

# Section 75 of the Northern Ireland Act 1998

## A Guide for Public Authorities

**April 2010**



## **Further information and advice**

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## **Introduction to the Revised Guide to the statutory duties**

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

The Equality Commission for Northern Ireland (the Commission) is fully committed to ensuring and monitoring the effective implementation of the Section 75 statutory duties. The decision to review and revise the Guide to the Statutory Duties<sup>1</sup> (the Guide) is a reflection of this commitment and follows the conclusion of the Section 75 Effectiveness Review<sup>2</sup> which the Commission undertook between 2006-2008, in order to assess the effectiveness of the legislation. The final report of the Effectiveness Review was published in November 2008.

The Effectiveness Review enabled the Commission to take stock of progress on the implementation of Section 75 and to ascertain if Section 75 was delivering on its intention that equality of opportunity and good relations should be central to public policy development. The Effectiveness Review's recommendations have influenced the direction and informed the content of this new revised Guide (Revised April 2010).

Following the Effectiveness Review recommendations, the Commission's aim was to create a more user friendly Guide, to make improvements in the area of screening of policies and to shift the focus within public authorities from concentrating primarily on the process of implementing Section 75, towards achieving outcomes within the Section 75 framework. The revised Guide also takes account of the experience to date of public authorities and groups affected by the duties, and their suggested improvements. It reflects the need to move forward with the implementation of the Section 75 statutory duties, whilst learning from experience.

### **Explanatory notes**

Chapters 1, 2, 3, 4 and 8 provide some general information about the Section 75 statutory duties, what is required from public authorities, who is responsible for implementing and overseeing them, and the role of the Commission. These chapters are intended to outline the context of the Section 75 statutory duties and provide an overview of the duties themselves

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<sup>1</sup> Equality Commission for Northern Ireland (2004). Guide to the Statutory Duties

<sup>2</sup> Equality Commission for Northern Ireland (November 2008). Keeping it Effective: Reviewing the Effectiveness of Section 75 of the Northern Ireland Act 1998 – Final Report.

to help public authorities understand what is required of them (Green Section).

Schedule 9 of the Northern Ireland Act 1998<sup>3</sup> directs that a public authority's equality scheme shall conform to any Guidelines as to form and content which are issued by the Commission with the approval of the Secretary of State. Chapters 5, 6 and 7 of this Guide (the Blue Section) constitute the Guidelines as to form and content of an equality scheme as per the requirements of Schedule 9.

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<sup>3</sup> Northern Ireland Act 1998. Schedule 9, Paragraph 4 (3) (a).

## Chapter 1 Section 75 of the Northern Ireland Act 1998 – the statutory duties

Section 75 of the Northern Ireland Act 1998 (the Act) requires public authorities designated<sup>4</sup> for the purposes of the Act to comply with two statutory duties.

The first duty is the *Equality of Opportunity* duty, which requires public authorities in carrying out their functions relating to Northern Ireland to have due regard to the need to promote equality of opportunity between the nine equality categories of persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation; men and women generally; persons with a disability and persons without; and persons with dependants and persons without.

The second duty, the *Good Relations* duty, requires that public authorities in carrying out their functions relating to Northern Ireland have regard to the desirability of promoting good relations between persons of different religious belief, political opinion and racial group.

### Background to the statutory duties

The duties on public authorities to promote equality of opportunity and good relations grew out of attempts to make the earlier non-statutory Policy Appraisal and Fair Treatment (PAFT)<sup>5</sup> initiative more effective, and from the agreement reached in the multi-party talks on Northern Ireland, that is The Belfast Agreement/Good Friday Agreement (the Agreement)<sup>6</sup>.

In the report of its Review of Employment Equality<sup>7</sup>, the Standing Advisory Commission on Human Rights (SACHR)<sup>8</sup> highlighted the dissatisfaction in many quarters with the PAFT Guidelines. SACHR recommended significant strengthening of the process of mainstreaming equality, including a recommendation that PAFT be put on a statutory basis with a statutory obligation on the public sector to promote 'full and effective equality'. In its White Paper 'Partnership for Equality'<sup>9</sup>, Government responded positively to

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<sup>4</sup> Designation is explained in chapter 5, page 26 of this Guide.

<sup>5</sup> Central Secretariat circular 5/93 (December 1993). Policy Appraisal and Fair Treatment.

<sup>6</sup> Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland (10 April 1998).

<sup>7</sup> SACHR (1997) Employment Equality: Building for the Future (The Stationery Office, London, ISBN 0-10-136842-9).

<sup>8</sup> Standing Advisory Commission on Human Rights - body established under the Northern Ireland Constitution Act 1973.

<sup>9</sup> Partnership for Equality White Paper (The Stationery Office, London, 1998, ISBN 070-138902-7).

some of SACHR's recommendations, including introducing statutory equality mainstreaming duties.

Subsequently, the 'Rights, Safeguards and Equality of Opportunity' section of the Agreement included a commitment to introducing such a statutory duty. This was followed with the introduction of new statutory duties on public authorities to mainstream equality and good relations by the Northern Ireland Act 1998 (Appendix 2).

## **Mainstreaming**

The Section 75 statutory duties make equality and good relations central to the whole range of public policy decision-making. This approach is often referred to as "mainstreaming". The Council of Europe<sup>10</sup> has defined mainstreaming as:

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

Mainstreaming equality and good relations is important for several reasons. Experience in Northern Ireland and elsewhere shows that questions of equality and good relations may easily become sidelined in organisations. Focused attention on mainstreaming addresses this problem by requiring all public authorities to engage directly with equality and good relations issues through all stages of policy making and service delivery. Section 75 is part of the public policy agenda which is ultimately aimed at developing policies and services that address the needs of all people, especially those experiencing inequalities.

Mainstreaming the Section 75 requirements of assessment of policies for impact on the promotion of equality of opportunity into other policy review timetables or policy evaluation can contribute to a 'joined-up' approach to policy review, ensuring coherence, integration of public policy goals and ultimately better value for public money.

## **Affirmative action and positive action**

The Section 75 statutory duties require more than the avoidance of discrimination. Public authorities should actively seek ways to encourage

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<sup>10</sup> Council of Europe, Strasbourg (May 1998). Gender mainstreaming conceptual framework, methodology and presentation of good practices.

greater equality of opportunity and good relations through their policy development, for example, the kind of measures permitted under sex discrimination, race relations, and disability discrimination legislation.

Public authorities should give particular consideration to positive action where the impact of a policy will affect different people in a different way, for example, the impact of a policy on women or people with disabilities. Public authorities should take an approach which recognises that certain groups such as women or people with disabilities may experience higher levels of inequalities than non disabled people and men respectively.

From the outset, Government made clear in the parliamentary debate on the legislation that the statutory duty concerning equality of opportunity does not deter a public authority from taking action to address disadvantage among particular sections of society:

*“Section 75 in no way calls into question the ability of public authorities to take affirmative action in appropriate cases to correct disadvantage. Affirmative action in appropriate circumstances is an important method of combating inequality, and it is our firm intention that that should remain so. The clause does not call that into question, and does not render unlawful what would be lawful affirmative action under current anti-discrimination legislation.*

*Furthermore, Section 75 means that public authorities are bound to have regard to the need for affirmative action when considering their duty under the clause”<sup>11</sup>.*

Mainstreaming may also require the taking of positive action and is complementary to making more effective the measures adopted specifically to tackle discrimination, such as anti-discrimination law.

### **Why the duties are important**

The Section 75 statutory duties aim to encourage public authorities to address inequalities and demonstrate measurable positive impact on the lives of people experiencing inequalities, through paying due regard to the need to promote equality of opportunity and paying regard to the desirability of promoting good relations.

Section 75 is a policy tool and its use should facilitate better public policy making and outcomes by focusing particular attention on the promotion of

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<sup>11</sup> Mr Murphy (18 November 1998). House of Commons, Official Report cols. 1069-1070.

equality of opportunity and good relations. Its effective implementation should improve the quality of life for all of the people of Northern Ireland.

The Commission produced a statement on key inequalities<sup>12</sup>. This statement should help to complement the work of public authorities in promoting equality of opportunity and good relations and ultimately in addressing inequalities. It presented information from a wide range of published sources, including official statistics, research reports and Commission data. It highlighted the breadth of the equality agenda in Northern Ireland and the role of public authorities, noting policy decisions by authorities have consequences that impact on individuals.

Those with responsibility for public policy should remember the reality of inequality, to have it in mind in the decisions they take, and to adjust or modify those decisions so that they can reduce its consequences on the lives of people.

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<sup>12</sup> Equality Commission for Northern Ireland (October 2007). Statement on Key Inequalities in Northern Ireland.

## **Chapter 2 What are public authorities required to do?**

Public authorities in carrying out their functions relating to Northern Ireland are required by the Section 75 statutory duties to have due regard to the need to promote equality of opportunity between the nine equality categories and have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group.

Under Schedule 9 of the Northern Ireland Act 1998, designated public authorities, which includes most public authorities operating in Northern Ireland, are required to submit an equality scheme to the Commission. Further information on the designation of public authorities is contained in chapter 5 of this Guide.

An equality scheme is a statement of the public authority's commitment to fulfilling its Section 75 statutory duties, including procedures for measuring performance.

The Commission's Guidelines on the form and content<sup>13</sup> of equality schemes are included in chapters 5, 6 and 7 of this Guide, which are approved by the Secretary of State for Northern Ireland. The information in this chapter is intended as an overview only.

### **Equality schemes**

An equality scheme outlines the public authority's arrangements for:

- assessing its compliance with the Section 75 statutory duties;
- assessing and consulting on the likely impact of policies on the promotion of equality of opportunity;
- monitoring any adverse impact of policies on the promotion of equality of opportunity;
- publishing the results of such assessments;
- training staff;
- ensuring and assessing public access to information and services provided by the public authority.

### **Preparation**

Public authorities must produce an equality scheme stating how they propose to fulfil the Section 75 statutory duties. The scheme must include the

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<sup>13</sup> Northern Ireland Act 1998. Schedule 9, paragraph 4 (3) (a).

requirements on form and content as set out in chapters 5, 6 and 7 of this Guide, which have been approved by the Secretary of State for Northern Ireland<sup>14</sup>. Public authorities must consult with representative groups when developing an equality scheme. The Commission recommends that a public authority should also consult affected individuals when developing its scheme.

## **Approval**

Following preparation and consultation, equality schemes must be submitted to the Commission for approval. Details of approval arrangements are set out in chapter 3 of this Guide. The Commission can only approve equality schemes that conform to the Guidelines outlined in chapters 5, 6 and 7 of this Guide. Schedule 9 of the Northern Ireland Act 1998 sets out specific arrangements for ensuring equality schemes meet these requirements. The Commission shall approve a scheme or refer it to the Secretary of State. Where the Commission refers a scheme to the Secretary of State, it shall notify the Northern Ireland Assembly that it has done so.

## **Implementation**

It is important to recognise that the Section 75 statutory duties do not end once the equality scheme has been submitted to the Commission. The public authority is required to comply with its equality scheme once it has been adopted by the authority and approved by the Commission.

In addition to the legislative requirements, there are a range of factors that should be considered when implementing the Section 75 statutory duties, as set out below.

## **Commitment and leadership**

Strong leadership is necessary within public authorities to ensure that the Section 75 statutory duties are integrated into core business activities and put into effective and visible practice. Effective implementation should be assured by ongoing top-level commitment, allocation of necessary resources, establishment of clear lines of responsibility, effective communication and training, and a system or systems for monitoring and ensuring progress.

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<sup>14</sup> Northern Ireland Act 1998. Schedule 9, paragraph 4 (3) (a).

## **Focusing on action measures and outcomes**

In order to effectively demonstrate that a public authority has paid due regard to the need to promote equality of opportunity and regard to the desirability of promoting good relations through the implementation of its equality scheme, the Commission recommends that a public authority should develop action measures to promote equality of opportunity and good relations. The promotion of equality of opportunity and good relations by a public authority should be action-based in a way that is tailored to the specific functions, duties, objectives, and policies of the organisation. Certain functions may be more relevant than others to the Section 75 statutory duties. It may be helpful for a public authority to develop an action plan which details action measures relevant to a public authority's functions, to promote equality of opportunity and good relations and address inequalities for the Section 75 categories. Action plans should outline the desired outcomes a public authority aims to achieve with related performance indicators and timescales.

Outcomes from actions taken by a public authority may not be realised within the yearly annual progress reporting period (1 April – 31 March). The Commission's annual progress reporting template will facilitate reporting on outcomes achieved outside of the requested reporting period of 1 April to 31 March.

## **Assessment of equality implications**

The Northern Ireland Act 1998, Schedule 9 (4) (2) (b), requires public authorities to assess the likely impact of their policies on the promotion of equality of opportunity. The Commission recommends that effective assessment of the equality implications of a policy includes screening of all policies (see Annex 1 of this Guide) and consideration of undertaking an equality impact assessment<sup>15</sup>.

Section 75 is important to policy formulation (new or proposed policies) and policy review (existing policies). It is important that public authorities use the assessment of policies for impact on equality of opportunity, including screening and equality impact assessment, as part of their policy development process, rather than as an afterthought when the policy has been established.

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<sup>15</sup> Equality Commission for Northern Ireland (February 2005). Practical Guidance on Equality Impact Assessment.

By enabling people likely to be affected by policies to participate directly in the development of policies and check for inequalities through appropriate consultation, the extent of impact can be more effectively assessed. Ultimately public authorities will be developing policies and services, following assessment and consultation, so that equality of opportunity and good relations can be better delivered. The results of assessments must be published.

## **Consultation**

Section 75 is underpinned by the building of relationships between those who make and deliver public policy and those affected by such policy. Consultation can help authorities to become aware of problems their policies may pose for individuals, which the organisation might not otherwise discover. The legislation requires consultation on the equality scheme itself, on the impact of policies and on matters to which the Section 75 statutory duties are likely to be relevant.

Section 75 should enable public authorities to identify the usefulness of their policies with a view to improving service provision and accessibility on a continuous basis. Public authorities will want to ensure that they are providing the best possible services within available public monies. Consultation can help to ensure that public policy meets its intended need and contributes to better service delivery and accessibility.

A key aspect of effective consultation is providing timely feedback to consultees demonstrating how their input was considered and how it affected decision making. Further information on undertaking consultation is included in chapter 7 of this Guide.

## **Responding to equality scheme complaints**

Public authorities should facilitate affected individuals to make complaints regarding the implementation of their equality scheme and ensure effective systems, protocols and procedures are in place to support this. Public authorities should also co-operate with the Commission in any subsequent investigation regarding implementation of their equality scheme. Information on the Commission's complaints and investigations role is set out later in chapter 4 of this Guide.

## **Monitoring**

Monitoring Section 75 information involves the processing of sensitive personal data (data relating to the racial or ethnic origin of individuals, political opinions, religious beliefs, etc). The Commission has developed monitoring guidance for public authorities which provides practical assistance and advice on monitoring for the purposes of Section 75<sup>16</sup>. Further advice and guidance on how to carry out monitoring in a confidential manner is also available from the Office of the Information Commissioner.

## **Progress report on implementation**

Public authorities should report to the Equality Commission annually, by the 31 August each year, on the implementation of their equality scheme, including progress on delivery of actions they have identified to promote equality of opportunity and good relations. The Commission provides a template for progress reporting to public authorities each year, to ensure comparability and allow further assessment of the effectiveness of the Section 75 statutory duties.

## **Five year review of schemes**

Within five years of submission of an equality scheme to the Commission, public authorities must conduct a review of their equality scheme and inform the Commission on the outcome of the review<sup>17</sup>. The Commission provides guidance on Five Year Reviews of Schemes<sup>18</sup> to ensure consistency and allow further assessment of the effectiveness of the Section 75 statutory duties.

The Commission, however, recognises that many public authorities operate a three year corporate plan cycle. As evidence of equality and good relations being taken into account in core business is required to demonstrate effective implementation of the Section 75 statutory duties, equality scheme review may take place within a shorter timescale to allow co-ordination with other planning cycles.

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<sup>16</sup> Equality Commission for Northern Ireland (July 2007). Section 75 of the Northern Ireland Act 1998 - Monitoring Guidance for Use by Public Authorities.

<sup>17</sup> Northern Ireland Act 1998. Schedule 9, paragraph 8 (3).

<sup>18</sup> Equality Commission for Northern Ireland (2005). Guidance on Five Year Review of Equality Schemes by Public Authorities.

## **Other important statutory duties**

In implementing equality schemes, public authorities will as appropriate have to give consideration to other legislative provisions such as health and safety requirements and the two positive disability duties<sup>19</sup> under Section 49 of the Disability Discrimination Act 1995. It is important to recognise cohesion with other duties.

In addition, since consultation and monitoring can involve the processing of personal information, it is also important that any systems that are adopted by public authorities comply with the common law duty of confidentiality and other statutory requirements such as the Data Protection Act 1998 and the Human Rights Act 1998.

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<sup>19</sup> Disability Discrimination Act 1995 - Section 49A (as amended by Article 5 of Disability Discrimination (Northern Ireland ) Order 2006).

## **Chapter 3 Role of the Equality Commission for Northern Ireland**

Schedule 9 of the Act sets out a range of provisions to give effect to the statutory duties under Section 75. For the Commission, these include:

- keeping under review the effectiveness of the duties imposed by Section 75;
- offering advice to public authorities and others in connection with those duties;
- carrying out other functions conferred on it including approval of equality schemes;
- preparation of Guidelines;
- investigating complaints of failure to comply with an approved scheme.

### **Keeping the effectiveness of Section 75 under review**

The Commission has responsibility for keeping under review the effectiveness of the duties imposed by Section 75. This is done through the provision of advice, monitoring and reporting on compliance and by investigating alleged breaches of equality schemes. In addition to this continuing work, the Commission has also undertaken a comprehensive review of the effectiveness of the Section 75 statutory duties.

The Effectiveness Review<sup>20</sup>, published in November 2008, made a number of recommendations. In line with these, the Commission will be taking a strategic approach to advice provision and to monitoring compliance.

### **Advice**

The Commission provides advice to designated public authorities, individuals and representative groups of the equality and good relations categories on implementation of the Section 75 statutory duties. This includes dedicated officers to provide advice on Section 75 statutory duties for a specific caseload of public authorities, advising affected individuals/groups on the complaints process under Section 75, the provision of information updates and awareness raising sessions on the implementation of Section 75 statutory duties and a dedicated enquiry line on all aspects of equality.

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<sup>20</sup> Equality Commission for Northern Ireland (November 2008). Keeping it Effective: Reviewing the Effectiveness of Section 75 of the Northern Ireland Act 1998 – Final Report.

## **Approval of equality schemes**

Schedule 9 of the Act sets out specific requirements for public authorities, in terms of preparing and consulting on the draft equality scheme before submission to the Commission for approval. What happens after an equality scheme is submitted for approval to the Commission depends on what type of public authority is involved.

A distinction is made between United Kingdom-wide Government departments which have been designated by the Secretary of State, and other public authorities. The inclusion of different public authorities under Section 75 has resulted in different arrangements in relation to the procedures to be followed for approval of equality schemes.

In summary, on receipt of an equality scheme submitted by any public authority, the Commission undertakes a desk audit to ensure the requirements on form and content have been met so that the Commission can approve the equality scheme. If the requirements are not met, the Commission will further advise the public authority on the prerequisite form and content of an equality scheme. If a public authority's equality scheme does not meet the requirements on form and content as per the Commission's desk audit and advice, the Commission then has the following options:

- if the equality scheme is from a United Kingdom-wide Government department<sup>21</sup>, the Commission can request the Government department to make a revised equality scheme<sup>22</sup>; or
- if the equality scheme is not from a United Kingdom-wide Government department, the Commission can refer the equality scheme to the Secretary of State who can either approve it; request the public authority to make a revised equality scheme; or make an equality scheme for the public authority<sup>23</sup>.

### **Requiring a revised scheme to be produced**

Where it thinks appropriate, the Commission may request any designated public authority to make a revised scheme. As Schedule 9 of the Act indicates, a public authority must respond to this request by submitting a scheme to the Commission within six months of the date of the request.

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<sup>21</sup> Northern Ireland Act 1998. Section 75 (3) (a).

<sup>22</sup> Northern Ireland Act 1998. Schedule 9, paragraph 12 (2) (b).

<sup>23</sup> Northern Ireland Act 1998. Schedule 9, paragraph 6 (1) (a) to paragraph 7 (2).

Furthermore, a public authority itself, independently, may wish to submit a revised scheme to the Commission. There must be consultation on the revised equality scheme and this must cover the revised scheme, as opposed to the changes only. Such a scheme will be treated as if it were received in response to a request for a revised scheme from the Equality Commission<sup>24</sup>.

## **Preparation of guidelines**

The Commission has produced this Guide as guidance for public authorities on the implementation of their Section 75 statutory duties. In addition, the Commission has also produced a range of advice and guidance which is relevant to the Section 75 statutory duties, including guidance on consulting children and young people<sup>25</sup>, undertaking equality impact assessments<sup>26</sup>, promoting good relations<sup>27</sup>, procurement<sup>28</sup>, and monitoring<sup>29</sup>. Further advice notes may also be produced on particular issues to clarify specific requirements based on the principles and procedures set out in this guidance.

## **Investigation of complaints**

The Commission may undertake investigations in respect of complaints made regarding the implementation of the Section 75 statutory duties by public authorities. Further information on complaints and investigations is given in chapter 4 of this Guide.

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<sup>24</sup> Northern Ireland Act 1998. Schedule 9, paragraph 8 (1) and (2).

<sup>25</sup> Equality Commission for Northern Ireland (June 2008). Lets Talk Lets Listen, Guidance for Public Authorities on Consulting and Involving Children and Young People.

<sup>26</sup> Equality Commission for Northern Ireland (February 2005). Practical Guidance on Equality Impact Assessment.

<sup>27</sup> Equality Commission for Northern Ireland (October 2007). Promoting Good Relations - A Guide for Public Authorities.

<sup>28</sup> Equality Commission for Northern Ireland and Central Procurement Directorate (May 2008). Equality of Opportunity and Sustainable Development in Public Sector Procurement.

<sup>29</sup> Equality Commission for Northern Ireland (July 2007). Section 75 of the Northern Ireland Act 1998 - Monitoring Guidance for Use by Public Authorities.

## **Chapter 4 Complaints and investigations**

Schedule 9 of the Northern Ireland Act 1998 relates to enforcement of the Section 75 statutory duties. Schedule 9 makes provision for two types of investigations related to the Section 75 statutory duties which the Commission can undertake, in relation to failure by public authorities to comply with their approved equality scheme. These are a paragraph 10 investigation or a paragraph 11 investigation.

Further detailed information on complaints is given in the Commission's Investigation Procedure under Paragraphs 10 and 11 of Schedule 9 of the Northern Ireland Act 1998 which is available from the Commission's website [www.equalityni.org](http://www.equalityni.org). The main points of the procedure are outlined below.

### **Paragraph 10 investigation**

A paragraph 10 investigation is an investigation undertaken by the Commission in response to a complaint that a public authority has failed to comply with its approved equality scheme. This is a complaint made in writing, under Schedule 9, paragraph 10, by a person (the complainant) who claims to have been directly affected by the failure of a public authority to comply with its approved equality scheme. Such a complaint must be brought to the notice of the public authority by the complainant in the first instance and the public authority given a reasonable opportunity to respond. Where the complainant is dissatisfied by the response from the public authority, they can approach the Commission. The Commission is required to investigate the complaint or to give the complainant reasons for not investigating.

### **Paragraph 11 investigation**

In addition to undertaking an investigation on the basis of a complaint made by a directly affected person as detailed above, the Commission itself can undertake an investigation where it believes that a public authority may have failed to comply with its approved equality scheme. The Commission can initiate such an investigation under Schedule 9, paragraph 11.

### **Complaints of failure to comply with an approved equality scheme**

An approved equality scheme is a scheme which has been submitted by a public authority to the Commission and which has subsequently been approved by the Commission.

The following is a list of matters that could potentially amount to a complaint of failure to comply with an approved equality scheme (this is not an exhaustive list):

- failure to comply with an approved scheme's commitments on public access to information and services;
- failure to carry out consultation in accordance with an approved scheme's commitments;
- failure to assess the equality implications of an existing or a new/proposed policy;
- failure to put appropriate internal arrangements in place to ensure that Section 75 statutory duties are effectively complied with as included in an approved scheme's commitments; or
- failure to properly comply with the public authority's complaints procedure in its approved scheme.

### **Paragraph 10 complaints**

A potential complainant must follow certain procedural requirements before the Commission can authorise an investigation under Schedule 9, paragraph 10.

A complainant must in the first instance bring the complaint to the attention of the public authority concerned and allow it a reasonable opportunity to respond to the complaint.

A public authority should respond to a complainant within the specific timescales as detailed in its complaints procedure contained within its equality scheme.

The Commission would generally be of the view that a public authority should respond to a complainant within one month of receiving a complaint made under Schedule 9, paragraph 10. However, there may be particular circumstances whereby the complexity of the matter under consideration requires a longer period for response. The Commission would take the view that up to two months for response should be sufficient in those circumstances.

If a complainant is dissatisfied with a public authority's response to their complaint, the complainant can then make a formal complaint in writing to the Commission and request the Commission to investigate under paragraph 10.

Such written complaints must be sent by the complainant to the Commission within 12 months of the day on which the complainant first became aware of the matters they are complaining about.

If the Commission receives a written complaint from a complainant requesting the Commission to undertake an investigation under paragraph 10, the Commission is required to either investigate the complaint or give the complainant reasons for not investigating.

The procedure also sets out the types of reasons why the Commission might decide not to authorise investigation of a complaint which has been made in accordance with these procedural requirements. Information is provided on who can claim to have been directly affected by a failure and the 12 month timescale for making a complaint. The Commission has also developed a template complaint form to be signed by the complainant and/or her/his representative to overcome any potential barriers created by the need for complaints to be submitted in writing.

### **Both types of investigations**

Commission investigations under both paragraphs 10 and 11 are limited to a potential failure to comply with an approved equality scheme, as opposed to more general complaints relating to allegations of discrimination or unfairness.

However, this does not necessarily exclude a complainant from raising a more general type of complaint with a public authority under its Section 75 complaints procedure that due regard has not been, or is not being, given to the promotion of equality of opportunity. It may be possible for the Commission to authorise an investigation into a potential failure to comply with an equality scheme in relation to the commitment given by a public authority in its equality scheme to have due regard to the promotion of equality of opportunity. Should such a complaint not be resolved under the authority's complaints procedure, it may be possible for a complainant to pursue the matter by way of judicial review.

### **Commission's role**

The Commission's approach to investigating complaints is to allow both the complainant and the public authority to set out fully any information they wish to put forward, and to gather necessary information.

Following an investigation, a series of steps are taken by the Commission in terms of drafting a report, and where relevant, setting out recommendations for action by the public authority and a reasonable timescale for implementation.

Schedule 9 makes provision for publication and distribution of the report<sup>30</sup>. In certain circumstances the Commission may refer the matter to the Secretary of State if a report recommends action by the public authority, and the Commission considers that the action is not taken within a reasonable time<sup>31</sup>.

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<sup>30</sup> Northern Ireland Act 1998. Schedule 9, paragraph 11 (2) (a), (b) and (c).

<sup>31</sup> Northern Ireland Act 1998. Schedule 9 paragraphs 11 and 12.

## **Chapter 5 Scope of the legislation**

This chapter covers the scope of the legislation and the key terms and concepts associated with the Section 75 legislation.

### **Section 75**

Section 75 of the Northern Ireland Act 1998 provides that:

- (1) A public authority shall in carrying out its functions relating to Northern Ireland have due regard to the need to promote equality of opportunity-
  - (a) between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
  - (b) between men and women generally;
  - (c) between persons with a disability and persons without; and
  - (d) between persons with dependants and persons without.
- (2) Without prejudice to its obligations under subsection (1), a public authority shall in carrying out its functions relating to Northern Ireland have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group.

### **Schedule 9**

Schedule 9 of the Northern Ireland Act 1998 sets out a range of provisions to give effect to the duties under Section 75. These primarily affect public authorities and require that they develop equality schemes which detail how they propose to fulfil the duties imposed by Section 75 in relation to their relevant functions. This will be covered in more detail in chapters 6 and 7.

### **Promotion of equality of opportunity**

The promotion of equality of opportunity entails more than the elimination of discrimination. It requires proactive measures to be taken to facilitate the promotion of equality of opportunity between the categories identified in Section 75 (1). The equality duty should not deter a public authority from taking action to address disadvantage among particular sections of society – indeed such action may be an appropriate response to addressing inequalities. There is no conflict between the Section 75 statutory duties and other affirmative action measures or positive action measures which a public

authority may undertake under anti-discrimination laws. Likewise, there should be no conflict with specific government strategic initiatives.

Discrimination of various kinds is already prohibited under existing anti-discrimination laws. Further detailed information on the relevant anti-discrimination laws is available on the Commission's website [www.equalityni.org](http://www.equalityni.org). Public authorities should note that it is permissible to take positive action measures as provided for by anti-discrimination laws in addition to the implementation of the duties contained within Section 75.

### **Section 75 (1) categories**

Section 75 (1) lists the nine categories for which due regard to the need to promote equality of opportunity must be paid, namely between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation; men and women; persons with a disability and persons without; and persons with dependants and persons without.

The duty imposed by Section 75 (1) extends to "persons with and without dependants" - a category of persons currently not covered by other Northern Ireland or UK anti-discrimination statutes. It is important that, when considering the impact of policies on the promotion of equality of opportunity, due regard is given to the need to promote equality of opportunity for all categories of people specified in Section 75 including persons with and without dependants.

Individuals do not neatly fit into one Section 75 category or another, individuals will invariably be members of a number of Section 75 categories. Thus Section 75 enables multiple identity issues to be considered as well as issues regarding particular categories of people.

### **Section 75 (2) categories**

The relevant categories of people for which regard must be paid to the desirability of promoting good relations, according to Section 75 (2), are between persons of different religious belief; persons of different political opinion; and persons of different racial group.

The Commission emphasises that this duty embraces and extends beyond the religious/political dimension of 'community relations'. Consideration of the needs and interests of all minority ethnic groups, including Irish Travellers, is important in this context.

The Commission's Review of the Effectiveness of Section 75<sup>32</sup> found that, to date, public authorities have tended to focus on the equality of opportunity duty rather than the good relations duty when addressing their commitment to Section 75. Given that Section 75 (2) is a legal requirement, it is vital that the good relations duty is taken seriously. It is important that its mainstreaming and implementation can be demonstrated and reported upon.

The Commission has published a Good Relations Guide<sup>33</sup> and will continue to advise on the implementation of the good relations duty generally, monitor the implementation of the duty and share information on progress with public authorities and those affected by the duty.

### **Relationship between the Section 75 (1) and (2) duties**

The Section 75 statutory duties require that a public authority must have due regard to the need to promote equality of opportunity, while it must also have regard to the desirability of promoting good relations.

The term due regard was intended to be, and is, stronger than regard, but in either case an authority is required by the statute to take the specified matters into account and give them the required weight when carrying out its functions relating to Northern Ireland. Authorities must appreciate Parliament's stated assessment that there is a need to promote equality of opportunity between the categories of persons specified in Section 75 (1) and a desirability of promoting good relations between persons of different religious belief, political opinion or racial group (Section 75 (2)). Recognition of the inter-dependence of equality and good relations is crucial.

The two Section 75 statutory duties are also treated somewhat differently in Schedule 9 of the Northern Ireland Act 1998, which sets out a method of enforcement of both duties. Nevertheless every public authority must take both factors properly into account in the way they carry out their functions relating to Northern Ireland.

From the outset, the relationship between the two Section 75 statutory duties was clear in terms of their interdependence; the then Secretary of State said:

*"[W]e regard equality of opportunity and good relations as complementary. There should be no conflict between the two objectives. Good relations*

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<sup>32</sup> Equality Commission for Northern Ireland (2007). Keeping it Effective: Reviewing the Effectiveness of Section 75 of the Northern Ireland Act 1998.

<sup>33</sup> Equality Commission for Northern Ireland (2007). Promoting Good Relations - A Guide for Public Authorities.

*cannot be based on inequality between different religions or ethnic groups. Social cohesion requires equality to be reinforced by good community relations. ... I repeat that we see no conflict between these two objectives*<sup>34</sup>.

To the extent that a public authority may perceive, in certain circumstances, a tension between the two duties, the following must be taken into account. Both duties have to be discharged in all circumstances. What the Section 75 statutory duties provide is that the discharge of the good relations duty cannot be an alternative to or cannot set aside the equality of opportunity duty.

There is, however, an inter-relationship between the two duties.

Under its statutory advisory role, the Commission has produced guidance on the implementation of the good relations duty generally for use by public authorities and those affected by the duty<sup>35</sup>.

### **Due regard and regard**

Having 'due regard' and 'regard' means that the weight given to the need to promote equality of opportunity and good relations is proportionate to the relevance of the particular duty to any function of a public authority. Therefore, having 'due regard' or 'regard' entails taking a proportionate approach in determining the relevance of equality of opportunity and/or good relations to a particular function or policy.

In respect of Section 75 (1), due regard relates to the duty of the need to promote equality of opportunity between the nine equality categories to ensure public authorities seek opportunities to improve policy, practice and service delivery. Having due regard means that the weight given by a public authority to the need to promote equality of opportunity is proportionate to that duty's relevance to a particular function. Due regard is the regard given that is appropriate in all the particular circumstances in which a public authority is carrying out its functions relating to Northern Ireland.

In respect of Section 75 (2), regard relates to the duty of the desirability of promoting good relations in the three good relations categories. This means that a public authority is required to take the good relations duty into account and give the duty the required weight when carrying out its functions relating to Northern Ireland. Certain functions may be more relevant than others to

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<sup>34</sup> Dr Marjorie Mowlam (27 July 1998). House of Commons, Official Report col.109.

<sup>35</sup> Equality Commission for Northern Ireland (2007). Promoting Good Relations - A Guide for Public Authorities.

the good relations duty. Public authorities should take this into consideration when assessing the relevance of their functions to the duty, as it may not be immediately apparent.

### **Designated public authorities**

A public authority is defined as designated by inclusion in certain statutory provisions and/or by designation by the Secretary of State. A public authority can be designated as follows:

1. Departments, corporations or bodies listed in Schedule 2 to the Parliamentary Commissioner Act 1967 and designated for the purposes of this section by order made by the Secretary of State. These are mostly United Kingdom-wide public bodies;
2. Bodies (other than the Equality Commission itself) listed in Schedule 2 to the Commissioner for Complaints (Northern Ireland) Order 1996;
3. Departments or other authorities listed in Schedule 2 to the Ombudsman (Northern Ireland) Order 1996; and
4. Any other person designated for the purpose of Section 75 by order made by the Secretary of State.

A public authority is included in the statutes listed in 1-3 above, through the mechanism of Orders in Council or through enabling legislation, that is, the legislation which brings a public authority into being. A list of public authorities designated for the purposes of Section 75 can be found on the Commission's website [www.equalityni.org](http://www.equalityni.org). As designation is an ongoing process, further authorities will from time to time be added to this list.

Once designated for Section 75 purposes, a public authority is bound by the legislative requirements of Section 75, in relation to having due regard to the need to promote equality of opportunity and regard to the desirability of promoting good relations, and must begin to implement its statutory obligations.

### **Exemption from the requirement to produce an equality scheme**

Under Schedule 9, the Commission can exempt a public authority subject to Section 75 from producing an equality scheme. Exemptions are notified in writing by the Commission. Exemptions being granted by the Commission either to a body entirely, or to particular functions of a body, will continue to be rare. Government made clear the limited circumstances in which it envisaged such exemptions being granted by the Commission:

*“We intend the exception to be used only in rare circumstances – for instance, when public authorities’ activities in Northern Ireland are minimal, and the effort involved in preparing the scheme, and having it validated by the Commission, would be disproportionate. In other circumstances, it might make sense to exempt a public authority<sup>36</sup>”.*

All public authorities covered by Section 75 (3) of the Act are subject to the Section 75 statutory duties even if they have been exempted from the requirement to produce an equality scheme by the Commission.

## **Functions**

The duties imposed by Section 75 (1) and (2) on a public authority are that in carrying out its functions relating to Northern Ireland it must have due regard to the need to promote equality of opportunity between the nine equality categories. Without prejudice to these obligations, a public authority is also required, in carrying out its functions, to have regard to the desirability of promoting good relations between the three good relations categories.

Section 98 (1) of the Act<sup>37</sup> defines the term functions. Section 98 (1) states that ‘functions’ includes ‘powers and duties’ of a public authority.

The expression ‘carrying out’ also embraces a wide range of activity. For example, a health authority is carrying out its powers, duties and other functions not just when its employees are performing surgical procedures but also when it is recruiting nursing or medical staff to perform the procedures and procuring the equipment and facilities to enable them to do so. Therefore, the functions covered by Section 75 statutory duties include employment and procurement. However, Section 75 statutory duties only apply where the public authority is carrying out its functions ‘relating to Northern Ireland’.

## **Policies**

Schedule 9 of the Act<sup>38</sup> specifies particular elements that an equality scheme must contain. In particular, paragraphs 4 (2) (b) and (c) of Schedule 9 require a scheme to state the public authority’s arrangements for assessing and consulting on the likely impact of policies adopted or proposed to be adopted by the authority and for monitoring any adverse impact of its policies on the promotion of equality of opportunity.

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<sup>36</sup> Mr Murphy (18 November 1998). House of Commons, Official Report col. 1069.

<sup>37</sup> Northern Ireland Act 1998. Section 98 (1).

<sup>38</sup> Northern Ireland Act 1998. Schedule 9, paragraph 4 (2).

In respect of this guidance, the term ‘policy’ is used to denote any strategy, policy (proposed/amended/existing) or practice and/or decision, whether written or unwritten.

With regard to policies, four particular points should be noted:

1. Policy is a broad, inclusive term. A policy is defined in the New Oxford Dictionary of English as -

“a course or principle of action adopted or proposed by a government, party, business or individual”.

In the present context, the term policies covers all the ways in which an authority carries out or proposes to carry out its functions relating to Northern Ireland. As has been indicated above, an authority’s employment and procurement policies are an integral aspect of the way in which an authority carries out its functions. Accordingly, the scheme must cover the arrangements for assessing the impact of such policies. Policies include unwritten as well as written policies.

2. The policies referred to in Schedule 9 are not just policies on the promotion of equality of opportunity. It is the likely impact (on the promotion of equality of opportunity) of any of the authority’s policies that has to be assessed. During the course of the debate on the legislation, Government clarified its intentions:

*“..... it is the Government’s intention that impact assessments should relate to the general run of a public authority’s policies. It is not intended that the assessment should be restricted only to policies aimed at promoting equality of opportunity<sup>39</sup>”.*

3. Most policies are not static, but dynamic. Policies are often reviewed and amended, or the way they are implemented changes, in response to new situations. The Section 75 statutory duties should be utilised as a developmental aid for policy development. Changes to a policy that are likely to have an impact on access to equality of opportunity and good relations should be assessed for such impact in the same way as an original, existing or new policy is assessed. The Commission recommends that such an assessment of a policy includes the

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<sup>39</sup> Lord Dubs (11 November 1998). House of Lords, Official Report, col.814.

screening of the policy (Annex 1) and consideration of subjecting the policy to an equality impact assessment<sup>40</sup>.

4. Whatever status or label is accorded to an amended or new policy, for example, 'draft', 'pilot', 'high level strategy' or 'sectoral initiative', the equality and good relations implications must be considered in terms of assessing the likely impact of a policy and the Commission recommends applying the screening procedure (Annex 1) and, if necessary, subjecting the policy to an equality impact assessment<sup>41</sup>.

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<sup>40</sup> Equality Commission for Northern Ireland (revised June 2004). Practical Guidance on Equality Impact Assessment.

<sup>41</sup> Ibid

## Chapter 6 Form and key elements of an equality scheme

### Form of an equality scheme

The equality scheme is an important document. It is both a statement of the public authority's arrangements for fulfilling the Section 75 statutory duties and a plan for their performance. The equality scheme must be in written form and must be both comprehensible and accessible. A public authority should ensure that systems are in place to ensure that an equality scheme is available in accessible formats in a timely fashion. Specific consideration should also be given to how best to communicate the equality scheme to children and young people, people with learning disabilities and ethnic minority communities.

### Key elements of an equality scheme

The Commission recommends that an equality scheme includes a general introductory statement specifying the purpose of the scheme and the public authority's commitment to the Section 75 statutory duties. This statement of commitment should be signed by the Minister and Permanent Secretary in the case of Government Departments or the Chair and the Chief Executive in the case of other public authorities.

Under Schedule 9 of the Act, public authorities designated for the purposes of Section 75 of the Act are required to submit an equality scheme to the Commission. Schedule 9 of the Act specifies requirements in relation to the content of an equality scheme. The Schedule, without being exhaustive, specifies particular elements that a scheme must contain.

An equality scheme must show how the public authority proposes to fulfil the Section 75 statutory duties in relation to their relevant functions and must also state the authority's arrangements for the discharge of the Section 75 statutory duties.

Requirements of Schedule 9 are detailed in the table below:

Schedule 9	Requirements
<b>Schedule 9 paragraph 4 (1)</b>	An equality scheme shall show how the public authority proposes to fulfil the duties imposed by Section 75 in relation to the relevant functions.

<b>Schedule 9 paragraph 4 (2) (a)</b>	An equality scheme shall state the authority's arrangement for assessing its compliance with the Section 75 statutory duties and for consulting on matters to which a duty under that section is likely to be relevant (including details of the persons to be consulted).
<b>Schedule 9 paragraph 4 (2) (b)</b>	An equality scheme shall state the authority's arrangements for assessing and consulting on the impact of policies adopted or proposed to be adopted on the promotion of equality of opportunity.
<b>Schedule 9 paragraph 4 (2) (c)</b>	An equality scheme shall state the authority's arrangements for monitoring any adverse impact of policies adopted by the authority on the promotion of equality of opportunity.
<b>Schedule 9 paragraph 4 (2) (d)</b>	An equality scheme shall state the authority's arrangements for publishing the results of such assessments as are mentioned in paragraph (b) and such monitoring as is mentioned in paragraph (c).
<b>Schedule 9 paragraph 4 (2) (e)</b>	An equality scheme shall state the authority's arrangements for training staff on issues relevant to Section 75 statutory duties.
<b>Schedule 9 paragraph 4 (2) (f)</b>	An equality scheme shall state the authority's arrangements for ensuring, and assessing, public access to information and to services provided by the authority.
<b>Schedule 9 paragraph 4 (3) (a)</b>	A scheme shall conform to any Guidelines as to form or content which are issued by the Commission with approval of the Secretary of State.
<b>Schedule 9 paragraph 4 (3) (b)</b>	A scheme shall specify a timetable for measures proposed in the scheme.
<b>Schedule 9 paragraph 4 (3) (c)</b>	A scheme shall include details of how the scheme will be published.

<b>Schedule 9 paragraph 8 (3)</b>	A scheme must include a commitment to conducting a review of the scheme within five years of its submission to the Commission or the scheme's last review, and to forwarding a report of this review to the Commission.
<b>Schedule 9 paragraph 9 (2)</b>	A scheme must include a commitment that, in making any decision with respect to a policy adopted or proposed to be adopted by it, a public authority shall take into account any such assessment and consultation as is mentioned in paragraph 4 (2) (b) carried out in relation to the policy.
<b>Schedule 9 paragraph 10</b>	A scheme must include the authority's arrangements for dealing with complaints arising from a failure to comply with the scheme.

In publishing the results of such an assessment as mentioned in Schedule 9, paragraph 4 (2) (b) (as detailed in table above), a public authority must provide:

- a statement of the aims of the policy to which the assessment relates;  
**Schedule 9 paragraph 9 (1)**
- details of any consideration given by the authority to measures which might mitigate any adverse impact of that policy on the promotion of equality of opportunity;  
**Schedule 9 paragraph 9 (1) (a)**
- details of any consideration given by the authority to alternative policies which might better achieve the promotion of equality of opportunity.  
**Schedule 9 paragraph 9 (1) (b)**

## **Chapter 7 Elements of an equality scheme**

This chapter provides more detailed guidelines on the content of the key elements of an equality scheme as referred to in the previous chapter.

### **General introductory statement**

The Commission recommends that an equality scheme includes a general introductory statement specifying the purpose of the scheme and a specific commitment to discharge the duties as they affect the functions of the public authority. We also recommend that a statement of commitment is signed by the Minister and Permanent Secretary in the case of Government Departments and the Chair and Chief Executive in the case of other public authorities.

The Commission recommends that a general introductory statement includes at least the following:

- an outline of the Section 75 statutory duties and the purpose of the equality scheme, specifying that the equality scheme will relate to how the public authority carries out all its functions, powers and duties relating to Northern Ireland;
- a commitment by the public authority to the allocation of the necessary resources in terms of people, time and money to ensure that the Section 75 statutory duties are complied with and that the equality scheme can be drawn up and implemented effectively and on time;
- a commitment to ensuring that there are effective internal arrangements in place to ensure that the Section 75 statutory duties are effectively complied with and for monitoring and reviewing progress;
- a commitment to the development and delivery of a planned programme of communication and training on the equality scheme.

### **Annual review of progress**

So as to facilitate the requirement that an equality scheme includes a public authority's arrangements for compliance with the duties, the Commission recommends that public authorities include in their equality scheme a commitment to conducting an annual review of progress on the implementation of the arrangements specified in their equality scheme to promote the Section 75 statutory duties. We also recommend that public authorities include a commitment to forwarding a report of this review to the

Commission by 31 August each year and to liaising with the Commission with a view to ensuring that such progress is maintained.

**Assessing its compliance with the duties under Section 75 and for consulting on matters to which a duty under that section is likely to be relevant (including details of the persons to be consulted)  
Schedule 9 paragraph 4 (2) (a)**

This section of a scheme must include at least the following elements:

- arrangements of how a public authority intends to assess its compliance with the Section 75 statutory duties;
- details of arrangements for consultation;
- a list of those to be included in consultation on matters relating to Section 75 statutory duties;
- a list of those to be consulted on the equality scheme.

In addition, the Commission recommends that in order for a public authority to support the effective implementation of its Section 75 statutory duties an equality scheme includes the following elements:

- an outline of internal arrangements;
- a commitment to developing an action plan, relative to the functions of the public authority, detailing measures to promote equality of opportunity and good relations.

Each of the above elements of an equality scheme is described in more detail below.

**Consultation  
Schedule 9 paragraph 4 (2) (a)**

Public authorities must include in their equality scheme details of arrangements for consultation.

Consultation enables an assessment to be made of the views of those who are affected by policy decisions or by the design of services. It can help authorities to become aware of issues and problems which policies may pose for various individuals or groups and which the authority might not otherwise discover. Consultation provides an important means of enabling those who may be adversely affected by public policy to participate in the process of policy making.

## Consultation lists

A public authority must compile a list of persons to be consulted on its equality scheme. Once an equality scheme has been prepared, and before submitting it to the Equality Commission, a public authority is required to consult in accordance with any Guidelines given by the Commission with:

- representatives of persons likely to be affected by the scheme;
- such other persons as may be specified in the Guidelines.

Public authorities must also create a list of persons to be consulted on matters relevant to Section 75 statutory duties. It will be for the public authority to decide whom it will consult and a list must be included within the scheme. We recommend that the list includes the Equality Commission and a range of voluntary, community and trades unions, business organisations and organisations representing the various categories included in Section 75. However, the Commission recommends that a consultation list should be indicative and not exhaustive and is reviewed on an annual basis to ensure it remains relevant to the functions and policies of the public authority. We also recommend that a public authority's consultation list is made available on its website.

Although the legislation requires a list of persons to be consulted, the Commission recommends that to ensure the most effective use of a public authority's and the community/voluntary sector's resources, a targeted approach to consultation is taken. For example, we recommend that all consultees are notified by email or by post of the policy being consulted on. Public authorities may then consider which consultees have a particular interest in the policy being consulted on and adopt a more targeted approach to consultation with them. In addition, particular policies may be more relevant than others to specific consultees, and we recommend public authorities take this into consideration when consulting to ensure that they consult directly with the most appropriate affected individuals or representative groups.

The Commission recommends that it is consulted as part of a public authority's consultation programme, whether the consultation is on an equality scheme, action measures, equality impact assessment or any other consultation relevant to the Section 75 statutory duties. The Commission will adopt a strategic approach to responding to such consultations.

## Consultation

Approaches to consultation will vary. However, the Commission recommends that an equality scheme includes the public authority's commitment to carrying out consultations in accordance with the following recommendations:

- consultation with affected individuals and representative groups begin as early as possible;
- consideration be given as to whether face-to-face meetings, focus groups, written documents with the opportunity to comment in writing, questionnaires, information/notification by email with an opportunity to opt in/opt out of the consultation, internet discussions or telephone consultations are appropriate methods. This list is not exhaustive and public authorities may develop other additional methods of consultation more appropriate to key stakeholders and the matter being consulted upon;
- that public authorities engage with affected individuals and representative groups to identify how best to consult or engage with them and consider a more proactive and targeted approach to consultation with key stakeholders;
- that the accessibility of the language and the format of information be considered to ensure that there are no barriers to the consultation process, that information should be made available on request in accessible formats and that systems are in place in order that information can be made available in accessible formats in a timely fashion. In addition, we recommend that specific consideration is given to how best to communicate information to children and young people, people with learning disabilities and minority ethnic communities. Further guidance on how to consult with children and young people is included in the Commission's publication – 'Lets Talk Lets Listen'<sup>42</sup>;
- that specific training be provided to ensure that those facilitating consultations have the necessary skills to communicate effectively with consultees;
- that adequate time be allowed for groups to consult amongst themselves as part of the process of forming a view. We recommend that the consultation period lasts for a minimum of twelve weeks. However, the Commission recognises that there may be exceptional circumstances when this timescale is not feasible, for example implementation of EU Directives or GB legislation, to meet Health and Safety requirements, urgent public health matters or to comply with

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<sup>42</sup> Equality Commission for Northern Ireland (June 2008), Lets Talk Lets Listen, Guidance for Public Authorities on Consulting and Involving Children and Young People.

Court judgements. In these circumstances a public authority can shorten timescales to 8 weeks or less, if required, before the policy is implemented, but can continue consultation thereafter and review the policy as part of its monitoring commitments;

- that appropriate measures are taken to ensure full participation in any meetings that are held. Affected individuals and representative groups may have different needs and customs and we recommend that public authorities consider the time of day, the appropriateness of the venue, in particular whether it can be accessed by those with disabilities, how the meeting is to be run, the use of appropriate language, whether a sign language interpreter is necessary, and the provision of childcare;
- that information is made available to ensure meaningful consultation, including detailed information on the policy proposal being consulted upon and any relevant quantitative and qualitative data;
- that feedback to consultees is provided in a timely manner and that a feedback report includes summary information on the policy consulted upon, a summary of consultees' comments and a summary of the public authority's consideration of and response to consultees.

Further information on consultation is also available<sup>43</sup>.

## **Internal arrangements**

The Commission recommends that public authorities identify and maintain effective internal arrangements for dealing with and reporting on the Section 75 statutory duties as well as a point of contact for those affected by them and that clear lines of responsibility are established within each public authority to ensure the effective implementation of the Section 75 statutory duties and the approved equality scheme.

Accordingly, it is important that a public authority designates primary responsibility to a specific senior member of staff, operating at Board level, to ensure accountability for reporting on the delivery of the Section 75 statutory duties. Leadership provided at the highest levels in a public authority, for example, Minister and Permanent Secretary or Chair and Chief Executive is critical to the successful achievement of equality mainstreaming. It will be for each public authority to decide on how to proceed to ensure optimum effectiveness.

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<sup>43</sup> Department for Business, Enterprise and Regulatory Reform (July 2008). Code of Practice on Consultation.

## **Commitment to develop action measures/action plans**

The Commission recommends that public authorities include in their equality scheme a commitment to developing action plans detailing measures to promote equality of opportunity and good relations. It may be helpful as a means of demonstrating that due regard to the need to promote equality of opportunity and regard to the desirability of promoting good relations is being paid, for a public authority to develop an action plan which details action measures to promote equality of opportunity and good relations. Further detailed guidance on the development of action measures/action plans is outlined in chapter 8 of this Guide.

## **Assessing and consulting on the likely impact of policies adopted or proposed to be adopted by the authority on the promotion of equality of opportunity.**

### **Schedule 9 paragraph 4 (2) (b)**

A scheme must include an outline of a public authority's arrangements for assessing and consulting on the impact of policies adopted or proposed to be adopted on the promotion of equality of opportunity. This section of the equality scheme must specify the authority's arrangements for assessing the impact of policies and the authority's arrangements for consulting on the likely impact of policies.

The Commission recommends screening (Annex 1) and equality impact assessment<sup>44</sup> as tools to be utilised for assessing the likely impact of a policy on the promotion of equality of opportunity and on good relations.

## **Screening**

The purpose of screening is to identify those policies that are likely to have an impact on equality of opportunity and/or good relations. Screening enables a public authority to identify those policies which are more relevant to the Section 75 statutory duties and on that account be considered for an equality impact assessment. It also helps to identify policies which offer better opportunities for the discharge of the Section 75 statutory duties for people in any of the equality or good relations categories.

Further guidance on undertaking screening is provided in Annex 1 of this Guide and a screening flowchart and template are provided in Appendix 1.

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<sup>44</sup> Equality Commission for Northern Ireland (February 2005). Practical Guidance on Equality Impact Assessment.

## **Equality impact assessment**

The Commission recommends that, once a policy is screened and if it has a major potential to impact on equality of opportunity and good relations, then it should be subjected to an equality impact assessment.

An equality impact assessment is a thorough and systematic analysis of a policy, whether that policy is formal or informal, and irrespective of the scope of that policy or the size of the public authority. The primary function of an equality impact assessment is to determine the extent of any differential impact of a policy upon the Section 75 categories and to determine if the differential impact is an adverse impact. An equality impact assessment can assist in decision-making and improve policy making by adding to the evidence base available.

The Commission's publication, Practical Guidance on Equality Impact Assessment (February 2005), provides detailed guidance on our recommended process to be followed for undertaking equality impact assessments.

### **Arrangements for consulting on the likely impact of policies Schedule 9 paragraph 4 (2) (b)**

This section of the scheme must state the public authority's arrangements for consulting on the likely impact of policies adopted or proposed to be adopted by the authority. The scheme must list persons who will be consulted. We recommend that the list includes the Equality Commission and other relevant interest groups, for example, other public authorities, voluntary/community sector, trades unions and other groups with a legitimate interest in the matter. The Commission recommends that those persons directly affected by the policy to be assessed are included in the consultation and that the consultation is conducted in accordance with the consultation recommendations detailed earlier in this Guide.

### **Arrangements for monitoring any adverse impact of policies adopted by the authority on the promotion of equality of opportunity Schedule 9 paragraph 4 (2) (c)**

Public authorities must outline their monitoring arrangements in their equality scheme. Public authorities must monitor any adverse impact of policies adopted and this section of the equality scheme must specify how the authority will do this. Monitoring involves the collection and analysis of both

quantitative and qualitative information and the Commission recommends that systems are put in place to monitor the impact of policies.

An effective monitoring system will indicate the actual impact of policies; whether and on whom there is any adverse impact; help to identify ways to mitigate or relieve such impact; and provide pointers to alternative policy approaches that might more effectively promote equality of opportunity.

The Commission recommends that public authorities undertake at least an annual review of equality impact assessment monitoring information and publish the results of this as part of the authority's annual report.

The Commission recommends that public authorities monitor more broadly than strictly for adverse impacts as required by Schedule 9, and monitor policies to identify opportunities to better promote equality of opportunity and good relations for the relevant Section 75 categories. Monitoring can assist public authorities to deliver better public services and continuous improvements. The development of equality monitoring arrangements that are appropriate to the size and nature of an organisation can, with careful shaping, meet both the demands of Section 75 activities and broader strategic aims of organisational development and improvement. For example, demonstrating that general services are accessible to all sections in the community or developing aspects of services to better meet the needs of specific users.

Further advice on the collection and consideration of available data and research and on monitoring for adverse impact in the future, is also contained in the Commission publication, Practical Guidance on Equality Impact Assessment. In considering methods of monitoring and evaluation, we recommend that public authorities take account of the Commission's publication, Monitoring Guidance for Use by Public Authorities, which provides detailed advice on all aspects of monitoring, including data collection, storage and analysis.

**Publishing the results of such assessments as are mentioned in paragraph (b) and such monitoring as is mentioned in paragraph (c) Schedule 9 paragraph 4 (2) (d)**

A scheme must set out the authority's arrangements for publishing the results of assessments of the likely impact of a policy and also must set out the authority's arrangements for publishing the results of monitoring any adverse impact of policies. The Commission recommends screening and equality impact assessment as the most effective tools for assessing the likely impact of a policy on the promotion of equality of opportunity and on good relations.

The Commission recommends that this section of the scheme gives details of how and where screening reports and templates, the results of equality impact assessments and the results of monitoring adverse impact of policies will be published. We recommend that public authorities ensure that all information published is accessible and can be made available in alternative formats on request.

### **An authority's arrangements for training staff on issues relevant to the duties**

#### **Schedule 9 paragraph 4 (2) (e)**

This section of the scheme must state the public authority's arrangements for the training of staff on both the equality of opportunity and good relations duties. The Commission recommends that this includes an effective communication and training programme on the content of the equality scheme for all staff and a planned programme for the delivery of such training.

The Commission recommends that the communication and training programme includes at least the following, bearing in mind that the key consideration is how to ensure that all staff are conscious of how best to reflect the duties in carrying out the functions of the public authority:

- effective internal and external communication of the commitment of the head of the public authority to the Section 75 statutory duties;
- all staff should have access to a copy of the equality scheme and awareness training should be provided for all staff on scheme commitments to ensure that employees fully understand their role in implementing the scheme;
- more focused training for staff in management roles, and other specialist staff, such as trainers, lawyers and staff involved in research and data collection, policy development, service design, conducting equality impact assessments, consultation, monitoring and evaluation;
- induction training for new staff;
- monitoring and evaluation of training.

**The authority's arrangements for ensuring and assessing public access to information and to services provided by the authority  
Schedule 9 paragraph 4 (2) (f)**

This section of the scheme must specify how the authority will ensure that both the information which it disseminates and the services which it provides, are made accessible in a way which promotes equality of opportunity. The Commission recommends that this includes making arrangements for the provision of information in accessible formats, including non-written formats and minority languages. It will also require a commitment to monitoring access to information and services, across all functions, to ensure equality of opportunity.

**The authority's timetable for measures proposed in the scheme  
Schedule 9 paragraph 4 (3) (b)**

This section of the scheme must specify a timetable for measures proposed in the scheme. Measures included in a timetable could include training, undertaking assessments of policies, monitoring of policies, consultation, ensuring and assessing access to information and services and any other measures proposed in the scheme. The Commission recommends that a timetable for implementation of measures proposed in a scheme is linked to implementation of a public authority's corporate plan.

**Details of how the scheme will be published  
Schedule 9 paragraph 4 (3) (c)**

The scheme must be published which may include press releases, prominent advertisements in the press, the internet and direct mail shots to groups representing the various categories in Section 75.

**A commitment to conducting a review of the scheme within five years of its submission to the Equality Commission and to forwarding a report of this review to the Equality Commission  
Schedule 9 paragraph 8 (3)**

This review is a formal review of the scheme to evaluate its effectiveness in meeting the public authority's Section 75 statutory duties. It is therefore different from the annual review of progress on the implementation of the measures in the scheme. If the scheme is not effective a revised scheme may be required. The Commission produces guidance on how schemes should be reviewed.

**Commitment that in making any decision with respect to a policy adopted or proposed to be adopted by it, a public authority shall take into account any such assessment and consultation carried out in relation to the policy**

**Schedule 9 paragraph 9 (2)**

This must be a clear statement in the scheme and should clarify the processes outlined to meet the Section 75 statutory duties, such as how the assessment of the likely impact of policies adopted or proposed to be adopted by the authority on the promotion of equality of opportunity will inform policy development and decisions. This is an important commitment and failure to comply with it could lead to complaints of failure to comply with a scheme.

**The authority's arrangements for dealing with complaints arising from a failure to comply with the scheme**

**Schedule 9 paragraph 10**

This section of the scheme should detail a procedure for dealing with complaints including where and how complaints may be raised and a timetable for responding.

## **Chapter 8 Action measures**

The Commission's Effectiveness Review found that equality schemes are a useful framework to demonstrate a public authority's commitment to have due regard to the need to promote equality of opportunity and regard to the desirability of promoting good relations. In order to effectively demonstrate that a public authority has paid due regard to the need to promote equality of opportunity and regard to the desirability of promoting good relations through the implementation of its equality scheme, the Commission recommends that a public authority develops action measures/action plans to promote equality of opportunity and good relations. The Commission recommends that public authorities consider their individual roles in the promotion of equality of opportunity and good relations and how, through the implementation of their equality schemes, they can meet their statutory obligations under Section 75.

We recommend that public authorities take a systematic approach to examining their functions and how these relate to the promotion of equality of opportunity and good relations. As part of this approach, we recommend that public authorities develop action measures/action plans to promote equality of opportunity and good relations which are based on the context of their functions and are implemented through the framework of equality schemes.

Action measures/action plans to promote equality of opportunity and good relations should be informed by an analysis of the inequalities that exist for those Section 75 categories affected by the functions of the public authority.

### **Commitment to develop action measures/action plans**

At the outset of the development of an equality scheme, the Commission recommends that public authorities include within their equality scheme a commitment to develop action measures/action plans which detail how they will undertake the promotion of equality of opportunity for the nine equality categories and good relations for the three good relations categories.

### **Action measures/action plans and business planning**

The Commission recommends that public authorities link the development of action measures/action plans to their corporate planning cycle, in order that equality of opportunity and good relations are incorporated and mainstreamed at a strategic level into the business of the public authority.

At an operational level, we recommend that implementation of action measures/action plans are included in a public authority's business planning cycle. Action measures/action plans provide a mechanism for the realisation of measures to achieve equality outcomes for the Section 75 equality and good relations categories.

The Commission will not consider the content of action plans or action measures as part of the approval process for equality schemes. However, the Commission recommends public authorities submit these along with their equality schemes in order to demonstrate their commitment to implementing their equality schemes.

### **Action measures**

Action measures should be specific, measurable, linked to achievable outcomes, realistic and timely. These can include action measures which public authorities initiate, sponsor, participate in, encourage or facilitate and can be internal or external or both.

Action measures should be set out in the public authority's action plan, with performance indicators and timescales for their achievement. The public authority should monitor progress on the delivery of its action plan in conjunction with its scheme.

It is particularly important when developing action measures to focus on impact and outcomes rather than simply outputs. Public authorities should therefore consider the likely outcome or impact the action measure will have on the promotion of equality of opportunity and good relations; what monitoring information they need to collect in order to evaluate whether the outcome has been achieved; and once the action measure has been taken the degree to which the outcome was achieved.

### **Steps to develop an action plan**

The Commission recommends that, in preparing action measures/action plans, public authorities should:

- undertake an audit of inequalities to identify the range of key inequalities which the discharge of the public authority's functions is intended to or is likely to address;
- develop action measures based on functions and key inequalities identified;
- prioritise those actions which have most impact on inequalities;
- develop performance indicators for delivery of action measures;

- develop timescales for implementation of action measures;
- develop an action plan;
- consult on action plan.

## **Developing action plans**

In developing an action plan, the Commission recommends that a public authority considers what inequalities can be addressed through the exercise of its specific functions and/or what opportunities exist to promote equality of opportunity and good relations. We recommend that action plans include specific measures to promote equality of opportunity and good relations for the relevant equality and good relations categories; action plan measures are accompanied by performance indicators for their completion or review and are linked to a public authority's strategic aims and functions. We also recommend that action plans should be flexible, adaptable and responsive to changing circumstances and needs.

To ensure that measures included in an action plan are relevant to the functions of a public authority, the Commission recommends that they are developed on the basis of an analysis of inequalities that exist for the public authority's service users and those affected by its policies. The Commission recommends that public authorities undertake an 'audit of inequalities' to inform the development of their action plans.

In order to obtain sufficient and relevant data to effectively inform action plans, the Commission will build in a lead in time of three months for the undertaking of an audit of inequalities. The timeframe for undertaking an audit of inequalities will be in addition to the six month timescale for public authorities to produce an equality scheme, once requested by the Commission. Therefore, prior to the Commission formally requesting a new/revised equality scheme from a public authority, an additional three months advance notice of the intent to request such equality schemes will be given by the Commission to facilitate the undertaking of an audit of inequalities by a public authority.

## **Audit of inequalities**

An audit of inequalities should set the framework for a public authority to address inequalities relevant to their functions. It should enable a public authority to identify potential functional areas for further or better discharge of the Section 75 statutory duties and can therefore inform key strategic actions.

An audit of inequalities is a systematic review and analysis of inequalities which exist for service users and those affected by a public authority's policies. It can be used by a public authority to inform its work in relation to the promotion of the Section 75 equality and good relations duties. It can also enable public authorities to assess progress on the implementation of the Section 75 statutory duties, as it should provide baseline information on existing inequalities relevant to a public authority's functions.

To undertake an audit of inequalities, public authorities should first gather information as an evidence base to inform their audit. As a minimum requirement, public authorities should begin to collate and analyse existing information both internal and external as sources of information for an audit.

Public authorities should analyse collated data, disaggregated by Section 75 categories, to develop indicators of levels of inequalities. Indicators should be utilised to inform the setting of measures to promote equality of opportunity and good relations to achieve equality outcomes for the Section 75 categories. An audit of inequalities entails an analysis of information gathered to inform the development of action plans.

Sources of information for the undertaking of an audit of inequalities could include internal information such as Article 55 reviews; customer surveys; Section 75 monitoring information; complaints information; data on uptake of services; equality impact assessments and annual progress reports to the Commission. Some examples of external information sources are existing datasets referenced in the Commission's Practical Guidance on Equality Impact Assessment (February 2005), the Commission's Statement on Key Inequalities in Northern Ireland (October 2007) and datasets held by the Northern Ireland Statistics and Research Agency. Public authorities may also wish to consider information held in other jurisdictions which could inform their audit of inequalities. Public authorities should, where appropriate, seek advice from other relevant experts. The scale and size of an audit of inequalities should be proportionate to the size and relative functions of a public authority. The audit of inequalities should be reviewed within the context of the review of equality schemes. The Commission recognises that this is a developing process and public authorities should focus on priorities and outcomes improving over time.

### **Consult on action plans**

The Commission recommends that public authorities consult on their action plans prior to submission to the Commission.

## **Review and monitor action plans**

Public authorities should review and update action plans over the life time of their equality scheme to ensure that they remain effective and relevant to their functions and work. The timescales for action plans can be between 1-5 years, however, the Commission recommends that action plan timescales should correlate to a public authority's corporate planning cycle and scheme. Public authorities should inform the Commission of any changes or amendments to action plans and should also include this information in their annual progress report to the Commission.

Effective ongoing monitoring should be considered at all stages of the implementation of action plans to allow for measurement and reporting of progress on their delivery.

## **Annex 1     Screening**

Annex 1 outlines a range of information relating to screening. This information should be read in conjunction with the model screening template developed by the Commission enclosed in Appendix 1.

### **Screening of policies**

In the context of Section 75, policy is very broadly defined (chapter 5) and covers all the ways in which a public authority carries out or proposes to carry out its functions relating to Northern Ireland.

In respect of this guidance, the term 'policy' is used to denote any strategy, policy (proposed/amended/existing) or practice and/or decision, whether written or unwritten.

For example, a policy may include planning decisions; service changes; corporate strategies; policy development; practices; guidelines; procedures and protocols; board/council papers and decisions etc, both written and unwritten.

The purpose of screening is to identify those policies that are likely to have an impact on equality of opportunity and/or good relations. Screening is one of the key tools to enable public authorities to fulfil their statutory obligations and mainstream the Section 75 equality and good relations duties into policy development and service delivery. It provides an opportunity to improve decision-making and support 'evidence based' policy making.

Screening will help improve a public authority's service provision through a systematic review of all services, policies, procedures, practices and/or decisions. It should be completed at the earliest opportunity in the policy development process. For more detailed strategies or policies that are to be put in place, through a series of stages, a public authority should then consider screening at various times during implementation.

Screening is more useful if it is introduced at an early stage when developing or reviewing a policy, or during successive stages of implementation (e.g. strategic review, options paper). To undertake screening after policy proposals have been developed may be inefficient in terms of time and may be ineffective if policy makers are reticent to make changes at a later stage. It may also duplicate policy development processes.

Screening will provide tangible evidence as to how a public authority has given 'due regard' to the promotion of equality of opportunity and 'regard' to the desirability of promoting good relations in the initial stage of policy development.

## **Undertaking screening**

The Commission recommends that the lead role in the screening of a policy is taken by the policy decision-maker who has the authority to make changes to that policy.

The screening of a policy should also involve other relevant team members, those who implement the policy and staff members from other relevant work areas. The Commission considers it good practice to include key stakeholders in the screening process.

As a first step in the screening exercise, public authorities should gather evidence to inform their screening. Evidence to help inform the screening process may take many forms. The public authority should ensure that any screening decision is informed by relevant data. This may be either quantitative or qualitative or both and should help indicate whether or not there are likely equality of opportunity and/or good relations impacts associated with a policy. The absence of evidence does not indicate that there is no likely impact. A public authority should make arrangements to obtain relevant information, whether quantitative or qualitative. If a public authority having taken reasonable steps to obtain relevant data, concludes that none is available, it may then wish to consider subjecting the policy to an equality impact assessment <sup>45</sup>.

Relevant information will enable a public authority to clearly demonstrate the reasons for a policy being either 'screened in' for an equality impact assessment or 'screened out' from an equality impact assessment.

Evidence can come from many sources and may include information from the public authority's own management information systems, including service monitoring and complaints handling systems, or from engagement in research, surveys or consultation exercises. Information to help inform the screening of a policy may also be sourced from commissioned research or from research produced by other public authorities, representative groups, trades unions, business organisations or universities. In the absence of quantitative information there may be other anecdotal evidence, for example,

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<sup>45</sup> Equality Commission for Northern Ireland (February 2005). Practical Guidance on Equality Impact Assessment.

feedback from service users and affected groups on their experience of the authority.

Through screening a public authority can make an assessment of the likely impact, whether 'minor' or 'major', of its policy on equality of opportunity and/or good relations for the relevant categories. In some instances, screening may identify the likely impact is none.

If a public authority's screening concludes that the likely impact is 'minor' (pages 64-65), in respect of one, or more, of the equality of opportunity and/or good relations categories, the authority may decide to consider measures that might mitigate the policy impact. This may involve consideration of lessening the severity of the impact by amending the policy or introducing an alternative policy or policies to better achieve the promotion of equality of opportunity and/or good relations. This screening decision should be 'signed off' by the appropriate policy lead within the public authority.

If a public authority's screening concludes that the likely impact is 'major' (pages 64-65), in respect of one, or more, of the equality of opportunity and/or good relations categories, the authority should consider subjecting the policy to an equality impact assessment. This screening decision should be 'signed off' by the appropriate policy lead within the public authority.

If a public authority's screening concludes that the likely impact is 'none', in respect of one, or more, of the equality of opportunity and/or good relations categories, the authority may decide to screen the policy out. If a policy is 'screened out' as having no relevance to equality of opportunity or good relations, a public authority should give details of the reasons for the decision taken. This screening decision should be 'signed off' by the appropriate policy lead within the public authority.

Public authorities should take care in particular not to 'screen out' policies that have a procurement aspect if there is potential to promote equality of opportunity through the procurement of services. The Commission has produced detailed guidance on integrating equality of opportunity and sustainable development into public sector procurement<sup>46</sup>. This guidance can be accessed at the Commission's website, [www.equalityni.org](http://www.equalityni.org).

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<sup>46</sup> Equality Commission for Northern Ireland and the Central Procurement Directorate (May 2008). Equality of Opportunity and Sustainable Development in Public Sector Procurement.

## **Screening questions**

The Commission has developed a series of four questions which should be applied to all policies as part of the screening process.

The four screening questions are intended to identify those policies that are likely to have an impact on equality of opportunity and/or good relations.

In order to answer the screening questions, public authorities should consider the implications of the policy being screened and gather evidence/information (qualitative/quantitative) which has been utilised to inform the policy. In taking this evidence into account public authorities will need to consider the different needs, experiences and priorities for each of the Section 75 equality categories.

The four screening questions that should be applied to policies are:

- What is the likely impact on equality of opportunity for those affected by this policy, for each of the Section 75 equality categories? (minor/major/none)
- Are there opportunities to better promote equality of opportunity for people within the Section 75 equality categories?
- To what extent is the policy likely to impact on good relations between people of a different religious belief, political opinion or racial group? (minor/major/none)
- Are there opportunities to better promote good relations between people of a different religious belief, political opinion or racial group?

The Commission has developed a screening template which may assist public authorities in undertaking effective screening (Appendix 1).

## **Screening decisions**

Completion of screening should lead to one of the following three outcomes:

1. the policy has been 'screened in' for equality impact assessment;
2. the policy has been 'screened out' with mitigation or an alternative policy proposed to be adopted;

3. the policy has been ‘screened out’ without mitigation or an alternative policy proposed to be adopted.

The third outcome above will include some policies which are ‘technical’ in nature and will have no bearing in terms of their likely impact on equality of opportunity and/or good relations for people within the equality and good relations categories. Screening will help to identify these types of policies at an early stage, thus enabling them to be ‘screened out’.

### **Screening and good relations duty**

The Commission recommends that public authorities should carefully consider those policies that may have implications for equality of opportunity and/or good relations. The Commission recommends that a policy is ‘screened in’ for equality impact assessment if the likely impact on good relations is ‘major’. While there is no legislative requirement to engage in an equality impact assessment in respect of good relations, this does not necessarily mean that equality impact assessments are inappropriate in this context. There may be instances/circumstances where it may be appropriate to undertake an equality impact assessment in this context and this should be carefully considered before commencing an equality impact assessment.

Policies which a public authority might consider subjecting to an equality impact assessment could include, for example, policies regarding celebratory bonfires, flags and emblems, community funding, Traveller encampments or the use of interpreting services. This list of policies is not prescriptive nor exhaustive. There may be other policies relevant to the Section 75 statutory duties which may be considered for equality impact assessment.

### **Screening and legislative proposals**

The Section 75 statutory duties apply to the development of legislative proposals. Proposals to the Northern Ireland Executive or memoranda to the Northern Ireland Assembly Committees should confirm that the legislative proposal has been subjected to the requirements of the Section 75 statutory duties.

### **Screening report**

Public authorities should prepare and publish for information regular reports on their screening exercises. The screening report should detail all policies screened over a three month period and include decisions reached. An electronic version, or hard copy if more suitable for recipients, of the

screening report should be sent to all consultees on a quarterly basis and should include details of:

- the name of the public authority;
- the name of the policy;
- whether the policy has been 'screened in' for equality impact assessment;
- whether the policy has been 'screened out' with mitigation or an alternative policy proposed to be adopted;
- whether the policy has been 'screened out' without mitigation or an alternative policy proposed to be adopted;
- the timetable for conducting all equality impact assessments;
- a link to the completed screening template on the public authority's website.

## **Screening template**

The Commission has developed a model screening template (Appendix 1) which it recommends public authorities use as a tool to conduct screening exercises. (A copy of the screening template may be downloaded from the Commission's website [www.equalityni.org](http://www.equalityni.org)).

The screening template provides a step by step guide to the screening process and as such is designed to serve as a tool to enable a public authority to fulfil its Section 75 statutory duties. It ensures that the screening questions are consistently and objectively applied to all policies. By using the screening template a public authority can record that it has taken equality of opportunity and/or good relations considerations into account. The template ensures transparency in the undertaking of screening. The screening template can also form the basis of a public authority's screening report.

A public authority can use the screening template to help it identify any equality of opportunity or good relations issues associated with a particular policy. It can also help identify any gaps in information; how a public authority might address those gaps and who it would be useful for the public authority to talk to in respect of such information gaps.

Utilisation of the screening template can help a public authority identify whether or not it needs to mitigate a policy or introduce an alternative policy to better promote equality of opportunity or good relations. The screening template can be used to inform a public authority's consideration of the need to undertake an equality impact assessment of a specific policy.

A copy of the screening template for each policy screened should be 'signed off' and approved by the senior manager responsible for the policy. Following completion of the screening process, the screening template should be made available on the public authority's website and on request.

If a consultee/stakeholder, including the Commission, raises a concern with supporting evidence about a screening decision, a public authority should reconsider screening its policy again.

# Appendix 1

## Screening flowchart and template

### Introduction

**Part 1. Policy scoping** – asks public authorities to provide details about the policy, procedure, practice and/or decision being screened and what available evidence you have gathered to help make an assessment of the likely impact on equality of opportunity and good relations.

**Part 2. Screening questions** – asks about the extent of the likely impact of the policy on groups of people within each of the Section 75 categories. Details of the groups consulted and the level of assessment of the likely impact. This includes consideration of multiple identity and good relations issues.

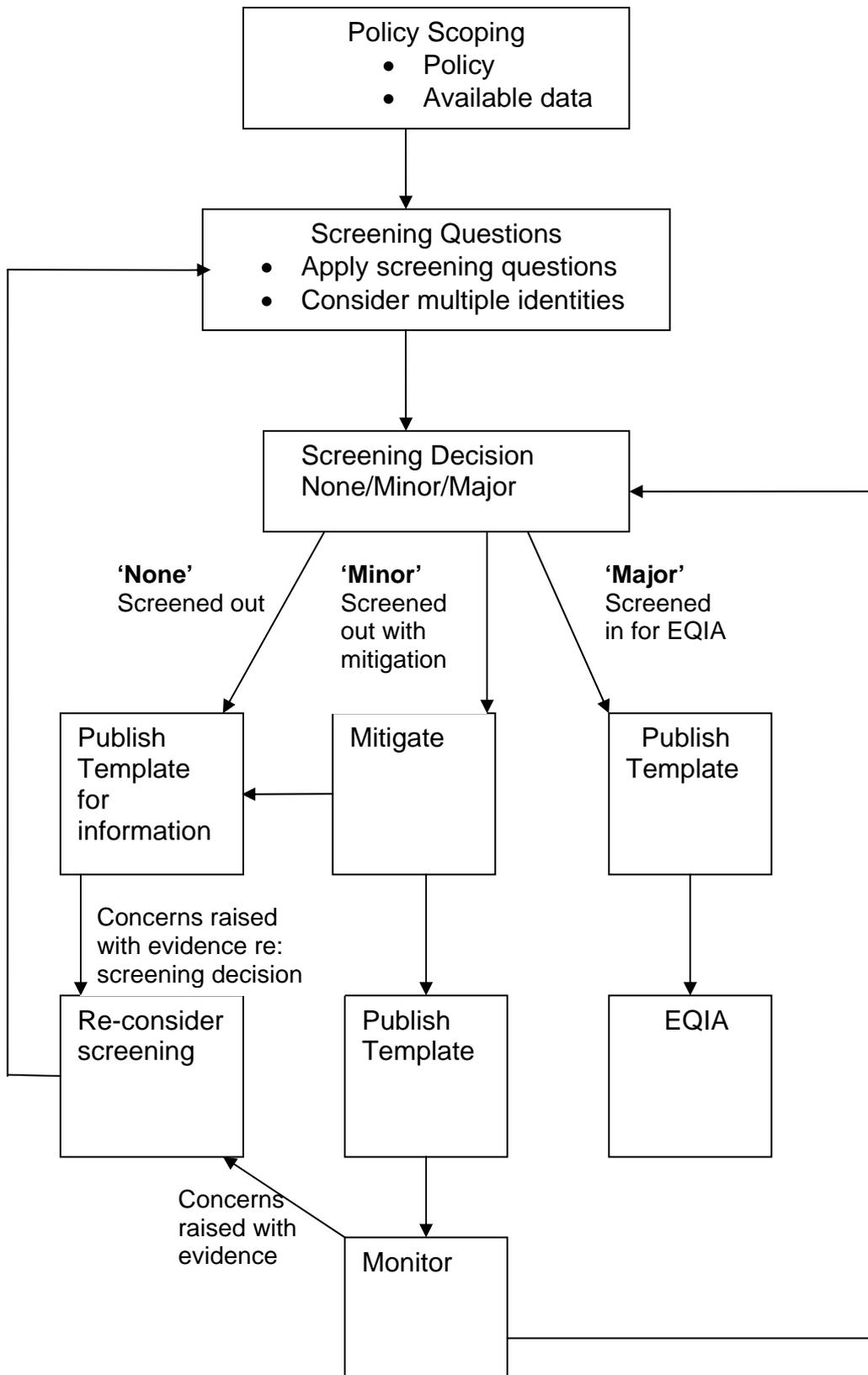
**Part 3. Screening decision** – guides the public authority to reach a screening decision as to whether or not there is a need to carry out an equality impact assessment (EQIA), or to introduce measures to mitigate the likely impact, or the introduction of an alternative policy to better promote equality of opportunity and/or good relations.

**Part 4. Monitoring** – provides guidance to public authorities on monitoring for adverse impact and broader monitoring.

**Part 5. Approval and authorisation** – verifies the public authority's approval of a screening decision by a senior manager responsible for the policy.

A screening flowchart is provided overleaf.

# SCREENING FLOWCHART



## Part 1. Policy scoping

The first stage of the screening process involves scoping the policy under consideration. The purpose of policy scoping is to help prepare the background and context and set out the aims and objectives for the policy, being screened. At this stage, scoping the policy will help identify potential constraints as well as opportunities and will help the policy maker work through the screening process on a step by step basis.

Public authorities should remember that the Section 75 statutory duties apply to internal policies (relating to people who work for the authority), as well as external policies (relating to those who are, or could be, served by the authority).

### Information about the policy

Name of the policy
_____
Is this an existing, revised or a new policy?
_____
What is it trying to achieve? (intended aims/outcomes)
_____
Are there any Section 75 categories which might be expected to benefit from the intended policy? If so, explain how.
_____
Who initiated or wrote the policy?
_____
Who owns and who implements the policy?
_____

## Implementation factors

Are there any factors which could contribute to/detract from the intended aim/outcome of the policy/decision?

If yes, are they

- financial
- legislative
- other, please specify \_\_\_\_\_

## Main stakeholders affected

Who are the internal and external stakeholders (actual or potential) that the policy will impact upon?

- staff
- service users
- other public sector organisations
- voluntary/community/trade unions
- other, please specify \_\_\_\_\_

## Other policies with a bearing on this policy

- what are they?
  
- who owns them?

## Available evidence

Evidence to help inform the screening process may take many forms. Public authorities should ensure that their screening decision is informed by relevant data.

What evidence/information (both qualitative and quantitative) have you gathered to inform this policy? Specify details for each of the Section 75 categories.

<b>Section 75 category</b>	<b>Details of evidence/information</b>
Religious belief	
Political opinion	
Racial group	
Age	
Marital status	
Sexual orientation	
Men and women generally	
Disability	
Dependants	

## Needs, experiences and priorities

Taking into account the information referred to above, what are the different needs, experiences and priorities of each of the following categories, in relation to the particular policy/decision? Specify details for each of the Section 75 categories

<b>Section 75 category</b>	<b>Details of needs/experiences/priorities</b>
Religious belief	
Political opinion	
Racial group	
Age	
Marital status	
Sexual orientation	
Men and women generally	
Disability	
Dependants	

## Part 2. Screening questions

### Introduction

In making a decision as to whether or not there is a need to carry out an equality impact assessment, the public authority should consider its answers to the questions 1-4 which are given on pages 66-68 of this Guide.

If the public authority's conclusion is **none** in respect of all of the Section 75 equality of opportunity and/or good relations categories, then the public authority may decide to screen the policy out. If a policy is 'screened out' as having no relevance to equality of opportunity or good relations, a public authority should give details of the reasons for the decision taken.

If the public authority's conclusion is **major** in respect of one or more of the Section 75 equality of opportunity and/or good relations categories, then consideration should be given to subjecting the policy to the equality impact assessment procedure.

If the public authority's conclusion is **minor** in respect of one or more of the Section 75 equality categories and/or good relations categories, then consideration should still be given to proceeding with an equality impact assessment, or to:

- measures to mitigate the adverse impact; or
- the introduction of an alternative policy to better promote equality of opportunity and/or good relations.

### In favour of a 'major' impact

- a) The policy is significant in terms of its strategic importance;
- b) Potential equality impacts are unknown, because, for example, there is insufficient data upon which to make an assessment or because they are complex, and it would be appropriate to conduct an equality impact assessment in order to better assess them;
- c) Potential equality and/or good relations impacts are likely to be adverse or are likely to be experienced disproportionately by groups of people including those who are marginalised or disadvantaged;
- d) Further assessment offers a valuable way to examine the evidence and develop recommendations in respect of a policy about which there are concerns amongst affected individuals and representative groups, for example in respect of multiple identities;

- e) The policy is likely to be challenged by way of judicial review;
- f) The policy is significant in terms of expenditure.

### **In favour of 'minor' impact**

- a) The policy is not unlawfully discriminatory and any residual potential impacts on people are judged to be negligible;
- b) The policy, or certain proposals within it, are potentially unlawfully discriminatory, but this possibility can readily and easily be eliminated by making appropriate changes to the policy or by adopting appropriate mitigating measures;
- c) Any asymmetrical equality impacts caused by the policy are intentional because they are specifically designed to promote equality of opportunity for particular groups of disadvantaged people;
- d) By amending the policy there are better opportunities to better promote equality of opportunity and/or good relations.

### **In favour of none**

- a) The policy has no relevance to equality of opportunity or good relations.
- b) The policy is purely technical in nature and will have no bearing in terms of its likely impact on equality of opportunity or good relations for people within the equality and good relations categories.

Taking into account the evidence presented above, consider and comment on the likely impact on equality of opportunity and good relations for those affected by this policy, in any way, for each of the equality and good relations categories, by applying the screening questions given overleaf and indicate the level of impact on the group i.e. minor, major or none.

## Screening questions

1 What is the likely impact on equality of opportunity for those affected by this policy, for each of the Section 75 equality categories? minor/major/none		
Section 75 category	Details of policy impact	Level of impact? minor/major/none
Religious belief		
Political opinion		
Racial group		
Age		
Marital status		
Sexual orientation		
Men and women generally		
Disability		
Dependants		

2 Are there opportunities to better promote equality of opportunity for people within the Section 75 equalities categories?		
Section 75 category	If <b>Yes</b> , provide details	If <b>No</b> , provide reasons
Religious belief		
Political opinion		
Racial group		
Age		
Marital status		
Sexual orientation		
Men and women generally		
Disability		
Dependants		

3 To what extent is the policy likely to impact on good relations between people of different religious belief, political opinion or racial group? minor/major/none		
Good relations category	Details of policy impact	Level of impact minor/major/none
Religious belief		
Political opinion		
Racial group		

4 Are there opportunities to better promote good relations between people of different religious belief, political opinion or racial group?		
Good relations category	If <b>Yes</b> , provide details	If <b>No</b> , provide reasons
Religious belief		
Political opinion		
Racial group		

## **Additional considerations**

### **Multiple identity**

Generally speaking, people can fall into more than one Section 75 category. Taking this into consideration, are there any potential impacts of the policy/decision on people with multiple identities?  
*(For example; disabled minority ethnic people; disabled women; young Protestant men; and young lesbians, gay and bisexual people).*

Provide details of data on the impact of the policy on people with multiple identities. Specify relevant Section 75 categories concerned.

### Part 3. Screening decision

If the decision is not to conduct an equality impact assessment, please provide details of the reasons.

If the decision is not to conduct an equality impact assessment the public authority should consider if the policy should be mitigated or an alternative policy be introduced.

If the decision is to subject the policy to an equality impact assessment, please provide details of the reasons.

All public authorities' equality schemes must state the authority's arrangements for assessing and consulting on the likely impact of policies adopted or proposed to be adopted by the authority on the promotion of equality of opportunity. The Commission recommends screening and equality impact assessment as the tools to be utilised for such assessments. Further advice on equality impact assessment may be found in a separate Commission publication: Practical Guidance on Equality Impact Assessment.

## Mitigation

When the public authority concludes that the likely impact is 'minor' and an equality impact assessment is not to be conducted, the public authority may consider mitigation to lessen the severity of any equality impact, or the introduction of an alternative policy to better promote equality of opportunity or good relations.

Can the policy/decision be amended or changed or an alternative policy introduced to better promote equality of opportunity and/or good relations?

If so, give the **reasons** to support your decision, together with the proposed changes/amendments or alternative policy.



## Timetabling and prioritising

Factors to be considered in timetabling and prioritising policies for equality impact assessment.

If the policy has been ‘**screened in**’ for equality impact assessment, then please answer the following questions to determine its priority for timetabling the equality impact assessment.

On a scale of 1-3, with 1 being the lowest priority and 3 being the highest, assess the policy in terms of its priority for equality impact assessment.

Effect on equality of opportunity and good relations	
Social need	
Effect on people’s daily lives	
Relevance to a public authority’s functions	

Note: The Total Rating Score should be used to prioritise the policy in rank order with other policies screened in for equality impact assessment. This list of priorities will assist the public authority in timetabling. Details of the Public Authority’s Equality Impact Assessment Timetable should be included in the quarterly Screening Report.

Is the policy affected by timetables established by other relevant public authorities?

If yes, please provide details

## Part 4. Monitoring

Public authorities should consider the guidance contained in the Commission's Monitoring Guidance for Use by Public Authorities (July 2007).

The Commission recommends that where the policy has been amended or an alternative policy introduced, the public authority should monitor more broadly than for adverse impact (See Benefits, P.9-10, paras 2.13 – 2.20 of the Monitoring Guidance).

Effective monitoring will help the public authority identify any future adverse impact arising from the policy which may lead the public authority to conduct an equality impact assessment, as well as help with future planning and policy development.

## Part 5 - Approval and authorisation

<b>Screened by:</b>	<b>Position/Job Title</b>	<b>Date</b>
<b>Approved by:</b>		

Note: A copy of the Screening Template, for each policy screened should be 'signed off' and approved by a senior manager responsible for the policy, made easily accessible on the public authority's website as soon as possible following completion and made available on request.

## Appendix 2 Northern Ireland Act 1998, Section 75

### Statutory duty on public authorities

75. (1) A public authority shall in carrying out its functions relating to Northern Ireland have due regard to the need to promote equality of opportunity -
- (a) between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
  - (b) between men and women generally;
  - (c) between persons with a disability and persons without; and
  - (d) between persons with dependants and persons without.
- (2) Without prejudice to its obligations under subsection (1), a public authority shall in carrying out its functions relating to Northern Ireland have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group.
- (3) In this section “public authority” means -
- (a) any department, corporation or body listed in Schedule 2 to the Parliamentary Commissioner Act 1967 (departments, corporations and bodies subject to investigation) and designated for the purposes of this section by order made by the Secretary of State;
  - (b) any body (other than the Equality Commission) listed in Schedule 2 to the Commissioner for Complaints (Northern Ireland) Order 1996 (bodies subject to investigation);
  - (c) any department or other authority listed in Schedule 2 to the Ombudsman (Northern Ireland) Order 1996 (departments and other authorities subject to investigation);
  - (d) any other person designated for the purposes of this section by order made by the Secretary of State;

- (4) Schedule 9 (which makes provision for the enforcement of the duties under this section) shall have effect.
- (5) In this section -  
“disability” has the same meaning as in the Disability Discrimination Act 1995; and  
“racial group” has the same meaning as in the Race Relations (Northern Ireland) Order 1997.

## **Appendix 3 Northern Ireland Act 1998, Schedule 9**

### **Equality: Enforcement of Duties**

#### **The Equality Commission**

1. The Equality Commission for Northern Ireland shall -
  - (a) keep under review the effectiveness of the duties imposed by Section 75;
  - (b) offer advice to public authorities and others in connection with those duties; and
  - (c) carry out the functions conferred on it by the following provisions of this Schedule.

#### **Equality schemes**

2.
  - (1) A public authority to which this sub-paragraph applies shall, before the end of the period of six months beginning with the commencement of this Schedule or, if later, the establishment of the authority, submit a scheme to the Commission.
  - (2) Sub-paragraph (1) applies to any public authority except one which is notified in writing by the Commission that that sub-paragraph does not apply to it.
3.
  - (1) Where it thinks appropriate, the Commission may -
    - (a) request a public authority to which paragraph 2(1) does not apply to make a scheme;
    - (b) request any public authority to make a revised scheme.
  - (2) A public authority shall respond to a request under this paragraph by submitting a scheme to the Commission before the end of the period of six months beginning with the date of the request.

4. (1) A scheme shall show how the public authority proposes to fulfil the duties imposed by Section 75 in relation to the relevant functions.
- (2) A scheme shall state, in particular, the authority's arrangements
  - (a) for assessing its compliance with the duties under Section 75 and for consulting on matters to which a duty under that section is likely to be relevant (including details of the persons to be consulted);
  - (b) for assessing and consulting on the likely impact of policies adopted or proposed to be adopted by the authority on the promotion of equality of opportunity;
  - (c) for monitoring any adverse impact of policies adopted by the authority on the promotion of equality of opportunity;
  - (d) for publishing the results of such assessments as are mentioned in paragraph (b) and such monitoring as is mentioned in paragraph (c);
  - (e) for training staff;
  - (f) for ensuring, and assessing, public access to information and to services provided by the authority.
- (3) A scheme shall -
  - (a) conform to any Guidelines as to form or content which are issued by the Commission with the approval of the Secretary of State;
  - (b) specify a timetable for measures proposed in the scheme; and
  - (c) include details of how it will be published.
- (4) In this paragraph -

“equality of opportunity” means such equality of opportunity as is mentioned in Section 75(1);

“the relevant functions” means the functions of the public authority or, in the case of a scheme submitted in response to a request which specifies particular functions of the public authority, those functions.
5. Before submitting a scheme a public authority shall consult, in accordance with any directions given by the Commission -
  - (a) representatives of persons likely to be affected by the scheme; and
  - (b) such other persons as may be specified in the directions.

6. (1) On receipt of a scheme the Commission shall -
  - (a) approve it; or
  - (b) refer it to the Secretary of State.
- (2) Where the Commission refers a scheme to the Secretary of State under sub-paragraph (1) (b), it shall notify the Assembly in writing that it has done so and send the Assembly a copy of the scheme.
  
7. (1) Where a scheme is referred to the Secretary of State he shall -
  - (a) approve it;
  - (b) request the public authority to make a revised scheme; or
  - (c) make a scheme for the public authority.
- (2) A request under sub-paragraph (1) (b) shall be treated in the same way as a request under paragraph 3(1) (b).
- (3) Where the Secretary of State -
  - (a) requests a revised scheme under sub-paragraph (1) (b); or
  - (b) makes a scheme under sub-paragraph (1) (c),he shall notify the Assembly in writing that he has done so and, in a case falling within paragraph (b), send the Assembly a copy of the scheme.
  
8. (1) If a public authority wishes to revise a scheme it may submit a revised scheme to the Commission.
- (2) A revised scheme shall be treated as if it were submitted in response to a request under paragraph 3(1) (b).
- (3) A public authority shall, before the end of the period of five years beginning with the submission of its current scheme, or the latest review of that scheme under this sub-paragraph, whichever is the later, review that scheme and inform the Commission of the outcome of the review.

## **Duties arising out of equality schemes**

- 9.** (1) In publishing the results of such an assessment as is mentioned in paragraph 4(2)(b), a public authority shall state the aims of the policy to which the assessment relates and give details of any consideration given by the authority to -
- (a) measures which might mitigate any adverse impact of that policy on the promotion of equality of opportunity; and
  - (b) alternative policies which might better achieve the promotion of equality of opportunity.
- (2) In making any decision with respect to a policy adopted or proposed to be adopted by it, a public authority shall take into account any such assessment and consultation as is mentioned in paragraph 4(2)(b) carried out in relation to the policy.
- (3) In this paragraph “equality of opportunity” has the same meaning as in paragraph 4.

## **Complaints**

- 10.** (1) If the Commission receives a complaint made in accordance with this paragraph of failure by a public authority to comply with a scheme approved or made under paragraph 6 or 7, it shall -
- (a) investigate the complaint; or
  - (b) give the complainant reasons for not investigating.
- (2) A complaint must be made in writing by a person who claims to have been directly affected by the failure.
- (3) A complaint must be sent to the Commission during the period of 12 months starting with the day on which the complainant first knew of the matters alleged.
- (4) Before making a complaint the complainant must -
- (a) bring the complaint to the notice of the public authority; and
  - (b) give the public authority a reasonable opportunity to respond.

## **Investigations**

- 11.** (1) This paragraph applies to -
- (a) investigations required by paragraph 10; and
  - (b) any other investigation carried out by the Commission where it believes that a public authority may have failed to comply with a scheme approved or made under paragraph 6 or 7.
- (2) The Commission shall send a report of the investigation to -
- (a) the public authority concerned;
  - (b) the Secretary of State; and
  - (c) the complainant (if any).
- (3) If a report recommends action by the public authority concerned and the Commission considers that the action is not taken within a reasonable time -
- (a) the Commission may refer the matter to the Secretary of State; and
  - (b) the Secretary of State may give directions to the public authority in respect of any matter referred to him.
- (4) Where the Commission -
- (a) sends a report to the Secretary of State under sub-paragraph (2)(b); or
  - (b) refers a matter to the Secretary of State under sub-paragraph (3)(a),
- it shall notify the Assembly in writing that it has done so and, in a case falling within paragraph (a), send the Assembly a copy of the report.
- (5) Where the Secretary of State gives directions to a public authority under sub-paragraph (3)(b), he shall notify the Assembly in writing that he has done so.

## **Government departments**

- 12.** (1) Paragraphs 6, 7 and 11(2)(b) and (3) do not apply to a government department which is such a public authority as is mentioned in Section 75(3)(a).
- (2) On receipt of a scheme submitted by such a government department under paragraph 2 or 3 the Commission shall -

- (a) approve it; or
  - (b) request the department to make a revised scheme.
- (3) A request under sub-paragraph (2)(b) shall be treated in the same way as a request under paragraph 3(1)(b).
- (4) Where a request is made under sub-paragraph (2)(b), the government department shall, if it does not submit a revised scheme to the Commission before the end of the period of six months beginning with the date of the request, send to the Commission a written statement of the reasons for not doing so.
- (5) The Commission may lay before Parliament and the Assembly a report of any investigation such as is mentioned in paragraph 11 (1) relating to a government department such as is mentioned in sub-paragraph (1).

## **Appendix 4 Glossary of terms**

### **Action plan**

A plan which sets out actions a public authority will take to implement its Section 75 statutory duties. It is a mechanism for the realisation of measures to achieve equality outcomes for the Section 75 equality and good relations categories.

### **Action measures and outcomes**

Specific measures to promote equality and good relations for the relevant Section 75 and good relations categories, linked to achievable outcomes, which should be realistic and timely.

### **Adverse impact**

Where a Section 75 category has been affected differently by a policy and the effect is less favourable, it is known as adverse impact. If a policy has an adverse impact on a Section 75 category, a public authority must consider whether or not the adverse impact is unlawfully discriminatory. In either case a public authority must take measures to redress the adverse impact, by considering mitigating measures and/or alternative ways of delivering the policy.

### **Affirmative action**

In general terms, affirmative action can be defined as being anything consistent with the legislation which is necessary to bring about positive change. It is a phrase used in the Fair Employment and Treatment Order (NI) 1998 to describe lawful action that is aimed at promoting equality of opportunity and fair participation in employment between members of the Protestant and Roman Catholic communities in Northern Ireland.

### **Article 55 Review**

Under the Fair Employment and Treatment (NI) Order 1998, all registered employers must conduct periodic reviews of the composition of their workforces and of their employment practices for the purposes of determining whether members of the Protestant and Roman Catholic communities are enjoying, and are likely to continue to enjoy, fair participation in employment in each employer's concern.

These reviews, which are commonly known as Article 55 Reviews, must be conducted at least once every three years.

## **Audit of inequalities**

An audit of inequalities is a systematic review and analysis of inequalities which exist for service users and those affected by a public authority's policies. An audit can be used by a public authority to inform its work in relation to the Section 75 equality and good relations duties. It can also enable public authorities to assess progress on the implementation of the Section 75 statutory duties, as it provides baseline information on existing inequalities relevant to a public authority's functions.

## **Consultation**

In the context of Section 75, consultation is the process of asking those affected by a policy (ie, service users, staff, the general public) for their views on how the policy could be implemented more effectively to promote equality of opportunity across the 9 categories. Different circumstances will call for different types of consultation. Consultations could, for example, include meetings, focus groups, surveys and questionnaires.

## **Council of Europe**

The Council of Europe, based in Strasbourg, covers virtually the entire European continent, with its 47 member countries. Founded on 5 May 1949 by 10 countries, the Council of Europe seeks to develop throughout Europe common and democratic principles based on the European Convention on Human Rights and other reference texts on the protection of individuals.

## **Desk audit**

An audit of a draft equality scheme to ensure that the scheme conforms with the requirements on form and content as detailed in the Commission's Guidelines (the Guide).

## **Differential impact**

Differential impact occurs where a Section 75 group has been affected differently by a policy. This effect could either be positive, neutral or negative. A public authority must make a judgement as to whether a policy has a differential impact and then it must determine whether the impact is adverse, based on a systematic appraisal of the accumulated information.

## **Discrimination**

The anti-discrimination laws prohibit the following forms of discrimination:

- Direct discrimination
- Indirect Discrimination
- Disability Discrimination
- Victimisation
- Harassment

Brief descriptions of these above terms follow:

#### Direct discrimination

This generally occurs where a public authority treats a person less favourably than it treats (or, would treat) another person, in the same or similar circumstances, on one or more of the statutory non-discrimination grounds. A decision or action that is directly discriminatory will normally be unlawful unless: (a) in an age discrimination case, the decision can be objectively justified, or (b) in any other case, the public authority can rely on a statutory exception that permits it – such as a *genuine occupational requirement exception*; or, a *positive action exception* which permits an employer to use “welcoming statements” or to take other lawful positive action to encourage participation by under-represented or otherwise disadvantaged groups.

#### Indirect discrimination

The definition of this term varies across some of the anti-discrimination laws, but indirect discrimination generally occurs where a public authority applies to all persons a particular provision, criterion or practice, but which is one that has the effect of placing people who share a particular equality characteristic (e.g. the same sex, or religious belief, or race) at a particular disadvantage compared to other people. A provision, criterion or practice that is indirectly discriminatory will normally be unlawful unless (a) it can be objectively justified, or (b) the public authority can rely on a statutory exception that permits it.

#### Disability discrimination

In addition to direct discrimination and victimisation and harassment, discrimination against disabled people may also occur in two other ways: namely, (a) *disability-related discrimination*, and (b) *failure to comply with a duty to make reasonable adjustments*.

- (a) *Disability-related discrimination* generally occurs where a public authority, without lawful justification, and for a reason which relates to a disabled person’s disability, treats that person less favourably than it treats (or, would treat) other people to whom that reason does not (or, would not) apply.
- (b) *Failure to comply with a duty to make reasonable adjustments*: One of the most notable features of the disability discrimination legislation is that in prescribed circumstances it imposes a duty on employers, service providers and public authorities to take such steps as are reasonable to remove or reduce particular

disadvantages experienced by disabled people in those circumstances.

#### Victimisation

This form of discrimination generally occurs where a public authority treats a person less favourably than it treats (or, would treat) another person, in the same or similar circumstances, because the person has previously exercised his/her rights under the anti-discrimination laws, or has assisted another person to do so. Victimisation cannot be justified and is always unlawful.

#### Harassment

Harassment generally occurs where a person is subjected to unwanted conduct that is related to a non-discrimination ground with the purpose, or which has the effect, of violating their dignity or of creating for them an intimidating, hostile, degrading, humiliating or offensive environment. Harassment cannot be justified and is always unlawful.

### **Economic appraisal**

An economic appraisal is a systematic process for examining alternative uses of resources, focusing on assessment of needs, objectives, options, costs benefits, risks, funding and affordability and other factors relevant to decisions.

### **Equality impact assessment**

The mechanism underpinning Section 75, where existing and proposed policies are assessed in order to determine whether they have an adverse impact on equality of opportunity for the relevant Section 75 categories. Equality impact assessments require the analysis of both quantitative and qualitative data.

### **Equality of opportunity**

The prevention, elimination or regulation of discrimination between people on grounds of characteristics including sex, marital status, age, disability, religious belief, political opinion, dependants, race and sexual orientation.

The promotion of equality of opportunity entails more than the elimination of discrimination. It requires proactive measures to be taken to secure equality of opportunity between the categories identified under Section 75.

### **Equality scheme**

A document which outlines a public authority's arrangements for complying with its Section 75 obligations. An equality scheme must include an outline of

the public authority's arrangements for carrying out consultations, screening, equality impact assessments, monitoring, training and arrangements for ensuring access to information and services.

### **Good relations**

Although not defined in the legislation, the Commission has agreed the following working definition of good relations: 'the growth of relations and structures for Northern Ireland that acknowledge the religious, political and racial context of this society, and that seek to promote respect, equity and trust, and embrace diversity in all its forms'.

### **Mainstreaming equality**

The integration of equal opportunities principles, strategies and practices into the every day work of public authorities from the outset. In other words, mainstreaming is the process of ensuring that equality considerations are built into the policy development process from the beginning, rather than being bolted on at the end. Mainstreaming can help improve methods of working by increasing a public authority's accountability, responsiveness to need and relations with the public. It can bring added value at many levels.

### **Mitigation of adverse impact**

Where an equality impact assessment reveals that a particular policy has an adverse impact on equality of opportunity, a public authority must consider ways of delivering the policy outcomes which have a less adverse effect on the relevant Section 75 categories; this is known as mitigating adverse impact.

### **Monitoring**

Monitoring consists of continuously scrutinising and evaluating a policy to assess its impact on the Section 75 categories. Monitoring must be sensitive to the issues associated with human rights and privacy. Public authorities should seek advice from consultees and Section 75 representative groups when setting up monitoring systems.

Monitoring consists of the collection of relevant information and evaluation of policies. It is not solely about the collection of data, it can also take the form of regular meetings and reporting of research undertaken. Monitoring is not an end in itself but provides the data for the next cycle of policy screening.

### **Northern Ireland Act**

The Northern Ireland Act, implementing the Good Friday Agreement, received Royal Assent on 19 November 1998. Section 75 of the Act created the statutory equality duties.

### **Northern Ireland Human Rights Commission**

A statutory body established under Section 68 of the Northern Ireland Act 1998, which works to ensure that the human rights of everyone in Northern Ireland are fully protected in law, policy and practice.

### **Northern Ireland Statistics & Research Agency (NISRA)**

The Northern Ireland Statistics and Research Agency (NISRA) is an Executive Agency within the Department of Finance and Personnel (DFP). They provide statistical and research information regarding Northern Ireland issues and provide registration services to the public in the most effective and efficient way.

### **OFMdfM**

The Office of the First Minister and Deputy First Minister is responsible for providing advice, guidance, challenge and support to other NI Civil Service Departments on Section 75 issues.

### **PAFT**

The Policy Appraisal and Fair Treatment (PAFT) Guidelines constituted the first non-statutory attempt at mainstreaming equality in Northern Ireland in January 1994. The aim of the PAFT Guidelines was to ensure that issues of equality and equity informed policy making and activity in all spheres and at all levels of government. PAFT has now been superseded by Section 75 of the Northern Ireland Act 1998.

### **Policy**

The formal and informal decisions a public authority makes in relation to carrying out its duties. Defined in the New Oxford English Dictionary as 'a course or principle of action adopted or proposed by a government party, business or individual'. In the context of Section 75, the term **policies** covers all the ways in which a public authority carries out or proposes to carry out its functions relating to Northern Ireland. Policies include unwritten as well as written policies.

### **Positive action**

This phrase is not defined in any statute, but the Equality Commission understands it to mean any lawful action that a public authority might take for the purpose of promoting equality of opportunity for all persons in relation to employment or in accessing goods, facilities or services (such as health services, housing, education, justice, policing). It may involve adopting new policies, practices, or procedures; or changing or abandoning old ones. *Positive action* is not the same as *positive discrimination*.

Positive discrimination differs from positive action in that *positive action* involves the taking of lawful actions whereas *positive discrimination* involves the taking of unlawful actions. Consequently, *positive action* is by definition lawful whereas *positive discrimination* is unlawful.

### **Qualitative data**

Qualitative data refers to the experiences of individuals from their perspective, most often with less emphasis on numbers or statistical analysis. Consultations are more likely to yield qualitative than quantitative data.

### **Quantitative data**

Quantitative data refers to numbers, typically derived from either a population in general or samples of that population. This information is often analysed by either using descriptive statistics, which consider general profiles, distributions and trends in the data, or inferential statistics, which are used to determine 'significance' either in relationships or differences in the data.

### **SACHR**

The Standing Advisory Commission on Human Rights (SACHR) has now been replaced by the Northern Ireland Human Rights Commission. SACHR, as part of its review of mechanisms in place to promote employment equality and reduce the unemployment differential, recommended that the PAFT Guidelines should be made a statutory requirement.

### **Screening**

The procedure for identifying which policies will be subject to equality impact assessment, and how these equality impact assessments will be prioritised. The purpose of screening is to identify the policies which are likely to have a minor/major impact on equality of opportunity so that greatest resources can be devoted to improving these policies. Screening requires a systematic review of existing and proposed policies.

### **Schedule 9**

Schedule 9 of the Northern Ireland Act 1998 sets out detailed provisions for the enforcement of the Section 75 statutory duties, including an outline of what should be included in an equality scheme.

### **Section 75**

Section 75 of the Northern Ireland Act provides that each public authority is required, in carrying out its functions relating to Northern Ireland, to have due

regard to the need to promote equality of opportunity between:-

- persons of different religious belief, political opinion, racial group, age, marital status and sexual orientation;
- men and women generally;
- persons with a disability and persons without; and
- persons with dependants and persons without.

Without prejudice to these obligations, each public authority in carrying out its functions relating to Northern Ireland must also have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group.

### **Section 75 investigation**

An investigation carried out by the Equality Commission, under Schedule 9 of the NI Act 1998, arising from the failure of a public authority to comply with the commitments set out in its approved equality scheme.

There are two types of Commission investigation, these are as follows:

1. An investigation of a complaint by an individual who claims to have been directly affected by the failure of a public authority to comply with its approved equality scheme;
2. An investigation initiated by the Commission, where it believes that a public authority may have failed to comply with its approved equality scheme.

## **Appendix 5 Where to go for help**

### **Section 75 statutory duties**

Advice and information on the Section 75 statutory duties is available from the Equality Commission for Northern Ireland. This includes good practice examples and a list of publications drawn from the work of other governments and international organisations in Europe and around the world. A list of organisations and voluntary/community sector groups is also available.

The Equality Commission also produces a range of advisory publications on promoting equality of opportunity and good relations. These can be obtained from the Equality Commission at the address given below, or downloaded from the Commission's website [www.equalityni.org](http://www.equalityni.org).

### **Equality Commission for Northern Ireland**

Equality House  
7 – 9 Shaftesbury Square  
Belfast  
BT2 7DP  
Telephone : 028 90 500 600  
Textphone : 028 90 500 589  
Enquiry Line : 028 90 890 890  
Fax : 028 90 248 687  
Email : [information@equalityni.org](mailto:information@equalityni.org)  
Website: [www.equalityni.org](http://www.equalityni.org)

### **Data protection**

All public (and private) organisations are legally obliged to protect any personal information they hold or process. Public authorities are also obliged to provide public access to official information. For more information on these obligations please contact the Information Commissioner.

### **Information Commissioner (head office)**

Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF  
Telephone 08456 30 60 60 or 01625 54 57 45  
Website: [www.ico.gov.uk](http://www.ico.gov.uk)

There is also a regional office in Northern Ireland:

**Information Commissioner's Office – Northern Ireland**

51 Adelaide Street

Belfast

BT2 8FE

Telephone: 028 9026 9380

Fax: 028 9026 9388

Email: [ni@ico.gsi.gov.uk](mailto:ni@ico.gsi.gov.uk)

## **Further information and advice**

For further information and advice on equality issues or if you would like to find out more about the Equality Commission and its work, contact us at:

### **Equality Commission for Northern Ireland**

Equality House  
7-9 Shaftesbury Square  
Belfast BT2 7DP

**Telephone:** 028 90 890 890 (Enquiry Line)

**Fax:** 028 90 315 993

**Textphone:** 028 90 500 589

**Email:** [information@equalityni.org](mailto:information@equalityni.org)

**Website:** [www.equalityni.org](http://www.equalityni.org)

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