with those most likely to be affected by policy.
- The Public Sector Equality Duty (PSED) requires public bodies to have 'due regard' to equality in all aspects of their work. Equality Impact Assessments are a way to ensure public bodies have met their legal obligations under the PSED.
- Despite the obligations of the PSED, WBG has observed a pattern of poor-quality impact assessments by Government departments and, in some cases, a failure to carry out impact assessments at all.
- WBG is calling on the Government to carry out and publish meaningful equality impact assessments.

### Why assess equality impact?

#### Background

This briefing sets out why equality impact assessments are needed, what the law requires and current government practice. WBG's expertise is on the gender impact of economic policy so this is our main area of focus. However, impact assessments are needed across all areas of policy, and should take account of impact of policy on all disadvantaged groups.

#### Structural inequality

While there has been progress on some aspects of gender equality, women still experience structural inequality throughout their lives.<sup>1</sup> Inequalities based on gender intersect with other forms of inequality based on

class, race, disability, and other factors so that some groups of women, particularly poor women, Black and Minority Ethnic (BME) women and disabled women face multiple disadvantage.<sup>2</sup>

The expectations that society places on women and men, about what they can and should do, structure the roles and opportunities for both sexes. This means that policies impact differently on women and men.

#### Unpaid care

Gender roles and norms mean that women are more likely than men to have responsibility for unpaid work including childcare, care for older or disabled people and domestic work.<sup>3</sup> This reduces their time available for paid work and other activities.

<sup>1</sup> See for example: EHRC, 2015, Is Britain Fairer?, <https://bit.ly/2oeKExT>

<sup>2</sup> WBG/Runnymede Trust, 2017, Intersecting Inequalities, <https://bit.ly/2PFrb1N>

<sup>3</sup> Women do 26 hours unpaid work on average, compared to 16 for men: ONS, 2016, Women still shoulder the responsibility of unpaid work, <https://bit.ly/2KBdnG9>

This means that the provision of some public services, that reduce the amount of unpaid work that women do, can have a major effect on women's opportunities and employment. It also means that when public services are cut it is more likely to be women who increase their unpaid work to fill the gap and may have to give up employment or other opportunities to do so.

### **Wealth and poverty are gendered**

The expectation that women are responsible for unpaid work, discrimination in the workplace, and the undervaluing of work traditionally done by women means that women on average earn less than men, have lower incomes over a lifetime, accumulate lower levels of wealth and are more likely to be living in poverty.<sup>4</sup> This means that women are less likely to benefit from cuts to income tax than men, and cuts to taxes on business<sup>5</sup> and more likely to benefit from public spending on public services or cash transfers/welfare benefits.<sup>6</sup>

Women's lower incomes and wealth relative to men mean that they particularly benefit from having good provision of public services. It also means that they are less likely to be able to afford private provision when public services are cut. User fees can be a greater problem for women and girls, who gain more from public services being free.

### **Income within households**

Income may not be shared equally within households, meaning women and girls may not benefit as much as men when household income rises.<sup>7</sup> This means that policies that concentrate on improving household incomes may not benefit women as much as those that target women's incomes specifically.

### **Violence against women and girls**

Violence and abuse of women and girls continues to be widespread and underreported. Domestic violence and abuse often includes financial abuse.<sup>8</sup> This means that funding for specialist services for women who have experienced violence is vital to promoting gender equality. Cuts to such services can leave women without help to overcome trauma. For those currently

experiencing violence, loss of services such as refuges can be life threatening.<sup>9</sup>

It also means that women's access to independent income is important; policies that reduce it can increase women's vulnerability to financial and other forms of abuse.<sup>10</sup>

### **Women's representation**

Women continue to be under-represented in public life and decision making.<sup>11</sup> This means that government policies may not take women's needs and priorities into account. This lack of attention to women and girls' needs can lead to policies that fail to meet the needs of women or increase gender inequalities.

### **Equality Impact Assessment as a tool for change**

One of the main ways in which policy makers can ensure equality is taken into account when policy is made is to carry out an equality impact assessment, and take action to amend the policy if necessary before it is implemented. Because inequalities based on gender intersect with other forms of inequality it is important that equality impact assessments take an intersectional approach.

One form of Equality Impact Assessment is Gender responsive budgeting (GRB). This focusses on the impact of government budgets (and other economic policies) on inequalities between women and men in order to promote policies that will lead to greater equality.<sup>12</sup>

### **What the law says**

#### **The Public Sector Equality Duty**

Under the Public Sector Equality Duty, (PSED), contained in the 2010 Equality Act, all public authorities, including government departments, are obliged to have 'due regard' to the need to eliminate unlawful discrimination, advance equality of opportunity, and foster good relations between those who have a characteristic protected under the Act and those who do not. These protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy

<sup>4</sup> WBG, 2018, The Female Face of Poverty, <https://bit.ly/2PiYEyI>

<sup>5</sup> WBG, 2018, Tax and Gender, <https://bit.ly/2DnrAna>

<sup>6</sup> WBG, 2018, Social Security and Women <https://bit.ly/2CzJOv>

<sup>7</sup> Fran Bennett and Holly Sutherland, 2011, The importance of independent income: understanding the role of non-means-tested earnings replacement benefit, Barnett Papers in Social Research, University of Oxford, <https://bit.ly/2pbOdFI>

<sup>8</sup> WBG, 2018, Violence Against Women and Girls, <https://bit.ly/2CN77qF>

<sup>9</sup> WBG, 2018, Life Changing and Life Saving: funding for the women's sector <https://bit.ly/2Pxv6YH>

<sup>10</sup> Marilyn Howard, 2019, Benefits or barriers? Making social security work for survivors of violence and abuse across the UK's four nations, WBG, <https://bit.ly/2WENTtC>

<sup>11</sup> Fawcett, 2018, Sex and Power, at <https://bit.ly/2JnNh5t>

<sup>12</sup> WBG, 2018, Women Count: a casebook for gender responsive budgeting groups, <https://bit.ly/2BGhLO3>

and maternity, race, religion or belief, sex and sexual orientation.

The PSED has two parts. The general duty requires a public authority to give 'due regard' to equality in its decision-making. Specific duties are not stand-alone but support the general duty. They vary across Britain. In England there are two specific duties, to:

- Publish information to demonstrate compliance with the general equality duty by 31 January 2012 (April 2012 for schools and pupil referral units) and annually after that. This should include information about employees and people affected by the body's policies and practices who share a protected characteristic. Public bodies with less than 150 staff do not have to publish information on their employees.
- Prepare and publish one or more equality objective that the body thinks it should achieve.

Scotland and Wales have more extensive specific duties, including requirements to assess equality impacts of a new or revised policy or practice.<sup>13</sup> The Equality Act does not apply in Northern Ireland.

### Principles for 'due regard' to equality

A number of court cases have established a series of principles about what 'due regard' means in practice. These include:

- The decision maker must be aware of the duty.
- The duty applies before a decision is taken. It is not enough to consider equality after a decision has been made.
- The duty is on-going. It does not just apply when policy is made, but also when it is implemented.
- The duty must be exercised in substance, with rigor and with an open mind in such a way that it influences the final decision. It is not enough to 'tick boxes'.

- The duty cannot be delegated. A public body is responsible for making sure that any organisation that carries out work on its behalf has due regard to equality in carrying out that work.
- It is advisable for public bodies to keep records of how they have had due regard to equality when making decisions. If records are not kept it will be harder for a public body to demonstrate that they have had due regard.
- Public bodies must gather and consider sufficient evidence to enable them to assess the impact of a proposed policy on equality. This may include consultation with those likely to be affected by a policy or practice.
- The degree to which a public body should consider equality will vary depending on the likely equality impact of a policy.
- Where a public body identifies the risk of negative impact it should consider how to eliminate or mitigate against that risk.
- Lack of resources does not excuse not complying with the duty<sup>14</sup>.

### Equality Impact Assessments

Although there is no specific obligation in England to carry out an Equality Impact Assessment, they are widely relied upon by public bodies to demonstrate that they have met their legal obligations under the PSED.<sup>15</sup>

In November 2018 then Minister for Women and Equalities, Penny Mordaunt confirmed the importance of Equality Impact Assessments:

*'Across the public sector, we must ensure equality impact assessments are effective and remain core and integral to our policy development, with proper*

<sup>13</sup> WBG, 2017, The Public Sector Equality Duty: Evidence to Fawcett's Sex Discrimination Law Review, <https://bit.ly/344wpuV>

<sup>14</sup> The EHRC has produced technical guidance on the Public-Sector Equality Duty which gives more information about what 'due regard' means. There is separate guidance for England, Scotland and Wales. See

<https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-technical-guidance#h1>

<sup>15</sup> House of Commons Library, 2019, The Public Sector Equality Duty and Equality Impact Assessments, <https://bit.ly/2p9u2lg>

*consideration of equalities knitted into our organisational cultures and decision-making.*<sup>16</sup>

## Principles of equality impact assessment

### Consider cumulative impact

A cumulative analysis means looking at the combined impact of a number of measures. The effect of some individual measures may be small, but taken together the cumulative impact may be substantial.

### Look at impacts on individuals as well as households.

Interests within households may differ, so policies that benefit a household's decision-maker may not benefit all household members. It is important to recognise that policy may affect decision-making power within households.

### Take a life-time perspective wherever possible.

Policies' long-term effects may outweigh current impacts – for example policies that make it easier for women to stay doing unpaid care may have negative impacts on women's life time earnings and pensions in old age.

### Take account of effects on unpaid care economy.

It is important to recognise that the fiscal benefits of encouraging women into employment are not 'free' but may have an impact on unpaid care.

### Take an intersectional approach

Different structures of inequality intersect so that it is important to look at differences within particular groups of women and men, for example differences by race, income and disability. Impact assessments that consider each 'protected characteristic' in isolation (looking at race, gender, disability and so on separately) can ignore these intersectional impacts.

### Quantify gender differences in effects where possible.

This means drawing on statistical data to show how policy would impact women and men differently. Where no data is available it is important not to assume that this means that there is no impact.

<sup>16</sup> The Rt Hon Penny Mordaunt MP: Bright Blue's Women in Work conference speech, November 2018, <https://bit.ly/2JiuXWY>

<sup>17</sup> WBG (2018) Submission to the Women and Equalities Select Committee Inquiry into Enforcement of the Equality Act, (<https://bit.ly/2Oo62vk>) |

<sup>18</sup> WBG (2019) 'Gender-neutral': Universal Credit Equality Impact Assessments (<https://bit.ly/2S1Koer>)

## Consult affected groups

Qualitative research, including consultation with affected groups can highlight unexpected equality impacts and show how the combined effect of different changes can impact on women's lives.

## Government practice to date

Despite the obligations of the PSED, WBG has observed a pattern of poor quality impact assessments and, in some cases, a failure to carry out impact assessments at all.<sup>17</sup> Criticisms of impact assessments carried out by the Department of Work and Pensions, for example, include that they are simplistic, contain limited detailed evidence; are surprisingly political, build arguments on controversial (non-evidenced) assumptions and fail to understand equality impact.<sup>18</sup>

## Impact assessment of Budgets and financial statements 2011-2018

Budgets and financial statements produced by the Treasury since 2011 have failed to include meaningful equality impact assessments. WBG has raised this repeatedly in our budget analysis.<sup>19</sup>

Successive budget documents have failed to include a cumulative impact assessment, setting out the combined impact of all the budget proposals. This is important because the impact of some changes may be small but taken together the combination of a series of changes can have a devastating impact on the lives of women. Our own cumulative impact assessment of budgets since 2010 with the Runnymede Trust has shown that the poorest BAME women have been negatively affected by multiple cuts to social security and spending on public services and gained least from tax cuts.<sup>20</sup>

The only impact assessment relating to protected characteristics in successive Budget documents are the Tax Information and Impact Notes (TIINS) produced by HMRC and these are generally of poor quality.

For example, analysis of cuts to income tax through rises to the personal tax allowance (PTA) and higher rate threshold over several years do not include details of

<sup>19</sup> WBG analysis of budgets and financial statements are available at: <https://wbg.org.uk/category/analysis/uk-budget-assessments/>

<sup>20</sup> WBG/Runnymede Trust, 2017, *Intersecting Inequalities*, <https://bit.ly/2PFrb1N>

how many men and how many women there are in each category, or how much of the benefit of the cut will be received by men and how much by women. The 2015 Spring Budget included an impact note which gave a breakdown by sex of who benefits and who is taken out of tax altogether, but it failed to make the point that those who are 'taken out' of tax do not benefit from further increases in the PTA. The 2018 impact note does reveal that 70% of those taken out of higher rate tax are men.<sup>21</sup>

The 2016 Budget announced the removal of income tax relief and capital gains tax relief on receipt or buyback of shares issued to an employee. This had a direct impact on individuals who became Employee Shareholders after 1st December 2016. HM Revenue and Customs stated that *"This measure is not expected to have a disproportionate impact on people in groups sharing protected characteristics in any income groups. However, it is likely that the individuals benefiting from the cut will share characteristics with others of above average means."*<sup>22</sup> This ignores that, if those of above average means are mainly white men, then they would disproportionately benefit and individuals in protected groups would disproportionately miss out.

Analysis of the impact of cuts to fuel duty was included with Treasury background papers for the 2011, 2013, 2015 and 2017 Budgets and the 2012 Autumn Financial Statement. On each occasion similar arguments were made. For the 2013 Spring Budget the Government argued that *"No impacts are expected on groups sharing protected characteristics."*<sup>23</sup> In the 2018 Budget there was no analysis at all of the freeze to fuel duty. However, it is well known that men are more likely to own, drive cars, and drive greater distances. Our research shows that households without children and with men in them gain most from a cut to fuel duty.<sup>24</sup>

Apart from the HMRC TIINS notes there are no other equality impact assessments published with the Budget papers. It is expected that individual departments will carry out impact analysis for the measures that fall within their remits as they are implemented. However, none of the HM Treasury Budget documents mention equality analysis or make it clear when and how equality

auditing will take place, nor where the results will be available.

Equality audits should be carried out at the development stage of any policy or measure to examine the potential differential impacts and design in any mitigating measures necessary. To carry out the assessment after the measure has been decided will be unlikely to result in its being modified to address any difficulties identified. If departments do carry-out equality impact assessments on proposals before they are included in the Budget, then that should be stated, and the assessment made available.

### Impact of 2019 Spending Review

The Spending Review 2019 documents include an 'Impact on Equalities' section.<sup>25</sup> This section provides a few examples of spending decisions that are going to benefit women and other groups with protected characteristics, with the Government admitting it picked the positive cases:

*'This annex lists illustrative examples where spending allocations at Spending Round 2019 will have a positive impact on those sharing the protected characteristics.'*

There are evident problems with this approach. Firstly, cherry-picking examples does not replace a comprehensive assessment of the impact of spending decisions on the different groups. Secondly, the examples picked for women are on services that have traditionally been associated with women, like childcare. It doesn't show recognition that all services impact women and men differently. Decisions like increased spending on buses or on nurse training, for instance, also have a positive impact on women due to women's distinct travel patterns and career paths.

### Response by select committees

Both the Women and Equalities Select Committee<sup>26</sup> and, more recently, the Treasury Select Committee,<sup>27</sup> have recommended that the Government do more to demonstrate it has fulfilled its obligations to assess the

<sup>21</sup> HM Treasury Budget 2018: policy costings (op. cit.) p5 and HMRC (2018) Overview of Tax Legislation and Rates <https://bit.ly/2D0DUJH> pp76/7

<sup>22</sup> HMRC, 2016, Overview of Tax Legislation and Rates, <https://bit.ly/2PqOIGh>

<sup>23</sup> WBG, 2013, The Impact on Women of Budget 2013: A budget for inequality and recession, <https://bit.ly/32RTS20>

<sup>24</sup> WBG, 2018, Tax and Gender, <https://bit.ly/2NkBOHq>

<sup>25</sup> HMT, 2019, Spending Round 2019, Impact on Equalities, <https://bit.ly/2Wjhpq4>

<sup>26</sup> UK Parliament (18 November 2016) 'More transparency needed from HM Treasury on equality analysis' (<https://bit.ly/2GJ0iYY>)

<sup>27</sup> Treasury Select Committee (12 February 2019) *Budget 2018* (<https://bit.ly/2SPyWac>)

equalities impacts of the Budget and financial statements.

The Women and Equalities Committee described the limited impact assessment of the 2015 spending review as 'insubstantial and lacking in detail.' It called for '*more transparency in the process so that our Select Committee can look at how departments ensure the impact of policy change on equalities is understood. Without the information we have asked for or ministerial evidence it's not been possible to form a view of the Government's work under the public sector equality duty*'<sup>28</sup>.

The Treasury Select Committee raised the issue of impact assessments in 2017 and again in 2018. Its report on the 2018 Budget states that while there has been '*some improvement in the provision of equalities and gender impact assessments in this Budget, but they fall well short of the "robust [ ... ] assessments of future Budgets, including the individual tax and welfare measures contained within them" that the Committee recommended at the last Budget*'.<sup>29</sup>

## Conclusions and Recommendations

The Women's Budget Group recommends that all public bodies, including government departments should carry out and publish equality impact assessments based on the principles set out above.

The Treasury should carry out and publish a cumulative impact assessment of the Budget every year and of periodic spending reviews.

Staff responsible for these impact assessments should be trained in equality impact to ensure that assessments are meaningful.

### Women's Budget Group, November 2019.

WBG is an independent, voluntary organisation made up of individuals from Academia, NGOs and trade unions.

See [www.wbg.org.uk](http://www.wbg.org.uk)

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<sup>28</sup> UK Parliament (18 November 2016) 'More transparency needed from HM Treasury on equality analysis' (<https://bit.ly/2GJ0iYY>)

<sup>29</sup> Treasury Select Committee (12 February 2019) *Budget 2018* (<https://bit.ly/2SPyWac>)