



**An Assessment of the Effectiveness of
Section 75 of the Northern Ireland Act
1998 in Terms of the Development and
Implementation of Public Policy**

February 2007

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An Assessment of the Effectiveness of Section 75 in Terms of the Development and Implementation of Public Policy

EXECUTIVE SUMMARY

The Task

1. Schedule 9(1)(a) of the Northern Ireland Act 1998 states that *'The Equality Commission shall keep under review the effectiveness of the duties imposed by Section 75'*. This assessment, which is part of that review, was designed to assess the effectiveness of the legislation in terms of its impact on public policy and the delivery of services.

The Method

2. The assessment was guided by the 'Green Book' approach to evaluations. It is suggested that the "outputs" which might have been required from the application of Section 75 by public authorities were the implementation of processes, such as screening and EQIAs, and the production of reports to the Equality Commission. The "results" that might have been expected to follow from the processes were changes in policy making and implementation which would, in turn, have the "impact" of providing equality of opportunity for the nine groups and good relations between the specified three groups.

3. This piece of research was in effect, required to look at the anticipated "results" stage and the relevant counterfactual therefore includes any other influence(s) on public policy making which might have led to similar improvements and in turn to the desired impact. Because a suitable control group was not available, this had to be assessed by subjective methods based on observations by the bodies and people concerned of the differences Section 75 has made. Such observations were ascertained both from reports the relevant bodies and other people had prepared and by direct questions put in a series of interviews. In both these approaches the information being sought was:

- a) What difference had there been to public policy development and implementation which might have been due to Section 75?

- b) The counterfactuals, in particular:
- What else, if anything, might have changed policy making?
 - In what other ways might Section 75 have been applied?
- c) What could be learnt from this?

The Research

4. The literature review looked at the annual reports and available five year reports of designated public authorities, analysis reports produced by the Equality Commission and a variety of other reports. In addition a total of 26 interviews were conducted with 36 people from 22 different designated organisations. The people interviewed included permanent secretaries and chief executives, deputies and senior managers, equality unit staff and human resource managers, and officials and councillors. They covered government departments and NDPBs, UK and NI wide bodies, large and small organisations and policy makers and implementers.

5. The literature review produced relatively little documented evidence about the direct impact Section 75 has had on policy development but it did provide indirect evidence in the form of reports of policies which had been altered as a result of that impact. It was also noticed that, possibly because of their public and prescribed nature, the relevant reports did not generally reflect either the more positive or the more negative aspects of Section 75 indicated in the interviews.

6. There are now over 270 designated public authorities ranging from government departments to NDPBs, and from organisations large enough to have a number of different divisions and/or policy making levels to organisations employing fewer than ten people. It was not possible with this survey to cover a statistically representative sample of all the different possible categories and in that situation the survey did not try to produce a definitive quantitative analysis of the view of everyone involved. Instead it aimed to produce a qualitative assessment by sampling the views that a wide range of people held on the relevant aspects of Section 75.

The Results

7. A number of points were raised by interviewees about policy

making and the policy development process. Some interviewees commented on how, in their opinion, policy making used to be conducted, possibly sometimes in a more creative, but definitely less consultative, way. Some interviewees also highlighted the changes that were happening in policy development at the time that Section 75 was introduced, and some changes that might still be required. Some interviewees raised the issue of the highest level policies, which tend to come sometimes from ministers at short notice and with no evidence of prior screening or impact assessment. A number of other interviewees also alluded to problems in deciding what should be a relevant policy in the context of Section 75.

8. Despite any misgivings about what policy might be, it was clear from the responses that a large majority (almost two thirds) of the people interviewed thought that Section 75 had had a clear and very positive impact on policy development. UK wide bodies also saw Section 75 as positive and at least one was extending parts of it to its GB operations. Overall therefore the impact on policy development was welcomed and seen as beneficial. However a suggestion was made that Section 75 had levelled policy development both up and down: up because it has raised its average level by providing more guidance in how to do it, and down because there is more fear among public authorities of getting it wrong and less scope for individual flair. This was also combined with the comment that, because of all the guides that now had to be followed, the system was not now '*a driver for creativity*'.

9. Further evidence that policy development had changed was provided by some of the interviewees who were able to indicate policies which had been amended as a result. Nevertheless some people who reported that Section 75 had made a significant impact on policy development nevertheless could not readily identify specific policy changes. The various annual and five-year reports did however provide examples while also indicating why that was not possible in some other cases. Such examples are, however, only indirect evidence of a change in policy development and a lack of examples in some cases does not necessarily mean that Section 75 has not been applied properly or that it is not having an impact on current policy development. In any case other benefits were also indicated as potentially accruing from the application of Section 75.

10. However, even the majority who thought that Section 75 had had a positive impact on policy development also thought that it had some negative aspects. In particular the bureaucracy was thought to be alienating and '*the biggest single problem*' and other issues raised included:

- a) Too much pressure to follow strict procedures.
- b) The disincentive of seeing other organisations apparently not applying Section 75 properly and seeming to get away with.
- c) A perceived lack of feedback from the Equality Commission.
- d) And the name 'Section 75' which, it was suggested, is not an inspiring title and does not help to convey the purpose and importance of the initiative.

11. While a number of interviewees indicated that there were other influences which were tending to make policy development more inclusive, nevertheless most of them believed that policy making in their organisations would not have improved as much without Section 75:

12. One respondent specifically raised the possibility of Section 75 consultations giving undue weight to those special interest groups which were best organised to respond, and some suggested that it might also devalue the input of elected representatives. A few interviewees also raised questions about what would happen if and when the Assembly returns and, for instance, there were local ministers who were elected to promote a particular viewpoint.

13. Good relations work appears to have figured to a lesser extent in the public authorities' Section 75 activities that equal opportunities. Nevertheless at least some of them now see that it should be given more prominence.

14. The majority of the people consulted appeared to be strongly of the view that delivering a good service, being competitive and/or attracting the best staff required them to address all their consumers equally and to promote good relations. In other words for them Section 75 amounted to good business practice. Nevertheless a majority of the respondents felt that in applying Section 75 balances have to be struck between the extent of the work required by the letter of the instructions and the resources (in terms of time and/or money) that are in practice available.

15. The barriers still remaining to the further or continuing

implementation of Section 75 were thought to include the cost, both in time and resources, and the bureaucracy. The complaints about bureaucracy were general rather than very specific and one respondent indicated that in reality they might not be fully justified. Nevertheless there is a perception, whether justified or not, that the screening and EQIA process, and particularly its associated reporting, are unduly bureaucratic and this is also linked to a perception that the emphasis is currently on the process, rather than outcomes. While there was a recognition that the mandatory process might have been necessary to get Section 75 started, the bureaucracy associated with it is now seen as a negative feature. Therefore some respondents advocated a 'change of gear' linked to a focus on outcomes rather than processes, with help to employ the right process, but with sanctions if the outcomes are found to be lacking.

16. Other suggestions which were made for reinforcing Section 75 included explaining why it is good practice, helping organisations to make equality and good relations their practice, and pointing out the liabilities incurred through poor equality performance.

Conclusions and Recommendations

17. The main conclusion of the assessment is that a clear majority (almost two thirds) of the people interviewed from designated public authorities believed that Section 75 has made a significant and positive difference to development of policy in their organisations. Some (about a fifth) were more neutral and the few who disagreed and thought that it has had no impact on their organisations implied that that was because they were already treating people equally and doing what Section 75 requires.

18. Those respondents who thought that the Section 75 had made a clear and positive difference also believed that this would not have happened, at least not to the same extent, without Section 75, not least because the statutory provision was needed to start such an approach.

19. It was however indicated that there were some negative aspects to the application of Section 75. These included the bureaucracy involved and its cost in terms of either time or budget which meant that, in practice, compromises were sometimes made which were on occasion described as 'following the spirit rather than the letter'. The bureaucracy is probably the biggest remaining barrier and disincentive to the further or continuing implementation

of Section 75 and many people suggested that a ‘*change of gear*’ would now be appropriate.

20. The following is recommended.

- a) ***Recognising the Impact.*** The Equality Commission should continue to build on the awareness of the need for Section 75 that has been created among the public authorities and to credit the public authorities for the way in which Section 75 has often had a significant and positive impact on policy development.
- b) ***Addressing Negative Aspects.*** The Commission should however also recognise that, whether it is justified or not, there is a perception that applying Section 75 involves an undue amount of bureaucracy and there is degree of client dissatisfaction with some parts of the service provided by the Commission. Both these are demotivating and should, if possible, be addressed. While the Commission has a statutory role in the application of Section 75, nevertheless, if it could position itself more as a source of guidance in maintaining good practice and in addressing the legal requirements of Section 75, and less as primarily an enforcement organisation and the source of some of the bureaucracy, it could help. It is recommended that the aim in this should be to establish a willing partnership approach to securing equality of opportunity and good relations and not a coercive and/or reluctant relationship.
- c) ***A ‘Change of Gear’.*** However, if it is considered desirable both to sustain the result so far obtained by Section 75 and to widen its impact on the ultimate objective of the promotion of equality of opportunity and the promotion of good relations, then it is recommended that there should be a ‘change of gear’. Changing the emphasis of promotion and monitoring from the process to the outcomes might help those still opposed to the methods of Section 75 and would, in effect recognise that there is a need sometimes to strike a balance between consultation and assessment procedures and other imperatives. It would, for instance, allow the organisations concerned to assess the risks involved in making quick decisions and decide what to do accordingly and would help to resolve some ambiguities by focusing on the ultimate objective rather than categorising processes. It would also help to address other concerns.

Moving to a focus on outcomes could involve:

- Highlighting, and imposing penalties for, identified failure to provide equality of opportunity rather than for failure to follow the prescribed process.
 - Allowing organisations some flexibility in the process they adopt in order to achieve better equality results and actively encouraging them continuously to seek the best process for achieving superior outcomes in their particular case.
 - This could be supported by designing a new framework for public authorities to create revised equality schemes, with greater flexibility to reflect the particular role and responsibility of each public authority and to focus on equality and good relations commitments deriving from that role.
 - This should then have the benefit of facilitating more flexibility, innovation and creativity in achieving further equality outcomes.
- d) **Good Relations.** More attention should now be given to good relations. The Commission should increase the emphasis on the promotion of good relations now that there is evidence that the promotion of equality of opportunity is increasingly embedded in policy development.
- e) **Supporting Actions.** Whether the recommendations above are adopted, or not, it is recommended that the Commission should consider supporting Section 75 by:
- Promoting the application of Section 75 because it is good practice (and explaining its rationale) rather than just because it is a legal requirement.
 - Finding a new name for the initiative.
 - Reviewing comments in annual and five year reports and survey public authorities directly, to establish precisely which elements of the process are widely seen as particularly burdensome, and considering what could be done to alleviate this without compromising either its own responsibilities or the public authorities' compliance with Section 75.
 - Making people aware of the drawbacks of inadequate

outcome and publicising any penalties that are applied.

- Asking direct and open questions should be asked in report formats to encourage answers which better reflect the full range of what organisations are doing to deliver equality of opportunity and good relations outcome.
- Continuing to explore with Government means of ensuring that Section 75 can be effectively applied to high level policies.
- Continuing to develop and improve its guidance to public authorities and review existing guidance in light of any 'change of gear' which may be implemented as a result of the review.

An Assessment of the Effectiveness of Section 75 in Terms of the Development and Implementation of Public Policy

1 Introduction

This section provides an introduction to the assessment by summarising the task and the layout of this report.

Section 75

1.1 Schedule 9(1)(a) of the Northern Ireland Act 1998 states that *'The Equality Commission shall keep under review the effectiveness of the duties imposed by Section 75'*. In October 2005 the Commission agreed terms of reference and objectives for a review which would involve several streams of work each assessing different aspects of that effectiveness. This particular piece of research, which was commissioned in 2006, was designed to assess the effectiveness of Section 75 of the legislation in terms of its impact on public policy and the delivery of services.

The Task of the Assessment

1.2 The Invitation to Tender for this assessment stated that its aims were:

'to contribute to the Commissioners' review of the effectiveness of Section 75 and to assess how the statutory duties introduced by Section 75 have impacted on the development and implementation of public policy and ultimately on service provision in Northern Ireland'.

1.3 Other statements of the purpose of the research also included in the same documentation were:

- *'Assessing the impact of Section 75 in terms of the development and implementation of public policy and*

provision.'

- *'The project will assess the impact of Section 75 on the development and implementation of public policy.'*
- *'The research should assess how public policy and/or provision are different as a consequence of Section 75 compared to what it would otherwise have been.'*

The Layout of This Report

1.4 This is the report of that assessment and it is presented in six sections:

Section 1	This section provides an introduction to the assessment by summarising the task and the layout of the report.
Section 2	Describes the approach taken to the task, which is based to a considerable extent on a 'Green Book' evaluation, and the methodology employed to carry it out.
Section 3	Describes the research undertaken for the assessment by identifying both the information sought and the methods used to obtain it.
Section 4	Presents the results of the research. It summarises the relevant findings from the literature review and illustrates the range of views obtained from the interviews. A further selection from the responses made by those interviewed is also provided in the appendix.
Section 5	Provides an analysis of the research results and highlights the main points raised.
Section 6	Presents the conclusions of the assessment.

2 Approach to the Task

This section describes the approach taken to the task, which is based to a considerable extent on a 'Green Book' evaluation, and the methodology then employed to carry it out.

An Evaluation Approach

2.1 According to the 'The Green Book'¹ an evaluation is a '*retrospective analysis of a project, programme or policy to assess how successful or otherwise it has been, and what lessons can be learnt for the future*'. Section 75 is a law, not a project, programme or policy; and as such does not include a set of SMART objectives to indicate what it was supposed to do. Also the terms of reference for this assessment did not specifically call for a Green Book evaluation. Nevertheless it was felt that there were aspects of the logic and practice of the Green Book approach which would help this piece of research.

2.2 The Green Book indicates that the first two stages of an evaluation should be to establish what the initiative in question was designed to achieve and what might have happened if the initiative had not been delivered, or had been delivered differently (i.e. the counterfactual position). This aim and counterfactual should then be compared with what was actually achieved to see what lessons might be learnt. A further technique which can be helpful in looking at what an initiative was designed to achieve is to distinguish the 'outputs' which should be within the initiative's ability to deliver from the 'outcomes' which it is anticipated would then follow the outputs, but which might not necessarily be within the initiative's control because they would also be subject to other influences. Further, to give a fuller picture of the anticipated or hoped-for sequence of events, those outcomes can be divided into shorter-term 'results' and

¹ HM Treasury, *The Green Book: Appraisal and Evaluation in Central Government*, London: TSO, 2003

longer-term ‘impacts’.

2.3 It is suggested that in this case the “outputs” which might have been required from the application of Section 75 by public authorities were the implementation of processes, such as screening and EQIAs, and the production of reports to the Equality Commission. The “results” that might have been expected would follow from this process were changes in policy making and implementation which would, in turn, have the “impact” of providing both equality of opportunity for the nine groups and good relations between the specified three groups.

2.4 To provide a summary of the possible position of this assessment in an overall evaluation of Section 75 this sequence is summarised in Figure 1.

Figure 1: Section 75 – The Stages to the Desired Impact?

Stage	Requirement	Counterfactual Question
Outputs:	Screening, EQIAs, Reporting etc	
<i>which should lead to</i>		
Outcome Results:	Improvements in public policy development and implementation.	What else might have led to relevant changes in policy development and implementation?
<i>which should in turn lead to</i>		
Outcome Impact:	1) Equality of opportunity for the nine groups. 2) Good relations between the three groups.	What else might have led to improvements in equality of opportunity for the nine groups and/or good relations between the three groups?

2.5 This piece of research, which was designed to assess how public policy development and implementation is different as a consequence of Section 75 has, in effect, looked at the anticipated “results” stage (which is highlighted in Figure 1). The relevant counterfactual for this stage therefore includes any other influence(s) on public policy making which might have led to similar improvements and in turn to the required impact.

Methodology

2.6 The task involves assessing whether public policy development and implementation have changed as a result of Section 75. In theory that might best be done by using objective comparative methods such as comparisons with a control group of public bodies which are not following Section 75 or studies of public bodies before they apply Section 75 and then again after they have adopted it. Observations of policy making in the public bodies not following Section 75, or of policy making before it was applied, would then provide the counterfactual position. In this case such approaches are not possible because Section 75 applies to all significant public bodies and is already being applied by them. Because of this it was determined that, in addressing this task, more subjective methods would have to be used.

2.7 This piece of work therefore sought observations, by the bodies and people concerned, of the differences Section 75 has made. Evidence was however also sought supplement this, including both direct evidence of process change or indirect indications of that change such as policy changes which were presumed to have been occasioned by the application of Section 75 procedures. Such observations and evidence were sought both from any reports the relevant bodies had already prepared, in particular their annual progress reports and recent five year reviews (where these had been produced), and by directly asking selection of the people involved.

2.8 **Five Stages.** The task was therefore addressed in five stages:

- a) **Desk Research.** The first stage was a review of the relevant sections of the public authority annual and five year progress reports, and any other relevant reports, to see what, if anything, they indicate about the development and implementation of public policy and provision.
- b) **Survey Preparation.** Next, guided by the reports and in consultation with the Equality Commission, suitable organisations and/or people to target for interview were identified and a suitable questionnaire formulated on which to base the discussions.
- c) **Survey Research.** Interviews were then conducted with a sample of people drawn from the target list.
- d) **Analysis.** The results of the survey were then analysed to ascertain whether public policy development had improved, the extent to which this appeared to be due to Section 75, and any lessons that might be learnt from this for the future application of Section 75.
- e) **Reporting.** Finally a report on the assessment was prepared.

3 The Research

This section describes the research undertaken for the assessment by identifying both the information sought and the methods that were used to obtain it.

The Information Sought

3.1 The previous section indicated that the research to be conducted for this assessment would include both desk research and targeted interviews. In both these approaches the information being sought was:

- a) What difference had there been to public policy development and implementation which might have been due to Section 75?
- b) The counterfactuals, in particular:
 - What else, if anything, might have changed policy making?
 - In what other ways might Section 75 have been applied?
- c) What could be learnt from this?

LITERATURE REVIEW

3.2 The following documents were consulted:

- The various public authority Annual Progress Reports for the years April 2003 to March 2004 and April 2004 to March 2005.
- Public authority five year review reports that were available to the researchers at the time of assignment.
- Equality Commission, Report on the Implementation of the Section 75 Statutory Duties April 2002 to March 2003.

- Equality Commission, Report on the Implementation of the Section 75 Equality and Good Relations Duties by Public Authorities Based on Public Authority Annual Progress Reports April 2003 to March 2004.
- Equality Commission, Report on the Implementation of the Section 75 Equality and Good Relations Duties by Public Authorities Based on Public Authority Annual Progress Reports April 2004 to March 2005.
- Equality Commission, Section 75(2) of the Northern Ireland Act 1998: Audit of Progress on the Good Relations Duty 2000 to 2003.
- Equality Commission, Good Relations in Practice: A Report of Progress on the Good Relations Duty 2003 to 2005.
- Equality Commission, Response to DTI Gender Equality Duty Consultation 2006, January 2006.
- Equality Commission, The Nature and Future of Section 75, presentation at QUB by Bob Collins, Chief Commissioner, January 2006.
- Equality Commission, Guide to the Statutory Duties, June 2004.
- Equality Commission, Promoting Positive Attitudes Towards Disabled People and Encouraging the Participation of Disabled People in Public Life: A Guide for Public Authorities (consultation draft), September 2006.
- Equality Commission, Promoting Good Relations – a guide for public authorities (consultation draft), n.d. [2006]
- E McLaughlin and N Faris, The Section 75 Equality Duty: An Operational Review, November 2004.
- C. McCrudden, Mainstreaming Equality in Northern Ireland 1998 – 2004: a review of issues concerning the operation of the equality duty in Section 75 of the Northern Ireland Act 1998, 2004
- P Chaney and T Rees, The Northern Ireland Section 75 Equality Duty: An International Perspective, June 2004.

- OFMDFM, A Practical Guide to Policy Making in Northern Ireland, n.d. [2003]
- OFMDFM, A Shared Future, March 2005.

INTERVIEWS

3.3 **The Questionnaire.** The questionnaire prepared for the interviews included five main questions:

1. What difference has Section 75 made to policy making and implementation?
2. Is the difference embedded/mainstreamed?
3. How has the difference (to policy making/implementation) been effected/helped?
4. What do people think of Section 75 and its relevance to policy making and implementation?
5. Are there continuing barriers to the effectiveness of Section 75? What would still help?

3.4 **The Survey.** In total 26 interviews were conducted with 36 people. The interviews were conducted on the basis that, while the organisations surveyed would be indicated in the report and relevant comments might be quoted to illustrate the points being made, the interviewees would not be named and any comments quoted would not be attributed.

- a) Organisations. The people interviewed were from the following organisations:

Government Departments:

Department of Agriculture and Rural Development (DARD)

Department of Education (DE)

Department of Employment and Learning (DEL)

Department of Enterprise, Trade and Investment (DETI)

Department of Finance and Personnel (DFP)

Department of Health, Social Services and Public Safety (DHSSPS)

Department for Regional Development (DRD)

Department for Social Development (DSD)

Agencies / Implementing Bodies:

Livestock and Meat Commission

NI Fishery Harbour Authority

NI Housing Executive

NI Museums Council

North Down & Ards Institute

North and West Belfast Health and Social Services Trust

Northern Health and Social Services Board

Southern Education and Library Board

The Queen's University, Belfast

Association of Northern Ireland Colleges (ANIC, which, although not a designated public body itself, assists the FE sector)

Councils:

Derry City Council

North Down Borough Council

UK Bodies:

HM Revenue and Customs

British Council

Discussions were also held with the **Equality Commission**

b) Positions. The people interviewed included:

- Permanent Secretaries.
- Chief Executives/Directors and Deputies (or equivalent).
- Senior managers.
- Equality unit managers and officers (or equivalent).

- Human resource managers/officers.
 - Councillors.
- c) Dimensions. The survey therefore covered the following dimensions:
- Government departments and Non-Departmental Public Bodies.
 - UK wide bodies, Northern Ireland wide bodies and local councils.
 - Large organisations and small organisations.
 - A wide range of policy areas including agriculture, culture, economic development, education, health, local government, regional development and social development.
 - Policy makers and policy implementers
 - Chief executives, managers and equality staff.
 - Councillors and council staff.

3.5 The authors of this assessment wish to record their thanks to all those who participated in the interviews for the time and thought they contributed.

4 The Results

This section presents the results of the research. It summarises the relevant findings from the desk research and illustrates the range of views obtained from the interviews. A further selection from the responses made by those interviewed is also provided in the appendix.

The Literature Review

4.1 The literature, and in particular the available annual progress reports and five-year reviews from the public authorities, was consulted to see it could provide any direct evidence of the impact that Section 75 has had on policy development and any indirect evidence such as an indication of consequential changes to policies. Information was also sought on other relevant factors such as the policy making context.

Policy Development – The Direct Evidence

4.2 There is relatively little direct comment in the literature about the impact Section 75 has had on the process of policy development, as opposed to indirect evidence of consequential changes made to policies. The only questions in the annual and five-year reports to the Equality Commission which specifically touched on this were the concluding questions in the Annual Progress Reports, which asked public authorities to tick yes or no to indicate whether they believed that the work on implementing the statutory duties had had positive benefits for the organisation and to indicate on a limited scale the extent to which the duties had increased awareness and ability to target policies.

Question	Answers given
Does the authority believe its work to date on implementing	Almost all organisations ticked the “Yes” box.

the statutory duties had had positive benefits for the organisation?	
<p>To what extent have the duties:</p> <ul style="list-style-type: none"> • Increased ability to ensure policies are designed and targeted to reflect equality of opportunity objectives? • Increased awareness of good relations issues in policy making? • Increased ability to ensure policies are designed and targeted to reflect good relations objectives? 	<p>The report <i>pro forma</i> offered only three options for the responses and most organisations ticked either the “noticeably” or the “very noticeably” boxes. Some did tick the “no real change” box but it was not clear if that indicated no real change since before the introduction of Section 75 or no real change since the previous report.</p>

4.3 It was noticed by the researchers that, on the few occasions when very negative views were expressed in a survey interview (in which respondents were promised anonymity), or when particularly innovative approaches were indicated in other interviews, these were not generally reflected in the annual or five-year reports submitted by the relevant interviewees’ organisations. The reasons for this may include:

- a. It is probably not surprising that in public official returns submitted on behalf of their organisations the compilers might have preferred to avoid giving hostages to fortune by providing negative answers where the diligent implementation of Section 75 would seem to require positive ones. However, even in the face-to-face interviews, most respondents were still positive in their views.
- b. It was also noticed by the researchers that the templates provided for the annual and five year returns asked relatively specific questions based often on particular requirements of Section 75 and did not ask more open questions about how the respondent organisations were promoting equality of opportunity. This might be why one or two of the more innovative

approaches reported in the interviews did not seem to be reflected in the relevant reports.

4.4 The reports did however sometimes include other information relevant to this piece of research, such as indications of barriers to the implementation of Section 75. For instance:

- *'It is acknowledged that the combined demand for engagement from all the public bodies on the community and voluntary sector can be a significant drain on their resources. It would therefore be advantageous if the voluntary and community sector organisations representing the Section 75 groups, were resourced to develop their personnel to respond to the consultation process, and/or a more joined up or pooled resource approach were used.'* NIHE 5 Year Report p4
- *'Other sections of this report have already addressed issues such as the overall lack of engagement ... from Section 75 groups and explored some of the potential reasons for that. The report has also already identified ways for improving the communication process between the Department and particular Section 75 groups where data has been very limited. It is hoped that this will improve the communication process and assessment of potential impacts in future.'* DARD 5 Year Report
- *'There are no neat boundaries between - on the one hand - the specific requirements of Section 75 and the commitments given in equality schemes, and - on the other hand - the generality of work that is done to promote equality, equity, fairness, social justice, respect for diversity etc. e.g. setting up an interpreting service, or the work that goes into reviewing the Capitation Formula to ensure that, at the most strategic level, health and social care resources are allocated fairly according to need. The interpreting service and the continuous review of the Capitation Formula are just two examples of work that arguably would have been done even in the absence of s75, yet they are completely in the spirit of Section 75.'* DHSSPS 5 Yr Report p7/8

- *'Policy development generally involves a wide range of compliance issues which requires the involvement of representative groups. The fragmented approach to policy development with compliance measures for equality, rural impact, sustainability, health, TSN etc create significant resource problems for small public bodies and prioritization problems for groups trying to respond effectively to a large number of bodies with a wide range of compliance areas. A more streamlined integrated policy development model would ensure more effective evidence based decision making.'* NIFHA 5

Year Report

Policy Development in Practice – The Indirect Evidence

4.5 The literature did however provide evidence of changes being made to policies as the result of applying Section 75 procedures, which is evidence, albeit indirect, that Section 75 has had an impact on the policy development process. Question 6b in the Five-Year Review Report, for instance, asked to what extent consideration of EQIAs etc had contributed to changes in policies. The answers given however were generally limited in their scope, often referred to answers given elsewhere, and did not try to convey a wider view of the impact of Section 75. They did however provide a number of examples of instances where the application of Section 75 has led to a change in policy, either retrospectively for policies which pre-dated Section 75 or during the process of policy development. For instance:

- The Executive Summary of the Equality Commission's report on the implementation of the duties 2004 – 2005 states that: *'public authorities highlighted over 120 changes in policy or practices that resulted from equality impact assessment activities affecting individuals in all the equality categories'* and a number of these are described in the report.
- The DRD five-year report indicates that: *'On water reform, the revised and enhanced protections for low-income households and revised metering proposals secured a significant outcome for elderly householders. The revised protection also secured improved*

outcomes for most other section 75 categories living in low-income households.' It also stated that: *'The consultation responses to the draft EQIA on Water Reform Domestic Charging Proposals pointed to further impacts on a range of Section 75 groups arising from affordability. In addition, the mitigation measures, in particular the 25% discount proposal for low-income households, were criticised, In light of the additional impacts, including the additional equality impacts, the Government reviewed and agreed to enhanced protections for low-income households.'* Providing equality of opportunity does not necessarily mean that everyone will like a policy and this example demonstrates that the application of Section 75 procedures does not necessarily result in a policy which satisfies all service users or other stakeholders. Water reform remains one of the most controversial high-level policies introduced since Section 75 came into being and the High Court 'Declaration' in November 2006 stated that the draft 2006 order had not been subject to full consultation.

- NIHE cited the example of the tenants being given the right to buy their houses.

'The House Sales Scheme is a statutory scheme making provision for tenants to buy their homes at a discount from the Housing Executive. Although this scheme is unique to Northern Ireland, it has many similarities to the Right to Buy in the rest of the UK. Many of the changes to this scheme were adopted to remain in line with changes in the UK policy. However, following the review and the associated equality impact assessment, a number of key changes were carried out. The main change with equality implications was the removal of an over 60s exclusion. This age based exclusion was revised and a new rule was introduced limiting the sale of certain types of accommodation, principally single storey or ground floor dwellings with no more than two bedrooms.'

- Both Derry City Council and North Down Borough Council indicated that they had made significant

changes to policy during the process. Derry City Council stated that:

'All policies which were subjected to the EQIA process [14] were modified in light of contributions received through the consultation process.'

- Sometimes the effect of an EQIA is not a change to a policy, but steps taken to implement it better. For instance:

'The EQIA on the Electronic Libraries for Northern Ireland led to a series of actions including training on adaptive technology and disability awareness across all Boards.' Equality Commission, Report on the Implementation of the Section 75.Duties April 04 - Mar 05.

4.6 On the other hand some authorities believe that with equality thinking thoroughly embedded in policy development, the process is less and less likely to throw up the need for change. For example, North and West Belfast Trust suggested that:

'With the increasing awareness and knowledge of equality and human rights issues amongst trust staff, many of the policies coming forward for screening have already taken equality considerations into account. Therefore no impacts are being identified at the screening stage in policy areas where they might otherwise have been expected.'

4.7 DSD also highlighted the difficulty sometimes of identifying change that can be directly attributed to Section 75:

'The Department has placed great emphasis on embedding and integrating the statutory duty obligations into the policy development process. Such integration can make it difficult to identify those areas of policy that are changed as a direct result of s75. This is particularly difficult within DSD where the focus of its work is on social development and New Targeting Social Need generally. As such many of the Departments [sic] activities are already focused on improving equality per se. One aspect of policy development where it is easier to identify the

direct influence of s75 is during the EQIA process when the response of consultees gives grounds for reconsidering and altering policy.

'This was particularly evident during the EQIA consultation on the Unauthorised Encampments legislation the Department sought to introduce. The Department had already identified potential adverse impacts on Irish Travellers through the introduction of this legislation and the response of consultees to the EQIA sought to reinforce this point. In considering the responses, the Department accepted that the policy needed to reflect how the Department could further mitigate against the impacts consultees had identified on Irish Travellers and the policy was amended to ensure that the legislation would not be enforced until the issue of alternative sites was better addressed. This is perhaps the most significant outcome of a policy being directly affected by s75. However as mentioned earlier, many policies and actions will have been developed or changed in the formative stages of the policy development process as a result of informal consultations or discussions with internal or external key stakeholders. Attempting to identify or quantify this is very difficult, but anecdotally at least, it is accepted that s75 has made a greater impact than is possible to measure so precisely.'

The Policy Context

4.8 The literature also assisted in establishing some of the context for the task of assessing Section 75's influence on policy making. In particular much of McLaughlin's and Faris's review of the Section 75 Equality Duty was very relevant to this task and highlighted a number of salient issues and OFMDFM's Practical Guide to Policy Making in Northern Ireland lists Section 75 as one of the 'overarching policy issues' alongside New TSN, human rights, sustainable development, impact assessments, RPA and the Regional Development Strategy. It does not, however, distinguish between the different statutory weights of each of these. Elsewhere it addresses broad principles of policy making and the Northern Ireland policy making context (it was written following devolution) and, as another influence on

policy making, does form part of the counterfactual case.

Implications

4.9 The implications of these findings are assessed in Section 5 which presents the analysis of the issues raised. Overall the literature review provided limited direct evidence for an impact on policy development but some indirect evidence. It did however provide some indications as to why, if Section 75 had had the required impact on policy development, there was not more direct evidence of it. Among these were the lack of relevant direct open questions in the annual and five-year formats and the difficulty of identifying policy change once the Section 75 approach is embedded.

The Interview Responses

4.10 There are now over 270 designated public authorities ranging from government departments to NDPBs, from organisations large enough to have a number of different divisions and/or policy making levels to organisations employing fewer than ten people, and from bodies at the heart of government and its policy making to bodies which are responsible only for the delivery of a specific service in a limited area. It was not possible in this task to cover a statistically representative sample which would reliably indicate the proportions of people holding various views in each of the different possible categories of policy makers, across the different types of designated body and in each of the main areas of government. In that situation the survey did not try to produce a definitive quantitative analysis of the view of everyone involved but instead sampled the views that were held on the key relevant aspects of Section 75. The survey was therefore qualitative in nature and ascertained the range of views that are held on particular aspects of the situation.

4.11 In the event the views obtained ranged from the almost entirely positive to the fundamentally negative. The following brief selection of the responses of the interviewees has been

chosen to illustrate that range, but not the proportion of people holding each view. To give more detail of views of the interviewees and an indication of the relative strength of each position a wider selection is also given in the appendix to this report and an analysis of these responses is presented in Section 5. (NB The interviews were conducted on the basis of anonymity so the sources of the quotations are not indicated, except where they are taken from published documents.)

4.12 What Difference has Section 75 Made to Public Policy Making / Implementation?

- *'It has completely changed the way we operate and the way decisions are reached.'*
- *'Better [policy making], absolutely. The argument is that it is the right thing to do and it produces better policy and better implementation.'*
- *'It is not only good practice, but it protects the organisation by giving evidence that policy has been reached by systematic and thoughtful processes.'*
- *'Section 75 has created a greater awareness of the need to consider all the categories, but we can only do so much with our resources and so many of our policies are not public-facing.'*
- *'The ethos of equality is built into everything we do.'*
- *'It's had a very good effect widely but undermined by occasional high profile trivia tarred with the 'PC gone mad' argument.'*
- *'The cost is huge. The consultation demands have been positive but that was the way we were going anyhow. The whole system should be changed, especially for the smaller bodies.'*
- *'It makes you think of issues which might not otherwise be at the forefront. [It] has brought equality issues into people's consciousness. ... [But our] policy making had already mainstreamed equality and had reached a degree of maturity. ... Overall – little impact.'*
- *'I don't know if it's helping but it slows it down and makes it very difficult.'*

- *'I can't think of an example of where it's made a difference to policy. ... It's probably been useful to have had the discipline, but I can't think of where the policy was different.'*

4.13 Is the Difference Embedded?

- *'Yes, we've embedded it. It's part of our culture, but not as a compliance issue. The compulsion gets you the staff attention which you can then exploit.'*
- *'A lot is embedded now: it's in policy and procedures. But there is a way to go in terms of bureaucracy – which has a fairly high irritation factor.'*
- *'It's not fully embedded, and the Branch is still needed, but it's up there in the Department's strategies and everywhere.'*

4.14 What Has Helped to Embed It?

- *The ECNI Guidance is 'good – very useful – but we need more help with screening. The gaps are being filled in but there are still gaps.'*
- *'ECNI guidance has been, and still is, too prescriptive. .. [There is] far too much repetition in the required reporting. That process was essential at the start, but it is time to loosen up.'*
- *'Benchmarking, and giving us the regional statistics – seeing that you are not out of line.'*

4.15 Have We Needed Section 75?

- *'It needed a strong push to start with but it's far too bureaucratic. The bureaucracy overload is a huge negative. And a lot we were doing anyway.'*
- *'Yes, but not the bureaucracy.'*
- *'Statutory is the only way to get it done. PAFT taught us that.'*
- *'Definitely because it's good practice and beneficial. That's why we introduced it to GB when we didn't have to. However the twin drivers (Section 75 and the Race*

Relations Act) and the threat of the stick were needed.'

4.16 **Barriers and Suggestions for Improvement**

- *'You can't just do it by 'the letter' – it has to be proportional. ... We need to manage it more strategically. The emphasis on 'all policies' is a barrier – but most people have come to an accommodation, and we haven't been told we are wrong yet.'*
- *'They [ECNI] are slow in giving us feedback from our reports.'*
- *'Anything that will reduce the bureaucracy and resource required.'*
- *'The single biggest problem is the amount of bureaucracy in the process. However it probably seems that the balance is worse than it is, because it is so specified.'*
- *We follow 'very much the spirit. The letter is too prescriptive, not creative and not in the nature of this organisation. But it has been a useful baseline.'*
- *'Focus on the outcome not the process.'*
- *'Change the emphasis from compliance with the legislation to getting a better bottom line. Support outcomes, not processes.'*
- *'It's always good to see case studies and cases taken to court by the Equality Commission as examples of what will happen if you get it wrong.'* [Reviewers' comment: The cases taken to court might be issues of discrimination rather than Section 75 but the interviewee's comment nevertheless suggested that many people do not always perceive the difference and that the court cases help to make the point that errors in equality (in its widest sense) can be costly.]

Implications

4.17 The implications of these findings are also assessed in the next section which presents the analysis of the findings of the research.

5 Analysis of the Issues Raised

This section provides an analysis of the research results and highlights the main points raised.

5.1 Presented below is an analysis of the research results grouped under the following issues relevant to Section 75 and its implementation:

- The policy development context.
- The impact of Section 75 on policy development in that context.
- The current practice in addressing Section 75.
- The remaining barriers and what else might help.

The Policy Development Context

5.2 A number of points were raised by interviewees about policy making and the policy development process.

What Policy Making was Like

5.3 Some interviewees commented on the way in which, in their view, policy making used to be conducted, which was possibly sometimes in a more creative, but definitely a less consultative, manner:

- *‘Five to ten years ago policy making was a person sitting in an office writing it out in long-hand and then, if he [sic] liked it, it was OK. There was no feeling of a need to consult. Now it’s the reverse and there is more engagement. We’re engaging with people we never thought we’d have to engage with.’*
- *‘Years ago a Deputy Secretary could come in with a “great idea” and that was it.’*
- *‘30 years ago if you were in policy making you were*

very much a solitary hunter – who might find and kill a big beast - but who might not. Now you have all the policy making guides to follow, plus Section 75, the Green Book, etc, so it takes the flair out of individual input. There is no more heroic endeavour and a greater fear of getting it wrong. Section 75 is not seen as a driver for creativity but as something you must do.'

The Policy Making Context

5.4 Some interviewees also referred to the changes that were happening in policy development at the time that Section 75 was introduced, and some indicated changes that might still be required:

- *'Section 75 came in at a time when the Executive was coming in. There were new Ministers with no sense of policy – but expectations. A big value was put on Northern Ireland policies and a big value therefore on strong consultation. However it's become an endless process – it's led to a concept that it can take two years to turn around any policy.'*
- *'There's something in the suggestion that policy making was hierarchical but I don't think it is anything to do with Section 75 that it changed. When Tony Blair came to power everything had to go out to public consultation and there was a commitment to six weeks consultation before Orders in Council.'*
- *'Under Direct Rule the civil service here was an administrative civil service and few people were interested in policy making. We could do some things differently, such as Fair Employment, and 'Pathfinder' in economic development, but in things like agriculture Europe set the story.'*
- *'We are very good now on one-off outreach projects but less imaginative on broad policy, and imagination is often the province of ministers – but we're getting better.'*
- *'We didn't have a great policy making capacity. Therefore ... the policy making handbook (was)*

commissioned. People had been dominated by Section 75 and were not thinking what policy was about. What is policy – it's a big challenge.'

5.5 Some departmental interviewees raised the issue of ministerial level policies, some of which tend to come from [Direct Rule] ministers at short notice and with no evidence of prior screening or impact assessment. The implication was that at Westminster some policy decisions are made quickly in response to public concerns (in particular when highlighted by newspaper headlines) and there are occasions when ministers want to introduce a new policy quickly in Northern Ireland also.

- *'Ministers want quick answers and I can't afford too much process'.*
- *'Ministers will have value sets so you consult and then they do what they wanted to do, because they have a right to do so.'*

What is a Policy?

5.6 A number of interviewees also alluded to problems in deciding what should be a policy in the context of Section 75 (and see also paragraph 5.25 below). This issue was also specifically put, for instance, in the Department for Regional Development's Five Year Review Report:

'The definition of policy set out in the Guide to the Statutory Duties is deemed to be too wide ranging. Consultation with stakeholders confirmed that a clearer definition of 'policy' is necessary. The need for consultation on policies where stakeholders will have little influence was also questioned, ie EU led directives.'

5.7 McLaughlin and Faris, in the introduction to Chapter 2 of their report, provide some comments from the people they consulted which highlight the difficulty of defining what a 'policy' is and they then go on to state (in paragraph 2.2) that:

'One of the difficulties mainstreaming measures such as Section 75 must face is that of applying and developing a simple procedural prescription to the diffuse phenomena

which are policy and policy making. These phenomena are not neatly bounded in time and space ... (and) policy and policy making is often more often made up of a plurality of actions and decisions, some routine, some highly significant.'

They also add (in paragraphs 5.8 and 5.9) that:

'...we believe that a regulatory rather than adversarial approach is more appropriate for Section 75 [and that] Section 75 is not itself the mechanism which delivers equality of opportunity. It promotes and requires that equality of opportunity be mainstreamed into the decision-making processes of all designated public bodies. ... It is parasitic (in the better sense of that word) on the duties, actions and services delivered by the designated public authorities. It is these which, if designed and resourced adequately, may be capable of achieving equality of outcomes and reductions of unjustifiable inequalities in our society.'

5.8 Some interviewees discussed the need to approach different levels of policy differently (see also paragraph 5.38). The Equality Commission has expressed concern that EQIAs were not being carried out on high level policy: *'the annual Priorities and Budget Document, for example, and Public Private Partnerships'*¹, and, where such issues arose in the interviews, there were wide variations in the responses, from *'It could be focused a bit more on big policy'* to *'Departments are expected to carry out EQIAs on high level strategy and we need guidance on how to do that – there's really no advice available'*.

Implications

5.9 Overall the interviewees indicated that the context for the implementation of Section 75 in public authorities was one in which the policy development process had been more hierarchical. Now it was more consultative (externally and internally) and more people (internally) were taking ownership of the process, although Section 75 was not the only factor that had had an influence on this. However there

¹ Report on the Implementation of Section 75, April 2004 to March 2005, paragraph 2.20

could still be pressures sometimes for policy to be made quickly, which was not consistent with a full screening/EQIA process. It was also clear, not just from the interviews but from some written reports also, that in reality there is ambiguity about what is a policy in the context of Section 75 and at least some of those interviewed would like more flexibility in deciding what decisions should be considered to be policy on which it would be helpful to consult. Several interviewees expressed the view that some policies simply didn't need the full Section 75 process and that it was overkill. A number of interviewees described how their experience of working with Section 75, and the degree to which it was better understood and mainstreamed, had led to their rescreening and subsequently screening out some policies which had originally been screened in. The Equality Commission has expressed scepticism on this score in its annual progress reports, suggesting in its 2004 – 2005 report that, *'it may have more to do with reducing the number of EQIAs than screening in policies which have significant equality implications'*. The discrepancy between these two positions shows a tension between the perceptions of some public authorities and those of the Commission which needs to be addressed.

The Impact of Section 75 on Policy Development

A Positive Impact

5.10 Despite any misgivings about what policy might be, it was clear from the responses that a large majority of the people interviewed thought that Section 75 had had a clear and very positive impact on policy development.

5.11 Of the 36 people consulted only three clearly said that policy had not changed as a result of Section 75 and in only five of the interviews was a strong view expressed against Section 75. In these instances, it appeared that the dissatisfaction with Section 75 was not because the people concerned disagreed with the idea of equality but because they thought that Section 75 added nothing of value to their

organisations which, they implied, were already treating people equally. About one fifth of those interviewed was somewhat neutral (or in two cases appeared not to be very well informed about Section 75) and many of these were people from small organisations who felt that the provisions of Section 75 were too onerous. The rest, who amounted to almost two thirds of the people consulted, clearly felt that Section 75 had made a considerable difference and that policy making was significantly better as a result. Phrases such as '*vastly different*', '*completely changed*' and '*absolutely better*' demonstrate the energy with which many interviewees expressed themselves on this score. No correlation was observed between either the level of the person being interviewed, the size of the organisation or the level of policy making concerned and the extent to which people felt that Section 75 had made a difference. The research also found no other indications that the extent to which Section 75 has been mainstreamed was different at different levels of policy making.

5.12 One person however made the suggestion that Section 75 had levelled policy development both up and down, in the sense that there was less very bad policy but also less very good policy. This remark came towards the end of the sequence of interviews and was not put to the other interviewees. The explanation indicated for the levelling up was understood to be that, because there was more guidance in how to do it, policy development was on average better. However there was also a levelling down because there was more fear of getting it wrong and no more room for individual flair or 'heroic endeavour', which did not facilitate very innovative policy making. This was also combined with the comment that, because of all guidance now given and the guides that had to be followed (not only Section 75 but also the Green book), the system was not '*a driver for creativity*' and, as another person commented: '*by systemising (policy development) you make it more of a chore than something interesting or relevant*'. While this aspect of policy development was not raised by other respondents, they were not specifically asked about it and the two people who did raise it were both senior members of the civil service with considerable cross-departmental experience who were thus in a better position than many

others observe such effects. This is therefore likely to be a valid reflection but it does not however suggest that there should be a change in approach because it probably reflects an inevitable consequence of tighter control.

5.13 UK wide bodies also saw Section 75 as positive: *'it's good practice and beneficial'* and as being worthy of wider application: *'that's why we introduced it to GB when we didn't have to'*. And it has been promoted as a model for use elsewhere, as the British Council's progress report of 2004-05 indicated:

'Section 75 has been internationally showcased via the Global Diversity Network; through the EU Diversity Matters partnership, and through work shadowing ... In addition to S75, Corporate Social Responsibility was also discussed with members of the Community and Voluntary Sector, the Equal Opportunities Commission and the British Consulate in Hong Kong.'

5.14 The clear implication from the comments of the majority of the interviewees was that Section 75, in insisting on structured assessment, including consultation and consideration of the views of a wide variety of consumers, had significantly improved policy development overall. The few people who dissented from this view in most cases indicated that, in their view, policy making would have been taking these considerations into account anyway, but that view was not widely shared. The comments of two interviewees did however raise the possibility that the more structured and mandatory procedures for the policy development process, while raising the average quality of policy, might reduce the scope for innovation and individual flair. That view would be consistent with other views on the sort of culture which promotes innovation.

Examples of the Difference Made

5.15 As Figure 1 indicates, the outcomes expected from the application of Section 75 to policy development and implementation are improvements in the policy making process leading to equality of opportunity and good relations. Changes to existing policies would only be expected where

those policies are shown by screening or EQIA to have potential adverse equality or good relations impact, and it is quite possible that policy made without Section 75 would still provide equality of opportunity, especially as Section 75 was not the only initiative promoting this outcome. Therefore it should not be expected that in every case the proper application of Section 75 will necessarily lead to changes being made to existing policies. Also it is not necessarily the case that the application of Section 75 would lead to changes being made to policies during the policy making process. The Northern Ireland Civil Service's own 'Practical Guide to Policy Making in Northern Ireland', which was introduced recently because of an increasing demand for policy development advice, and was apparently written in particular to put an emphasis on the why as well as the how of policy development, indicates that early informal consultation is of key importance. If this is done, as recommended, before options are considered, it should mean that there will be less need to re-appraise the options after the formal consultation process.

5.16 It was not therefore expected that all organisations implementing Section 75 would be able to identify changes to policies and this was what happened. While the literature review did provide evidence that policies had been changed, it did not provide it in every case and provided some comments on why this was so:

- a) Evidence of changes being made to policies was for instance provided in the Executive Summary of the Equality Commission's report on the implementation of the duties 2004 – 2005 which states that: '*public authorities highlighted over 120 changes in policy or practices that resulted from equality impact assessment activities affecting individuals in all the equality categories*' (see paragraph 4.5).
- b) Reasons why changes to policies cannot always be identified (see also paragraphs 4.6 and 4.7):
 - '*With the increasing awareness and knowledge of equality and human rights issues amongst trust staff, many of the policies coming forward for screening have already taken equality*

considerations into account. Therefore no impacts are being identified at the screening stage in policy areas where they might otherwise have been expected. North and West Belfast Trust

- *'The Department has placed great emphasis on embedding and integrating the statutory duty obligations into the policy development process. Such integration can make it difficult to identify those areas of policy that are changed as a direct result of s75.'* DSD

5.17 A similar picture emerged in the interviews. In the majority of the interviews in which respondents indicated that Section 75 had made a difference to policy development in their organisations, they were asked if they could give any examples. Their answers did refer in some cases to policies which had changed but others explained that, despite some thought, they could not identify major changes to policy already made or in progress. Although one person indicated that *'consultation almost always results in modification of the policy, though often minor'*, the answers generally fell into one or more of the following categories:

- a) Answers in a few cases which provided instances where the application of Section 75 had indicated the need for a significant change to an existing or a developing policy, such as:
 - *'An example is water policy where there are big changes'*.
 - *'The e-libraries policy: the EQIA did make a difference.'*
 - *'All colleges have gone down the route of no football shirts, which has produced more neutral places as a result and each college is now perceived as more welcoming.'*
 - *And 'In age discrimination I didn't see the value until it forced me to see how discriminating we were.'*
- b) Answers which indicated that there had been some changes to existing or developing policy, but they were very few and only relatively minor. For instance:

- *'However it is hard to identify and/or remember specific examples of changes as screening is done as part of the policy development process and a lot of changes are small 'tweaking' so do not therefore register as big or significant impacts.'*
 - *'Very few of our policies have had to be changed.'*
 - *'Of the 276 policies in place when Section 75 was introduced, it was seen as having relevance to 77. Once screened this came down to 47, of which small changes were made to 5 or 6.'*
- c) Answers which indicated that the main difference arising from the application of Section 75 was in the way that policy is now made instead of retrospective changes to past policies. In those circumstances it is hard to show what difference there was between a new policy and what it would have been like if it had been made without Section 75. For instance:
- *'For instance our architects would have said: "we know what's good for you", but now it's: "what do you need?''*
 - *'I have difficulty in finding a concrete answer on the grounds that I could not be sure how the policy would have turned out without Section 75'.*

5.18 It was therefore the opinion of the researchers that an inability in some cases to provide ready examples of changes made to policies because of Section 75 did not necessarily mean that Section 75 was not being applied properly or that it was not having an impact on current policy development. The ultimate aim of the application of Section 75 should be that public authorities should promote equality of opportunity between the nine categories of people, and promote good relations between the three categories, and it is not possible to compare the same policy developed with and without Section 75 to show the difference in these respects. Therefore, as is explained in the section on methodology, observations by the bodies and people concerned of the differences Section 75 has made were sought. The responses from the majority of interviewees indicated, not just that it had made a difference because they

were following the required processes, but that they could see that these processes did lead to better policy development. This meant that equality considerations had, in the majority of cases, been embedded willingly because the people concerned could see that it produced a better service, rather than just because they had to do it. The result should be that in many cases policy development was now taking equality issues into consideration at an early stage and so did not need to be changed later. The lack in some cases of examples of policy changes did not therefore, in the researchers' view, mean that there had been no impact and that Section 75 is not now embedded.

Supporting Benefits

5.19 As well as better policy development, other benefits were also identified as accruing from the implementation of Section 75:

- The benefit of helping to secure staff engagement: *'It has helped us to engage with staff on the issue of equality because they see that we have to do it. The implication was that once staff had started to accept the need to address equality and good relations in that way management could move on to a more proactive approach.'*
- The benefit of giving credibility and transparency to decisions, which could be helpful in situations such as tendering, awarding grant aid and in Freedom of Information situations: *'it ensures the decision making process can be shown.'*
- The benefit of increased participation: *'A major lesson which has emerged over the past five years is that s75 has brought about a degree of participative democracy that may not have been foreseen by many in 1998. In particular it is now more clearly understood by policy-makers that Government can no longer take key policy decisions without first having conversations with people who will be affected by those decisions. There is a growing appreciation on the part of policy-makers that s75 and equality schemes offer tools and techniques for making the most of this engagement,*

and that the s75 framework is a valuable means of testing policy proposals for possible unintended consequences.” “Given the nature of health and social care and the priority given to meeting the needs of disadvantaged and vulnerable groups, it has become increasingly evident that there is an overlap between the boundaries of the s75 equality duty and many of the core functions of the HPSS.’ DHSSPS 5 Year

Progress Report p2

5.20 The ability of a number of interviewees to identify other benefits arising from the introduction of Section 75 was, in the researchers' view, further evidence that more than just lip-service was being paid to Section 75 and that it had been widely mainstreamed. Identifying these other benefits also helped to reinforce the belief of many respondents that introducing Section 75 did lead to improvements.

The Negative Aspects

5.21 However, even the majority who thought that Section 75 had had a positive impact on policy development also thought that it had some negative aspects:

- a) The bureaucracy is (now) resented (*'it's the biggest single problem'*). In one discussion it was suggested that people might however see the bureaucracy as worse than it actually was because it was mandatory and they might have been prepared to do as much had they been asked instead to decide what was appropriate. Another interviewee suggested that it is becoming *'political correctness'* and therefore there is a danger of a *'backlash'*.
- b) Section 75 might be detracting from other desirable initiatives: *'Because there is so much statutory emphasis, Section 75 has relegated other important considerations which have less legal imperative.'*
- c) It was seen as being too onerous, especially in requiring the close following of strict procedures: *'[We follow] the spirit [of Section 75] because doing it to the letter would be too onerous for us'*. (See also paragraph 5.38d)

- d) Too much enforcement can be alienating: *'We are conscious of the dangers of simplistic "zero tolerance" approaches to enforcement of the duty. The dangers, we suggest, are that in the longer term the "spin" of such approaches exceeds the actuality achieved by them. A further danger is that such an approach alienates those with whom partnership is required.'*

McLaughlin and Faris, 1.12

5.22 Among the other negative points made about the promotion of Section 75, often in response to the question about remaining barriers to its application, were:

- a) Several respondents made reference to the disincentive of seeing other organisations apparently not applying Section 75 properly and seeming to get away with. For instance some non-departmental public bodies (NDPBs) suggested that their Departments insisted that the NDPBs went through the stipulated Section 75 procedure while not doing it themselves.
- b) Several references were made to a lack of feedback from the Equality Commission. The researchers did not have the time to go into the specifics and the possible rights and wrongs of each of these suggestions and some of them might, to some extent, have been grumbles occasioned by the need to follow all the Section 75 procedures. Nevertheless they are mentioned here because they indicate a level of dissatisfaction which might be worth recognising.
- *'ECNI guidance has been, and still is, too prescriptive.'*
 - *'The Equality Commission ... are slow in giving us feedback on our reports.'*
 - *'Sometimes the Equality Commission guidance has been a long time coming but the revised guidance issued in February was helpful, although it's still open to interpretation and still needs to be more specific, for instance on what is a policy (we take the broad view).'*
 - *'You don't get feedback from the Commission (ECNI) so that means that the (people) have less*

confidence that they are doing the right thing. They say they don't have the resources to give quick feedback but we are not allowed to use a lack of resources as an excuse for not doing it.'

- c) One respondent suggested that the name 'Section 75' was not seen as prominent [ie inspiring] enough for such an important initiative. This was apparently in contrast to initiatives such as 'Targeting Social Need' and 'Human Rights' where the titles of the initiatives help to convey their purpose and importance.

5.23 It was clear from the responses obtained that the interviewees generally thought that the bureaucracy, which they believed was associated with the implementation of Section 75, was the biggest handicap in its continuing acceptance. What they meant by 'bureaucracy' appeared to be the combination of various time-consuming tasks which include screening and EQIAs together with the consultation they involve and the detailed and rigidly prescribed way in which these have to be carried out. It also includes the requirement for detailed annual and five year reports, the templates for which were seen as repetitive and of limited value in assessing the effectiveness of Section 75. Whether this perception of unnecessary bureaucracy was well founded or not (and one interviewee did indicate that it might not be) it nevertheless exists and limits the wider acceptance of Section 75.

The Counterfactual – Would Policy Making Have Improved Without Section 75?

5.24 While a number of interviewees indicated that there were other influences which were tending to make policy development more inclusive, nevertheless most of them believed that in their organisations Section 75 had been very influential and that, in this, the statutory basis was important:

- a) PAFT didn't do it. It was a significant predecessor but: *'statutory is the only way to get it done. PAFT taught us that.'*
- b) Other factors were moving things in the same direction. For instance there was *'a move to increasing*

consultation, a move to planning policies which reflect what people need, and more training in policy making and evaluation', there was *'a move to a more evidence based approach'* and *'the threat of Judicial Reviews also influenced people to be more systematic'*.

However the indication was that it was generally felt that the effect would not have been nearly so great without Section 75.

- c) No one however suggested that it was not necessary to consider equality of opportunity or good relations. The people who said that Section 75 hadn't made a difference implied that that was at least in part because policy was providing for these issues. (If you are achieving the desired impact why should you need to change the process?)
- d) The anti-discrimination legislation was seen by some people as complementary to Section 75, and by one or two as a more effective driver of change. There was however some evidence of confusion between the two. One interviewee said (in the context of public authority employment) that *'we would always have recognised any problem of inequality and dealt with that'*. Another who expressed strong reservations about Section 75, and felt that the organisation already had good equality of opportunity policies, spoke almost exclusively in terms of *'not discriminating'*. However another interviewee volunteered in Section 75's favour that *'it spread the anti-discrimination legislation to a wider range of people and is proactive and promotional rather than reactive and kicking in after a problem has arisen'*. A specific element of the anti-discrimination legislation is the disability duty included in the Disability Discrimination Act, referred to by a few interviewees. The Equality Commission was consulting on guidance on the new duties in relation to disability at the time this report was being produced and its consultation document explains the relationship between this and the Section 75 duties. One interviewee however described the new duty as potentially *'a step towards fragmentation'* apparently because Section 75 was seen as promoting overall equality thinking and a separate focus on just one dimension of equality could

diminish the broader approach.

5.25 The evidence presented therefore indicated that, while policy development in public bodies would have changed without Section 75, it would not have improved so much or systematically addressed equality considerations to the same extent.

The Role of Civic Society and of Elected Representatives

5.26 One respondent raised the issue of the possibility of Section 75 consultations giving undue weight to special interest groups because they are organised to respond, and suggested that this also devalued the input of elected representatives. While this specific point was volunteered by only one respondent, that was a senior person with considerable experience and, while it only indicated the possibility of undue weight, it is the reviewers' view that it reflects a relevant concern. It is clear that some of the larger interest groups can and do organise and resource themselves actively to promote their group's agenda, because they believe that lobbying can be effective, and other groups may have equally valid views but may be less well organised and less vocal. Nevertheless such organised lobbying by particular groups is now a feature of the influence of civic society on our wider government system and happens with or without Section 75 and, since all inputs do not have to be acted on, allowance can be made for some groups being better organised or being more vocal than others.

5.27 However other aspects of consultation with civil society organisations that was reported was the difficulty sometimes in getting a response and the possibility that representatives of some groups might be 'over-consulted'. One suggestion made in the Housing Executive's five year report was that it would *'be advantageous if the voluntary and community sector organisations representing the section 75 groups, were resourced to develop their personnel to respond to the consultation process'*.

5.28 The influence of special interest groups can be

resented by elected representatives, who have sometimes suggested that unelected groups have no mandate, but elected representatives do not have a monopoly on valid and relevant views. Several respondents therefore commented on the role of civic society groups vis-à-vis elected representatives in such circumstances but it is clear that this is part of a wider issue to which there is not a single right answer.

- *'The political party system should be about electing politicians for their views so the political pressures should highlight differences. Ministers will have value sets so you consult and then they do what they wanted to do, because they have right to do so.'*
- *'We also had the politics of opposition – that's what Ministers instinctively did, even when in power.'*
- *'As an elected representative, you're elected to make decisions'*.

5.29 In this context a few interviewees raised questions about what would happen if and when the Assembly returns:

- *'When we have an elected assembly it should be a matter of what is the best way to achieve what the elected minister wants, not whether the people like it?'*
- *'If you get the Executive back and it goes back to deciding what the politics of Northern Ireland is about – because there are some policies set in Europe and some in Westminster etc. ... We need to get the debate on to those things which it is worth our while to consider. It's a maturing process, but we might need to educate politicians. We need to look at the quality of the policy debate – not the technicality. It's not a case that if you get all the twigs right the tree will also be right – it might be mis-formed.'*
- *'Evidence is [often] values based and the political party system should be about electing politicians for their views.'*

However:

- *'Under devolution S75 would be a protection if a minister wanted to push things that helped his/her own'*

constituency.'

5.30 Other comments made about consultation suggested that it is on both sides that the ability to engage in open consultation is improving. One of the researchers had previously (in the context of early Laganside consultation) heard comments that in the past, because they were not consulted, no role in policy making was in effect allocated to communities except to oppose, and that it takes time to change this outlook. Also public sector bodies had to learn how to engage with them.

'A lot of people didn't have reasonable links with community groups (or understand who they actually spoke for).'

5.31 Whether Section 75 existed or not, there are organised groups in civic society which seek to have an influence on government policy and prepare and lobby accordingly. It would also appear that representatives of some groups are not resourced to respond in detail to all attempts at consultation. In addition there can therefore be a tension sometimes between civic society organisations and elected representatives about whose view has the better mandate and this happens without Section 75. These however are not factors that Section 75 can change but they exist and implementing bodies should therefore be aware of them and allow for them.

Good Relations

5.32 Good relations work has figured less in the public authorities' Section 75 activities which may, at least in part, be due to the good relations duty's somewhat weaker legal imperative and its potentially more sensitive area of engagement. Some bodies make the point, in their annual progress reports, that it is difficult to distinguish between the two duties, and some frankly acknowledge that they have undertaken more work on the promotion of good relations between different racial groups than between people of different religious belief or political opinion. As with the promotion of equality of opportunity, public authorities have to an extent struggled with aligning Section 75 duties with

other initiatives. Good relations work may, for example, be subsumed within community relations (and existing community relations initiatives may have been expanded to include racial groups) and health bodies may look to Health Action Zone initiatives to help deliver good relations. At the time of writing, the Equality Commission is consulting on a guide for public authorities on promoting good relations.

5.33 Interviewees were asked if they drew on 'A Shared Future' in their work and the responses varied from not recognising the title of the document to 'Yes, *absolutely*'. Some public authorities, including the smallest bodies and those who do not have direct contact with the public, indicate that they are somewhat at a loss to know how they can implement this duty.

5.34 It was however indicated by several of the respondents that they were already looking beyond the current application of Section 75 to see what else they should be doing to improve their service. In this context good relations was recognised by some respondents as worthy of attention and two respondents specifically suggested that good relations was an under-explored area and that the focus should now shift to it:

- *'Good relations is the poor relation.'*
- *'Good relations is probably the biggest challenge.'*
- *'The under explored area is the promotion of good relations – how do you develop a project around that? There's an issue around getting consensus that we want to promote good relations because we need an institutional consensus.'*
- *'You can, after a bit, only move equality forward through good relations but basic equality was needed before good relations could be started'*

Impact Conclusions

5.35 The conclusions from this analysis of the impact Section 75 has had on policy development and implementation by public authorities are that, in the opinion of the large majority of those interviewed, it has had a

significant and positive impact. This view is supported, in many cases, by examples of changes being made to policies as a result of Section 75 processes and there are reasons why, in the other cases, the lack of more such examples does not necessarily indicate a weak impact. This positive view was supported by the identification of other benefits arising from the application of Section 75 but there are also perceived to be some negative aspects to it which, whether real or imaginary, are limiting its further acceptance. It was also made clear, that while policy development was changing anyhow, it would not have changed to the same extent without Section 75. However the improvements so far have largely addressed equality of opportunity and more attention might now be given to good relations.

Current Practice In Addressing Section 75

5.36 The majority of the people consulted for this piece of research appeared to be strongly of the view that delivering a good service, being competitive and/or attracting the best staff, required them to promote equality of opportunity, and therefore to address all nine categories equally, and to promote good practice. In other words for them Section 75 amounted basically to good business practice.

5.37 The general view however was also that Section 75, with its statutory powers, had been necessary. For instance fair employment '*wasn't done until it became a legal requirement*' and PAFT was '*hard to understand*' and '*not statutory*'. Many thought that an analogy with car seatbelt legislation was apt because it had required legal sanctions to make seatbelt wearing become a habit. However many also thought that, now the principles and practice were established, continuing to put the same emphasis on the specified process could become counter-productive and that what was instead needed was a '*change of gear*' to encourage organisations to move on and build on the foundations which had now been established.

Balances Struck

5.38 A large majority of the respondents felt that, in applying Section 75, balances have to be struck in practice between the extent of the work required by the letter of the instructions and the resources (in terms of time and/or money) that are in practice available. These respondents indicated a number of ways in which *de facto* balances were being achieved:

- a) Defining work out: (*'We don't do policy, we think about frameworks'* and *'We have strategic policies and implementation policies'*).
- b) Ignoring the requirement. (*'We decide that some groups aren't an issue'*.)
- c) Applying *de minimus* selection criteria. (There is in some areas a trend *'not to consider small decisions to be policy ... but the Equality Commission says that everything is a policy'*. *'Most people have come to an accommodation – and we haven't been told we are wrong yet.'*)
- d) Judging what is sufficient/relevant process to achieve the desired impact. (*'We follow the spirit'* not the letter, because *'doing it to the letter would be too onerous for us. We focus on where (we think) the needs are.'* *'You can't just do it by the letter, it has to be proportional.'*)
- e) Tailoring the process to the public authority, for instance by designing a simpler EQIA or screening process.
- f) Cutting corners in reporting. Both the Equality Commission's 2004-2005 annual progress report and its report of progress on the good relations duty for instance note parts of some reports carried forward from year to year without change, addition or correction.

Implications

5.39 These responses serve as a reminder that Section 75 is not being implemented in isolation and there are other pressures on organisations' time and budgets. Applying Section 75 may be mandatory but where there is perceived to be scope for some flexibility, for instance in deciding what

is a policy (see paragraph 5.8), then it is inevitable that sometimes a balance will be struck, especially where people believe that full application of Section 75 procedures is not necessary to achieve the desired outcome of equal treatment. It is therefore possible that people will more willingly apply Section 75, and apply it to better effect, if they feel that they can be trusted to judge where it is relevant and necessary, and what level of scrutiny it should be given. This message was coming from the enthusiastic and committed interviewees as well as from those who were more sceptical. This is not to suggest removing all statutory obligations; there is general agreement that PAFT, ie a voluntary approach to equality mainstreaming, failed to deliver and interviewees recognised this. It is about a change in approach, not an abandoning of the basic goal.

MOVING FORWARD

The Remaining Barriers

5.40 The barriers still remaining to the further or continuing implementation of Section 75 were thought to include:

- a) Cost – both in time (raised in particular by Departments because Ministers want quick answers) and resources (raised in particular by smaller bodies because they have few staff to do the work). Therefore people will seek to avoid (or evade?) it.
- b) The perceived bureaucracy, including the reporting requirement – again a resource versus returns issue, and pressure to follow strict procedures.
- c) And possibly the return of an elected government in which Ministers would be mandated to make decisions.

5.41 For many people, it seems that it is in particular the bureaucracy associated with Section 75 which is a significant disincentive. It may be that sometimes the bureaucracy appears to be more onerous than it really is, because it is compulsory, and some of the examples quoted

appear to contain errors of fact about the requirement (for instance one person referred to '*the full-Monty of 12 week consultation among all and sundry*' which was said to be '*alienating to staff*', when the period is actually only two months and the Commission's guidance allows a focus of consultation on those likely to be directly affected by the policy.) However, whether it is fully justified or not, there is a perception that the bureaucracy is excessive.

5.42 The complaints about bureaucracy are also linked to a perception that the emphasis is currently on the process, rather than outcomes, and, while there was recognition that the mandatory process might have been necessary to get Section 75 started, it was now seen as a negative feature. Altering this was the 'change of gear' advocated by some respondents.

- '*The prescriptive nature of S75 can be an impediment to achieving the desired output. ... It has got so bogged down in the process that we've lost sight of the objectives.*'

5.43 There was however a degree of confusion in the process versus outcome debate. It is unlikely that anyone is going to disagree that outcomes are more important than process. However, to quote the Equality Commission's response to the DTI's consultation on the GB gender equality duty, January 2006, '*In order to get the outcomes, you need the processes, practices and systems to back them up.*' Some of the interviewees who argued against the perceived emphasis on process, nevertheless were happy to ascribe a high value to the process changes their public authority had instigated, claiming that their policy making was now more systematic, more evidence-based, more transparent and more inclusive. One interviewee explored the idea that since the process is so systematic, and since it is carried out in good faith ('*We make sure it's gone through properly and not just mechanistically*') it could not but result in a better policy. However some people appeared to be implying that the fixed nature of the stipulated process precludes further process improvement for even better outcomes, or for less cost which is also an important consideration.

5.44 As indicated above in paragraph 21 there is a strong and persistent perception that applying Section 75 involves a lot of bureaucracy, and this is seen as a barrier to its continuing and further implementation. This perception may not always be well founded but it is a perception and it does influence people's views on Section 75. This aspect was therefore referred to in suggestion for improvement (see following paragraphs).

Suggestions for Improvement and Reinforcement

5.45 While a clear majority of the people interviewed thought that Section 75 had been necessary and that its statutory imperative had been important, when they were asked what else might be done to further improve its impact, many of them did make suggestions for improving it. In general these were based on reducing the bureaucracy and focusing on outcomes instead of process, and about half of those interviewed made comments along these lines, such as.

- *'Focus on the outcome not the process'.*
- *'Change the emphasis from compliance with the legislation to getting a better bottom line. Support outcomes, not processes. That way you will get continuous improvement.'*

5.46 While these comments were not all identical they were consistent with the view of McLaughlin and Faris (see paragraph 5.6 above) in recognising that, in promoting equality of opportunity, Section 75 is a means not the end. Both these comments and McLaughlin and Faris can be construed as, in effect, suggesting that the means should be appropriate to the desired end and to the extent to which that end is already being addressed:

'We believe that a regulatory rather than adversarial approach is more appropriate for Section 75 (and that) Section 75 is not itself the mechanism which delivers "equality of opportunity". It promotes and requires that "equality of opportunity" be mainstreamed into the decision-making processes of all designated public bodies.'

... It is parasitic [in the better sense of that word] on the duties actions and services delivered by the designated public authorities. It is these which, if designed and resourced adequately, may be capable of achieving equality of outcomes and reductions of unjustifiable inequalities in our society.'

5.47 It would seem that a move towards emphasising the desired equality outcomes, supported by help and encouragement to employ appropriate processes, and with sanctions to be applied if the outcomes are found to be lacking, would be the 'change of gear' suggested by some people and would find considerable favour. In some cases these suggestions were offered by people who appeared not only to see the benefits to their organisation of providing equality of opportunity but also to the possibility of building on what they had already done to provide further improvements in their service. They were, in effect, recognising that providing and maintaining a good service is not a matter of a once-off improvement process, but of continuously exploring how the service could be made better and adjusting the process accordingly. This is a rather like the process of continuous quality improvement in some manufacturing businesses – see the box below). An example of this sort of thinking was provided in DSD's Five Year Review Report:

'Section 75 introduced a statutory obligation on the Department to promote equality of opportunity. However there has been too much emphasis placed on process with perhaps not sufficient focus on the outputs being sought. The formal nature of the process may well have been helpful in the initial years, but again perhaps is now too restrictive and does not afford Public Authorities the flexibility to take forward work that may not need to be as closely screened as other areas of work. ... It may now be time to provide a greater degree of flexibility that would allow Public Authorities to specifically target their efforts on those policies that can be influenced or further assisted by the statutory duty, in effect allowing a proportional effort to the outcomes deliverable.' p3

5.48 One suggestion along these lines specifically offered

the example of health and safety legislation (other interviewees did not mention it but would not have been so familiar with it). This legislation, which aims to achieve the outcome of healthy and safe work places, does not insist on the application and reporting of pre-determined one-size-fits-all procedures, but instead requires organisations to make an assessment of their health and safety risks, to take appropriate steps to reduce those risks, and then to monitor to ensure that those measures are followed. This, it was said, requires far less reporting of the process but, if an organisation does not do it properly, and a problem arises as a result, the organisation responsible should and will be heavily penalised. Such an approach would let the bodies concerned decide what is best for them to do on a risk versus cost basis, whereas, in theory, at present they ought to do everything specified, but not necessarily anything more, whatever the cost in time or money. If applied to equality considerations it would apply sanctions for failing to deliver adequate equality of opportunity but not specifically for failure to apply a particular process.

5.49 The implication of at least some of these suggestions was that the statutory emphasis on process had, for those organisations which were designated relatively early, now done as much as it could to mainstream equality issues. Many of those people and organisations which had accepted Section 75 and seen its merits now resented the continuation of, for instance, the required level of reporting, and those people who were not persuaded were unlikely to be convinced by more of the same.

5.50 Other suggestions which were, however, made for reinforcing Section 75 included the following:

- a) Inform people why Section 75 is good practice. The specific example was given of the recent road safety advertising which told people why it was good practice to drive at no more than 30 mph in built-up areas (because at that speed if you hit a child it would have an 80% chance of living, whereas at 40mph it would have an 80% chance of dying). This suggestion was made by someone who apparently believed that Section 75 would not only be better accepted but

would also be more imaginatively implemented if the reasons for it were promoted instead of an emphasis on the legal force behind it, the latter encouraging compliance but no more.

- b) Help organisations to make equality and good relations their practice (eg by better advice and guidance on consultation and research). This suggestion was similar to the previous one in that it sought to get people to want to implement Section 75 rather than doing it reluctantly under duress.
- c) Promote awareness of the liabilities incurred by a failure to achieve equality and good relations. This suggestion was along the same lines as the health and safety analogy mentioned above and it was aimed at encouraging organisations themselves to assess the risk of their failure to achieve equality and good relations outcomes and take appropriate steps to reduce them. The liabilities incurred through poor performance could include:
 - The danger of serving clients badly.
 - Reputational penalties and falling behind the competition (where there are competing organisations) because of poor service and/or poor staffing.
 - Being subject to the investigation and complaints procedure already in Schedule 9 or any new enforcement mechanisms that might be introduced. In any case, it was suggested, penalties should be publicised whenever they are applied – *pour encourager les autres*.
 - The potential to be the subject of a judicial review.

5.51 Other ways in which it was suggested that Section 75 objectives might be promoted included:

- Introducing a check list approach to speed up screening.
- Asking each Section 75 group what its key issues are.
- Introducing a *de minimus* rule. [This suggestion was not explained further at the time but it was understood

that it linked into the definition of what is a policy and was proposing that some issues about which decisions were required might be regarded as being too small, for instance in terms of cost or the number of people affected, to constitute a policy.]

5.52 *Summary of Improvement Suggestions.* The key themes arising from the suggestions for improvement could be summarised as:

- Equality and good relations outcomes are the ultimate objective and the focus should be on achieving them, rather than primarily on the process.
- Organisations and people should therefore be encouraged and motivated to achieve those outcomes.
- Applying the statutory process can only go so far towards those outcomes.
- The analogy with the health and safety legislation provides an example of a system which focuses on outcomes.
- In encouraging people to improve outcomes the carrot is that it provides a better service and the stick could be the liabilities incurred if the outcomes are not adequate.

Options for the Way Forward

5.53 These suggestions from respondents for improving the application of Section 75 indicate an alternative way for the future progression of Section 75, other than just more of the same. If the 'do nothing' option required for 'Green Book' appraisals is also included there are three main options:

- a) *Doing Nothing.* The 'do nothing' option, in this case, would mean dropping the requirements of Section 75 and ending efforts to promote its implementation. This research indicated that it was likely that some public bodies do now see the advantage of applying Section 75 procedures and would continue to apply them even if they were not mandatory. However, it also indicated that the mandatory provision had been necessary to get those bodies to adopt the required approach in the

first place, and the implied threat of sanctions if equality issues are not considered in policy making is still an important influence. Dropping the requirements of Section 75 would therefore not help to sustain its impact or to extend that impact to other bodies.

- b) *Continuing the Present System.* This emphasises the application of the specified process and would have the advantage of not requiring any change. It would also provide the more recently designated public bodies with the same structure that the others had. However it can be seen as rigid, bureaucratic, excessive and/or as sometimes too costly in time and effort for the benefit gained. Also continuing to apply this approach is unlikely to persuade those who still resent it and might even alienate those who support the basic idea.
- c) *Changing the Focus.* The focus could be changed to the required outcomes, allowing organisations more flexibility to adopt appropriate processes for their situations. This approach would require assessment of the outcomes obtained and the provision of penalties for poor outcomes. It would however recognise that individual organisations are in a better position to ascertain what best suits their circumstances, which might be the same as the current process or even stricter, but it would then be their decision. This option would also facilitate a continuous improvement approach (see box below).

5.54 Many of the respondents recognised that equality and good relations outcomes are beneficial and that Section 75 has helped to secure them. However a number of respondents suggested that a 'change of gear' or its equivalent would be helpful in efforts to secure the continued implementation of Section 75. This approach recognises that there are instances when the actions needed to get something started are not the actions then needed to keep it going. Stabilisers are helpful when starting to learn how to ride a bicycle but are a hindrance once the art has been mastered. Gliders need external assistance to get them into the air, but if that assistance is not released once they are aloft it will only hinder them. In the same way many

respondents accepted that Section 75's mandatory procedures were necessary to start the process of promoting equality of opportunity and good relations but argue that their rigidity is now hindering further progress.

5.55 It has been said that, in striving for achievement, 'what you measure is what you get', because people focus on what is measured and reported. It is presumed that, in seeking to have an impact on public policy development, the objective Section 75 was intended to achieve was that everyone should work towards the goal of greater equality and better relationships. If however that outcome is not assessed, and instead the focus of reporting is put onto the statutory process, then what is likely to be achieved is only compliance with that process. That might initially improve the equality of opportunity provided by policies, but would not necessarily motivate people to want to do more and to seek better ways of doing it.

5.56 An alternative approach focusing on outcomes could be similar to that of the health and safety legislation and is consistent with the continuous improvement approach described in the box below. It would help to motivate people to achieve the best outcomes (which will involve some balance of cost and quality) and which can always be further adjusted, rather than just compelling them to apply standard processes which does not allow for further improvement. As McLaughlin and Faris noted, '*Section 75 ... facilitates an excessive emphasis on process rather than outcomes*', and that a 'zero tolerance' approach to enforcement of the statutory duty can '*alienate those with whom partnership is required*' (paragraphs 4.3 ad 1.12)

An Analogy? – Continuous improvement in manufacturing processes

Manufacturing industry's approach to quality often used to be based on inspecting it in at the end of the manufacturing process. Under this system the quality of the output was maintained by inspecting 100% of what was produced and rejecting anything that didn't meet the required standard. In effect that approach was based on not trusting people to do what they should do and therefore checking everything they

did.

However, under the newer 'TQM' systems, quality of output is maintained by steering the production process to produce a quality required and then checking samples of the output to see that that level is maintained. In other words the quality of the output is maintained, not by inspecting the output in order to reject that which is not up to standard, but by sampling the output to provide feedback for maintaining the process. This system, in effect, trusts people to do what they should do and only checks the output occasionally to confirm that this is happening.

A further refinement on the TQM approach is continuous improvement in which businesses recognise that just maintaining quality is not enough, and that, to remain competitive, they need continuously to improve their products or services. Their focus is not therefore on specifying a production system and then sticking rigidly to it, but is instead on continually seeking ways of adjusting the process to produce the product better and/or cheaper. The focus therefore is not just on the output, as in TQM, but also on ideas for adjusting the process to achieve the best balance in achieving it.

5.57 In keeping with the Green Book description of an evaluation, which is a '*retrospective analysis of a project, programme or policy to assess how successful or otherwise it has been and what lessons can be learnt for the future*', this piece of work has looked, not just at the success of Section 75 in impacting on policy development, but also what lessons might be learnt from the research for sustaining and building on that impact in the future. Much of the feedback obtained from the interviewees, supported by some of the five-year reports and by parts of the report of McLaughlin and Faris, indicated that the Section 75 procedures, with their statutory basis, had been helpful in getting the impact that has so far been achieved, but that getting further might be facilitated by a different approach. Tying something down with rigid procedures might prevent it from falling back, but will also prevent it from moving forward. The arguments presented above for a change in approach with more emphasis on the objective and more flexibility in the process

could help organisations to tune their approaches for better outcomes, and a better balance of outcomes and cost, and could have the benefit of facilitating more flexibility, innovation and creativity in achieving further equality of opportunity and better relations.

6 Conclusions and Recommendations

This section presents the conclusions and the recommendations arising from them.

Conclusions

6.1 This assessment was designed, not to look at the effectiveness of all aspects of the implementation of Section 75, but, as indicated in Section 1 above, at *'how the statutory duties introduced by Section 75 have impacted on the development and implementation of public policy.'* Section 2 puts this requirement into the context of a 'Green Book' evaluation and suggests that the sequence of events envisaged for the realisation of the aims of Section 75 was that public bodies would follow the procedures Section 75 requires, that following the procedures would result in changes to the development and implementation of public policy and that changes to the development and implementation of public policy would then in turn have an impact on equality of opportunity for the nine groups and on good relations between the three groups. This piece of work was therefore looking at the middle of those three stages. It was an assessment of the difference made, not of compliance.

6.2 However it was not possible to establish what difference Section 75 made to policy making through comparisons with a control group, so this assessment was made by reference to relevant reports on policy making and by asking a sample of those involved for their views. The results of this research are summarised above in Section 4 and analysed in Section 5 to present an assessment of the difference Section 75 has made to public policy development.

6.3 In an evaluation however it is generally not sufficient just to assess whether a policy or programme has done what it said it would do. The counterfactual of what would have

happened without it and whether it might be done better also have to be considered if lessons are to be learnt. These issues were therefore also considered in the research and the responses also analysed in Section 5.

6.4 The main conclusion from this research was that Section 75 has, to a very considerable extent, achieved its desired result of impacting on policy development and implementation. In particular the research found that:

- a) Almost two thirds of the people interviewed from designated public authorities believed that Section 75 had made a significant and positive difference to the development of policy in their organisations. Some (about a fifth) were more neutral and the few who disagreed and thought that it has had no impact on their organisations implied that that was because they were already treating people equally and doing what Section 75 requires.
- b) It also appeared to be the view of that majority that equality of opportunity was an important aspect of the service they provided and that the process required by Section 75 was, in any case, good practice. That is why at least one UK wide body has extended aspects of it to its work elsewhere in GB. In addition to helping to improve the service provided to consumers many of the respondents also thought that the application of Section 75 had other benefits such as helping management to engage with staff on issues of service quality and providing transparency and credibility for decisions.
- c) The authorities' annual and five year reports indicate that the Section 75 procedures are being followed and, while they say little directly about the impact this had had on policy development, they do give some examples of policies being changed as a result.
- d) In many cases the people interviewed also provided examples of policies being changed because of the application of Section 75 procedures and the absence of specific examples of policy change in other cases does not necessarily mean that policy development has not changed.

- e) While the change in policy development and implementation has also been influenced by other factors, those respondents who thought that Section 75 had made a clear and positive difference also believed that this would not have happened, at least not to the same extent, without Section 75, not least because the statutory element was needed to start such an approach.

6.5 The research did also identify the potential for some negative results from the application of Section 75. For instance:

- a) It was suggested that, while it had raised the general level of policy development, it had also reduced the scope for individual flair and creativity.
- b) It was pointed out that Section 75 consultations might lead to undue weight being given to those special interest groups which were well organised and prepared to promote their views. However this might be said of any group seeking to lobby policy makers, with or without Section 75.
- c) Another drawback of Section 75 procedures which was more often raised was their cost in terms of either time or budget. Organisations which had a problem with either of these found that, in practice, they had to strike a balance between the resources which could be made available and the time or effort required for full implementation of the procedure.

6.6 This research was designed primarily to assess the impact of Section 75 on policy development. Nevertheless suggestions for improving it were made and are therefore summarised here because they might help its further implementation. No one indicated that it was not appropriate to seek to deliver equality of opportunity and good relations and the overall objective of Section 75 is accepted as relevant, as is the need to ensure that policy delivers it. However a number of reservations were expressed about the process, and especially about the rigid nature of some of the procedures and the bureaucracy associated with it. This bureaucracy, or at least the perception of it, is probably the

biggest remaining barrier and disincentive to the further or continuing implementation of Section 75. Relaxing some of it would, it was implied, help those organisations which had accepted Section 75, while continuing to apply it would not do more to persuade those who were not yet convinced.

6.7 Therefore, some people suggested, what is now needed is not necessarily more of the same and that a ‘*change of gear*’ might be appropriate if the momentum is to be maintained. ‘*We believe that a regulatory rather than an adversarial approach is more appropriate.*’ A significant number of interviewees, for instance, suggested that the focus should shift from processes to outcomes with the carrot of help to get the benefits to be obtained from good outcomes and the stick of penalties for bad outcomes. Section 75 currently, in effect, prescribes methods but, as McLaughlin and Faris indicated:

‘Section 75 is not itself the mechanism which delivers “equality of opportunity”. It promotes and requires that “equality of opportunity” be mainstreamed into the decision-making processes of all designated public bodies. It is these [processes] which, if designed and resourced adequately, may be capable of achieving equality of outcomes’.

6.8 The research therefore concluded that, if the resultant impact on policy development and implementation is to be sustained and widened, a change of approach might be beneficial. This is both because:

- a) While the application of rigorous procedures was probably necessary to effect the initial change in policy development, now that it has changed a modified approach might be better at maintaining the change and convincing the remaining doubters.
- b) Implementing Section 75 and having an impact on policy development are not ends in themselves but intermediate steps towards the desired objective which is equality of treatment and the promotion of good relations. The views obtained in this piece of work suggest that organisations might be able to do even more to achieve those objectives, through a process of continuous improvement, if they had more say in the

process they applied to get them.

6.9 Other suggestions which might also help were:

- Like the promotion of safe driving practices, it would help if explanations were provided of why Section 75 is good practice and what benefits can be obtained from following it.
- It can be a significant disincentive if it is felt that other organisations are not implementing Section 75 properly and getting away with it. Publicising the application of penalties can therefore help to encourage others.
- While the suggestions that Section 75 is very bureaucratic and that the Equality Commission is sometimes slow to respond might not always be justified, such perceptions exist and should therefore be addressed.
- Even the name 'Section 75' might be improved.

6.10 The suggestion was also made that the focus should shift to good relations. As one interviewee put it, basic equality of opportunity was necessary to start to address good relations but now good relations progress is now necessary to improve equality of opportunity further.

Recommendations

6.11 ***Recognise the Impact.*** The main conclusion from this work is that Section 75 has, to a very considerable extent, achieved its desired result of impacting on policy development and implementation. It is therefore recommended that the Equality Commission should continue to build on the awareness of the need for Section 75 that has been created among public authorities and to credit the authorities for the way in which Section 75 has often had a significant and positive impact on policy development.

6.12 ***Recognise the Negative Features.*** Assessing the negative aspects of Section 75 is the prime task of this report but they are relevant to Section 75's future acceptance. It is therefore recommended that the Equality Commission should recognise that, whether they are justified or not, there is a strong perception that applying Section 75 involves an undue amount of bureaucracy and that there is degree of client dissatisfaction with some parts of the service provided by the Commission. Both these are demotivating and should, if possible, be addressed. While the Commission has a statutory role in the application of Section 75, nevertheless, if it could position itself more as a source of guidance in maintaining good practice and in addressing the legal requirements of Section 75, and less as primarily an enforcement organisation and the source of some of the bureaucracy, it could help. It is recommended that the aim should be to establish a willing partnership approach to securing equality of opportunity and good relations and not a coercive and/or reluctant relationship. (See paragraphs 5.22b, 5.23 and 5.44)

6.13 ***Consider a Change of Gear.*** If it is considered desirable both to sustain the result so far obtained by Section 75 and to widen its impact on the ultimate objective of equality of treatment and the promotion of good relations, then it is recommended that there should also be a 'change of gear' (see paragraphs 5.54). Changing the emphasis of promotion and monitoring from the process to the outcomes might help those still opposed to the methods of Section 75

(see paragraph 5.14) and would, in effect recognise that there is a need sometimes to strike a balance between consultation and assessment procedures and other imperatives (see paragraph 5.38). It would, for instance, allow the organisations concerned to assess the risks involved in making quick decisions and decide what to do accordingly (see paragraph 5.9) and would help to resolve some ambiguities (see paragraph 5.9) by focusing on the ultimate objective rather than categorising processes. It would also help to address other concerns (see paragraph 5.21). Moving to a focus on outcomes could involve:

- a) Highlighting, and developing penalties for, identified failure to provide equality of opportunity rather than for failure to follow the prescribed process.
- b) Allowing organisations some flexibility in the process they adopt in order to achieve better equality results and actively encouraging them continuously to seek the best process for achieving superior outcomes in their particular case.
- c) This could be supported by designing a new framework for public authorities to create revised equality schemes, with greater flexibility to reflect the particular role and responsibility of each public authority and to focus on equality and good relations commitments deriving from that role.
- d) This should then have the benefit of facilitating more flexibility, innovation and creativity in achieving further equality outcomes.

6.14 ***Good Relations.*** More attention should now be given to good relations (see paragraph 5.34). The Commission should increase the emphasis on the promotion of good relations now that there is evidence that the promotion of equality of opportunity is increasingly embedded in policy development.

6.15 ***Supporting Actions.*** Whether the recommendations above are adopted, or not, it is recommended that the following supporting actions should be considered:

- a) The reasons why Section 75 is good practice (see paragraph 5.50a), and the benefits of implementing it

(see paragraph 5.19), should be promoted. More emphasis should be given to helping organisations to follow Section 75 because it is good practice rather than just because it is statutory (see paragraph 5.50b).

- b) A new name might be found for the initiative (see paragraph 5.22c).
- c) The Commission should review comments in annual and five year reports, and survey public authorities directly, to establish precisely which elements of the process are widely seen as particularly burdensome, and should consider what can be done to alleviate this without compromising either its own responsibilities or the public authorities' compliance with Section 75 (see paragraph 5.44).
- d) People should be made aware of the penalties for inadequate outcomes (see paragraph 5.50c) and any penalties applied should be publicised (see paragraphs 5.22a & 5.50c).
- e) To obtain more information on organisations' approaches to mainstreaming equality and good relations issues the Commission should ask direct and open questions in report formats to encourage answers which better reflect the full range of what organisations are doing to deliver equality of opportunity and good relations outcomes (see paragraph 4.9).
- f) The Commission should continue to explore with Government means of ensuring that Section 75 can be effectively applied to high level policies (see paragraph 5.8).
- g) The Commission should continue to develop and improve its guidance to public authorities and review existing guidance in light of any 'change of gear' which may be implemented as a result of the review.

Interview Responses

The interviews did not always cover all the prepared questions in the same amount of detail, depending on factors such as the interest or involvement of the interviewee or the time available for the interview. The following selection of responses has however been chosen to give, as far as practicable, both a summary of the views obtained from the interviewees in response to each of the main questions posed and an indication of the proportions of the interviewees who indicated that they held that view or something similar to it.

Question 1: What Difference has Section 75 Made to Public Policy Making and Implementation?

Responses Indicating an Unqualified ‘Yes’

‘The way we handle [policy making] is vastly different. An example is the new strategy we are about to launch for which an awful lot of work was done. People come to the [Equality etc] Branch nearly every day for advice and it’s mostly at the start of the plan making process – it’s not an afterthought. So it’s pretty well embedded in the culture. It was therefore made a difference to the way that people think about policy making - from the start.’

‘It has completely changed the way we operate and the way decisions are reached - from top to bottom and both the services and their provision – in every strand of (our) business.’

‘Better [policy making], absolutely. The argument is that it is the right thing to do and it produces better policy and better implementation.’

‘The difference is visible. It has not only influenced the various models of policy in NI but also in the UK and ROI.’

There has been a movement from the traditional mode of public service formulation and delivery, although it took some time to get understanding. We went from the old equal opportunities model which cost money to deliver to the new model which changes your service to attract customers better and so improves its appeal and thus 'makes money'/benefit. It's better, without question. We thought that we were very good and had a mechanism to engage, but there's been a shift away from prescription to inclusive'.

'Yes it has. There is an explicit requirement to address the nine Section 75 categories. Previously we were conscious of the equality implications but were less systematic. Section 75 has made a difference by ensuring that there is less opportunity to miss a particular group. It's not that we had serious omissions before but it has encouraged and stimulated us to focus on equality issues. The legislation named the groups which gave us something to focus on (which was missing earlier even for those who wanted to promote equality). Equality is now an integral part of the process. It's more systematic and there is more clarity; however very few of our policies have had to be changed.'

'Five to ten years ago policy making was a person sitting in an office writing it out in long-hand and then, if he liked it, it was OK. There was no feeling of a need to consult. Now it's the reverse and there is more engagement. We're engaging with people we never thought we'd have to engage with.'

'Yes, decision making has to be more evidence based and inclusive. Years ago a Deputy Secretary could come in with a "great idea" and that was it. It's made it a statutory obligation to consider equality so it has to be tied in early and fairly well mainstreamed. There's a desire to do it in this Department.'

'In policy making - a big difference, no doubt whatsoever, a much better process. In policy – harder to identify ... small changes. ... (However) a review of grant-making policy was in hand. Although the policy would have ended up the same, it [Section 75] gave us a much stronger and more legitimate reason for an applicant's succeeding or not and the process became much more systematic and less dependent on

personal contacts.'

'Yes [it's better]. [For example] now we have an information base and can defend and support decisions on where to locate services' . . . And it is 'helpful in Freedom of Information situations – it ensures the decision making process can be shown.'

'[Policy making is] better, for instance age has had a big impact. Also we now have flexible working primarily to address Section 75 and that has in turn had an impact on the way we work and connect with the wider workforce'.

'Yes, it has made it better, especially given where we started from. Ten years ago equality, gender and race would not have been mentioned. The Department then was 'diversity blind' and it isn't now. There's a consciousness of diversity throughout and policy management are conscious of the pressure to include the groups.'

'It is not only good practice, but it protects the organisation by giving evidence that policy has been reached by systematic and thoughtful processes.'

'The impact of Section 75 has been positive. It's not been the sole influence, but it's contributed. It's the "tail wagging the dog"'. . . . The key message is: 'not in isolation'. Because we are a UK organisation we have UK policy and practice behind us and this isn't the only initiative, for instance the Disability Discrimination Act, and more organisations want to be seen to subscribe. (However) I think that Section 75 give the other initiatives a footing, reporting structures, a strategy formula etc. Section 75 has affected our policies for the rest of the UK – we use the models and templates UK wide.'

'The ethos of equality is built into everything we do. It's been very useful, for instance, in introducing new indicators and the Cultural Diversity policy was facilitated by Section 75. The Disability Discrimination Act has also had an impact but Section 75 puts the onus on us to be proactive. Our awareness of Section 75, combined with other trends meant that we became more proactive.'

'Policy making is better in that equality issues are more mainstreamed.'

'[With reference to an example] At the end of the day [it is] seen as a fairer policy But also having a clear and thought-out policy in place "puts us in a good position" if [the are] becomes more diverse, and there are more, possibly contentious, decisions to be made. – "there are guidelines there now.'

'It has opened the anti-discrimination legislation up to a wider range of grounds and made it proactive, promotional and transparent rather than reactive and kicking in once the problem has arisen. ... Policy is much more evidence based and more systematic.'

Responses Indicating a Qualified 'Yes'

'If you're committed to equality, as a philosophy, then the idea of it being a requirement reminds you always of it and it sets it in place. I like Section 75 because of that. I always ask, however, if we are being proactive.'

'We are very good now on one-off outreach projects but less imaginative on broad policy, and imagination is often the province of ministers. But we're getting better.... [However] there's a levelling up and a levelling down. 30 years ago if you were in policy making you were very much a solitary hunter – who might find and kill a big beast. Now you have all the policy making guides to follow, plus Section 75, the Green Book, etc so it takes the flair out of individual input. There is no more heroic endeavour and a greater fear of getting it wrong. Section 75 is not seen as a driver for creativity but as something you must do.'

'I think we do think more about those issues and it's become more second nature.... It has included people more and opened the debate more and the process is more inclusive – but the outcomes? ... It's brought in some good practice, but it brought in some processes which are quite slow.'

'Section 75 has created a greater awareness of the need to

consider all the categories, but we can only do so much with our resources and so many of our policies are not public-facing.'

'It's had a very good effect widely but undermined by occasional high profile trivia tarred with the 'PC gone mad' argument.'

'It makes you think of issues which might not otherwise be at the forefront. (It) has brought equality issues into people's consciousness. ... [But our] policy making had already mainstreamed equality and had reached a degree of maturity. ... Overall – little impact.'

Responses Indicating Significant Reservations

'The cost is huge. The consultation demands have been positive but that was the way we were going anyhow. The whole system should be changed, especially for the smaller bodies.'

'I don't know if it's helping but it slows it down and makes it very difficult.'

[The difference made:] *'None at all.'*

'It's a waste of space [and] it has had no influence whatsoever (at least not in this organisation). We've never discriminated against anyone.'

'I can't think of an example of where it's made a difference to policy. ... It's probably been useful to have had the discipline, but I can't think of where the policy was different.'

Examples of the Difference Made

Where respondents indicated that Section 75 had made a difference to policy making in their organisations they were asked if they could give any examples. Their answers referred in some cases to policies which had changed but others placed more emphasis on the different way in which they were now making policy than on the need to change

policy already made.

Examples of policies which were changed:

'An example is water policy where there are big changes'.

'The e-libraries policy: the EQIA did make a difference. Older people were uncertain that they would be able to use the service - so that was taken into account in staff training.'

Third Party Funding. One organisation had routinely received a grant each year and didn't even have to apply. It was however decided they *'had to apply in future and probably wouldn't get it as if we give them a grant then we would have to give one to everyone'*.

'When we started we thought that religion was the main issue but we found that for us the big issues were disability and age. Hence our accessible transport strategy.'

'In age discrimination I didn't see the value until it forced me to see how discriminating we were.'

'There is a new appraisal system for non-teaching staff, a new recruitment and selection procedure, and a new register for part-time lecturers, all of which are due to S75.'

'All colleges have gone down the route of no football shirts, which has produced more neutral places as a result and each college is now perceived as more welcoming. (Some Colleges have introduced their own shirts which can be worn - a bit like America.)'

What changed was the approach to future policy:

'The last Regional Strategy is a very good example of a change in mind set. The previous one was much more hierarchical. For this one 300 odd people attended events or were surveyed as part of involving early and as broadly as possible.'

'We do still have some difficulties. For instance the issue of hospital services in the South West [which] has been a very

frank process which as inadvertently set two communities against each other’.

‘For the strategic plan for 2006-09 we sent a draft to the key stakeholders and a summary to the rest, although only about half a dozen stakeholders really responded (but being commercial we think that we consulted the ones who matter). In the past we would only have consulted the industry and (our department).’

‘For instance our architects would have said “we know what’s good for you” – but now it’s “what do you need”.’

‘Yes there are examples – but it’s hard to remember them. However we are going to review the Less Favoured Areas (LFAs). In the past we would have looked at things like stocking, hill farm subsidies, settlement patters, the impact on flock/herd size on erosion etc. Now there will be more emphasis on LFAs as instruments of social engineering and looking at gender and equality.’

Not many existing policies were changed:

‘In policy [resultant changes are] harder to identify. Of the 276 policies in place when Section 75 was introduced, it was seen as having relevance to 77. Once screened this came down to 47, of which small changes were made to 5 or 6. Even the flags and emblems policy was little changed.’

‘While most of the EQIAs undertaken by the Department have generated some positive actions that otherwise may not have occurred, none of the policies concerned have had to be abandoned. In some cases (see examples below) the EQIA process has prompted changes and improvements to better promote equality of opportunity. Our staff survey showed that just over a quarter of people considered that policies had changed as a result of EQIAs. It could therefore be concluded that the EQIA process has, to some degree, improved standards of policy- and strategy-making and decision-making. It has certainly enhanced the opportunities for stakeholders to participate in the policy development process.’ DHSSPS 5 Year Report p29

'However it is hard to identify and/or remember specific examples of changes as screening is done as part of the policy development process and a lot of changes are small 'tweaking' so do not therefore register as big/significant impacts.'

'I have difficulty in finding a concrete answer on the grounds that I could not be sure how the policy would have turned out without Section 75.'

Question 2: Is the Difference Embedded?

[Is it embedded?] 'Oh yes. Our Permanent Secretaries over the years have been very aware and every business area has its own equality officer – who all meet quarterly, and there is a twice a year engagement with the voluntary and community sector. We have good relationships with our business areas. We help them and hold their hands to ensure a consistent high standard – and with monitoring procedures.'

'Yes, we've embedded it. It's part of our culture, but not as a compliance issue. We are a learning business so it helps us because it's good practice, not because we have to. The future should be moving people to best industry practice. You do however need a discipline to ensure compliance. We are doing it more thoroughly with drive from top down because Section 75 is there. The compulsion gets you the staff attention which you can then exploit.'

'The last Regional Strategy is a very good example of a change in mindset. The previous one was much more hierarchical. For this one 300 odd people attended events or were surveyed as part of involving early and as broadly as possible.'

'A lot is embedded now: it's in policy and procedures. But there is a way to go in terms of bureaucracy – which has a fairly high irritation factor.'

'It's not fully embedded, and the Branch is still needed but it's up there in the Department's strategies and everywhere.'

'You can't unlearn something.'

'It's a chore we could well do without. It's a sledgehammer to crack a nut. [However] it has forced consultation and we found on the disability side that we were not monitoring it and it brought it to our attention.'

Question 3: How has the difference to policy making and implementation been helped?

The Equality Commission Guidance?

The guidance is 'good – very useful – but we need more help with screening. The gaps are being filled in but there are still gaps.'

'It's heavy going. I was in from the start so I went to all the briefings. It would be hard now for a newcomer to pick it up.'

The guidance has helped 'very much - because we already consulted our industry, it was integrated from the start.'

'The guidance is clear enough but guidance on screening is not as clear as it could be.'

'ECNI guidance has been, and still is, too prescriptive. ... [There is] far too much repetition in the required reporting. That process was essential at the start, but it is time to loosen up.'

'The guidance has been very useful. Our UK wide screening system is almost a direct lift from the Commission and having to do the progress reports can get people thinking about what they are doing.'

The guidance has 'helped – but the departmental steering group, led by the Permanent Secretary and with strong Grade 3 and 5 input, and the Equality Unit have been more important.'

'Of course [the guidance] has been a help – but it's very

prescriptive yet they refused to develop a template – so we just use the words they wanted to hear. (We actually totally ignore part of it and there are conflicts).'

Other Sources of Assistance

'The networks, such as the small public bodies' network and a group under the auspices of the Chief Executives' network.'

'We went from the old equal opportunities model which cost money to deliver to the new model which changes your service to attract customers better and so improves its appeal and thus 'makes money/benefit.'

'Benchmarking, and giving us the regional statistics – seeing that you are not out of line.'

'This unit'.

What Have Been the Other Influences on Policy Development?

One interviewee reported that there were three big developments at more or less the same time as Section 75:

- *'A move to increasing consultation – which Section 75 very firmly mainstreamed.*
- *A move to planning policies which reflect what people need.*
- *We're all trained now in policy making and evaluation – which Section 75 accelerated and for which it acted as a catalyst.'*

'The comparator was PAFT which recognised that something was not being done that needed to be done but only paid lip service to it. Section 75 has a stronger impetus and a change of emphasis to the quality of service delivery and to show it is being delivered. There is also a serious political angle to Section 75.'

'This isn't the only initiative, for instance (there is) the Disability Discrimination Act'.

'Judicial Reviews are another factor influencing systematic policy making.'

'When Tony Blair came to power everything had to go out to public consultation and there was a commitment to six weeks consultation before Orders in Council. ... Policy proofing became fashionable – we rural proof, sustainability proof and EU proof.'

Question 4: Have We Needed Section 75?

An Analogy? Seatbelt Legislation

An early interviewee suggested an analogy with seatbelt legislation in that, although people appreciate the logic of wearing seatbelts and will put them on without thinking once it becomes a habit, it nevertheless needed the threat of penalties to encourage people to do it until it became a habit.

'It's a bit unwieldy but it's useful, 'though it could be focussed a bit more on big policy. For the big ones it's very sound and they are more inclusive, better and less subject to challenge down the road. But there was a move to a more evidence based approach at the same time. ... It's difficult to demonstrate outcomes to get more buy-in, but we wouldn't have progressed so fast without it.'

'It needed a strong push to start with but it's far too bureaucratic. The bureaucracy overload is a huge negative. And a lot we were doing anyway.'

'Yes, but not the bureaucracy.'

'Yes we ought to invent it if we didn't have it. It's an extra tool for policy makers and it brings another prism to policy proposals. Although some of the categories are bit of a joke and are never on the radar screen. A lot of what the [Equality] Team does is to demystify it and bring it back to its origins and, for instance, looking at things like different types

of disability as the disabled are not just one group. (Multiple identities is the new buzzword for those in more than one category and some of the language/jargon is a lot of baggage.)

'Statutory is the only way to get it done. PAFT taught us that. I'll go with the seat belt analogy (in that it needed the statutory/penalty threat to encourage us to make it a habit.)'

'Definitely because it's good practice and beneficial. That's why we introduced it to GB when we didn't have to. However the twin drivers (Section 75 and the Race Relations Act) and the threat of the stick were needed. The seat belt analogy is a good one.'

'You need some sort of statutory provision to get people to consider these groups. When we started we thought that religion was the main issue but we found that for us the big issues were disability and age.'

'What's the alternative? Mature politicians with leaders who believe in debate? But with immature politicians it was necessary.'

'It's about perception (and) ... it's about the bottom line. However you did need the sanctions to get movement.'

Would you want to invent it? 'A few years ago I'd have said yes, but now I not sure that we still need it. The seat-belt analogy is appropriate. Section 75 helped to start with but some of the requirement is now a barrier.'

Question 5: Are there continuing barriers to the effectiveness of Section 75? What would still help to make it effective?

'Section 75 is not a great title, and that's a barrier now that it is in place.'

'Attitudes – but we are still chipping away. It takes time to change. It used to be: 'Sure this policy is available to everyone so it must be fair.' People didn't mean to be unfair

but they didn't see the hidden barriers. Seat belts took a long time to be accepted and used.'

'Some ways to get more involvement from the community and voluntary sector. Unless we go chasing representatives we don't get their views and then we're criticised. We provide opportunities for views to be heard but we don't get them and we don't know how else to get views. (But accepts that some representatives might be over-consulted.)

'The whole system should be changed, especially for the smaller bodies. It should be like Health and Safety where you do the risk assessment and act on it. There are risks in this industry so I know that if I don't do the Health and Safety I'll get clobbered. Barriers included the cost and that we haven't a great impact (because we are small and very focussed). We're having all the impact we could have. However it has given us policy direction and how to respond to a situation. The reporting requirement is also a barrier. One-size-fits-all is not appropriate and it should be focused on where it can make a difference. Also there are not enough guidelines on monitoring – it's still poorly understood.'

The Spirit or the Letter?

- *We follow 'very much the spirit. The letter is too prescriptive, not creative and not in the nature of this organisation. But it has been a useful baseline.'*
- *'The spirit. The prescriptive nature of Section 75 can be an impediment to achieving the desired output... It's got so bogged down in the process that we've lost sight of the objectives. I'd suggest a major way to improve effectiveness would be for all organisations to define what equal opportunities means for them.'*
- *'You can't just do it by 'the letter' – it has to be proportional. ... We need to manage it more strategically. The emphasis on 'all policies' is a barrier – but most people have come to an accommodation, and we haven't been told we are wrong yet. We need to learn a bit more about selecting screening and a bit more on monitoring.'*

'In terms of a review of the legislation we've been hampered by a lack of a single equality bill. Resources are getting more and more squeezed but at the same time reporting requirements have grown and grown. There should be something about appropriateness – Section 75 should have that.'

'Do they do modules on it in the colleges? – Because people won't complain if they don't know about it/how.'

'Focus on the outcome not the process.'

'Change the emphasis from compliance with the legislation to getting a better bottom line. Support outcomes, not processes. That way you will get continuous improvement (rather than once off assessments).'

'Push master classes in its contribution to the bottom line and emphasis good practice. Promote it as best practice, as something that will help to ensure that your service is good.'

'Guidance on the consultation process, such as an approved list of consultees. Our resources are being used to reinforce the community and voluntary sector. Some consultees are sick to death of being consulted.'

'One of the biggest is the bureaucratic pothole. Do you screen out, do a limited assessment or a full EQIA? That bureaucracy is quite unfriendly. It's not that expensive to do but policy time can be short. Another barrier is the lack of a research base (especially here).'

What else would help? *'Guidance on the intelligent application of policy (for instance if at present something clearly isn't relevant to a group we still have to consult it) and a plea for proportionality and materiality.'*

'The single biggest problem is the amount of bureaucracy in the process. However it probably seems that the balance is worse than it is, because it is so specified.'

'The reporting is a big downside.'

'Anything that will reduce the bureaucracy and resource required – for instance we did a five year review and then a month later had to do an annual report. Templates are a problem because they ask leading questions apparently trying to get particular answers.'

'The bureaucratic end of it is the main (barrier).'

The Spirit or the Letter? 'There are so many 'letters' to follow. The advice is extremely helpful – but there are so many things to do that one cannot be sure one is doing all of them. ... Therefore we are following the spirit. It's a question of proportionality – I could spend my whole time doing Section 75.'

'The process was too mechanistic at the start, but that may have been necessary to get it on the agenda.'

'The initial threat to prosecute was counter-productive'

'There should be a de minimus rule.'

'The first phase was about creating awareness and setting up processes. Now please modify and simplify and focus on outcomes.'

'It would help if we had an equality officer in the Equality Commission with whom we could have regular contact/meetings and build up a relationship. It would be a comfort to have someone who was able to advise us. (It would also help if) departments took greater responsibility for their NDPBs eg to provide equality of scale for training etc and coverage by their equality schemes and involvement in their working together with networking benefits. What about a single equality scheme for a department's NDPBs?'

'There isn't enough guidance, eg on monitoring.'

'Departments are expected to carry out EQIAs on high level strategy and we need guidance on how to do that – there's really no advice available.'

'They [the Equality Commission] are slow in giving us feedback from our reports.'

‘Sometimes the Equality Commission guidance has been a long time coming but the revised guidance issued in February was helpful, although it’s still open to interpretation and still needs to be more specific, for instance on what is a policy (we take the broad view). Sometimes guidance is interpreted in a purist way – do you, for example, always need to do a full-blooded assessment?’

‘The full Monty of 12 week consultation among all and sundry is alienating to staff, so [we] have been selling the idea of building networks, relationships with a range of interested parties who can be called on. ... ECNI is now less prescriptive about consultation than at the start, when they lost much good will by their attitude.’

‘Highlight what’s happened in/to other organisations. They look outside and see others only doing a quarter of what they are doing and yet the sky doesn’t fall on them and the Commission doesn’t do anything.’

‘More face to face contact with the Commission. You don’t get feedback from the Commission (ECNI) so that means that [organisations] have less confidence that they are doing the right thing. They say they don’t have the resources to give quick feedback but we are not allowed to use a lack of resources as an excuse for not doing it. The Fair Employment section in the Commission come back quickly (in response to a query) but we haven’t heard from the Section 75 section in two years.’

‘It’s always good to see cases studies and cases taken to court by the Equality Commission as examples of what will happen if you get it wrong.’

‘ECNI seem to have always been interested exclusively in the process not the outcome. (For instance when a consultation document is sent to ECNI the response is only in terms of the process, not the issue.)’