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**Assessing the role of the Office of the  
First Minister and Deputy First Minister  
and the Northern Ireland Office in  
contributing to the effectiveness of  
Section 75 of the Northern Ireland Act  
1998**

**February 2007**

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## **Executive Summary**

1.1 This report was commissioned by the Equality Commission for Northern Ireland as a component of the effectiveness review of Section 75 of the Northern Ireland Act 1998 (the Act). Section 75(1) places an obligation on public authorities to have due regard to the need to promote equality of opportunity across a range of nine different groups in society, and Section 75(2) obliges the same public authorities to have regard to the desirability of promoting good relations between different racial, religious and political groups.

1.2 Part One contains four sections (1-4). The Executive Summary is followed in Section 2 by an Introduction. Background to the review is contained in Section 3. Appendix D is an overview of Section 75 and Schedule 9 of the Northern Ireland 1998, and sets out the relevant UK and European legislative developments particularly where these have impacted the statutory duty in Northern Ireland.

1.3 Section 4 contains a description of the methodological approach, which draws primarily on in-depth interviews with government departments and Voluntary and Community Sector organisations. An analysis of the qualitative data reveals regularly recurring themes despite some limited availability of hard evidential data, which has been explained in the findings. Data collection through in-depth interviews has been supplemented by published academic and social policy research in the area of equalities.

1.4 Part Two has four sections (5-8) in which the findings are presented. The findings are arranged on the basis of analyses conducted strictly according to the Commission's objectives as set out in the Terms of Reference. Section 5 analyses the contribution of the NIO to the effectiveness of Section 75, particularly how the role has been used to drive forward designation of public authorities, and the extent to which equalities have been mainstreamed. Section 6 presents a detailed analysis of the role of OFMDFM in contributing to the effectiveness of Section 75. This focuses largely on mainstreaming equalities and good relations across government departments. In this section, the need for high level visible leadership of the equalities and good relations debate has emerged, and clear

equality impact assessment (EQIA) of high level policy making is regarded as of the utmost strategic necessity to ensure the future effectiveness of Section 75. The conclusions are set out in Section 7, and the recommendations in Section 8.

1.5 Section 75 has been developed several times since its implementation, particularly as a consequence of automatic additions to the list of public authorities covered by the statutory duty. When it came into force as many as 120 public bodies were automatically designated. Some 270 public authorities are currently designated under Section 75.

1.6 While there has been progress over the period since implementation of Section 75, much is yet to be achieved within government departments. The NIO and OFMDFM will be required to overcome persistent negative perceptions within the Voluntary and Community Sectors about how Section 75 has been undermined. This is understood by some to have resulted from the particular structure of Section 75(1) and 75(2), while others point to the substance of the legislation, particularly in instances where phrases such as 'due regard' (see 5.2.3.3) may have been interpreted in a way that ultimately led to operational difficulties within public authorities.

1.7 This report assesses the perception that the role of the Commission in relation to Section 75 may have been undermined by the legislation at operational levels, which would indicate consideration of a review of the legislation. Steps might be required to ensure the Commission is further enabled to carry out its statutory obligations to greater effect with respect to the NIO and OFMDFM, and the Voluntary and Community Sectors.

1.8 The operation and outcomes of Section 75 were intensely analysed in some interviews which produced different attitudes and perspectives. Interviewees across all sectors emphasised that Section 75 requires higher levels of commitment and resources to make it work more effectively. Others suggest it should be reviewed because Section 75(1) and 75(2) are set in competition, but should be complementary instead. It was also thought in some quarters that equalities are perceived to have much more resonance with local

devolved ministers than with Direct Rule ministers. In any case, however, all sectors hailed Section 75 and believe it provides hope for bringing about the sustainable good relations by effectively reducing inequalities in Northern Ireland.

## 2. Introduction

2.1 AW Trotman Associates was appointed in November 2006 by the Equality Commission for Northern Ireland (the Commission) to undertake research assessing the roles of the Office of the First Minister and Deputy First Minister (OFMDFM) and the Northern Ireland Office (NIO), as a component of the effectiveness review of Section 75 of the Northern Ireland Act 1998 (the Act).

2.2 This element of the review specifically considers the role of OFMDFM and the NIO in contributing to the effectiveness of Section 75. Section 75 is the statutory duty enshrined in the legislation at a crucial time in the peace process, and incorporated in the Belfast Agreement<sup>1</sup> as a positive recognition of the changing political and religious situation in Northern Ireland.

2.3 Part One of this report comprises four sections (1-4). Section 1 offers an Executive Summary, followed by an introduction in Section 2. The research background and context relating to the Commission's objectives is contained in Section 3. An overview of the legislation specifically including Section 75 and Schedule 9 of the Northern Ireland 1998 appears at Appendix D. This overview also presents the relevant UK and European legislative developments particularly where these have impacted on the statutory equality and good relations legislation in Northern Ireland.

2.4 Section 4 explains the methodological approach which draws primarily on in-depth interviews with government departments and Voluntary and Community Sector organisations. An analysis of the qualitative data reveals regularly recurring themes despite the relative unavailability of some forms of hard evidential data, which has been explained in the findings. Nonetheless, data collection through interviews has been supplemented by published academic and social policy research in the area of equalities and good relations.

2.5 Part Two comprises four sections (5-8) in which the findings have been presented. These are arranged on the basis of analyses conducted strictly according to the Commission's objectives in the

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<sup>1</sup> The Agreement: Agreement reached in the multi-party negotiations. Belfast 1998

Terms of Reference (Appendix A). Section 5 develops discussion around the contribution of the NIO to the effectiveness of Section 75, particularly how the role has been used to drive forward designation of public authorities, and the extent to which equalities have been mainstreamed. Section 6 presents a detailed analysis of the role of OFMDFM in contributing to the effectiveness of Section 75. This focuses largely on mainstreaming equalities and good relations across government departments. In this section, the need for high level visible leadership of the equalities and good relations debate has emerged, and clear equality impact assessment of high level policy making is regarded as of the utmost strategic necessity to ensure the future effectiveness of Section 75. Conclusions are presented in Section 7, and the recommendations in Section 8.

2.6 Section 75 has been regarded as a ground-breaking piece of legislation by equality practitioners and academics the world over, and in Northern Ireland particular. This broad range of interests and a profound desire to transcend sectarianism and racism help to explain the strength of reaction within government departments and the Voluntary and Community Sectors, but also provoked mixed reactions to the review in relation to expectations of Government implementing Section 75 within Northern Irish society. The Belfast Agreement of 1998 which gave birth to Section 75 had at its heart the need to overcome a recent history of conflict. The findings in the following pages, therefore, seek to present a clear analysis of the Government's role in effectively delivering equalities and good relations.

2.7 Thus, the perception and goal of committed sectors is that, if it is properly implemented and rigorously enforced, Section 75 provides an opportunity for the proactive mainstreaming of equality in public policy and service delivery. This represents a position which not only offers potential over litigation-based strategies in holding public authorities to account in the pursuit of equality, but can positively reduce inequality.

# PART ONE: RESEARCH FRAMEWORK

## 3. Background

3.1 Schedule 9(1) (a) of the Act places a duty on the Equality Commission to ‘*keep under review the effectiveness of the duties imposed by section 75.*’<sup>2</sup> At its meeting on the 26<sup>th</sup> October 2005, the Commission agreed the Terms of Reference of the review;

1. To review the effectiveness of the duties on public authorities as set out in Section 75 of the Northern Ireland Act 1998 in terms of the impact which their discharge has on the development of public policy, on the provision of services and on the practical outcomes for the nine categories insofar as promoting equality of opportunity is concerned and for the three categories insofar as promoting good relations is concerned.

2. To consider whether any issues arise for consideration by the Commission itself or on which it might wish to make recommendations to Government.<sup>3</sup>

3.2 It is recognised that ‘the effectiveness of Section 75 is dependent on public authorities, The Equality Commission for Northern Ireland, OFMDFM, the NIO and other stakeholders, e.g., the voluntary sector. The review will therefore consider the roles and responsibilities of these stakeholders. This project, which looks specifically at the respective contributions of OFMDFM and the NIO to the effectiveness of the legislation, is therefore a central objective of that review.’<sup>4</sup>

3.3 The Commission is also charged with responsibility for offering advice<sup>5</sup> to public authorities and others, and was mandated to assess the situation. It is with respect to performing this duty that the Commission’s aims and objectives are set out.

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<sup>2</sup> The Northern Ireland Act 1998, Schedule 9, Paragraph 1(a).

<sup>3</sup> The Equality Commission for Northern Ireland, *Invitation to Tender*, pp. 1-2.

<sup>4</sup> *Ibid.*, p. 2.

<sup>5</sup> The Northern Ireland Act 1998, Schedule 9, Paragraph 1(b).

### **3.4 Project aim**

3.4.1 The aim of this project specifically is ‘to assess the role and effectiveness of OFMDFM and the NIO in contributing to the effectiveness of section 75.’<sup>6</sup>

### **3.5 Project objectives**

3.5.1 The objectives are as follows:

- a) OFMDFM (i) to assess the extent to which commitment to Section 75 is reflected in the policies, processes, structures and systems of OFMDFM; (ii) to assess the extent to which OFMDFM’s advice, support and challenge function has ensured successful implementation of Section 75 within other Departments; (iii) to assess the leadership given by OFMDFM in regard to its functions, and more generally, in respect of Section 75; and (iv) to consider the implications of the division of responsibility between OFMDFM and the Equality Commission.
  
- b) NIO; (i) to assess the extent to which commitment to Section 75 is reflected in the policies, processes, structures and systems of NIO; (ii) to assess the role played by the NIO in driving the process of designation of public authorities under Section 75; (iii) to assess the leadership given by NIO in regard to its functions, and more generally, in respect of Section 75; (iv) to consider the implications of the division of responsibility for implementation of Section 75 between NIO and the Equality Commission.<sup>7</sup>

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<sup>6</sup> *Invitation to Tender*, p. 2.

<sup>7</sup> *Ibid.*, p. 2.

## **4. Methodological approach**

### **4.1 General Comments**

4.1.1 For the purposes of clarity and coherence, consultants sought to analyse and present the perspectives of senior level civil servants, as well as key personnel within the Commission and the Voluntary and Community Sectors. Entire sections or paragraphs highlight views, therefore, which are applicable equally to all main stakeholders.

4.1.2 Beyond its primary objective, that is, determining the extent to which the roles of OFMDFM and the NIO have contributed to the effectiveness of Section 75, we have adopted an approach which helped to identify and recommend steps for improving effectiveness of their respective roles. It includes paragraphs, therefore, which point to the importance of collective responsibility relating to the outcomes envisaged by Government,<sup>8</sup> i.e., economic strength in the local and global economy and harmony with opportunities for all. The findings are reported strictly according to the specific objectives of the assignment.

### **4.2 The OFMDFM and the NIO**

4.2.1 Qualitative data collection by way of in-depth interviews with NIO and OFMDFM senior staff and practitioners with responsibility for implementing Section 75 (Appendix E) has been the main basis on which we have prepared this report. Interviews with independent academics also took place, and data was collected from the publications of some of these respected individuals whose expertise in equality law is renowned.<sup>9</sup> Perspectives and conclusions drawn

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<sup>8</sup> A Draft Economic Vision for Northern Ireland, paragraphs 6, 24-25, (October 2004), pp. 3, 10-11 (The Vision); Northern Ireland, Draft Priorities and Budget 2005-2008, Paragraph 19, (October 2004), p. 7 (Priorities and Budget).

<sup>9</sup> Christopher 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), in McLaughlin and Faris, Annex B, (McLaughlin and Faris); Christopher McCrudden, Mainstreaming Equality in the Governance of Northern Ireland, Fordham International Law Journal, Vol. 22:1696, 1998-1999 (FILJ); Brice Dickson and Colin Harvey, Assessing the Role of the Equality Commission in the Effectiveness of Section 75 of the Northern Ireland Act 1998, (December 2006) (Dickson and Harvey); Mary McMahan, Assessing the Roles of the Voluntary and Community Sectors in Contributing to the Effectiveness of Section 75 of the

from the NIO and OFMDFM are interpreted in the light of those provided by the Voluntary and Community Sectors which often conflict with, and sometimes confirm, the views of the statutory sector on the implementation and outcomes of the equality and good relations duties.

4.2.2 The issues regarded by the Commission as central to this component of the effectiveness review largely determined the importance of qualitative data collection. Data collection methodology, as noted above, has been augmented by up-to-date published literature on Section 75. These tools have been used to address the specific requirements of the Terms of Reference.

4.2.3 A series of structured questions (Appendix C) were designed by the researcher to examine key issues from the perspectives of the named senior personnel. In addition, similar structured and semi-structured questions (Appendix C) formed the basis of data collection sourced by Voluntary and Community Sector organisations and individuals. In summary, therefore, the following approach has shaped our methodology:

- 4.2.3.1 In-depth interviews with senior staff of OFMDFM, the NIO and the Commission;
- 4.2.3.2 In-depth interviews with senior policy officers of a number of non-governmental organisations in the Voluntary and Community Sectors;
- 4.2.3.3 In-depth interviews with researchers and academics with expertise on equality law and Section 75 in particular; and
- 4.2.3.4 Analysis of all relevant accessible literature and documentation which, for the purposes of this assignment, could clearly demonstrate credible policy analyses in relation to outcomes (Appendix B).

### **4.3 Literature review**

4.3.1 We reviewed published literature and internal documentation including the relevant legislation, Draft Priorities and Budgets and

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Northern Ireland Act, (February 2007) (McMahon); Committee on the Administration of Justice, Equality in Northern Ireland: The rhetoric and the reality (CAJ, Belfast: September 2006) (CAJ).

commentaries, and Equality Schemes for the NIO and OFMDFM. Whilst this project has been informed by access to senior departmental staff with responsibility for implementing Section 75, there have nonetheless been certain limitations of accessibility to some forms of actual written evidence. This may have been occasioned by general inaccessibility, the limited number of personnel consulted, the narrow timeframe for data collection, an absence of internal record, or a combination of these. We are confident, nevertheless, that the accuracy and quality of our findings remain credible. Essentially, results depended on the high priority we attached to in-depth interviews with key staff and equality and good relations experts and practitioners.

4.3.2 Researchers sought not merely to assess effectiveness over the recent past, but also to provide indicators for future improvements in the operation of the legislation across all nine equality and good relations duties as contained in Section 75. To this end, the value of the literature review is reflected not only in its corroborative utility as part of the verification process, but primarily as data which we consider capable of demonstrating the kind and quality of leadership the NIO and OFMDFM have provided in driving forward Section 75.

#### **4.4 The Equality Commission**

4.4.1 A series of meetings were held with the Commission: at the initial stage, on presenting draft emerging themes, and on submission of a draft final report. These have been supplemented by electronic mailings and telephone conferences throughout. Senior Commission staff provided interviews and all members of the Commission's Project Working Group who have direct responsibility on the Commission's Section 75 remit. In addition, access to the most recent research held by the Commission on equalities and good relations policy and practice assisted in our task. With permission, reference has been made in the findings, for example, to parallel research on other aspects of the effectiveness review.<sup>10</sup> We utilised a structure which is set within the framework of the Commission's objectives.

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<sup>10</sup> Mary McMahon, *Assessing the Roles of the Voluntary and Community Sectors in Contributing to the Effectiveness of Section 75 of the Northern Ireland Act*, February 2007 (McMahon); Brice Dickson and Colin Harvey, *Assessing the Role of the Equality Commission in the Effectiveness of Section 75 of the Northern Ireland Act 1998*, (November 2006) (Dickson and Harvey).

## **PART TWO: FINDINGS**

### **5. The Northern Ireland Office (NIO)**

#### **General comments**

As noted above, the implementation and operation of Section 75 of the Northern Ireland Act 1998 rests largely with the NIO and the OFMDFM (2.2). Under Section 75 all functions of public authorities relating to Northern Ireland are included in their Equality Scheme. The Public Prosecution Service, however, is only subject to Section 75 regarding its functions that do not relate to prosecutorial decisions. Other public bodies with quasi judicial functions, e.g., the Parades Commission and the Boundary Commission, are subject to the legislation or designated for Section 75 purposes. The NIO assumes key roles and responsibilities in terms of the designation of public authorities, and OFMDFM in mainstreaming equalities and good relations across all Section 75 groupings. In this regard, a number of important issues, perspectives, hopes and fears have been articulated during the course of this research and, broadly speaking, have contextualised and determined the report's findings in relation to the objectives.

#### **5.1 Policies, processes, structures, systems**

*Objective 1: To assess the extent to which commitment to Section 75 is reflected in the policies, processes, structures and systems of NIO.*

5.1.1 Generally, a public authority is a body that falls within one or more of a number of categories, as noted by Professor Christopher McCrudden,<sup>11</sup> whose work on equality law and practice over many years has been widely recognised. Perspectives on the roles and responsibilities of the NIO are dealt with in this section only insofar as these can be regarded as having contributed to the general effectiveness of the legislation through policies, processes, structures

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<sup>11</sup> Christopher 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), in McLaughlin and Faris, Annex B, p. 5. (McLaughlin and Faris); see also footnote 8, p. 11; footnote 16, p. 16; McCrudden, *The Equality of Opportunity Duty in the NI Act 1998: An analysis*, (1998). These works have been the result of and were contributory to the process which led to the development of Section 75 of the Northern Ireland Act 1998.

and systems. The consultants found that the operation of these structures were not always well defined, but often overlapped and affected the acquisition of full clarity in some respects. The exception is where specific monitoring and measurement systems were effectively deployed. Most importantly, sufficient credible information sources were available to meet our central objective, which has satisfied the research methodology. Nevertheless, information did not appear to be available to facilitate a more extensive discussion on some points despite the provisions for public access to information set out in the NIO's Five Year Review report.<sup>12</sup> Whilst the NIO's Equality Scheme describes how the department intended to implement the statutory duty, to one degree or another, consultants have worked with an awareness of its limitations (4.3.1 - 4.3.2), and this has been reflected in our findings and recommendations.

5.1.2 The evolution of Section 75 cannot be divorced from the way in which it has been implemented; this has a bearing on effectiveness. We proceed at this point, therefore, with a brief examination of the historical processes and contexts which brought forward Section 75.

### **5.1.3 The emergence of Section 75**

5.1.3.1 Firstly, Section 75 did not suddenly emerge from nowhere. Peace builders in Northern Ireland sought throughout the 1990s to advance the recommendations of the Standing Advisory Committee on Human Rights (SACHR).<sup>13</sup> As the peace process developed, the Government wanted to move beyond mere 'anti-discrimination' law and the non-statutory approach of Policy Appraisal and Fair Treatment (PAFT) guidelines to a statutory duty. PAFT, according to McCrudden, was an attempt to establish a procedure within government decision making so that 'equality and equity' were regarded as 'central issues which must condition and influence policy making in all spheres and at all levels of Government activity...'<sup>14</sup> After a complex and difficult Parliamentary process, which is outside the scope of this study to address, proposals incorporating some of the PAFT guidelines were developed within this embryonic

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<sup>12</sup> Northern Ireland Office, Equality Scheme Five Year Review Report, 28<sup>th</sup> November 2001 to 31<sup>st</sup> May 2006, Section 8, p. 30, (FYRR).

<sup>13</sup> FILJ, p. 1708.

<sup>14</sup> FILJ, p. 1712.

evolutionary history, but one firmly based in the politics of equality policy developments of Great Britain.

5.1.3.2 Secondly, the process of evolution of Section 75 both from previous legislative measures and the PAFT guidelines,<sup>15</sup> fed into the Belfast Agreement (1998), and importantly defined the role of the NIO. However, in the opinion of many the political difficulties associated with the outworking of the Belfast Agreement may have impacted on the implementation of Section 75 specifically in the succeeding years. McCrudden points out that from the accession of the New Labour to Government in 1997, the British and Irish Governments were conscious that equality issues were perceived to be part of the 'confidence building' in the Catholic/Nationalist community.<sup>16</sup> It was important, therefore, for both Governments to have focused on equality within the particularity of Northern Ireland. Thereafter, equality issues were factored into multi-party political discussions which culminated in the Belfast Agreement. It ensured a strong political dimension to the equalities and good relations agenda.

5.1.3.3 Thirdly, a notable irony relating the NIO's role in developing the legislation, and, therefore, on which effectiveness could be judged, became evident. On the one hand, the then Secretary of State had announced an intention 'to make it a statutory duty for government bodies to take equality of opportunity into account through more rigorous enforcement of the Policy Appraisal and Fair Treatment (PAFT) guidelines.'<sup>17</sup> On the other, however, the Secretary of State had made a crucial announcement about the new equality provisions in the Bill, i.e., that the Commission and the statutory equality duty would remain reserved matters to be administered by Direct Rule ministers.<sup>18</sup> Ultimately, however, it is provided that

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<sup>15</sup> McLaughlin and Faris, p. 3.

<sup>16</sup> FILJ, p. 1724.

<sup>17</sup> *Ibid.*, p. 1726. McCrudden's *Article* provides an excellent and detailed picture of the historical processes and developments which ultimately led to the equality and human rights obligations for public authorities being included in the Agreement, though portions of it are, according to him, 'only speculative'. See pp. 1708-1738.

<sup>18</sup> FILJ, p. 1757.

Schedule 9 Paragraphs 6, 7 and 11(2)(b) and (30) do not apply to a government department which is such a public authority as is mentioned in section 75(3)(a).

From our perspective, the exemption granted to UK Government departments under Schedule 9 when departments, such as the Cabinet Office, failed in certain aspects of the duty could be said also to have a potentially weakening effect on the roles of the Commission and the NIO by the creation of a duality. Where a public authority answers a request by the Commission for a revised scheme, for example, the public authority shall respond according to the statutory regulations, (Schedule 9 (7), (12)(1)) except where the public authority is a UK Government department which has failed to respond accordingly.

5.1.3.4 The emergence of this positive statutory duty was designed to place a requirement on all authorities delivering a public service to make an assessment of any significant impact on the authority's ability to carry out its duties. McCrudden had established six key principles upon which the duty would be based, and on which effectiveness could be measured. As cited in Dickson and Harvey, these are:

- 'a clear statutory duty to promote equality of opportunity by public authorities across all areas of government policy making and activities;
- the participation of affected groups in determining how this should be achieved;
- the assessment of impact of existing and future government policies on affected groups;
- consideration of the alternatives which have less of an adverse impact;
- the consideration of how to mitigate adverse impacts which cannot be avoided;
- transparency and openness in the process of assessment.'<sup>19</sup>

5.1.3.5 Fourthly, the exercise of these key principles would be consequential upon political will and the application of adequate

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<sup>19</sup> Brice Dickson and Colin Harvey, *Assessing the Role of the Equality Commission in the Effectiveness of Section 75 of the Northern Ireland Act 1998*, November 2006), p.19.

resources.<sup>20</sup> Concerns were expressed that Direct Rule ministers would not maintain appropriate levels of commitment on which consistent and effective implementation of the duty depended might not have been unfounded, particularly on evidence of the fact that their fundamental power base remained in GB. We cannot confirm this opinion, however, and the point here is not to suggest that ministers based in England, for example, were incapable of full commitment to the equalities agenda in Northern Ireland. There could, nevertheless, be conflicting political agendas affecting implementation of the legislation, but the evidence for this is not obvious. In the case of these exemptions, however, McCrudden believes that the intention of the Secretary of State was ‘to avoid a situation where the Secretary of State must reach a decision or issue a direction in a case involving her [his] Department or that of a Cabinet colleague.’<sup>21</sup> On this basis it could be argued that the legislation itself potentially weakens the Commission’s ability to properly carry out its statutory role in regard to Section 75.

5.1.4 Nevertheless, the replacement of PAFT with a new statutory positive duty included the Government’s declaration that ‘there would be a strong mechanism within the Northern Ireland civil service to monitor and enforce this obligation.’<sup>22</sup> In its White Paper setting out these developments in March 1998, the Government created a new unified statutory authority – the Commission - bringing together the existing equalities agencies, (Race, Equal Opportunities and Fair Employment and Disability) and the new statutory duty on public authorities. The Belfast Agreement affirmed;

“the right to equal opportunity in all social and economic activity, regardless of class, creed, disability, gender, or ethnicity ... and the right of women to full and equal political participation.”<sup>23</sup>

It is precisely how this positive duty would give substance to the Agreement that renders the role of the NIO of the utmost importance.

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<sup>20</sup> FILJ, p. 1772. McCrudden notes that ‘a strong political commitment to mainstreaming is absolutely crucial and must drive the new approach taken by Departments and other public bodies’.

<sup>21</sup> FILJ, p. 1763.

<sup>22</sup> *Ibid.*, p. 1730.

<sup>23</sup> *Ibid.*, pp. 1734-1735.

5.1.5 In this task, three main themes have emerged which provide the basis for analysing the extent to which commitment to Section 75 is reflected in the policies, processes, structures and systems of NIO. Firstly, we sketch the structures through which roles and responsibilities of the departmental teams in relation to Section 75 are carried out, stated in the Equality Scheme and Five Year Review report.<sup>24</sup> The structures within which responsibility for Section 75 lay include:

- The Human Rights and Equality Unit (HREU), (once called the Statutory Duty Unit), a high level policy group based in London, which was set up by the Department to 'drive forward and monitor the implementation of the equality scheme and Section 75'. It provides advice guidance, support and challenge across the NI Civil Service;
- The Departmental Board and Senior Management Board, for whom 'section 75, is a standard agenda item programmed into the Board's agenda on a regular basis';
- The Senior Management Forum, with whom 'Equality issues are regularly raised';
- The Permanent Under Secretary of State, and the Departmental Senior Management Group which consist of the Heads/Chief Executives;
- An Equality Drivers Forum, consisting of representatives from across the department known as Equality Drivers, and chaired by the Director of Resources. This was established 'to ensure the equality message is delivered to all staff';
- The Central Equality Unit, part of the Central Management Unit, a mid level management team responsible for dealing with complaints, and has 'participated in a number of cross government forums on equality including the Equality and Social Needs Group and the Equality Practitioners Group; it has been established to provide advice and guidance to departmental staff on equality, and to take forward and monitor the implementation of the Equality Scheme; and

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<sup>24</sup> Northern Ireland Office, Equality, an Equality Scheme for the Northern Ireland Office, (2000), (*Equality*); FYRR.

- The Secretary of State, the UK Government representative with political and administrative responsibility for Northern Ireland.

According to the ‘Consistency Scheme’, the equality and good relations processes, policies and systems, and the designation of public authorities are largely delivered primarily through these structures.

5.1.6 Secondly, implementation of the Northern Ireland Act 1998 and its new statutory duty was accompanied by a measure of confusion at commencement between the British and Irish Governments and the devolved administration, according to largely anecdotal evidence from many sources. The question essentially was where responsibility for equality issues rested, particularly once powers were transferred to the new Assembly and Executive. This is considered at length below (see 6.4.1). It was necessary to decide whether the NIO was ‘keeper’ of the policy. It became clear that, as the overarching body responsible for all policy under Direct Rule, and who, in response to concerns raised by a range of individuals and organisations inside and outside government,<sup>25</sup> took decisive steps to locate Section 75 at the heart of the Belfast Agreement, the NIO clearly was policy leader. In essence, the Agreement had brought equality (and human rights) in from the margins of policy making to the mainstream.<sup>26</sup> Whilst there would have been pressures within Departments undertaking a novel new all-embracing duty, the legislation was clear about the role of the Commission.

5.1.7 These developments and processes connected with the initial phase of operation, nevertheless, have all been cited as having an impact on the effectiveness of the role of the NIO where overall responsibility for implementation and mainstreaming of the Section 75 is vested. We cannot rush to judgment, however, but must now turn to a more comprehensive set of issues which have emerged in one of the most important and telling functions of the NIO: the specific designatory role of the Secretary of State for Northern Ireland.

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<sup>25</sup> FILJ, pp. 1720-1721.

<sup>26</sup> *Ibid.*, p. 1699. For the purposes of this report, ‘mainstreaming’ is defined according to the EU Commissioner cited by McCrudden as, ‘an integral part of all public policy making and implementation, not as something that is separated off in a policy or institutional ghetto.’ See also Colm O’Cinneide, Taking equal opportunities seriously: the extension of positive duties to promote equality’ (Equality and Diversity Forum, 2003), pp. 34-35.

## 5.2 Designation

*Objective 2: To assess the role played by the NIO in driving the process of designation of public authorities under Section 75*

5.2.1 Section 75 operates on a ‘closed list’ system, in that only public authorities are subject to the legislation, and are specified either by virtue of being designated under the Ombudsman’s Scheme (Section 75 3(c)) or by the Secretary of State 3(d).<sup>27</sup> The NIO is mandated by Schedules 2 and 3 of the Act, and clearly expresses commitment to work in collaboration with the Commission to identify organisations that should be designated.<sup>28</sup> This role which is administered by the Secretary of State who in turn is informed and advised by the NIO’s Human Rights and Equality Unit (HREU) also includes powers to persuade organisations to accept designation. By all accounts, within and outside the Department, there is a view that policy in the early years appears to have been arbitrary: ‘designate, unless good reason to the contrary could be found’. The HREU, a high-level specialist unit with responsibility for equality and Human Rights law and implementation, emphasized that, where the NIO’s challenge function had been successful, designation occurred easily with the consent of the organisations in question. The Voluntary and Community Sectors believe, however, that the persuasive role was not always followed through robustly enough in accordance with the statutory duty. Consideration of a number of processes and systems in assessing how that role has been performed follows.

5.2.1.1 Firstly, Section 75 has been developed several times since implementation through a process of merely ‘adding to the list of public authorities, automatically covered by the statutory duties’.<sup>29</sup> When it came into force and an additional 120 public bodies were designated. Since then, the Secretary of State has used the power to designate 150 public authorities. At the time of writing and to date, some 270 public authorities have been designated for the purposes

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<sup>27</sup> See for an up-to-date list: <http://www.ni-ombudsman.org.uk/whocomp.htm#what>

<sup>28</sup> *Equality*, p. 9.

<sup>29</sup> McLaughlin and Faris, p. 30.

of Section 75 by Orders of the Secretary of State.<sup>30</sup> In the process of designation of those public authorities not covered automatically, four Designation Orders have been made. These have picked up bodies such as Central Government departments active in NI that were not included by the automatic designation provisions of the primary legislation. The first such Order was made in July 2000 just six to seven months after the primary legislation commenced. Subsequent Orders have designated authorities that the NIO and the Equality Commission agreed should be included.

5.2.1.1.1 A problem potentially indicative of low commitment emerged, however, when, it was claimed by two voluntary and community organisations, that the NIO apparently merely ‘invited’ public authorities to ‘submit themselves’ for designation. When few did so, the Commission requested the Secretary of State to consider whether others should be included. This had implications in a number of cases where bodies resisted designation. Whilst this anecdotal evidence is not corroborated by published data of which we are aware, the perception among the sectors is significant. There was, moreover, considerable concern about the range of functions that were exempted from the statutory duty (cf. 5.2.1.2; 5.22 to 5.2.3) where the relevant UK-wide authority was not to be designated. We learned, for example, that the NIO attempted to seek exemption from Section 75, which was regarded as indicative of its general attitude to the statutory duty. The HREU stated, however, that their records do not indicate that the NIO tried to gain exemption from S75. Staff recalled that as a Central Government department the NIO:

was not automatically designated under s75 (b) or (c). It therefore had to be designated by Order in Council under s75 (a). Ministers and officials had agreed (after consultation across the Cabinet) that a Designation Order to give this effect, and to include other Central Government departments that operated in NI, should be prepared so that it could be made in December 1999.

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<sup>30</sup> Information supplied by the Commission’s Project Working Group. See also Dickson and Harvey, footnote 177, p. 58.

This was scheduled to come into effect alongside the primary legislation, which commenced on 1 January 2000. The HREU acknowledged, however, that there was a delay in the event because the Commission at the last moment ‘flagged up other authorities (mainly the governing bodies of further and higher education institutions) that should be designated in the same Order’.<sup>31</sup> Consideration of how this should be dealt with, combined with the disruption caused by the suspension of devolution meant there was a delay in processing the Order but it was made as quickly as the circumstances of the time would allow (in July 2000). Given the lack of hard evidential data on this claim that exemption was attempted, it is difficult to draw conclusions. The exception might be to offer some acknowledgement of the prevailing perception within the sector that the NIO appeared to have breached Section 75 in some respects (see 5.3.5; 5.4.3), which may be fuelled more by a general lack of communication and obvious progress on equalities, but minimal signs of mainstreaming.

5.2.1.2 Secondly, if performance of the equality and good relations duties are to have wide effect, it is imperative that public policy is subjected to screening for its impact on the equality and good relations groupings. Responsibility for ensuring that policy is fully and fairly mainstreamed is the public authorities’ once designated; the Commission has the power, however, to exempt some public authorities as noted above. Some Voluntary and Community Sector organisations such as the CLC and the Law Centre (NI) (LC) believe that the Commission commands the important role of challenging the NIO with regard to the designation of public authorities, particularly those who continue to resist. It is not clear from the evidence that this implies a desire for the Commission to become a designating body. What is certain is that the Commission’s role is perceived to be unclear if it does not possess the authority to challenge proactively or be able to designate with enforcement power similar to that it utilises in granting exemptions. To date, only six public authorities have been exempted.<sup>32</sup> Under Schedule 9, only where a public authority, except some government departments, has been notified in writing that it

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<sup>31</sup> HREU.

<sup>32</sup> These are: Carlingford Lough Canneries, Coral Crescent Housing Association, Craigavon Housing Association, Export Credit Guarantee Department, Food for Britain, and Wine Standards Board Vintners Company.

does not need to submit an equality scheme is it exempted. Despite any complexities that may be associated with the designation, Schedule 9 is understood by the Voluntary and Community Sectors to give the Commission the necessary scope to persuade. Whilst the Commission understands this viewpoint, it does not accept that it possesses a formal role to persuade public authorities to designate, but an informal role to recommend. In our view, this issue requires some attention in order to bring greater clarity. As will be seen, both the HREU and some in the sector believe this to be an important role for the Commission, who, because of its level of collaboration with the HREU on designations, may gain more clarity if it formally shared the role as a designation body. While the point is well made, the implications for the NIO and the structures of the Commission becoming a body with a formal designating role will potentially be prohibitive, but worthy of exploration. In any case there appears to be an issue about what facts are known within the sectors or have been grasped.

5.2.1.3 Many organisations in the Voluntary and Community Sectors are convinced that other large UK-wide public bodies with a presence in Northern Ireland should be designated. This view is reflected by Dickson and Harvey,<sup>33</sup> and was shared also by the Equality Coalition and the HREU, who stated that the Commission ‘has not yet succeeded in its efforts to persuade the Secretary of State to designate some authorities’. The drive to designate public authorities can be tested, however, when large organisations resist whatever the grounds. The Home Office (HO), the BBC and the Ministry of Defence (MOD) have to date resisted or has had some functions exempted from Section 75. There is a body of opinion also which suggests that schools in Northern Ireland should be designated. These cases are worthy of exploration in order to illuminate commitment in performance of the roles of the NIO in driving forward designation.

5.2.2 First, the Home Office’s (HO) resistance to designation, according to the HREU, has been on the basis of their requirement to implement immigration legislation which allows discrimination on the

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<sup>33</sup> Dickson and Harvey, p. 58, where reference has been made to statements by the Commission on 20 July 2000 and 5 April 2001, which are available in the News Archive on the Commission’s website.

grounds of 'ethnic origin and race'. It is contended by specialised organisations in the Voluntary and Community Sectors that the debate about designation of the HO may have been stifled by the relative 'disregard for equalities at the highest level in other parts of the United Kingdom'. A parallel may be drawn, for example, where the race equality duty applies to organisations in GB, which require them to have a duty to prevent racial discrimination while having a due regard to the need to promote equality of opportunity. This duality, it is argued, is necessary to protect minority ethnic groups, and is reinforced by the Race Relations (Amendment) Act 2000 (RRA) within whose scope the HO comes; but the HO is provided with exemptions 'for all matters regarding the implementation of immigration policy'.<sup>34</sup> In this regard, the HO is quite content with the RRA. Very early on a House of Lord's debate challenging non-designation of the HO illustrates the importance of the need to designate. The key question was put by Lord Lester of Herne Hill, who at the time seemed convinced that the HO should be designated. He said:

Religious discrimination is forbidden in Northern Ireland but not yet in Britain. Racial discrimination is forbidden on both sides of the Irish Sea. The Race Relations Act will impose similar duties on central Government departments here. In order to achieve some kind of symmetry across the Irish Sea in relation to public authority obligations of this kind, what will be the position in regard to central Government departments like the Home Office or the Lord Chancellor's Department? Is it contemplated that their functions in relation to race and religious equality in Northern Ireland will also bring them within this scheme in due course or is there to be an anomalous position in which those two departments--the Home Office and I think the Lord Chancellor's Department--will be outside the scope of the duty?<sup>35</sup>

Lord Avebury thought at the time that,

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<sup>34</sup> Lord's Hansard, Columns 535, 536, 537, 538, 30 March 2001.

<sup>35</sup> Hansard, Column 537, 30 Mar 2001.

while it was appreciated that there had to be certain exceptions so that discrimination was permissible under the Asylum and Immigration Act for certain limited reasons, and that those had been accommodated in the Race Relations (Amendment) Act, it should have been possible similarly to designate the Home Office under Section 75.<sup>36</sup>

5.2.2.1 The HO has not yet been designated. The HREU points out in response that the HO's concern with Section 75 is about the application of the 'all-or-nothing' approach, that all functions have to be designated or none at all, since Section 75 does not permit partial designations by Order and, therefore, without primary legislation. The question remains to what extent has the HO engaged with, and been persuaded by, the NIO to designate. Many Section 75 groupings and representatives such as LC (NI), Northern Ireland Council for Voluntary Action (NICVA), the Equality Coalition and some academics are convinced of the need for greater collaboration between the NIO and the Commission in driving forward designation of those resisting it. This may entail consideration of the Commission becoming a body with a formal designating role. In regard to the HO, the then Minister, Lord Falconer, whilst arguing that the HO was willing to voluntarily comply with the spirit of Section 75 in respect of all its other functions, stated:

“The Race Relations (Amendment) Act made a specific exemption from the Great Britain race equality duty to exclude immigration from the necessity of promoting equality of opportunity. That exemption reflects a unique requirement for immigration entry clearance officers to discriminate on grounds of nationality and ethnic or national origin. There is no such scope for an exemption within Section 75. There are difficulties, therefore, concerning designating the Home Office in Northern Ireland.”

5.2.2.2 There are conditions that appear to justify non-designation of some functions within the remit of some public authorities. One precedent noted by the HREU is where the Director of Public

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<sup>36</sup> *Ibid.*

Prosecutions (DPP) for NI and the Public Prosecutions Service were partially designated through primary legislation. It was designated except for all matters to do with decisions on whether or not to prosecute. There is a risk, however, to which the Children's Law Centre (CLC) rightly pointed, and the HREU recognise, that the group 'most likely' to be prosecuted is young males; this would mean that young males could be adversely affected by this exemption. In any circumstance, if it is likely that Section 75 groupings would be adversely affected by policy, any exemption should formally recognise this in screening and impact assessment of that function well before the moment of decision to prosecute or not.

5.2.2.3 Nevertheless, the issue of the exemption of certain functions is of the utmost importance because of the potential for undermining the statutory equality duty. It is important to note, therefore, that the Commission has a power whereby it can grant exemptions from the requirement to produce a scheme, and a range of bodies have been granted these, as noted earlier, but the Commission to its credit has also refused applications for exemptions from a number of bodies, e.g., the Northern Ireland Film and Television Commission.

5.2.3 Secondly, the drive to designate some bodies must be a matter of political will and greater collaboration. The Ministry of Defence (MOD) has also resisted designation, sometimes argued as a matter of national security, but more strongly on the grounds of concern that Section 75 is an all-or-nothing approach to equalities. Here it is understood that all functions have to be designated or none at all. The Home Office and the MOD are covered by the Race Relations legislation in Britain, but it is only their relevant functions that are covered. Accordingly, they do not fall under the same scope in GB as Section 75 which covers all functions in NI.

5.2.3.1 The key issues in regard to the MOD concern recruitment to the armed forces, where essentially the need, they argue, is to attract young males and females physically capable of performing the rigorous duties of a soldier in combat rather than disabled people. As grounds for resistance this suggests that there is no place for disabled people in the armed forces per se. On the contrary, in our view, it can convincingly be argued that disabled people can perform many tasks within the armed forces. In response to comments made

in December 2000 by General Sir Charles Guthrie, (Chief of Defense Staff), Bert Massie, Chair of the Disability Rights Commission (DRC) said:

“It’s ridiculous to exclude disabled people from serving in the armed forces because of some outdated stereotype. By extending anti disability discrimination legislation to the armed forces disabled people will be able to apply for jobs for which they are best suited. This could be in non-combative roles such as logistics, supplies or administration but there is no reason that a person with, say, a facial disfigurement, could not serve on the front line.”<sup>37</sup>

5.2.3.2 The disability equality duty applies to the MOD in other parts of the UK in a way not dissimilar to how the racial equality duty applies to the HO in respect of immigration (See 5.2.2.1). That the MOD has exemption from the disability duty similarly requires further consideration, given that screening for disability and other inequalities across Section 75 categories should take place. This view is supported by NICVA and the Human Rights and Equality Unit who agreed that the NIO is committed to persuading the HO and MOD that the due regard requirement of Section 75 should be enough to allow them to make the desired exemptions. Those cases where there would be an adverse impact on other Section 75 groupings without an exemption makes the case for further urgent consideration of this matter.

5.2.3.3 Further, Section 75 requires public authorities to pay due regard to the need to promote equality of opportunity, and though it is not an exemption currently, the NIO would argue that ‘due regard’ means a lack of ‘specific and absolute’ requirement provided that due regard is paid to all the circumstances that would allow avoidance of adverse effects. It appears that in the NIO’s view, ‘specific and absolute’ is a test of due regard. On this basis, the HREU also recognised, the MOD, the HO and several other organisations may feel uncomfortable with the prospect of having to defend the test of

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<sup>37</sup> Disability Rights Commission, Disabled people should be allowed to serve in the Armed Forces (December 2000). [http://www.drc-gb.org/newsroom/news\\_releases/2000/disabled\\_people\\_should\\_be\\_allo.aspx](http://www.drc-gb.org/newsroom/news_releases/2000/disabled_people_should_be_allo.aspx)

due regard in the courts. If the NIO interprets the legislation in a way that is insufficiently 'specific and absolute' as the test of driving designation, then a collaborative response between the NIO and the Commission is required in order to encourage the NIO to use its persuasive powers more effectively. In cases where partial designation is an option, careful thought would be required before the Commission advises the NIO in order to avoid possible a *fait accompli* among other things, where a public body develops services with adverse impacts but could resist designation on the borderline.

5.2.4 Thirdly, a range of voluntary and community sector organisations are strongly convinced that the BBC should be designated because it is a key public service provider. There is legal opinion which suggests that the BBC cannot be included as they 'not on the Parliamentary Commissioner's Act' as a public body in that sense, and to designate separately would give the Secretary of State for NI an oversight of the BBC. This would be a position no other Cabinet Minister holds. Given the possibility of anomaly, we have noted with Dixon and Harvey that the Commission has

'made efforts since its inception to persuade the Secretary of State, exercising the power conferred on him or her by section 75(3)(d) of the Northern Ireland Act 1998, to designate as many persons as possible as 'public authorities' if they are not already listed in Schedules 2 to the Parliamentary Commissioner Act 1967, the Commissioner for Complaints (NI) Order 1996 or the Ombudsman (NI) Order 1996.'<sup>38</sup>

5.2.4.1 The question of the BBC remains outstanding, and according to its Equality Unit, the 'definition of a public authority as it would apply to the BBC was unclear', and is now the subject of legal analyses. Action by the NIO in exercising its challenge function to convince the BBC suggests that the BBC is unique in this regard. The HREU states:

Its uniqueness has been recognised in GB where the new Gender Equality Duty and the Disability Equality Duty

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<sup>38</sup> Dickson and Harvey, p. 57.

designate the BBC only with regard to its public functions (that is, not its programme making).

Whatever the merits of the BBC's case, editorial independence and freedom from political control needs to be balanced against the strong impression from a public sector broadcaster who does not want to sign up to a positive public equality duty. Public service programming must be seen also in terms of its impact on Section 75 groupings. The NIO continues to address remaining bodies,<sup>39</sup> but notes that in each case 'the issues are legally complex and cannot be taken forward by the NIO alone'. The NIO is confident, however, that organisations are responding well to designation, and plans for designating new bodies are working well, as in the case of the Review of Public Administration (see below). We concur with Dickson and Harvey that 'the principal aim of the Commission in this regard, to have section 75 extended to those public authorities whose functions relate not just to Northern Ireland but to one or more other parts of the United Kingdom.'<sup>40</sup> We found that in addition to the HO, MOD and BBC, however, other organisations which are regarded as candidates remain undesignated.

5.2.5 Fourthly, the sector points out that schools, for example, are not designated which, according to organisations such as the CLC, LC (NI) and NICVA, is considered a breach of the 'spirit' of Section 75. The importance of the need to designate schools apparently relates to evidence that, by and large, children and young people are not being protected or afforded the same rights as adults. The issues here are complex, and are believed by the Voluntary and Community Sectors to include the NIO's concerns about the embedded political divisions in the education system, and lack of capacity and availability of adequate resources. The sector thought, however, that the resource argument was unsustainable because from their perspective universities and colleges of further education are designated and possess a wealth of expertise on Section 75 which can be made available to assist schools. Further, the sector suggests that heads of schools would probably resist designation on the strength of administrative complexity and time consuming detail. We are keen to

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<sup>39</sup> The HREU states that in the next round the Revenue and Customs and the Big Lottery will be designated, and discussion regarding the BBC and MOD continues.

<sup>40</sup> Dickson and Harvey, p. 57.

avoid political rhetoric on this issue, and we are not aware of hard evidential data on the potential impact of designation, but the emerging debate is not unexpected. There have been a number of important studies on equality and diversity in the segregated system in Northern Ireland. These include work by Dr Tony Gallagher, Professor of Education at Queen's University Belfast (QUB), in which designation of schools has not been extensively addressed.<sup>41</sup> From our perspective, however, it is entirely expected that the issue of designation would arise since public services are delivered through institutions such as schools in Northern Ireland. Important questions for consideration must include the impact of designation, for example, on school Heads, governors, staff, pupils and parents, given the existence of an embedded segregated system. Indeed, in that context it would be necessary to address at least two key issues: i) the introduction of citizenship education to the curriculum of all schools in Northern Ireland. As Alan Smith in the *Cambridge Journal of Education*<sup>42</sup> contends, citizenship is seen as 'one way of underpinning a long-term commitment to democratic politics as part of the fragile peace process'. The concept of citizenship, however, requires careful consideration, particularly 'in a society where there are different loyalties that give rise to conflict over the future constitutional status of the society itself'. He continues: 'Neither British nor Irish national identity provides the basis for a 'patriotic' model of citizenship that could be accepted in all schools';<sup>43</sup> ii) a mechanism for making the profoundly difficult issue of integrated education a viable option would require consideration. This would be necessary to ensure that all religious groups, and an increasing black and minority ethnic population have equal access and protection.

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<sup>41</sup> See T. Gallagher, Education and Equality in Northern Ireland in, O. Hargie and D. Dickson, (eds.) *Researching the Troubles: social science perspectives on the Northern Ireland conflict*, Mainstream Publishing (Edinburgh 2003); T. Gallagher and A. Smith, The effects of selective education in Northern Ireland, *Education Review*, 15(1), 74-81 (2001); Osborne, Bob and Gallagher, Higher Education in a Divided Society: Northern Ireland, in M. Tight, (ed) *Access and Exclusion: International Perspectives on Higher Education Research*, Volume 2, Elsevier Science Ltd (Oxford 2003); A. Smith, The Challenge of Diversity for Education in Northern Ireland in, M.A. Lyons and F. Waldron, (eds.), *Perspectives on Equality: The Second Seamus Heaney Lectures*, Dublin, Liffey Press, 3, 65-91, (2005).

<sup>42</sup> The Abstract, *Citizenship Education in Northern Ireland: beyond national identity?* in *Cambridge Journal of Education*, Vol. 33, Issue 1, (March 2003), pp. 15-32.

<sup>43</sup> *Ibid.*

5.2.6 Sections of the Voluntary and Community Sectors repeatedly pointed out that QUB carried out a consultation on the designation of schools on behalf of the Commission. At least two organisations thought this exercise ‘lacked merit because it did not consult with children or young people’.<sup>44</sup> The view was expressed, for example, that the exclusion of children ‘invalidates the research’. There appears, however, to have been a lack of awareness or recognition that the Commission included children in its consultation on designation of schools. The Commission had contracted QUB to carry out research in which, according to the Project Working Group, ‘the central request was to consult with children and young people’ and secure the views of the parents.<sup>45</sup> Furthermore, a key part of the Commission’s education work was to have ‘explored with the Education Training Inspectorate the possibility of inclusion of equality and good relations as performance indicators in Schools’. It is clear, therefore, that the Voluntary and Community Sectors’ views appear unfounded and perhaps reveal more about the lack of effective communication than the substantive concerns.

5.2.7 Finally, the NIO now works to ensure that any new bodies that are created are designated automatically in their founding legislation. The HREU stressed:

This is the approach we are taking in our close liaison with the project team that are taking forward the Review of Public Administration. That project team plans to designate all the numerous new bodies that will be created through the founding legislation for each body. If new bodies are not designated that way, the NIO will do so through further Designation Orders.

### **5.3 Leadership in respect of Section 75**

*Objective 3: To assess the leadership given by NIO in regard to its functions, and more generally, in respect of Section 75*

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<sup>44</sup> Interviewees suggest that there is clear evidence of a lack of commitment in that some designated organisations are clearly in breach of Section 75 by ‘not consulting children and young people’, and this raises operational commitment issues within government departments. We found that major concerns regarding the children’s strategy have been expressed including how responses to consultations are analysed and what weight do these consultations carry.

<sup>45</sup> See *Nfer* at Queens, Centre for Educational Research, A Public Consultation on Ways to Mainstream Equality in Schools in Northern Ireland, 2006.

[http://www.qub.ac.uk/nfer/research/project\\_outlines/project\\_outline\\_ecni.htm](http://www.qub.ac.uk/nfer/research/project_outlines/project_outline_ecni.htm)

5.3.1 In this section the intention is to identify and clarify the leadership given by NIO in regard to its functions, and more generally, in respect of Section 75. The Secretary of State for Northern Ireland and the NIO Department have a power to designate public authorities under Section 75, as we have seen above (5.2), but the NIO is also a designated public authority, and itself must have 'due regard to the need to promote equality of opportunity and regard to the desirability of promoting good relations,'<sup>46</sup> including process and management of equality schemes, the effect of Direct Rule and budgetary systems.

### **Equality schemes**

5.3.2 As a public authority, the NIO is required 'to submit an Equality Scheme to the Commission and to carry out Impact Assessments of its policies in certain circumstances,'<sup>47</sup> which is specified in Schedule 9, sections 2 to 9 of the Act. Section two stipulates that a public authority shall develop an equality scheme in which it sets out its strategy for complying with the legislation. The NIO's Scheme referred to earlier (5.1.2; 5.1.2.3) includes the principles for addressing these statutory obligations which, as pointed out by the CLC, NICVA and the LC (NI), must be regarded as the basis for embedding policy or confidence building in other Departments. McCrudden, who is clear on this matter states:

Mainstreaming should... encourage greater resort to evidence-based policy making and transparency in decision making, since it necessitates defining what the impact of policy is at an earlier stage of policy making more systematically and to a greater extent than is currently usually contemplated.<sup>48</sup>

We concur with McLaughlin and Faris on this point, essentially because if evidence of impact or outcomes is used to inform approaches, policy that seeks to increase equalities can more appropriately and openly be measured. The claim that mainstreaming

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<sup>46</sup> *Equality*, p. 5.

<sup>47</sup> *Ibid.*

<sup>48</sup> McLaughlin and Faris, p. 7.

occurs when departments are ‘thinking equality and good relations’ is short of the mark. As McCrudden notes, it requires all stakeholders across the community working together to ensure ‘that change actually occurs, particularly in those areas of disadvantage where equality has been far too slow in coming in the past.’<sup>49</sup> In this regard, some key points deserve consideration.

5.3.2.1 Firstly, the NIO recognises strengths and weaknesses in the way Equality Schemes (ES) are handled. The HREU and the Central Management Unit has sought to include ‘equality thinking into systems and policies at departmental level’ so that Section 75 is considered to be mainstreamed across departments. The Voluntary and Community Sectors have consistently failed to confirm this from their perspective. The evidence would necessarily entail more visible leadership by the NIO of the public debate, and certainly better levels of communication as to how Section 75 works across Departments. Certain weaknesses in the Five Year Review Report are acknowledged, but it goes on to say: ‘By following the discipline involved with the formal processes of screening, consulting and conducting equality impact assessments, equality is now mainstreamed into the work of the NIO.’<sup>50</sup> It recognises: ‘We now appreciate the importance of developing relationships with key stakeholders from the Voluntary and Community Sectors to inform the policy processes and the importance of working jointly with colleagues in the NI Departments.’<sup>51</sup> Perceptions are sometimes far removed from the reality, but are often of the utmost importance as indicators of the operation of Section 75, hence the need for more effective communication between the NIO and the NGO sectors.

5.3.2.1.1 Equality schemes commit and oblige a public authority to perform its legal obligations including arrangements for assessing and consulting on:

- the likely impact of policies on the promotion of equality of opportunity;
- monitoring;
- review;
- training; and

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<sup>49</sup> FILJ, p. 1773.

<sup>50</sup> Five Year Review, p. 1.

<sup>51</sup> *Ibid.*

- communication and publication submitted to the Commission.

Set against the background of the Five Year Review Report, the NIO has much work to do to achieve this goal. Consultation with 'representatives of persons' likely to be affected by the policy, and such other persons as may be specified in the directions are a central requirement. Paragraph 9 also highlights the importance of an equality impact assessment (EQIA), designed to ensure conformity with guidelines issued by the Commission.

5.3.3 Secondly, the Central Management Unit (CMU), a middle level structure within the Division, also works with an 'Equality Driver' to 'mainstream' equality and good relations.<sup>52</sup> Equality Drivers are representatives assessing and ensuring that policy within all Divisions in the Department and its Agencies are equality proofed. Equality Drivers comprise members of the Section 75 Steering Committee. The CMU remarks that the NIO is obliged to perform impact assessment screening exercises which should all ensure that, by the time it comes to budgeting for a particular activity or policy, the appropriate action of removing equal opportunity barriers would have been performed. In section 3.4 of its own scheme, the NIO recognised the importance of its role.<sup>53</sup> This paragraph clearly mirrors the legislation Departmental responsibilities, but the general attitude of the Voluntary and Community Sectors is that this has not been consistently complied with, as failure in the case of the introduction of Anti-Social Behaviour Orders (ASBOs) illustrates. (See case details below 5.3.3.1).<sup>54</sup>

### **ASBOS – A Case Study**

At a very early stage of consultations, concerns were raised by a number of NGOs including the CLC directly with the NIO regarding possible breaches of section 75 in relation to proposals to introduce ASBOs into jurisdiction. The NIO proceeded without taking action on the concerns raised and the CLC was placed in the position where they were forced to raise the matter with the EC. The matter was then raised by the Chief Commissioner with the NIO, but there were no

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<sup>52</sup> *Equality*, Annex A 2.

<sup>53</sup> *Ibid.*, p. 23.

<sup>54</sup> See Briefing Paper by CAJ on the case. <http://www.caj.org.uk/equality/75casenote.doc>

moves to comply with section 75, and the CLC with nine other organisations filed a complaint with the EC.

The complaint was upheld by the EC. It remains the NGO's contention that if the NIO had carried out the screening process, it would have found a serious differential adverse impact, as a consequence of which, the legislation could not and should not have gone through parliament because amendments should have been required. This was further aggravated by the then NIO minister in the House of Commons indicating in advance of the end of the consultation period his intention to introduce ASBOs which the NGOs believe pre-empted adequate consideration of any consultation responses.

This case has been quite widely referenced in interviews. There has been a completely negative reaction among the Voluntary and Community Sectors to the introduction of ASBOs, which, for them, illustrated lack of commitment to and leadership on Section 75 by the NIO. The Voluntary and Community Sectors believe that under devolved rule there would be more detailed attention and scrutiny, but wanted to be cautious that it should not be such as to develop a prescriptive system that precluded effectiveness. Whilst the evidence that more detail attention would have been given is lacking, the reaction remains strong and has formed an almost debilitating response among the sector to Section 75.

5.3.3.1 Thirdly, whether this can be shown in evidence is uncertain, but considerable concern expressed by specialist NGOs about leadership and commitment has, for example, suggested that some consultation, a key aspect of mainstreaming, also appears to be a paper exercise, e.g., the timing of them during summer months when respondents generally would be unavailable. This view is supported by some studies, as cited by McMahon.<sup>55</sup> McCrudden notes:

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<sup>55</sup> McMahon develops an extended discussion on this issue, and cites an example which demonstrates the 'tick box' attitude among focus groups that criticised the manner of some consultation processes. These included group i) whether the consultation process was meaningful or 'just a formality'; ii) public authorities had to be 'encouraged'; and iii) a 'lack of genuine consultation by public authorities', and queried the meaningfulness of consultation process saying that it was 'often no more than a tick box exercise by statutory agencies'. p. 33; See also McLaughlin and Faris, pp 28-35; Committee for the Administration of Justice, Equality in Northern Ireland: the rhetoric and the reality, (September 2006), p. 166.

Too many discussions of participation and deliberation fail to show how policies and institutions might be redesigned to achieve substantive goals. Consultation can be a paper exercise regarded by Government as no more than a troublesome exercise that must be endured.<sup>56</sup>

The Equality Coalition, among others, question the political will within the NIO regarding this case, and are suspicious of the level of importance accorded to the full implementation of Section 75 in respect of its compliance on the bases of these processes. They tend to agree that when public authorities fail to complete Equality Impact Assessments, for example, this leads to ‘frustration and a lack of interest’ among the public, community and voluntary sectors. The Commission would contend this suggestion, however, because in its view, the necessary steps were taken to ensure schemes were of the high standard required. It is virtually impossible to judge this issue without a thorough examination of all the early schemes. The NIO in their Five Year Review Report are committed to reviewing their scheme because of ‘weaknesses’ (5.3.2.1). This does not imply any weakness on the Commission’s part in approving the Scheme, but appears to have more to do with the Department seeking now to learn lessons and implement Section 75 more comprehensively. The Commission also noted a flaw in the NIO’s approved Equality Scheme in relation to its commitment to carry out direct consultation, as opposed to its decision to consult only with ‘representatives’ of those affected.<sup>57</sup>

5.3.3.3 Fourthly, as a result of the controversy around the introduction of ASBOs (5.3.3) the CMU now performs a monitoring function. It meets at least quarterly with an external assessor to monitor and review the implementation of Section 75 obligations by the Department. This work is restricted, however, i), by the lack of an adequate system for data collection, which is vital for benchmarking and monitoring, and ii), a lack of capacity in the Equality Driver’s role because of the high volume of policies. The Five Year Review group recommends for example, an enhancement of the Equality Drivers’

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<sup>56</sup> McLaughlin and Faris, p. 9.

<sup>57</sup> *Equality*, Paragraph 2:1, p.20.

role to include ‘a more robust recording mechanism in view of the difficulties involved in gathering information on the actual numbers of screening and EQIA exercises conducted during the last 5 years.’<sup>58</sup> There appears, therefore, to be some inconsistency with the objectives set out in the Equality Scheme, namely, that the NIO ‘will ensure that implementation of the Section 75 obligations is supported efficiently with the necessary resources of people, time and money.’<sup>59</sup> The NIO in its Five Year Review report has acknowledged the need to learn lessons from the Commission’s current effectiveness review.

5.3.3.4 Fifthly, the CMU, nevertheless, does not regard the level of resources earmarked for Section 75 as measurable in any way because, according to staff, there is ‘no need for separate budgets’ as Section 75 is ‘so well mainstreamed’. Action plans for different Section 75 groupings are cited here as evidence of mainstreaming. Clearly, action plans in our view, may contribute as a first formal stage of the process of mainstreaming, but evidence-based data is vital, and could only be gathered consistently if action plans are implemented and performance indicators are transparent. A broader definition of mainstreaming is, therefore, necessary to ensure benchmarking change in equalities and good relations.

5.3.4 A critical aspect of this relates to the leadership provided by the Permanent Under-Secretary of State who is duty-bound to ensure that ‘all officials of the Department, and its Executive Agencies, will be familiar with this Scheme and how it will be implemented.’<sup>60</sup> This should include ‘all new policies, powers and initiatives’, as proposed in the review of all existing policies, functions and duties.

5.3.5 A sixth strand stated by the CMU is that it ‘usually works through OFMDFM and have regular contact with all its departments’, which for staff is indicative of the importance of joined-up Government on Section 75. Together with OFMDFM, the CMU were involved, for example, in the setting up the Criminal Justice Network. The Equality and Social Needs Steering Group (ESNSG) works closely with CMU and the HREU but no evidence was available to confirm what work is being done. There is recognition at this level that

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<sup>58</sup> Five Year Equality Review Report, p. 3.

<sup>59</sup> *Equality*, p. 5.

<sup>60</sup> *Ibid.*

the culture of equality has changed 'because equalities are embedded in policies, processes and systems'. Nevertheless, the evidence-base for a changed culture, as noted above, requires systems for measurement and monitoring. As the Head of Good Relations and Reconciliation Division at OFMDFM repeatedly pointed out, the critical evidence of mainstreaming is 'real and obvious change in equalities and good relations at community level'. The true test, he continued, 'is when violence ends and race attacks are reduced, and society is reflecting better relations'. It is clear that the absence of tools for measuring change restrict the effectiveness of Section 75.

5.3.6 This begs the question as to the methodology for assessing consultations and systems for analysing them, which has been cited by Voluntary and Community Sector organisations as a weakness in the performance of the role of the NIO. The CMU stresses that this is vital for the effective operation of Section 75 both as base line information and monitoring progress, a view also commonly articulated by practitioners in government departments. It would be helpful if systems for analysis of consultations, how those systems work, and what criteria are used for analysis were shared.

5.3.7 Some sector organisations expressed concern that the Commission 'mistakenly did not recommend and pursue amendments to the NIO's Scheme in line with its statutory obligation'. Having produced Guidance in 2000, the Commission explains in response that any amendments would take place in line with the statutory five year review of schemes, and strongly represented the position that public authorities should not alter their schemes until the Commission's guidance (2005) became available.<sup>61</sup> Guidance is available, and use of the Commission's new guidance and template<sup>62</sup> should help the NIO to address weaknesses the department

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<sup>61</sup> See Equality Commission for Northern Ireland, Practical Guidance on Equality Impact Assessment, section 7.6, *Guidance for implementing Section 75 of the Northern Ireland Act 1998*, ECNI, (February 2005). The guidance also stipulates a seven step procedure for EQIAs. These include i) defining the aims of the policy, ii) consideration of available data and research, iii) assessment of impacts, iv) consideration of measures that might mitigate any adverse impact and alternative policies which might better achieve the promotion of equality of opportunity, v) consultation on the actual impact of existing policies and likely impact of proposed policies, vi) decision by the public authority and publication of the report on results of the EQIA, and vii) monitoring for adverse impact in the future and publication of the results of such monitoring.

<sup>62</sup> Fiver Year Review Report, p.2.

acknowledged in its own scheme both in the review and in its annual report. It declares: 'The review has highlighted the need to increase the profile of equality by looking again at how senior management commitment to equality is followed through.'<sup>63</sup>

## **Children and young people**

5.3.8 The CLC remains concerned, however, that the lack of attention effectively 'allows the NIO to avoid carrying out direct consultation with children and young people'. The CLC stressed, for example, that in the last two years 46 requests for the child accessible version of a consultation exercise were made by them, but only on two occasions have they received a child accessible format: one from the Children's Commissioner and one from the Children's and Young People's Unit of OFMDFM on the children's strategy consultation. It is noteworthy, however, that the Commission has in recent months been developing guidance for consultation with children and young people to be made available in 2007. What is crucial about this problem and worthy of restatement is that there is now a general perception within the Voluntary and Community Sectors that the NIO's lack of effective leadership in important processes appears to have undermined Section 75 within government departments and the NGO sectors. If the Commission's revised template for Progress Reports which calls in section 2 for screening and EQIAs, and in section 10 for reports on good relations duties is adhered to, it is possible that the NIO's leadership on processes and policies could produce better practice and evidence based commitment.

## **5.4 Direct Rule**

5.4.1 Many respondents within government departments and the Voluntary and Community Sectors associate the difficulties concerning the implementation of Section 75 primarily with the sudden suspension of the devolved administration. The NIO is aware of this from the McLaughlin and Faris Operational Review<sup>64</sup> (2004). The effect of the change was reported to be dramatic in that return to Direct Rule for many meant reduced attention by Direct Rule

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<sup>63</sup> *Ibid.*

<sup>64</sup> [http://www.nio.gov.uk/section\\_75\\_equality\\_duty\\_an\\_operational\\_review\\_volume\\_1.pdf](http://www.nio.gov.uk/section_75_equality_duty_an_operational_review_volume_1.pdf)

ministers to the detailed implementation of Section 75. A comparison with what would have been expected from local politicians who were said to be much more attuned to the political scene in NI regarding equality was drawn.<sup>65</sup> The Law Centre in Northern Ireland LC (NI), for example, referred to 'huge delays' in implementing Section 75, noted earlier, because of operational difficulties at beginning. It is generally held by all sectors that much more could have been done about *A Shared Future* when Direct Rule returned and impacted the public sector. As one interviewee remarked:

The composition of the workforce at senior level did not change, and it still looks like there is a Protestant Civil Service for a Protestant people.

Though there will inevitably be different perceptions, equality and good relations are an important political issue in Northern Ireland in a way that might not quite be so critical in other parts of the UK,<sup>66</sup> and ministers in NI need to be mindful of this fact when addressing or confronted with mainstreaming.

5.4.2 Based on comments by McLaughlin and Faris, removing the involvement of local politicians in implementing Section 75 appeared to have curtailed momentum.<sup>67</sup> This is consistent with the view expressed also in parallel research on the Commission's Powers. Dickson and Harvey noted:

The current suspension of devolved government is also an important policy context. A number of those interviewed for this research listed direct rule as a possible impediment to the Commission in its work. They argued that having local ministers who were committed to making section 75 effective did make, and will make, a difference in terms of the seriousness with which the section is taken at the higher levels of public administration. We were told that Direct Rule ministers simply do not have the same level of commitment.<sup>68</sup>

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<sup>65</sup> McLaughlin and Faris, Vol. 1, pp. 30-31.

<sup>66</sup> Good Relations Associates, *Embedding Good Relations in Local Government: Challenges and Opportunities*, Final Report, December 2006, section. 6.2.3-6.2.5, p. 24.

<sup>67</sup> McLaughlin and Faris, Vol. 1, p. 10.

<sup>68</sup> Dickson and Harvey, pp. 35-36.

In so far as many organisations were designated at commencement, a large section of the public sector had to persist with Section 75 without much guidance and support in the early days. One interviewee emphasized that NIO leadership on Section 75 was 'over-cautious and muted'. Some anecdotal evidence suggests, however, that the absence of devolved Government made little difference.

5.4.3 Some non-governmental organisations such as NICVA and the CLC were concerned that the quality of leadership and the level of commitment to Section 75 determine internal and external attitudes. This position is based on the view that a strong negative message has been sent throughout the sector and across departments that Section 75 could be breached with impunity and therefore is of secondary significance. These groups cite the controversial introduction of legislation (ASBO's - Anti-Social Behaviour Order) (see 5.3.3) without equality proofing, the introduction of religious education in the curriculum in schools based only on Christian perspectives, and a general sense that equality of opportunity is not mainstreamed in government departments.

5.4.4 This perspective, of course, is contrary to the response of some government departments where policy makers now more readily 'think' equality. Notwithstanding our earlier comments the definition of mainstreaming, the Head of the Good Relations and Reconciliation Division suggests the contrary, however, and stated that 'we must get equality into the DNA of policy making'. Clearly a significant difference of opinion prevails. This may be accounted for, at least in regard to mainstreaming, by some Departments defining mainstreaming too narrowly as 'thought' despite its importance. The difference could also partially be explained by a lack of, or poor, information flow about Departmental activity on implementation of Section 75. Regardless of the reality, the strong perception remains. While the Commission is inclined to understand the sector on this point, it is also content with its positive relationship with Departments such as an increasing confidence with the DFP (see case study at 6.6.8).

## **5.5 High level review**

5.5.1 The aim in this section is to assess the extent to which action at the high level has or could produce more effective leadership on Section 75. This question is approached on three levels. Firstly, the CRC and the Voluntary and Community Sectors indicated that Section 75 has suffered from a lack of clear and positive leadership by the NIO, as noted e.g., in 5.4.3 and elsewhere in this report. Interviewees, however, state that leadership and commitment could also be shaped by a high level ministerial review of processes. This popular perspective was shared within government departments and the sectors alike. Allied to this is the commonly held view that

public authorities, non-governmental organisations, the Commission, and the Voluntary and Community Sectors must collaborate with equal political will and adequate resources to ensure the promotion of equalities and good relations more readily.

The notion within the sector that ‘muted leadership is consequential upon the failure to differentiate process of Section 75 from the Act’, was strengthened by the claim in some government quarters that the Commission was ‘flying in the face of elected representatives’ when it challenged a possible breach of the NIO’s Equality Scheme. To one degree this is not unexpected given the complexities around development of the legislation and the possible undermining of the Commission referred to earlier (5.1.2.3 – 5.1.2.5). The Commission’s action, however, is not extraneous to its statutory role, and rather than ‘flying in the face of elected representatives’, is to be expected if Section 75 is to be implemented effectively and respected.<sup>69</sup>

5.5.2 Secondly, in order to address leadership the sector suggests that policies and strategies at high level should be subject to Equality Impact Assessments. This is consistent of course with the Commission’s view. We have noted (5.1.2) that the work of the Departmental Board, Senior Management Board, and the Senior Management Forum, includes ‘section 75 as a standard agenda item in the Board’s agenda’, and that the Permanent Under-Secretary of State also has responsibility to ensure staff mainstream policies. It is

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<sup>69</sup> See Equality Commission for Northern Ireland, Guide to the Statutory Duties, Obligations placed on public authorities to meet the statutory duties in Section 75 of the Northern Ireland Act 1998, (2005). <http://www.equalityni.org/archive/pdf/GuidetoStatutoryDuties0205.pdf>

at this level that policies could be routinely subjected to EQIAs, which the Commission and the Voluntary and Community Sectors regard as fundamental to prove high quality leadership. The department would contend, however, that the existence and role of these committees (5.1.2) are evidence that policies are being mainstreamed. Our analyses elsewhere (see 5.4.4; 6.1.1.6; 6.6.2) e.g., equality impact assessing the Budget also applies here.

5.5.3 This must not be viewed in isolation from other critical aspects of the leadership question. From our perspective, clear and prominent leadership of the debate around Section 75 by ministers and elected representatives is equally important. The Chief Executive Officer of the Community Relations Council (CRC) was emphatic that there is a huge gap:

in developmental leadership around Section 75, and the debate here should be led by the Government. It would include the question about what kind of equality, the problem about access to equality, and how these are woven should not be excluded. Some are misguided about what equality is, and there are two drivers: Equality laws deal with being properly defined in terms of inclusive society, and good relations in terms of minimum citizenship for all.

Questions raised by instances of ineffectual leadership invite consideration of the need for pragmatic sanctions and the strengthening of commitment to Section 75. Professor McCrudden agrees and is convinced that there should be:

a “much stronger approach” by the Equality Commission than has so far been forthcoming, with the need for an effective enforcement strategy on the part of the Commission.<sup>70</sup>

McCrudden’s comments must be understood in the light of his principle of collective responsibility among all stakeholders if Section 75 is to be effective.<sup>71</sup> The Commission is accountable to the NIO

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<sup>70</sup> McLaughlin and Faris, p. 22.

<sup>71</sup> FILJ, p. 1773.

itself and its ministers, and they will of course not find in any circumstance against themselves, a factor which points to a particular difficulty with the legislation. The question is: should ministers, for example, be challenged with the unrealistic scenario of litigating against themselves or is there a need to review Section 75 regardless? The difficulties are tied with changing the legislation, as already indicated in this report, but any such proposal is likely not to succeed in the current political climate. And for politicians ‘without a written constitution’, the CRC notes, it is difficult, but legitimate to raise the question of changing legislation.

5.5.4 Thirdly, both the NIO as the main Government department and OFMDFM as sponsoring Department would have some responsibility in respect of the high level process. Any diminution of the duty consequent upon leadership deficiencies interpreted in a particular way does deliver a negative message to other departments and non-governmental organisations. Any recourse the Commission may have in pursuing complaints, furthermore, does not include appeals. Where, however, the situation arises in which an appeals process might be the only remaining option in pursuing a complaint, it is considered by some in the Voluntary and Community Sectors to be financially unattractive because of the high cost of appeals. The CLC are of the view, for example, that appeals in such circumstances become less desirable given the lack of clarity about sources of funding them, and the uncertainty of outcomes. This view is supported by Colm O’Cinneide who has identified a number of difficulties with enforcement following a failure to implement Equality Schemes in another context, as noted in Dickson and Harvey.<sup>72</sup> The Commission, moreover, is clear about its role relating to complaints which are set out in Schedule 9 (see Appendix D). Whilst this does not include appeals, it is also clear that an appeals process would be a disincentive and perhaps undesirable given that the Commission does have a positive duty to ‘offer advice’, refer matters to the Secretary of State (see Schedule 9(1)(a)(b) (c)) in pursuing Section 75 processes.

5.5.5 All sectors indicate that in managing burgeoning agendas, prioritisation and ranking of workload in a Direct Rule situation have

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<sup>72</sup> Dickson and Harvey, p. 22.

often determined policy emphases and quality of delivery. One interviewee suggests that on the NIO's work on criminal justice, for example, some civil servants believed there were issues too important to be subject to EQIAs and Section 75 duties. This attitude is regarded as a main source of the perception of lethargy in leadership and commitment. The emphasis here is that high level processes helps to shape how equality is embedded in policies which could contribute to the thinking that all policies must be subjected to Section 75. In this regard, it is noted, with McCrudden, that 'reluctant or unwilling consultation on the part of designated public authorities is not in compliance with Section 75'.<sup>73</sup> One interviewee poignantly said:

'Many organisations have given up on Section 75. Human Rights and equality organisations are giving up'.

5.5.6 With regard to details of public authorities' management and analyses of consultation responses, the CLC, for example, indicated consistent failure on the part of the NIO to make accessible the analyses or details of the system by which it carries out these processes. The key issue for them is about the quality and extent to which adverse impacts are screened and avoided, and the type and extent of consultation. Very few public bodies have carried out any direct consultation with children and young people, which for the sector contributes to the claim of undermining of Section 75. The thrust of the contention here clearly points to the lack of guidance on consultation with children and young people, which the NIO recognised is now being developed by the Commission.

5.5.7 These issues raise concerns about leadership in the NIO (and OFMDFM) as lead agency, in particular a weakness in the drive to ensure mainstreaming across departments in terms of direction, training, support, and results in the community sector. Though consultation has perceptibly improved, the Department recognised that more needs to be done on training, which, despite the practice that 'all new entrants to the NIO receive equality awareness training during induction', Equality Impact Assessment Training according to the Five Year Review, 'is organised according to demand'.<sup>74</sup> A

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<sup>73</sup> McLaughlin and Faris, p. 35.

<sup>74</sup> Five Year Review, pp. 3-4.

consistent and committed approach has been recognised as vital to improvement to the operation of Section 75, and the NIO has noted this as an area for improvement.<sup>75</sup>

## **5.6 Division of Responsibility: NIO/ECNI**

*Objective 4: To consider the implications of the division of responsibility for implementation of Section 75 between NIO and the Equality Commission*

5.6.1 The Commission's roles and responsibilities are clearly stated in the legislation. Evidence from the NIO and the community and voluntary sectors broadly suggests that the current division of responsibility between the two organisations is realistic and feasible. In fact, while Head of the Human Rights and Equality Unit could not comment because this was deemed not his domain, others in the Government have indicated that they could identify no perceptible difficulty in their relationship with the Commission.

5.6.2 A closer examination of the evidence, however, suggests that there are many sources which demonstrate Section 75's myriad shortcomings in terms of how the relationship between the Commission and the NIO works.

5.6.3 Firstly, the Human Rights and Equality Unit are content that the Commission has a workable relationship with the department, and have reported on the organisations identified for designation. The Commission uses what influence it has to provide the NIO with arguments that may assist in persuading organisations to designate, for example. This means that designation is not an exclusively one-way process, and that cooperation according to responsibilities has the potential for ensuring greater effectiveness. The Unit remarked that 'there are other bodies involved in consultations, but have not replied in terms of how successfully the Commission has been able to persuade them to accept a designation'. The key to a possible unbalance has been the ASBOs case, but this appears to have more to do with the NIO's commitment to Section 75 than the division of responsibilities.

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<sup>75</sup> *Ibid.*, p. 2.

5.6.4 Secondly, the HREU indicated that this level of cooperation between the two bodies is indicative of the positive relationship with the Commission, in that the NIO has not yet been asked to ask ministers to designate an authority without the Commission's agreement. This level of collaboration is important in helping to drive Section 75 forward. It is generally accepted that equality proofing policies is a diversity tool or equal opportunity mechanism that benefits organisations promoting or advancing equality.

5.6.5 Thirdly, there have been contrary voices regarding the role of the Commission in relation to the Government. Notwithstanding my comments about the Commission's possibly weakened role within the legislation (5.1.2.3 to 5.1.2.5), it was noted by the CRC that initially 'the expectations on the Commission were too great because they had to deliver the law rather than focus on equality'. This, the CRC states, is because equality has risen as a political item rather than a matter of the society's inequalities between rich and poor, etc. This perspective is understandable and has merit; but it is equally convincing that equality can be nothing other than political because it remains central to the emergence of the Belfast Agreement. The driving force behind the Catholic/Protestant nexus in Northern Ireland was political.

5.6.6 The CRC is convinced, moreover, that the Commission needs to 'stand away from the government's tools of statute and money and become independent'. One other interviewee echoed this openly suggesting that the Commission can be ineffectual because of the lack of independence. The crucial issue from these perspectives is the source of funding that would be required to support an independent Commission. They both believe that funding could be accessed 'using the Non-Departmental Public Body (NDPB) model and the Single Equality Act'. The Commission is clear, however, that while it is funded from the public purse, its statutory obligations and functions are carried out independent of Government, though it provides statutory advice to the OFMDFM. McCrudden refers to its independence which is set down in Schedule 9 of the Act, thus: 'The Commission would be established "by Westminster legislation, independent of Government..."'<sup>76</sup> In the prosecution of its statutory

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<sup>76</sup> FILJ, p. 1736.

role, for example, the Commission is, at the time of writing, assisting in 33 (51%) funded public sector cases against government departments or agencies.<sup>77</sup> The call for independence may well be understood, but the notion that independence would ensure greater effectiveness appears to lack conviction at key points. It is difficult, for example, to conceive a structure legally bound to ensure consistent Government compliance with Government's own policy, which was also totally independent from the Government structures and systems; these would be necessary for formal and full access in order to ensure the effective deliver that duty.

5.6.7 We concur with McCrudden, however, that the Commission needs stronger approaches for enforcing its role (5.5.3), which possibly entails amending the legislation. Amending the legislation in order to strengthen the Commission's role, particularly on Section 75 (2), may be untimely and complicated, but would be consistent with the Government's own reasoning some years ago. A Government review led by Jeremy Harbison entitled *A Review of Community Relations Policy* in 2002 was based on key fundamental principles. One of the principles was entitled 'building on Section 75 of the Northern Ireland Act', which included a key recommendation (see 6.4 below). Nevertheless, the Commission's resolve to challenge in respect of a number of Government policy proposals such as the Anti-Poverty Strategy is unquestioned.<sup>78</sup> They responded to the NTSN thus:

The development of the good relations duty is also a key component in this debate and needs to be factored into the Strategy. Therefore the Commission is somewhat surprised that this has not been recognised in this

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<sup>77</sup> Statistics are supplied by the Commission's Project Working Group.

<sup>78</sup> See footnote 65, p. 46. Equality Commission for Northern Ireland, *Response to the New TSN – The Way Forward towards an Anti-Poverty Strategy*, (October 2004), Paragraph 1.5, p. 2. The Commission believed that 'a fuller assessment of New TSN could have been undertaken, and the links proposed in the consultation proposals between New TSN and Section 75 had failed to provide for adverse impact now or in the future', see p. 32. See also the Commission's *Response to Gender Matters: Towards a cross-departmental strategic framework to promote gender equality for women and men 2005 -2015*, (February 2005); Equality Commission for Northern Ireland Policy and Public Affairs Committee, *Draft response to the OFMDFM draft Race Equality Strategy* (April 2003).

Strategy and by the lack of analysis between NTSN and equality legislation. We consider that equality is a pre-requisite for good relations and we consider equality is a pre-requisite for the eradication of poverty.

5.6.8 Finally, the NIO works through the dedicated Human Rights and Equality Unit whose staff advises the Secretary of State on his responsibilities for equality and good relations under Section 75 in regard to schemes referred, but so far, none has been referred by the Commission. This confirms the impression formed in this report on the basis of the evidence that the NIO need to be much more leadership driven and proactive on Section 75. There are, however, clearly contrasting views at this point. On the one hand NICVA, for example, believes that the reporting systems between the two bodies, where the Commission amalgamates the yearly reports from government departments are unhelpfully voluminous and ‘make no difference’. The reason offered is that the Commission ‘did not start from the point of view of outcomes, but of process’. Hence, the annual reports facilitate the process. Moreover, NICVA is also clear that the Commission should be advising departments “to do”. On the other hand, however, other voluntary sector organisations find real value in the reports, and some, including NICVA, suggest that increased resources and ‘good’ baseline knowledge should be made available to the Commission.

5.6.9 The Commission, however, contends that annual reports ‘assist public sector bodies’ committed to Section 75 which actually make appropriate use of this resource. The reports also provide a mechanism for holding public authorities to account and offer a monitoring function in accordance with its obligations (Schedule 9(1)(c) (4)(c)). The suggestion of increase resources would almost certainly enable the Commission to address any issues in this regard. Where anecdotal evidence of delays in the answering queries and complaints could be verified, for example, resources would enable the Commission to strengthen its administrative functions where necessary with greater immediacy. We concur with the view, therefore, that the NIO and the Commission have a critical collaborative role to play; thus, from the Commission’s Guide to the Statutory Duties, and the NIO’s Five Year Review we would expect that, in the next phase of the operation of Section 75, there would be

greater effectiveness particularly as the NIO amends its scheme and improves its practice.

## **6. Office of the First Minister and Deputy First Minister (OFMDFM)**

### **6.1 Roles and Responsibilities**

*Objective 1: To assess the extent to which commitment to Section 75 is reflected in the policies, processes, structures and systems of OFMDFM*

6.1.1 Senior staff within OFMDFM contributed significantly to the research, in addition to personnel at high level with specific responsibilities for Section 75. The roles and responsibilities<sup>79</sup> associated with this Executive Department include: i) the Board of Senior Management, who report to the First Minister and Deputy First Minister; the Equality and Social Needs Steering Group, comprising cross-departmental senior officials; the Good Relations and Reconciliation Division; the Racial Equality Unit; and the Equality Practitioners Group, who comprised equality officers from across departments, who meet quarterly to discuss implementation and coordination of Section 75. There is also a Good Relations Forum, (the Forum) co-chaired by the Commission and the Community Relations Council (CRC), and an Equality, Good Relations and Human Rights Steering Group working on the Review of Public Administration. The work of this group, which includes representatives from the departments of Education, Culture and Arts, Housing, Policing, and the Human Rights Commission (HRC), all feed into OFMDFM's work on equality. The first meeting of the Forum convened in November 2006 to consider processes for moving the agenda forward and for an annual audit. The Equality Directorate in OFMDFM also has responsibility for providing: i) advice and support to Departmental policy colleagues in taking their statutory duties into account in developing policies and procedures; ii) advice, support and challenge to departmental equality units with regard to exercising their statutory duties; iii) acting as a central point of contact for advice

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<sup>79</sup> OFMDFM, Annual Report to the Equality Commission 2004/05 on Implementation of the equality and food relations duties under Section 75 of the Northern Ireland Act 1998, (August 2005), p. 3.

and guidance between the Northern Ireland Departments and the Equality Commission; iv) sponsorship of the Commission; and v) bringing forward primary and secondary legislation on equality either at Westminster or through a devolved Assembly.

6.1.1.1 The Equality and Social Needs Steering Group (ESNSG) stated that commencement of Section 75 impacted on roles and responsibilities within OFMDFM. Unrealistic expectations created the impression among voluntary and community groups that government policies would transform the prevailing inequalities overnight. From OFMDFM's perspective, this was a false notion, which was only to be reinforced by the need to carry out what was in those circumstances 'an extraordinary amount of consultation' in each department. The evidence indicates that in such conditions communication weaknesses prevailed and affected the performance of Section 75 duties in the very early days.<sup>80</sup>

6.1.1.2 Nevertheless, a taskforce was set up which advised the voluntary and community sectors on the implementation of Section 75. This was welcomed not because of a particular ideology or the religious-political divide, but as a practical measure to assist the sector to engage with public authorities. Everyone assumed important new responsibilities with little awareness of the procedures within a short time frame. It became apparent that OFMDFM had the greatest difficulty in terms of what was meant, and how to proceed with Section 75. The voluntary and community Sectors were also thought to be ineffectual because, it was stated, OFMDFM was not responding with feedback. The evidence suggests that the sector such as Carers NI, for example, learnt gradually to manage.<sup>81</sup>

6.1.1.3 OFMDFM has the crucial role of overseeing the sponsorship of the Commission, though the roles and responsibilities between them, as noted for NIO, are distinct (5.6). Oversight includes approval of three year Corporate Plans, Annual Business Planning and Budgets, managing the payment of approved grant-in-aid and

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<sup>80</sup> Eithne McLaughlin, Working Paper 15, Mainstreaming Equality: The Statutory Equality Duties in Northern Ireland, the early years of implementation. See <http://www.qub.ac.uk/sites/EqualitySocialInclusionInIreland-HomePage/Links/Filetoupload,18121,en.doc>

<sup>81</sup> <http://www.carersni.org/Policyandpractice/Consultancy>

monitoring the Commission's expenditure. OFMDFM has oversight of the Commission's performance against business targets.

6.1.1.4 As a sponsoring body with a challenge function OFMDFM relates to, and challenges, government departments regarding their compliance with Section 75. The Commission in collaboration with OFMDFM would be moved to act where a Department did not meet the requirements of the equality and good relations duty because the effect would be much greater and possibly more effective. This is important because OFMDFM values the Commission's advisory role which some Departments consider very helpful in terms of delivering Guidance. It is the Commission's responsibility, however, to make guidance available, and where the Commission engages OFMDFM this is to be commended given the importance of the need to joint working practices, which contribute to effectiveness. The difficulty, it was noted, is that advice and guidance is suggestive rather than prescriptive, and there may be a case for considering guidance becoming a code of practice after the RPA changes are bedded down. This is meritorious because it would provide a greater emphasis and focus on outcomes-driven equalities and good relation in the next phase of the legislation.

## **Mainstreaming**

6.1.1.5 The OFMDFM Statutory Duty Team also advises the Commission on Government policies and procedures relating to Non-Departmental Public Bodies (NDPBs) and other matters which may affect it. As the Executive branch of Government OFMDFM's Statutory Duty Team ensure NDPBs are kept well informed in order to enable them to utilise their expertise to reduce inequalities at community level. This could be done by providing training, doing research and perhaps offering small grants to effective organisations. In this regard and the context of consistency, McCrudden points to the potential shortcomings of mainstreaming:

In particular, mainstreaming may result in over-fragmentation of equality policy especially if it were to become an alternative to traditional anti-discrimination and other equality mechanisms. If all public bodies have

responsibility, then there is the danger that none will regard it as an important part of their functions.<sup>82</sup>

He suggests 'centralized responsibility within government' to ensure consistency according to common standards. While there is much merit here, unless mainstreaming is comprehensive, then greater inequalities will prevail. On the contrary, comprehensive mainstreaming could in collaboration with community and voluntary sectors lead to less fragmentation because of the safety net which the sector could represent. The Equality Coalition agrees, believing that effectiveness 'depends on context, at a range of levels'.

6.1.1.6 As part of its sponsorship role OFMDFM carried out a five year review<sup>83</sup> of the Commission, planned as part of the 1998 legislation. To determine the effectiveness of the operation of the Commission, the review objectively assessed the Commission's relationships, past performance, responsiveness, good practice, delivery mechanisms, governance and delivery of objectives in the context of an operating environment which has changed. One is constrained to enquire whether the Commission has kept a respectful distance in such circumstances, for which we have no evidence to the contrary, given its challenge and advisory functions. The CRC stressed that 'the Commission should be independent from both of them', but our earlier comments apply here (5.6.6-5.6.7). The keenness of some sections of the Voluntary and Community Sectors for the Commission to be independent or function at a necessary distance from the Departments relates largely to their understanding of the Commission's enforcement role (5.5.3; 5.3.7.1).

## **6.2 Challenge function**

*Objective 2: To Assess the Extent to which OFMDFM's Advice, Support and Challenge Function has ensured successful Implementation of Section 75 within other Departments*

6.2.1 OFMDFM has a challenge function, which it is suggested they do not perform unilaterally. The challenge function is carried out in

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<sup>82</sup>FILJ, p. 1772.

<sup>83</sup><http://www.ofmdfm.gov.uk/equality-Commission-report.pdf>

consort with the Commission and the organisations concerned. It is on this point that McCrudden's perspective on the possible result where two or more bodies 'end up doing nothing' that attention is aroused. The possibility is realistic, but the Equality and Social Needs Steering Group (ESNSG), a high level professional group of practitioners, address issues relating to Section 75 across departments. This arguably should provide the robustness of challenge function required for results. We suspect neutralisation would result only if the roles between the Commission and OFMDFM are not clear and complementary.

6.2.2 There is also an Equality and Social Needs Research and Information Group (ESNRIG). The group meets as statisticians to discuss research because a data baseline is necessary to support the work on Section 75 across all the departments. All departments contribute to a fund of approximately £20,000 - £25,000 per year. Each year the ESNRIG determine their priorities according to that budget. It has been argued elsewhere in this study that effective monitoring could not be achieved without the tools for measuring and monitoring progress. The same principle applies here, and relates closely to ESNSG's responsibility for identifying the gaps in policy. For example, the Steering Group has worked towards a sexual orientation data strategy because research had identified significant gaps in sexual orientation data across the sector as a whole.

6.2.3 While OFMDFM states that the department is 'committed to the fulfilment of its Section 75 obligations in all parts of its structure, personal responsibility for driving forward implementation... will rest with the Director of Equality, Human Rights and Community Relations, and the Head of Equality and Social Needs Division will represent OFMDFM in interdepartmental structures to co-ordinate the implementation of Section 75 obligations.'<sup>84</sup> This is an example of joint working which is meant show of evidence of embedding of the policy. Once again, it is vital that a definition of mainstreaming takes seriously changes on the ground within the context for the Belfast Agreement, in addition to 'thinking' equality and good relations inter-departmentally.

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<sup>84</sup> Office of The First Minister and Deputy First Minister, Equality Scheme, Northern Ireland Act 1998 Section 75 Statutory Equality Obligations, (ES) March 2001, p. 25.

6.2.4 The Equality Scheme of OFMDFM is clear that ‘the objectives and targets relating to the statutory obligations will be integrated into the Office’s strategic and operational plans, and that all officials who are directly involved in the implementation of the scheme will include reference to their role and responsibilities in their personal performance plans.’<sup>85</sup> The idea of personal performance indicators suggests a level of responsibility for embedding Section 75 into policies and process which, if applied consistently, would confirm the expressed views of virtually all interviewed personnel. One high level senior head said, for example,

the investment is to work together to show that we are a shared society, and report annually, but we need to integrate delivery of the duty working in consort with the public agencies. The role of the group [GRRD, see 6.2.5] is to facilitate and support departments where expertise is needed. We have a clearly defined role in how this relates to the Commission. And the important indicator is change at the grassroots.

There is a perception within the Voluntary and Community Sectors that OFMDFM ‘do not understand Section 75. Perhaps, there has not been any training or resources for section 75, which is a complex piece of legislation even for lawyers.’ This view may very well point to the lack of information trickling down, and thus reinforcing the widely held belief that Section 75 is a ‘tick box exercise’. On the contrary, OFMDFM has undertaken a considerable amount of training, as evidenced in its Five Year Review Report.<sup>86</sup> The disparity between the views of government departments and the Voluntary and Community Sectors at this point suggest a worrying trend, especially as the sector tends very largely to depend for motivation on the belief that Section 75 is being taken seriously by the NIO and OFMDFM. It is not clear from the evidence that there is a fundamental lack of understanding of the statutory duty by civil servants, despite the regularity with which this belief has been muted in the sector. Political will can be perceived as a contributory factor to the impression given the paucity of prominent leadership of the debate at political level in

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<sup>85</sup> ES, pp. 25-26.

<sup>86</sup> OFMDFM, Five Year Review of Equality Scheme, Report to the Equality Commission, pp. 32-34.

the public domain. In our view this has again signalled a lack of effective collaboration between the Government and the sector, at least in terms of information exchange. Diminished leadership and information exchange occur sufficiently regularly as to demand concerted effort by the departments in the next phase of Section 75. Yet, OFMDFM (and the NIO) communicate progress by various strategies, but almost all are targeted at the public sector, except information accessible on the website.<sup>87</sup>

6.2.5 A vital role performed by the Good Relations and Reconciliation Division (GRRD) of OFMDFM is implementation of, and driving Section 75(2), by which public authorities have to take into account the desirability of promoting Good Relations between persons of different religious belief, political opinion or racial group (the good relations duty).<sup>88</sup> The main involvement of the Head of Division is to work together across voluntary and community sectors to demonstrate action on a shared society, but he points to the need for strong equality legislation. The critical task is two-fold: pursuing equality through Section 75(1) and good relations in Section 75(2). The GRRD, which is represented in the Senior Management Board, aims to deliver positive actions to promote good relations. While the Department has a responsibility to 'fulfil the duty', the policy, it was noted, is delivered so that the duty translates into practical steps for building good relationships at community level. Of course, this is the key objective of the duty, and was passionately and convincingly expressed by the Head of the Division in four points.

6.2.5.1 Firstly, convinced that there is a need to get Section 75 'into the DNA' of the departments - and this is about how people construct the policy – he declared that effectiveness is tested 'when violence, for example, ends and practical outcomes are obvious' at ground level. Outcomes were persistently stressed to the point where processes appear to diminish in significance albeit unwittingly. This is consistent with the Division's view that the policy is only being effective when there is evidence of reduced race attacks, when society as a whole reflects better relationships. These indicators are

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<sup>87</sup> OFMDFM, Annual Report to the Equality Commission 2005-06 on Implementation of the equality and good relations duties under Section 75 of the Northern Ireland Act 1998, p. 9.

<sup>88</sup> OFMDFM, A Shared Future Policy and Strategic Framework for Good Relations in Northern Ireland March 2005.

difficult to capture, which supports the author's point that the tools for measuring and monitoring need to be in evidence.<sup>89</sup> One possible example of the investment in good relations is the Ballyclug Estate:

### **The Ballyclug Estate, Ballymena**

This estate was visited by the minister David Hanson as a case study for the development of a shared future. It comprises 50% Catholic and 50% Protestant communities. £4m investment went in which is expected to drastically change the estate. The issues here are being tackled as an indication of a model of how the department is involved and seeking real practical outcomes on the equality and good relations duties.

McCrudden is much more cautious, perhaps sceptical, about the legislation and his statement is telling:

Schedule 9 ... focuses entirely on the processes on which compliance is seen to depend. No substantive achievements are required at all. It is an administrative-bureaucratic instrument rather than being policy-driven, and consideration of effectiveness and efficiency have hardly figured in its elaboration...Not only has section 75 been seen not as requiring substantive outcomes, it sometimes has been seen as hostile to such outcomes.<sup>90</sup>

This perspective is surprising given the critical involvement of McCrudden on the legislation; but his positive viewpoint has been articulated in relation to mainstreaming equalities and good relations where all sectors work together with political will.<sup>91</sup>

6.2.5.2 Secondly, the work of the newly formed Good Relations Panel (6.1.1), a non-governmental structure, is an interesting development in that it comprises key stakeholders including the Commission and representatives from the Voluntary and Community Sectors and can

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<sup>89</sup> Five Year Review, p. 30; OFMDFM has reported consistently on its monitoring activities, but primarily relating to complaints and policy impacts, rather than societal change at the grassroots.

<sup>90</sup> McLaughlin and Faris, Appendix B, p. 14. 'It would be reasonable,' he later remarks, 'to see outcomes change and inequality between groups identified by Section 75 reduced over time', p. 19.

<sup>91</sup> FIJL, p. 1773.

influence Governmental processes at a strategic level. The opportunity for an increased collaboration could test and/or overcome misinformation or negative perceptions in some quarters. According to the group, the importance of monitoring cannot be overstated because it would provide 'up-to-date base line data for measuring progress' which, in our view, is lacking. This point was supported by NICVA and the CLC, which, from their standpoint, was required in order to assess need well before anything was done on Section 75. The head of the GRRD restated the well-established point that:

the value base for good relations is not so much on consultation or processes, but on issues around housing, racism, sectarianism etc.

### **6.3 Leadership**

*Objective 3: To assess the leadership given by OFMDFM in regard to its functions, and more generally, in respect of Section 75*

6.3.1 In this section we seek to provide evidence on how leadership has specifically contributed to effectiveness in driving Section 75 through the functions of OFMDFM. Important here is reference to specialist groups and departments, as in previous section, but reference to these structures will be determined by the function being performed.

6.3.1.1 We note that head of the GRRD is a member of the OFMDFM team working on the Review of Public Administration (RPA)<sup>92</sup> through which new administrative boundaries for district councils will be drawn. Departmental personnel reports on work with the RPA in whose processes and plans it seeks to ensure equality and good relations are built. Similar work on the RPA is being done in some instances by the Good Relations Steering Group (GRSG), and also within a broader context drawing politicians into discussions on what equality and good relations entail. It is amazingly easy in the midst of a radical shift in administrative systems for the goals of

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<sup>92</sup> The Review of Public Administration 'reached a conclusion in March 2006. It was a comprehensive examination of the arrangements for the administration and delivery of public services in Northern Ireland. It covered over 150 bodies, including the 26 district councils, the Health and Social Services Boards and Trusts, the five Education and Library Boards and about 100 other public bodies.' <http://www.rpani.gov.uk/>

equality and good relations to be overlooked. Hence, the presence of the two groups working with the emerging new structures to ensure that the seven new Councils, as designated public authorities, are supported at practical level at the outset, and in which equality and good relations are best placed to drive practical outcomes. These are thought to be complementary activities in which the Commission also plays an advisory role. The current political climate into which the new Councils will commence could be seen as conducive to uncertain outcomes for equality and good relations, but the quality of leadership given at commencement and implementation of the legislation will provide an indication.

## **6.4 Commencement of the statutory duty**

6.4.1 Almost inevitably, upon commencement of the legislation, as noted in Part One, a measure of confusion developed around roles. The Commission was, of course, mandated by the legislation as set out in Schedule 9 to:

- a) Keep under review the effectiveness of the duties imposed by Section 75;
- b) Offer advice to public authorities and others in connection with those duties;
- c) Carry out the functions conferred on it by the following provisions of this schedule.

The legislation is clear on the obligations on public authorities to have due regard to the need to promote equality of opportunity and regard to the desirability of promoting good relations. The Commission also remains certain about its statutory responsibility as set out under Section 75(2) and Schedule 9. Nevertheless, there remain contrasting interpretations, perspectives and expectations worthy of note here. Some within OFMDFM thought Good Relations to be the responsibility of the Community Relations Council (CRC). It is contended that a structure specifically geared to address community relations would be more effective in developing Section 75(2) duty at the grassroots.<sup>93</sup> It is apparent that in addition to setting up the external structure, the Equality Commission, the Government during

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<sup>93</sup> It is apparent that whilst drafting the legislation the Government was also unclear about how the role of some .....

the drafting period seemed unclear about the 'internal arrangement for co-ordinating, promoting and monitoring the activities of government departments and public bodies.'<sup>94</sup> The then Secretary of State, potentially confusingly, also envisaged in his statement another structure for addressing these questions. He had said:

I envisage that role at least initially being played by the Central Community Relations Unit of the Government's Central Secretariat though the Assembly will in due course determine its own departmental structure.<sup>95</sup>

McCrudden is clear, however, and confirms that the legislation did not confer a formal role to CRC.<sup>96</sup> Clearly, this situation has had a measurable impact on the ability of the public authority to drive Section 75 as robustly as it might. This uncertainty has implications for Section 75(2) in other ways. As Dickson and Harvey notes, the legislation:

does not require assessments or monitoring in respect of the impact of policies on the promotion of good relations. This means that the Equality Commission has less information at its fingertips when assessing whether a public authority has fully complied with its duty to promote good relations (imposed by section 75(2) of the Northern Ireland Act 1998).<sup>97</sup>

Normally equality schemes must explain how public authorities propose to comply with their Section 75(2) duty. Hence, the duty to promote equality of opportunity imposed by Section 75(1) 'is clearly a stronger duty than that imposed by section 75(2)'.<sup>98</sup> The need to clarify the legislation appears to be substantive. The Good Relations and Reconciliation Division of OFMDFM is convinced, nevertheless, that the test of Section 75(2) duty is observable change at community level, and any initial or enduring confusion leading to a perceived lack of focused responsibility within government departments could have had a diminutive effect on the drive to embed good relations.

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<sup>94</sup> FILJ, p. 1745.

<sup>95</sup> FILJ, pp. 1745-1746.

<sup>96</sup> *Ibid.*

<sup>97</sup> Dickson and Harvey, p. 82.

<sup>98</sup> *Ibid.*

Regardless of the claim, the Commission is of course correct to point to its mandated obligations, but greater clarity would be to the benefit of all stakeholders.

6.4.2 All sectors throughout the research remarked that initially, neither OFMDFM nor the NIO knew what to do with the good relations duty. A gap of two years passed, for example, before any work was undertaken. Some within senior leadership of the Commission, moreover, thought that under the tight time frame for establishing the Commission and meeting deadline for legislation, the Commission ‘engaged primarily with the equalities duties and did not achieve much on good relations duty’. When the Commission came to focus attention on the duty, identification of leadership on good relations was difficult and obscure. The Commission notes, however, that the Government took some time before producing guidance on good relations. As Section 75(2) places a legal duty on designated public authorities ‘to have regard to the desirability of promoting good relations’, and it is the role of the Commission to assist (see 6.4.1(a)(b)(c) above), the Commission have since produced draft guidance for consultation.<sup>99</sup> The CRC has also developed *A Good Relations Framework*,<sup>100</sup> to ‘assist any organisation to address sectarianism and racism within their organisations.’<sup>101</sup> This in our view could only be understood as complementary to the statutory duty which defines the Commission’s role and the collaborative leadership roles of the Commission and the CRC in the Good Relations Forum could be understood as a positive development. Clarity between the CRC and the Commission is necessary, however, and this may very well emerge from the need to review the legislation. In this regard, the Government in 2002 embarked upon *A Review of Community Relations Policy*,<sup>102</sup> led by Jeremy Harbison, in which a key principle envisaged ‘building on Section 75 of the NI Act’. Despite this author’s concerns about amending the legislation (5.6.7), consideration of the

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<sup>99</sup> Equality Commission for Northern Ireland, Promoting Good Relations - A Guide for Public Authorities (Consultation Draft), Section 75(2), Northern Ireland Act 1998, (2006).

<sup>100</sup> Community Relations Council, *A Good Relations Framework, An Approach to the Implementation of Statutory Duty 2 from Section 75 of the Northern Ireland Act 1998*, 2006.

<sup>101</sup> Community Relations Council, *A Good Relations Framework, An approach to the development of Good Relations*, (2006).

<sup>102</sup> Report of Review Team, *A Review of Community Relations, Recommendations*, (January 2002),

implementation of a key recommendation in the Government's report could do much to improve clarity. It said that:

consideration should be given to amending legislation to extend the Equality Commission's statutory authority to promote good relations to all groups included in Section 75(2).<sup>103</sup>

The strength of clearer structures could contribute to the view that a good relations policy is a prerequisite for better understanding and community relations in Northern Ireland, and needs to be integrated across the party political agenda, with desired support for grassroots projects. Good Relations and Equality should not be viewed or treated as separate entities, but fully complementary and implemented as interdependent, since there could be no good relations without equality across all strands.

6.4.3 Sections of the Voluntary and Community Sectors are also clear that OFMDFM's responses to the A Shared Future policy presented 'huge difficulties' and the consultation necessary to get policy agreed was equally difficult. Nevertheless, the sector is almost unanimously of the view that Section 75 remains 'hugely important', and if it is implemented and driven in a way that the implementation and operation demonstrate no adverse impact on Section 75 groupings, this must send out the right message. Recalling the importance of the duties, one interviewee declared:

There would not have been the Belfast Agreement if Section 75 was not included. There was going to be no change until and unless public bodies were forced to do so, and the NIO and OFMDFM had a duty to make this clear at the outset. Ministers found it problematic, and the Advisory Group found it frustrating and misunderstood the need to support Section 75.

6.4.4 OFMDFM states, however, that their leadership role in driving forward Section 75 within and across Departments is also achieved by chairing practitioner groups:

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<sup>103</sup> *Ibid.*, pp. 52-53.

- Good Relations and Reconciliation Division;
- Equality and Social Needs Steering Group;
- Equality and Social Needs Research and Information Group;
- Good Relations Forum;
- Equality, Good Relations and Human Rights Steering Group.

This in their view constitutes an important function, and is affirmed by the fact that the Department is responsible to the Commission for contributing to Section 75. From GRRD's perspective there is no difficulty in their working relationship with the Commission, and OFMDFM has not encroached, except, it confessed, where it felt the need to in the early days to get guidance out for consultation. In conclusion, it is imperative that equality and good relations are seen as interlinked and interdependent.

## **6.5 Section 75(1) (2)**

6.5.1 It is also of importance that consideration be given to the text of Section 75 (1) (2) which might require review for the purposes that (1) appears much more specific and possibly more easily enforceable than (2). The wording is less specific and may be interpreted less clearly. This does not necessarily imply radical change to the legislation, which would possibly be unachievable. Three different parties hold three different positions on this issue. First, the CRC is of the opinion that:

the way Section 75 (1) and (2) have been drafted begs the question, which hierarchy? It is not properly joined up, even as separate tasks. They belong together, and should not lose sight of each other. Good relations and equality should not be in competition.

A second contributor from the Racial Equality Unit remarks:

Section 75 (1) is a set of rules for people who do not do the right thing. It is time consuming and the purpose might not be clear. It is not goal focus, but a process. 75 (2) has serious difficulties, and there is a dearth of guidance on it. The Commission is now doing consultation on guidance. There was no baseline data or good practice from which to work. It should be

approached from hearts and minds, but it is statutory and rules are important, which can introduce paralysis. Ultimately, Section 75 (1) (2) invites the question how to have good relations when the same people would insist that Section 75(1) is a necessary condition for 75(2) but it is not sufficient.<sup>104</sup>

The third standpoint from the Equality Coalition states:

Section 75 (1) and (2) is a statutory framework. GR/Shared Future is a policy. The tendency appears to be distaste for equality (among Government) and minimise obligations. [They] Don't like to have to do things [and be held to account].

As early as 1998, Majorie Mowlam, in the Parliamentary debate had said:

[W]e regard equality of opportunity and good relations as complementary. There should be no conflict between the two objectives. Good relations cannot be based on inequality between different religions or ethnic groups. Social cohesion requires equality to be reinforced by good relations....<sup>105</sup>

6.5.2 It is clear that Section 75 has engendered a typical reaction to challenging legislation which still needs to be implemented fully. The majority impression is that it should not be changed despite these reactions, except where strengthening Section 75 would require adding to the nine categories, 'any other grounds' which would include all forms of discrimination. On the other hand, virtually all respondents indicate that high level leadership on the equality and good relations duties has been minimal and must be improved in both quality and substance if in the second phase of its operation inequalities are, and seen to be, reduced.

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<sup>104</sup> Dickson and Harvey notes that, 'for the Commission to be able to monitor effectively the implementation of the section 75 duties, at least in terms of impact and outcomes, it needs to have at its fingertips an array of baseline statistical and other data to allow it to measure progress in various areas. Several of those we interviewed stressed this point. As far as we know, the Commission has not itself commissioned any research to help it obtain such data, so it has to rely on information already in the public domain,' Op. Cit., p. 95.

<sup>105</sup> Hansard, House of Commons, Official Report, 27 July 1998, col.109.

6.5.3 In her research towards an academic dissertation, a community activist cites the Commission in her argument that Section 75 has 'failed to deliver substantive change for the most disadvantaged groups in Northern Ireland, despite being hailed as one of the most advanced equality mainstreaming processes in existence,'<sup>106</sup> and that both need to be strengthened. From this author's perspective, given that Section 75 was intended to transcend 'uneven coverage of anti-discrimination law' and move to 'proactive and preventive action by public authorities' through all stages of policy-making and service delivery, consideration of where Section 75 can be strengthened is urgent. This author has increasingly come to the view that at least, its view merits serious thought as indicated in Part One (5.5.3).

## **6.6 Priorities and Budgets**

6.6.1 This section examines the budgeting processes in the light of OFMDFM's roles and responsibilities, and where these might have or have not contributed to the effectiveness of Section 75. Key documents such as the Draft Economic Vision, "Fit for Purpose" and Draft Priorities and Budget are source documents for our analysis. Essentially, the material which informs this section is drawn primarily from the Department for Finance and Personnel. We begin with some explanation about the budgeting process.

6.6.2 The Priorities and Budget process of the OFMDFM is the main methodology for deciding, organising and managing state spending specifically with respect to Northern Ireland. Produced annually, the Draft Priorities and Budget sets out the Government's main policies and priorities associated with budget allocations in three year cycles.<sup>107</sup> It is in the budgeting process where the concept of mainstreaming equalities, that is, subjecting all policies to equality proofing, monitoring and measurement of change, is most likely to take sustainable effect.

6.6.3 The aim of getting equality into the Priorities and Budget process is to ensure that 'at key stages equality considerations are mainstreamed into the development of budget and priorities, by the

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<sup>106</sup> Anne Moore, Queen's University Belfast School of Law, 'Only connect - the case for using a human rights approach to strengthen the Section 75 equality duty and nTSN in Northern Ireland,' October 2006, p. 6.

<sup>107</sup> Northern Ireland, Priorities and Budget 2005-08, (October 2004), p. 1.

use of meaningful, practical and productive methodologies.<sup>108</sup> One of the most important areas of policy influence and good practice in terms of Section 75 is public spending across all the nine equality, and three good relations categories. The evidence suggests that the Department of Finance and Personnel (DFP) and the entire budgeting process<sup>109</sup> can actually make a consistent contribution to the effectiveness of Section 75.

6.6.4 Northern Ireland's public spending cycle operates on the same basis as in the rest of the UK, through the annual budget planning cycle. This is a fixed cycle with many detailed stages, in which there is a review of allocations for the ensuing three years. The budget levels are determined by the Barnett formula,<sup>110</sup> a mechanism for determining budgets in (Wales and Scotland) Northern Ireland Office and the Northern Ireland departments. In this formula, there is a 'block' of money which is spent according to the Secretary of State's discretion. The setting of priorities for Northern Ireland tends to follow proportionately the national priorities, e.g., health and education.

6.6.5 Spending is linked to the political and strategic Draft Economic Vision<sup>111</sup> for Northern Ireland 2004, (the Vision) which states that: 'there are particular challenges and opportunities and the vision and policies set out here focus on how we can all help make Northern Ireland a more competitive and productive region, as well as a fairer society.'<sup>112</sup> The Government declares the Vision 'a focal point and challenge for policy setting and actions affecting the local economy'.<sup>113</sup> Development of the economy in a way that is necessary to drive the Vision of 'fairness' is conceptualised as a collaborative strategy between Government and the private and non-governmental sectors. This is consistent with, and/or confirms views shared across government departments and the Voluntary and Community Sectors. The Draft Economic Vision envisages Northern Ireland, for example, as:

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<sup>108</sup> ECNI, Comments of Priorities and Budgets 2004.

<sup>109</sup> The process begins in the period January to March each year during which time ideas are drawn together. Then from April to July the department determines what money is needed, and from September to November a draft budget is prepared and consulted. After returns the Government publishes the budget in December.

<sup>110</sup> <http://www.parliament.uk/commons/lib/research/rp98/rp98-008.pdf>

<sup>111</sup> See Northern Ireland, Draft Economic Vision, October 2004.

<sup>112</sup> Draft Economic Vision, p. 2.

<sup>113</sup> Draft Economic Vision, p. 3

a high value-added, highly skilled, innovative and enterprising economy which enables us to compete globally leading to greater wealth-creation and better employment opportunities for all.<sup>114</sup>

6.6.6 Budgeting processes are perceived in terms of priority setting, which has been done on £8b per year. The apparent absence of evidence that this process takes account of Section 75 proofing is answered by the OFMDFM's perspective that the process covers a wide range of policy areas and would not only be administratively too complex, but also counterproductive to Section 75. While some sympathy with this response could be expressed, it should be possible to isolate or at least identify an overarching budget head for Equalities and Good Relations given its centrality in the Northern Ireland context.<sup>115</sup> The Draft Vision for 2004, moreover, and the Draft Priorities and Budget 2005-2008 critically recognise the need to build in 'equality and community cohesion'<sup>116</sup> thereby ensuring stronger safer communities. The Vision should be subject to robust measurement which a more sophisticated, though time consuming, budgeting process could provide.

6.6.7 Clearly the budgeting process has the potential for addressing inequalities at critical political and administrative levels, and is a matter on which the Commission has worked with the DFP/OFMDFM in developing strategies for the process taking account of Section 75. The Voluntary and Community Sectors expressed deep concerns that the budget allocations will not be subjected to EQIAs at all, which in their view is a clear breach of Section 75. In 2005 the Government issued a Draft Budget and Priorities in which they stated that subjecting the process to Equality Impact Assessment was too difficult. It declared:

Because of the nature of the Draft Priorities and Budget, it is neither appropriate nor possible to carry out a full equality impact assessment of the proposals. However, equality, good relations and targeting social need are mainstreamed throughout the target setting and

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<sup>114</sup> Draft Economic Vision, p. 4.

<sup>115</sup> Northern Ireland, Draft Priorities and Budget 2005-2008, Paragraph 200, p. 155.

<sup>116</sup> Northern Ireland, Draft Priorities and Budget 2005-2008, p. 1.

budgetary process. Departments include information about equality, good relations and New TSN impacts on Draft Priorities and Budget 2005-2008 departmental submissions to DFP.<sup>117</sup>

The Commission, which has been in Roundtable meetings with the DFP, the Economic Policy Unit, and OFMDFM since 2002, consequently developed a template which is now in use, accompanied by guidance. This ongoing work clearly represents a way forward, and positively challenge to the above statement.

6.6.8 Consultation on the current Priorities and Budget, moreover, utilises (see case study below) a series of public meetings in which Voluntary and Community Sectors are able to express their views on the process. Hosted by the Commission, the DFP through these sessions is aware that while meeting has been progressive, there is tendency for them 'to be dominated by particular interest groups, and not necessarily the voice of the community'. And yet, departmental objectives and outcomes expressed in their Equality Schemes could be enhanced if contributions from the expert and experienced Voluntary and Community Sectors on equalities and good relations were sought systematically. The Commission has already indicated the importance of this as a possible objective,<sup>118</sup> but the sector need to be sufficiently resourced to engage effectively.

### **Case Study: DFP and the Commission**

Work is being done by the Commission to engage with colleagues in DFP to ensure visible evidence of the mainstreaming process, and to drive forward a systematic approach to equality impact assessment of departmental bids.

The Department of Finance and Personnel has recently been meeting voluntary and community organisations and individuals through the work of the Commission to consult on the Budget and Priorities process. Though still in its infancy, this development promises to accomplish much in this new area of collaboration. The

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<sup>117</sup> *Ibid.*, pp. 154-155.

<sup>118</sup> ECNI, Comments of Priorities and Budgets, paragraph 1.6, 2004.

DFP and the Commission are using this space to move towards a policy of subjecting the Budget and Priorities to EQIAs. Fundamentally, this process is also enabling the Commission and department to hear and factor in voices within the community in a high level policy making. As this has been a recent development, only one meeting has been convened to date.

6.6.9 In order to address the perceived lack of impact of Section 75 duties on the budgetary process, DFP have welcomed the opportunity to meet recently with the Commission around how to consult effectively on Priorities and Budget. This is confirmed by the Commission's response to the consultation on the Priorities and Budget 2005-2008 and 2006-2008,<sup>119</sup> in which they continue to express concern that equality and good relations outcomes such as 'identification and reporting of adverse impact, alternative policies or mitigating measures' are not in evidence. The DFP intends by the process of consultation to discover how to equality impact assess such a huge budget process. This has introduced the importance of High Level Equality Impact Assessments (EQIAs) (see below).

6.6.10 The DFP is also aware that any under-spend is returned to the department, and any additional spending has to be justified for equality impact. Since the 2004 priorities and budget process the positive and negative impacts have had to be identified and set out. In its response to the 2006-2008 Priorities and Budget process the Commission has pointed to, and this research acknowledges, a 'lack of detail' on this relationship in the draft document,<sup>120</sup> but also a paucity of clear evidence of mainstreaming equalities through the Priorities and Budget process.

6.6.11 Critical to the development of the budgeting process, vis-à-vis setting priorities which avoid disadvantaging Section 75 groupings is the goal expressed in the Vision for Northern Ireland which states that, 'it will be important that Government resources are focussed, as far as possible, on those areas which deliver the Government's priorities.'<sup>121</sup> The priorities include health, education, and

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<sup>119</sup> ECNI, Response to the Consultation on the Draft Priorities and Budget 2005-2008; Response to the Consultation on the Draft Priorities and Budget 2006-2008.

<sup>120</sup> Response, Priorities and Budget 2006-2008, section 4, p. 2.

<sup>121</sup> The Vision, Paragraph 13, p. 6.

infrastructure. If the Government wants to achieve its objectives, it is vital that the priorities and budgeting process is not only equality impacted assessed throughout, but that evidence is made available that equality and good relations are being mainstreamed in terms of actual outcomes. We have noted elsewhere in this report that Section 75 is central to the political and economic progress in Northern Ireland.

6.6.12 Accordingly, the process needs to take account of Equality and New TSN impacts at the earliest stages and throughout, and a system of monitoring implemented to measure progress annually. EQIAs should be applied according to the Commission's flow chart, particularly to:

- the Commissioning Note and Guidance from the DFP;
- Preliminary Returns including the high level assessment proforma;
- the first Draft of Priorities and Budget document;
- draft Proposals to ministers for decisions; and
- through Published Priorities and Budget.

Subjecting critical stages of the Priorities and Budget process to EQIAs will ensure that priorities and budgets are consistent with the Government's Vision as such: wealth-creating and productivity, employment opportunity for all, and an economically strong and progressive community.<sup>122</sup> Goals of this order cannot realistically be achieved except the intrinsic divisions which they seek to overcome in the Northern Irish context are simultaneously addressed.

6.6.13 Given the particularity of Northern Ireland's historical polarities, a budgeting process which takes this history and the growing levels of racism seriously is absolutely imperative. This is important because eliminating past, present and emerging polarities is essential to delivery of the Government's economic vision for Northern Ireland. Equality and good relations must conceptually and practically be central to achieving the economic and political goals across all processes and budget lines.

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<sup>122</sup> Draft Economic Vision, sections 13-14, p. 6. See also ECNI, Response to Priorities and Budget 2005-2008, p. 2.

6.6.14 The DFP indicates that the draft Priorities and Budget is difficult conceptually and practically to equality proof because it is an 'overarching policy addressing many policy areas at the same time'. It is worth stressing, however, that given the continuum of sectarianism and Section 75 inequalities which actually or potentially run throughout every policy area not least emerging racism and religious-political distrust of people who are migrants of national minority backgrounds, concerted effort must be applied to ensure that inequalities are weeded out at the high level of spending priorities.

6.6.15 What is critical in complying with their Equality Schemes is the Department's statement that 'OFMDFM will ensure that implementation of the Section 75 obligation is supported with necessary resourcing'.<sup>123</sup> To duly implement this obligation requires a consistent EQIA approach to priorities and budgeting. While the Vision incorporates the need to equality proof its aims and objectives a key observation in relation to budgeting processes is the inevitable risk that, with government and the civil service, it is all too easy to 'bureaucratise a process'. Many in government departments and across the voluntary and community sectors share this perspective that a 'form-filling and tick-box' exercise can be deemed adequate address of equality issues. The impact of such bureaucratic processes is that equality issues are not necessarily addressed. It was noted that some departments are a long way off embedding equality.

6.6.16 It became clear from a departmental perspective that the real power to mainstream equality 'lies with those who have responsibility for the day to day and year to year administration spending' programmes. It is they who can spot where something is having an unanticipated impact. This reaction appears to contradict the collaborative approach at departmental level which the Equality Scheme sets out. But it focuses on activity at the grassroots. It is further argued by OFMDFM that creating a budget specifically for Section 75 duties would defeat the purpose of Section 75, which is to mainstream equality into spending programmes. This is to suggest that, while effective mainstreaming entails all policy areas are being

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<sup>123</sup> ES, p. 26.

subject to EQIAs, this is not possible because of the complexity of budgetary processes. On the contrary, we contend that, without EQIAs and a system for addressing adverse impacts and measuring progress, it is impossible to achieve Government determined equality, economic and political goals.

6.6.17 The DFP indicated that a major difficulty in terms of budget allocation is the problem faced when trying to get government departments to 'think dynamically about spending'. This is largely because the bureaucracy does not allow for much adaptability. A budget line for Section 75, therefore, would be difficult, relatively small, and would do little to address inequalities. Moreover, change at the practical level comes by delivery of health, education etc., which are equality proofed. The Commission has correctly voiced its concern about this statement in the Draft Priorities and Budget, that 'mainstreaming Section 75 requirements applies to policies at all levels, including the highest and most strategic level of policy making within the public sector.'<sup>124</sup> Given the apparent inflexibility built into the process, and the need to address some key issues, the Secretary of State has developed an approach which addresses certain areas when money becomes available. Rather than recycling available under-spending for department based programmes he has sought to tackle three priority issues: i) the needs of children and young people, ii) environmental concerns, and iii) training and skills by setting up a fund sourced from all under-spend in all departments. It was noted that on a budget of £40b a year, any under-spend is a substantial resource allocation.

6.6.18 The DFP would further point to the difficulties regarding the release of funding because 'too much spending is demand driven' with no discretionary budgets. Both the devolved administration and the Secretary of State have offered a solution, which is to channel all public expenditure through the institutional departmental programme. This allows fixed and difficult programmes to become more flexible, thus overcoming bureaucratic momentum. Departments need to think of a more diverse set of funding tools that could be made available. This would mean:

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<sup>124</sup> ECNI, Response to the Consultation on Draft Priorities and Budget 2005-2008, section 4:1, 2004, p. 16.

- the injection of a challenge function to ensure no wastage or adverse impact on equalities, e.g., unemployment;
- it would be a way of ensuring ministers have a margin of funding that is more discretionary able to address issues that arise.

6.6.19 The DFP is convinced that some progress has been made in reducing religious and political discrimination over the past five years. In our view, any reduction in political and religious discrimination may have much more to do with the restoration of devolved government at the highest political level and the challenges associated with it. It does not necessarily imply that reductions in inequality of opportunity and mainstreaming of equalities at departmental levels are capable of being demonstrated in ways that suggest substantial institutional change. The DFP believes that the stress is now more on 'fundamental equalities', such as, for example, road pricing. The proposal for road tolls would need an EQIA because the department appears to believe that an adverse impact might be claimed by communities paying for new roads when old roads are not tolled. In the opinion of this author, this is a skewed view of Section 75. We are aware that road pricing, for example, does not affect Section 75 groupings though because pricing affects all people and none. Children or people without the use of vehicles would not necessarily be directly adversely affected by road pricing. We understand the principle of proofing for adverse affects on any new policy, however, as important for best practice.

6.6.20 The DFP notes that the Voluntary and Community Sectors can identify issues at local level and additional funding required. Bureaucrats cannot do this, and the priorities and budgeting system cannot deliver this money. The DFP could see the possibility of welcoming proposals to fund three or four effective projects per year from the community sector, channelled through the Commission. It is worth stressing again, however, that while discretionary sources of funding are important to address some inequalities at local level, public policy development must take account of the broader challenges. The DFP believes it is right, therefore, to focus Section 75 on the totality of Public Spending, and where appropriate, to think small in terms of objectives for some spending. The suggestion here

is that the Commission could annually offer the minister three to four spending priorities on key issues identified from an equality point of view.

6.6.21 There is little objective evidence of equality mainstreaming according to the broader definition, except in policy making. As with other research initiatives on the Commission's Powers, we have found that while the legislation itself 'does not require public authorities to conduct assessments or monitoring of the impact of their policies on the promotion of good relations', the Commission will need to do more to ensure that OFMDFM is paying 'due regard' to equality of opportunity and work to bring the duties on good relations within the scope of the legislation. The Commission is reminded, the community sector pointed out, to hold the DFP accountable for mainstreaming equalities and good relations according to their Equality Schemes. We note the DFP's view that it collaborates well with the Commission. The introduction of equality consideration within the budgetary processes is new and imaginative work, and has the potential to make important changes at a very high level in the work to reduce in equalities. In the performance of this role, the DFP appears to represent an opportunity for progressive institutional application of Section 75 across all budgetary processes, which would have implication for the Priorities and Budgets (PB).

6.6.22 The Programme for Government (PfG)<sup>125</sup> now called Priorities and Budget, which sets out business plans for each succeeding three years is an area in which the evidence of equality proofing is lacking, though the Priorities and Budgets expresses commitment to 'working closely with the Commission'<sup>126</sup> and increasingly does so. The Commission is aware that, where there is an opportunity in the planning cycle, it could engage with directly with the departments or via Priorities and Budgets on how to ensure 'their targets are measured in such a way as to take equality issues into account?'<sup>127</sup> This would also ensure consistent reporting on Priorities and Budgets in accordance with EQIAs.

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<sup>125</sup> Northern Ireland, Programme for Government, 2001, at <http://archive.ofmdfm.gov.uk/publications/pfga/contents.htm>

<sup>126</sup> *Ibid.*, paragraph 1.3

<sup>127</sup> ECNI, Comments of Priorities and Budgets, paragraph 1.7, 2004

6.6.23 NICVA thought, however, that the investment strategy of £16b represented:

‘huge potential for redressing equality, but a lack of commitment means a lack of resources. The NIO should decide “you have to do this”.’

The head of the GRRD tentatively put the cost for all good relations activities around £15m per year. An estimate, however, which the Alliance Party made in trying to translate costs, put the figure in the region of £1b for building relations across all policy areas; but they calculated this without base line research. As a consequence, the GRRD commissioned a report to assess more precisely the cost of this broader agenda, which will be published later in 2007. Unlike most of the responses from other government departments, which on the whole stressed the difficulty of identifying specific budget lines for Section 75, this was more positive.

6.6.24 The GRRD also expresses the need for an integrated delivery of equality and good relations, where they are able to work in consort with all public agencies. We have at other places in this report pointed to the critical importance of collaborative working methods across all sectors, which is also recognised by McCrudden, McLaughlin and Faris.<sup>128</sup> The Review of Public Administration<sup>129</sup> (RPA) with devolved budgets should assist with this in creating local intermediaries which should help delivery of Section 75.

## **6.7 Direct Rule**

6.7.1 We found conflicting views on the impact of Direct Rule on the effectiveness of Section 75. According to the CLC, direct rule has had a huge impact on the level of commitment to Section 75 across the board, as noted in section 5.4 above. In their view, many of the problems are coming from ministers who apparently are undermining the statutory duty. One possible reason offered is that Direct Rule ministers do not actually understand the importance of, or appreciate how, Section 75 is implemented.

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<sup>128</sup> FILJ, p. 1773; see also A Review of Community Relations, Principle 7, p. 47.

<sup>129</sup> <http://www.rpani.gov.uk/index/cross-cutting-themes/equality-and-good-relations.htm>

6.7.2 In addition to Section 75 legal experts and academics, it was stressed by the head of CRC, head of CLC and of NICVA that Section 75 is a very complex piece of legislation. There have been arguments about how embedded it really is, and whether it is actually understood by civil servants involved with its implementation. There seems also to have been a contradictory view of Section 75, in that although it is a statutory obligation, those involved seem not to take it seriously. This perception is too common within the Voluntary and Community Sectors to be ignored. Much that could change the perception or improve the situation depends on developments in the second phase, e.g., the revised NIO scheme, the growing collaboration between the Commission and the DFP, and the need to find ways of increasing collaboration across all section, and the exchange of specific forms of information on the work of government departments.

## **6.8 Division of responsibility: OFMDFM/ Commission**

*Objective 4: To consider the implications of the division of responsibility for implementation of Section 75 between OFMDFM and the Equality Commission*

6.8.1 The effectiveness of Section 75 is dependent upon workable and transparent collaboration between government departments, the Commission and Voluntary and Community Sectors. Where this fails at any one point Section 75 is potentially weakened. It remains the case that the roles and responsibilities between OFMDFM and the Commission are crucial and may require some further clarification. As the cases on consultation (5.3.3.1) show, if there is no clear distinction in operation as opposed to legislation, which is clear, then confusion ensues. It seems important, therefore, to stress that, where academics and the Commission's staff work with the NIO and OFMDFM in a non-disruptive manner on the operation of Section 75, they could clarify roles on the statutory duty. Where, at the practical level, a conflict of responsibility develops, there would need to be built in mechanisms for immediate and clear communication and accountability.

6.8.2 A case in point is the Lisburn District Council where the Council breached its own Equality Scheme, as presented in the case study below.<sup>130</sup>

#### Case Study- Lisburn City Council

The investigation relates to an alleged failure by Lisburn City Council to comply with paragraph 10.3 of its approved Equality Scheme.

The Council examined, inter alia, its policy in relation to the display of the Union Flag in the context of an Equality Impact Assessment (EQIA) titled “Promotion of Equality and Social Inclusion/Civic Leadership” and issued for consultation on 31 October 2002. The interim decision of the Council was that the Union Flag would only be flown at the Civic Offices for the 17 days designated by the Secretary of State for N. Ireland in the Flags Regulations (Northern Ireland) 2000 and two additional days. Following consultation, the Council issued its Equality Impact Assessment in 2003. The outcome of the EQIA was that the Union Flag be flown only at the Civic Headquarters (Lagan Valley) on the 17 designated days, and two additional days, namely the 1st and the 12<sup>th</sup> of July. As a consequence the Union Flag began to be flown from May 2005 on a permanent basis at six Council locations, departing from the policy introduced following the Equality Impact Assessment to fly the Union Flag only at Civic Headquarters.

The Commission recommended that the display of the Union Flag should be confined to Civic Headquarters in accordance with the policy implemented as a result of Council’s 2003 Equality Impact Assessment titled “Promotion of Equality and Social Inclusion/Civic Leadership”. Such display is limited to designated days in accordance with the policy implemented as a result of Council’s 2003 Equality Impact Assessment; abide by the Department of Environment recommendation in respect of the 17 designated days for the Union Flag as previously advised to the Council and should not add additional days to the calendar.

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<sup>130</sup> Despite this, and in service of its outcome, McCrudden recommends that the Commission ‘needs to develop an enforcement strategy’. McLaughlin and Faris, (2005), p. 73.

This represents where, contrary to some opinion noted earlier about the Commission's role, the Commission has been effectively seeking to pursue its statutory role and hold the authority to account on the basis of its scheme. Clearly, the position of the Council is not defensible; the Commission is keen to assist the authority to remain committed to its EQIA of 2003. This case could also send a clear message that the Commission regards EQIA and the ability of public authorities to screen out adverse impacts as crucial to promoting equality and good relations.

6.8.3 As if to emphasize effective collaboration between the two bodies, OFMDFM is generally convinced that the Commission's Guidance is followed carefully and the Commission has been responsive. Yet, OFMDFM brought forward guidance initially which is generally recognised to have been the role of the Commission. However, OFMDFM pointed out that this occurred when the need to get guidance out quickly at commencement of the new equality and good relations instruments was overwhelming and there was little time. The department argues that this action was to ensure guidance on Section 75 was not unduly delayed. Many in the Voluntary and Community Sectors, on the other hand, argue that the Commission did not 'react sufficiently quickly'.

## **7. Conclusions**

7.1 Most commentators would acknowledge that there have been achievements in the implementation and operation of Section 75 within the NIO and OFMDFM: annual reports on the equality duty provided regularly by these public authorities to the Commission describe progress and impacts.<sup>131</sup> The impact of Section 75 on government departments can be characterised by increased awareness of equality issues, increased engagement with Section 75 groupings, and recognised changes to policies.

7.2 Participants in this research almost unanimously agreed that Section 75 has been a ground breaking piece of legislation for

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<sup>131</sup> Equality Commission for Northern Ireland, Report on the Implementation of the Section 75 Statutory Duties 2002-2003, and Report on the Implementation of the Section 75 Equality and Good Relations Duties by Public Authorities Based on Public Authority Annual Reports 2003 – 2004, (ECNI, November 2005).

Northern Ireland. It has the potential for bringing about real and lasting equalities and good relations across all Section 75 groupings. Accordingly, a noticeable degree of disappointment has been registered about the difficulties associated with implementation, despite the unanimously held view that the legislation must be maintained.

7.3 Many factors have contributed to a realistic and informed sense of ineffectiveness. These include a lack of obvious political leadership at the highest political level, which is necessary for broadening and strengthening the debate by which confidence across all sectors would be built. The suspension of devolved government clearly impacted both government and community sectors in that local ministers more familiar with inequalities within the Northern Irish context are perceived to be more committed to implementation of Section 75. There has been a profound sense across the Voluntary and Community Sectors that Direct Rule ministers are distinguished largely by a lack of commitment.

7.4 The need for the NIO and OFMDFM to engage the Voluntary and Community Sectors with a view to building confidence in Section 75 cannot be underestimated. Essentially, strengthening communication will almost certainly help to break down barriers associated with the undermining of Section 75 within government departments. It was unanimously agreed within the sector that there is a lack of accountability, but this appears have more to do with the Departments' underdeveloped relationship with the sector.

7.5 While there have been clear processes within OFMDFM that has assisted some embedding of the legislation at Government level, and a real sense of commitment from some senior civil servants to mainstreaming equalities, there is a strong counter claim across the Voluntary and Community Sectors. This is understandable from the standpoint that there appears to be a narrow definition of mainstreaming, and a distinct lack of positive information being fed through the sector about embedding Section 75 within Government.

7.7 Priorities and Budget processes are understood universally to have the potential for achieving the Government's objectives for equality of opportunity for all and economic strength for Northern

Ireland locally and globally. These processes therefore represent a tool whose potential for assisting the realisation of these goals and increased levels of equality and good relations require utilisation. The emerging relationship between the DFP and the Commission has to this end been a welcomed development which must be built upon.

7.8 It is widely recognised within the Voluntary and Community Sectors that designation of public authorities is essential to the embedding of equality and good relations. Whilst the designation of some authorities has been particularly welcomed, there is a strong demand that the NIO and the Commission do more to persuade the BBC, Ministry of Defence and the Home Office to designate. There appears to be no particularly negative reaction to the legislation where it exempts certain functions of a public authority, but a clear expectation that greater persuasive powers be generated and utilised.

7.9 The Commission has a distinct relationship to OFMDFM and the NIO, but a stronger enforcement role is required and increased communication about that relationship would address the problem of clarity across the sector. This would clarify the potentially conflicting roles of advisor and enforcer further. The Commission has been prohibited to some degree in the performance of its role both by the structure of the legislation and a lack of operational clarity. We do not accept that the Commission could become fully independent from Government and retain viable challenge and enforcement functions satisfactorily because, for example, it depends on high level access. The Commission must continue to find ways of working effectively to deliver its legislative obligations in all circumstances with due regard to any public authority that may have breached the duty.

7.10 The Commission's role has been performed in many respects with robustness given the challenge implementing the new novel responsibility of a positive equality and good relations duty imposed. Where its practice in terms of communication with the Voluntary and Community Sectors and the NIO about its role could be improved its role would be strengthened.

7.11 Given the importance of clarity of roles between the NIO, OFMDFM and the Commission, and the need for a stronger enforcement and possibly a designation function for the Commission, the need to amend Section 75(1)(2) requires consideration.

7.12 The suspension of devolved Government has in many respects made a significant difference in the way Direct Rule ministers and the ministers of a devolved administration approach the equality and good relations duties in Northern Ireland.

7.13 Though there has been improved communications, training and targeted consultation across government departments, the NIO in particular has acknowledged weakness in its practice, which it intends to address following its Five Year Review Report. Data collection and analysis has improved in government departments, but there needs to be clarity and transparency about consultation criteria, systems analysis, and how the results of the consultation processes are used to bring about change at community level. In these areas more base line data collection, measuring or monitoring systems within OFMDFM and the NIO is required. Annual performance targets and achievements must be reported and made widely available.

## **8. Recommendations**

### ***The Government - OFMDFM, NIO***

- 8.1 The Government should now visibly demonstrate that equality has been mainstreamed across all departments by monitoring and measuring the extent to which Section 75 has reduced inequalities and promoted good relations.
- 8.2 The Government should host bi-annual high level Roundtables for ministers specifically on good relations and equalities duties to help raise their awareness, and encourage them to lead the public debate on Section 75.
- 8.3 The Government should develop a system for sustaining regular effective communication and collaboration between Government and the Voluntary and Community Sectors on the equalities and good relations agenda.
- 8.4 The Government should consider granting the Commission formal or statutory persuasive powers enabling the Commission to work with the Human Rights and Equality Unit and other appropriate structures on the designation of public authorities.

### ***OFMDFM, NIO, the Commission***

- 8.5 The NIO and OFMDFM together with the Commission should consider examining the legislation in order to ascertain what should be amended in order to strengthen the Commission's enforcement role including the provision of appropriate penalties for non-compliance.
- 8.6 The NIO and OFMDFM should engage in a high level debate around Section 75 with the Commission, maximising its potential for building confidence across the Voluntary and Community Sectors, and focusing on the importance of Section 75 in relation to Government's fiscal and communal objectives.
- 8.7 The NIO and OFMDFM should agree with the Commission, and provide their staff with, a broader understanding of mainstreaming, and the necessary analytical tools and systems for monitoring and benchmarking change at community level.

- 8.8 The NIO and OFMDFM should be explicit about their systems for analysing consultations, inform the Commission how those systems work, and what criteria is used for analyses.
- 8.9 Academics and the Commission's staff should work with the NIO and OFMDFM in a non-disruptive manner on the operation of Section 75, and clarify roles on their respective roles.

### ***OFMDFM***

- 8.10 OFMDFM and the Department for Finance and Personnel (DFP) should continue to develop work with the Commission on ways for subjecting the Priorities and Budget to Equality Impact Assessments. They should seek new opportunities for specific intervention that would encourage public spending in more imaginative ways in relation to Section 75.
- 8.11 OFMDFM should ensure that they hold government departments to account for the full implementation of Section 75.

### ***The Commission***

- 8.12 The Commission and the DFP should continue to seek ways to build mainstreaming into the Priorities and Budget processes.
- 8.13 The Commission should be granted increased resources to enable it to respond more readily to enquiries and complaints in the discharge of its duties, e.g., communication with all sectors.
- 8.14 The Commission should consider the merits and strengths of its challenge function to ascertain whether litigation on cases where there has been a breach of the Equality Scheme is a viable option.
- 8.15 The Commission should persist with the task seeking the designation of the Home Office, the Ministry of Defence and the BBC.

## **Appendix A**

### **Terms of Reference**

1. To review the effectiveness of the duties on public authorities as set out in Section 75 of the Northern Ireland Act 1998 in terms of the impact which their discharge has on the development of public policy, on the provision of services and on the practical outcomes for the nine categories insofar as promoting equality of opportunity is concerned, and for the three categories insofar as promoting good relations is concerned.

2. To consider whether any issues arise for consideration by the Commission itself or on which it might wish to make recommendations to Government.

The effectiveness of Section 75 is dependent on public authorities, The Equality Commission for Northern Ireland, OFMDFM, the NIO and other stakeholders, e.g. the voluntary sector. The review will therefore consider the roles and responsibilities of these stakeholders. This project, which will look specifically at the respective contributions of OFMDFM and the NIO to the effectiveness of the legislation, is therefore a central objective of that review.

## **Appendix B**

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## Appendix C

### **Assessment of the role of OFMDFM and the NIO with regard to the effectiveness of Section 75 of the Northern Ireland Act 1998**

Questions for interviews with public bodies and Voluntary & Community Sector

#### **Office of the First Minister and Deputy First Minister**

- i) What role and responsibilities do you have in ensuring effectiveness in relation to S.75?
- ii) what criteria do you think should be applied when judging the role of OFMDFM in making S.75 effective?
- iii) how well do you work across departments to ensure the effective delivery of S.75?
- iv) how has your department used its roles and responsibilities to drive the implementation of S.75?
- v) what internal impediments to the performance of your role do you think there have been?
- vi) what external impediments to the performance of your role do you think there have been?
- vii) in your experience, what role does S.75 play in internal reviews, and are there any associated strengths?
- viii) as an advisory body with a challenge function, in what ways do you think OFMDFM's performance of their role and responsibilities have impacted the sector?
- ix) what leadership do you give in driving the effectiveness of responsibility? Can you assist further by providing some evidence, e.g., statements or ministerial speeches?
- x) how do you think the division of responsibility between OFMDFM and the Equality Commission contributes to the effectiveness of your role?
- xi) are there reports and/or other sources of information about processes and/or perceptions about your role which you think would be helpful?
- xii) how well does the structure within OFMDFM contribute to the effectiveness of S.75, e.g. where there are divisional and functional teams?

- xiii) what resources have been applied to delivery of your role and responsibilities on S.75, and what increments have there been over the period?
- xiv) how have OFMDFM found their role in approving the Commission's Statutory Guidance?
- xv) how well do you think government departments perform screening in order to meet S.75 duties at the highest level?
- xvi) how do OFMDFM approach the Review of Public Administration and the issues relating to the effectiveness of S.75?
- xvii) how well do you think the OFMDFM's challenge function work given that they have responsibility for the Priorities and Budget processes, e.g. coordinating work on screening? How well do OFMDFM work with the ECNI on Priorities and Budgets?
- xviii) are there any other matters you would like to raise?

### **Northern Ireland Office**

- i) What role and responsibilities do you have in ensuring the effectiveness of the process of designation of public authorities under S.75?
- ii) can you say how many bodies you have designated since 1998, and how many have not been designated?
- iii) how do you make decisions on designation, and what views do you have on who should be designated?
- iv) what role, if any, has the NIO in encouraging Public Authorities to consider the benefits of designation?
- v) what criteria do you think should be applied when judging the role of the NIO in making S.75 effective?
- vi) what difficulties if any have you experienced in carrying out your role and responsibilities?
- vii) in your experience, what role does S.75 play in internal reviews, and are there any associated strengths?
- viii) do you think there have been internal impediments to the performance of your role?
- ix) do you think there have been external impediments to the performance of your role?

- x) as an advisory body with a challenge function, in what ways do you think the NIO's performance of its role and responsibilities have impacted the sector?
- xi) how do you think the division of responsibility between the NIO and the Equality Commission contribute to the effectiveness of your role?
- xii) are they reports and/or other sources of information about processes and/or perceptions about your role which you think would be helpful?
- xiii) how well do you think the NIO's challenge function work given that you have responsibility for compliance e.g. general review of S75 ? How well do NIO work with the ECNI on designation?
- xiv) how do NIO approach the Review of Public Administration and the issues relating to the effectiveness of S.75?
- xv) are they any other matters you would like to raise?

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

- i) Are there issues of capacity which you think affect the way S.75 processes are handled by the Commission?
- ii) do you think the roles and responsibilities between the OFMDFM and the ECNI are distinct and clearly understood? What improvements would you like to see?
- iii) do you think the roles and responsibilities between the NIO and the ECNI are distinct and clearly understood? What improvements would you like to see?
- iv) what actions do you take to ensure clarity on roles and responsibilities between key stakeholders?
- v) how does key stakeholders regard to your Guidance and response to progress reports?
- vi) OFMDFM and the NIO have both advisory roles and responsibilities and also challenge/enforcement functions; do you think this is helpful?
- vii) what difficulties have you experience with the way key stakeholders perform their roles and responsibilities?
- viii) are they other matters you would like to raise?
- ix) do you think Direct Rule or suspension of the NI Executive impacted the effectiveness of S.75?
- x) are they any other matters you would like to raise?

### **Departments: ESNSG (any other Departments? i.e. DFP, DSD)**

- i) What roles and responsibilities do you have in ensuring effectiveness of S.75?
- ii) what thoughts do you have about the criteria that should be applied when judging the role of OFMDFM and the NIO in making S.75 effective?
- iii) how well does the structure within OFMDFM and the NIO contribute to the effectiveness of S.75, where, e.g., there are divisional and functional teams?
- iv) as an advisory body with challenge function, in what ways do you think OFMDFM in performing its S.75 role and responsibilities have impacted the sector?
- v) as an advisory body with a challenge function, in what ways do you think NIO in performing its S.75 role and responsibilities have impacted the sector?
- vi) how do you think decisions are made on designation, and what views do you have on who should be designated?
- vii) how well do you think government departments perform screening in order to meet S.75 duties at the highest level?
- viii) are they any other matters you would like to raise?

### **Equality Coalition**

- i) what criteria do you think should be applied when judging the role of the NIO in making S.75 effective?
- ii) what criteria do you think should be applied when judging the role of the OFMDFM in making S.75 effective?
- iii) how well do you think government departments perform screening in order to meet S.75 duties at the highest level, specifically the Priorities and Budgets process?
- iv) as an advisory body with a challenge function, in what ways do you think OFMDFM's performance of their role and responsibilities have impacted the sector?

- v) how well do you think the structure within OFMDFM contribute to the effectiveness of S.75, where, e.g. there are divisional and functional teams?
- vi) in your experience, can you say how you think S.75 is reflected in the NIO and OFMDFM, e.g., leadership, processes, policies, structures systems, advice, support, and challenge function?
- vii) how well do you think the structure within NIO contribute to the effectiveness of S.75, where, e.g. there are divisional and functional teams?
- viii) how do you think decisions about designation are made by the NIO, and are they bodies you think should be designated?
- ix) are there any other matters you would like to raise?
- x) do you have any views about how well NIO and OFMDFM approach the Review of Public Administration and any issues relating to the effectiveness of S.75?

### **Voluntary and Community Sectors**

- i) How would you assess the way OFMDFM and NIO perform their roles and responsibilities in fulfilling S.75?
- ii) in your experience, can you say how you think S.75 is reflected in the NIO and OFMDFM, e.g., leadership, processes, policies, structures systems, advice, support, and challenge function?
- iii) what do you think are the strengths and weaknesses of the way the roles and responsibilities are carried out, a) by OFMDFM and, b) the NIO?
- iv) do you think Direct Rule or suspension of the NI Executive impacted on the effectiveness of and on various agencies as these relate to S.75? How?
- v) how do you think decisions about designation are made, and are they bodies you think should be designated?
- vi) what impact do you think S.75 has had on equalities since its implementation?
- vii) how well do you think OFMDFM has driven compliance of S.75 with high-level policy making?

- viii) do you have any comments about the distinction of roles between ECNI and NIO, and ECNI and OFMDFM?
- ix) have the V and C sector been aware of the benefits of ECNI's role and responsibilities on S.75?
- x) how well do you think the OFMDFM's challenge function work given that they have responsibility for the Priorities and Budget processes, e.g. coordinating work on screening? How well do OFMDFM work with the ECNI on Priorities and Budgets?
- xi) are there any other matters you would like to raise?

## Appendix D

### 3. Overview of legislation and policy

3.1 Since implementation of the equality and good relations provisions under Section 75 of the Northern Ireland Act 1998 (the Act), legislation and policy have developed to reflect or drive forward changes in sectarian divisions and other inequalities generally in Northern Ireland. In order to contextualise this assessment of the roles of the NIO and OFMDFM in contributing to the effectiveness of Section 75, a brief overview of these changes is undertaken.

#### 3.2 The Northern Ireland (St Andrews) Act 2006

3.2.1 Parties to the St Andrews talks in 2006 agreed an amendment to the 1998 Act which is inserted at Part 2 of the Northern Ireland (St Andrews Agreement) Act, 2006. This amendment seeks to ensure that, when the Assembly is restored, devolved ministers remain committed 'to promote the interests of the whole community represented in the Northern Ireland Assembly towards the goal of a shared future'.<sup>132</sup> It further underlined the need for full commitment to 'a balanced institutional accommodation of the key relationships' within Northern Ireland, and to place 'equality and human rights at the heart of the new dispensation'.<sup>133</sup> The main thrust of the St Andrews Agreement, therefore, is a renewed commitment to overcoming tensions between Protestant and Catholic communities, toward which the Assembly, it stated, should 'build confidence in both communities and pursue a shared future for Northern Ireland in which the culture, rights and aspirations of all are respected and valued, free from sectarianism, racism and intolerance'.<sup>134</sup> The Agreement also incorporates measures relating to targets for poverty reduction,<sup>135</sup> which of course impinges upon, and has implications for equality of opportunity and good relations.

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<sup>132</sup> Northern Ireland (St Andrews Agreement) Bill, Part 2, Section 7:1:ca, page 6.

<sup>133</sup> St Andrews Agreement, Section 3. See [http://www.nio.gov.uk/northern\\_ireland\\_\(st\\_andrews\\_agreement\)\\_bill.pdf](http://www.nio.gov.uk/northern_ireland_(st_andrews_agreement)_bill.pdf)  
[http://www.nio.gov.uk/st\\_andrews\\_agreement.pdf](http://www.nio.gov.uk/st_andrews_agreement.pdf)

<sup>134</sup> St Andrews Agreement, Section 8.

<sup>135</sup> OFMDFM, Lifetime Opportunities, Government Anti-Poverty and Social Inclusion Strategy for Northern Ireland, (2006). See <http://www.ofmdfm.gov.uk/antipovertynov06.pdf>

### 3.3 European Union Directives

3.3.1 Legislative developments in Northern Ireland have been modified by a series of European Union (EU) Directives since the implementation of Section 75. Cited here are four EU Directives that have impacted equality legislation in Northern Ireland. These developments are initially listed and then their impact on existing legislation is described albeit briefly.

3.3.2 One: the Race Directive 2000<sup>136</sup> required Member States to bring forward laws against discrimination on the grounds of race by 19<sup>th</sup> July 2003.

3.3.3 Two: the Framework Employment Directive 2000<sup>137</sup> required Member States to bring forward legislation to protect people from discrimination in employment on the grounds of religion and political opinion, and included new protections for sexual orientation to have been implemented by 2<sup>nd</sup> December 2003. There was also a requirement to change the law relating to employment and disability, and to extend protection to cover age by December 2006.

3.3.4 Three: the 1976 Gender Directive was amended by the Gender Directive 2003<sup>138</sup> which had the effect of raising the standard to that of the Race and Framework Directives.

3.3.5 Four: the 1976 EU Equal Treatment Directive<sup>139</sup> which prohibited sex discrimination in the fields of employment and vocational training was amended in October 2002, requiring Member States to implement amendments by 5 October 2005. This Directive, known as the Equal Treatment Amendment Directive (ETAD), incorporates European Court of Justice (ECJ) case law and strengthens the principle of equal treatment and its practical

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<sup>136</sup> Council Directive 2000/43/EC 29 June. This sought to implement the principle of equal treatment between persons irrespective of racial or ethnic origin.

<sup>137</sup> Council Directive 2000/78/EC, 27 November 2000, creating a general frame work for equal treatment in employment and occupation.

<sup>138</sup> Council Directive 2002/73/EC, 23<sup>rd</sup> November 2003, amending CD 76/207/EEC implementing the principle of equal treatment for men and women regarding employment vocational training and working conditions.

<sup>139</sup> [http://www.ofmdfm.gov.uk/employment\\_equality\\_sex\\_discrimination\\_regulations-4.pdf](http://www.ofmdfm.gov.uk/employment_equality_sex_discrimination_regulations-4.pdf)

implementation. OFMDFM's Gender Equality Unit launched a public consultation on its proposals to implement the Directive in April 2005.

3.3.6 The paragraphs which follow sketch the impact of new legislation on existing law briefly, primarily in the fields where change has been or intends to be effected: age, disability, gender, race, religion and belief, and sexual orientation, and the implications of the Single Equality Act. A brief summary of policy development in the area of Good Relations and a Shared Future appear at the end of this section.

### **3.4 Age**

3.4.1 The EU Framework Directive triggered the Employment Equality (Age) Regulations (Northern Ireland) 2006, the main provisions of which came into force on 1 October 2006. Commencement of the occupational pension provisions in the Age Regulations was deferred from 1 October 2006 until 1 December 2006.

3.4.2 Introduction of the Age Regulations was necessary in order to implement the age strand of the EU Directive (3.3.3) in Northern Ireland. The Regulations<sup>140</sup> apply to employment and vocational training, and prohibit unjustified direct and indirect age discrimination, harassment and victimisation on grounds of age relating to people of any age. These Regulations cover recruitment, terms and conditions, promotions, transfers, dismissals and training; they do not cover the provision of goods and services.

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<sup>140</sup> The regulations i) prohibit age discrimination in terms of recruitment, promotion and training; ii) set a default retirement age of 65; iii) retirement ages below the default retirement age will need to be objectively justified or changed; iv) introduces a new right for employees to request working beyond retirement age and a duty on employers to consider that request; v) introduce a new requirement on employers to give at least 6 months notice to employees about their intended retirement date; vi) allow pay and non-pay benefits to continue which depend on length of service requirements of 5 years or less or which recognize and reward loyalty and experience; vii) provide exemptions for many age-based rules in occupational pension schemes; and viii) remove the upper age limit for unfair dismissal and redundancy rights, giving older workers the same rights to claim unfair dismissal or receive a redundancy payment as younger workers.

3.4.3 Age discrimination law requires employers and vocational training providers to review policies, practices and attitudes to ensure that a person's age does not influence decisions that are made regarding selection for a job, promotion, training, redundancy, etc., unless there is a justifiable reason for age to be taken into account.

### **3.5 Disability**

3.5.1 The Disability Branch of OFMDFM<sup>141</sup> has responsibility for making new, or amending existing legislation. The Disability Discrimination Act 1995 (DDA) is a UK-wide Act which gives disabled people rights in the areas of employment, access to goods, facilities and services, and buying or renting land or property. This Act also allows the Government to set minimum standards to enable disabled people to use public transport. While the DDA extends to the whole of the United Kingdom separate legislation is required for Northern Ireland.

3.5.2 In 2004 the Disability Discrimination Act 1995 (DDA) was amended by the Disability Discrimination Act 1995 (Amendment) Regulations (NI) 2004 which implemented the EU Employment Directive 2000 (3.3.3). These Regulations made a number of important changes to the employment provisions of the DDA. It ended the exemption of small employers and a number of occupational exclusions (e.g. the police, prison officers, barristers and partners in business partnerships) from the scope of the DDA. It also prohibited harassment.

3.5.3 A new Disability Discrimination (NI) Order 2006<sup>142</sup> came into force in Northern Ireland on 1<sup>st</sup> October 2006. The Order also extends current legislation to bring the functions of public authorities within the scope of disability legislation for the first time, and from 1<sup>st</sup> January 2007, imposes a new duty on them to promote positive attitudes towards disabled people and to encourage their participation in public

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<sup>141</sup> <http://www.ofmdfm.gov.uk/index/equality/age.htm>

<sup>142</sup> It strengthens and extends the coverage of the DDA ensuring that more people with disabilities are protected, and for the first time helps people, for example, who are diagnosed with cancer, HIV and multiple sclerosis (MS) but not yet showing signs of their illness. No longer will people with mental ill health have to prove their condition is 'clinically well-recognised'.

life. It imposes further duties on public authorities not to discriminate against disabled people across a wide range of public activities.

### 3.6 Gender

3.6.1 The Gender Directive 2003 (3.3.4) had to be complied with in Northern Ireland by October 2005 as part of the Belfast Agreement's emphasis on a partnership of peaceful, cohesive, inclusive prosperous and fair society. The Northern Ireland Assembly, in 2002,<sup>143</sup> and the Commission in 2006 undertook research projects respectively looking at the implications of this Directive with published papers, and at disparities in pay for men and women.<sup>144</sup> OFMDFM developed a gender equality strategy in 2006<sup>145</sup> which their Gender Equality Unit will have responsibility to implement.

### 3.7 Race

3.7.1 To comply with the EU Race Directive (3.3.2) the Race Relations Order (Amendment) Regulations (Northern Ireland) came into force 19<sup>th</sup> July 2003. This measure enforced changes to race relations legislation in employment, goods, facilities and services, and brought in new protections against discrimination in social advantages, e.g., concessionary schemes. It also imposed a duty on public authorities not to discriminate. Latterly, the Racial Equality Unit of the OFMDFM published the Racial Equality Strategy for Northern Ireland 2005 – 2010.

3.7.2 In April 2006 Minister with responsibility for Racial Equality, Lord Rooker, announced publication of the first annual action plan – 2006, which will implement the Racial Equality Strategy. The Strategy provides a framework for tackling racial inequalities and to open up opportunities for all; to eradicate racism and hate crime; and together with *A Shared Future* – Policy and Strategic Framework for Good Relations in Northern Ireland, to initiate actions to promote good race relations.

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<sup>143</sup> <http://www.niassembly.gov.uk/io/research/2802.pdf>

<sup>144</sup> [http://www.equalityni.org/uploads/pdf/GenderPayFull\(FF\)220606.pdf](http://www.equalityni.org/uploads/pdf/GenderPayFull(FF)220606.pdf)

<sup>145</sup> Office of the First Minister and Deputy First Minister, Gender Equality Strategy, A strategic framework for action to promote gender equality for women and men for Northern Ireland 2006-2016, <http://www.ofmdfm.gov.uk/genderequalitystrategy2006-2016.pdf>

## **3.8 Religion and Belief**

3.8.1 In addition to protections against religious discrimination under the Fair Employment and Treatment Order and the Employment Equality (Sexual Orientation) Regulations (see 3.9.1), the Government in 2005 brought forward the Racial and Religious Hatred Bill. After prolonged and effective lobbying on its implications for freedom of speech and religious practice by all sectors, the Bill was defeated. It was included in the timetable for the remainder of the current parliamentary session, and was not included in the Queen's Speech November 2006.

3.8.2 Interesting to note also that NI has its own Criminal Justice (No2) (NI) Order 2004, which requires judges to take into account any offence involving hostility to a person on grounds of Race, religion, Sexual Orientation or Disability and allows for tougher sentencing

## **3.9 Sexual Orientation**

3.9.1 The EU Employment Framework Directive led in Northern Ireland to the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003, and the Fair Employment and Treatment Order (Amendment) Regulations (Northern Ireland) 2003 which came into operation on 10 December 2003. These regulations implemented the requirements on Member States to introduce laws to prohibit discrimination on several grounds including religion or belief. A new definition on indirect discrimination<sup>146</sup> and a definition of 'harassment' were also adopted, together with changes to the burden of proof in tribunals. Amendments were also made to the Employment Equality (Sex Discrimination) Regulations (Northern Ireland).<sup>147</sup>

3.9.2 The Civil Partnership Act 2004 which applies also in Northern Ireland became law on 5th December 2005. It enables same-sex couples to form civil partnerships, generally giving all the same rights and responsibilities as married couples.

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<sup>146</sup> Indirect discrimination may occur where a provision, criterion or practice, although applied equally to all, would put persons of a particular religion or belief at a particular disadvantage compared with other persons unless that provision, criterion or practice is objectively justified by a legitimate aim.

<sup>147</sup> [http://www.ofmdfm.gov.uk/employment\\_equality\\_sex\\_discrimination\\_regulations-4.pdf](http://www.ofmdfm.gov.uk/employment_equality_sex_discrimination_regulations-4.pdf)

3.9.3 The major concern for some groups in Northern Ireland has been the impact of the Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006 which came into force on 1<sup>st</sup> January 2007. Some groups argue that legislation permitting forms of same sex activity militate against certain fundamental principles of their faith. Most of the equality legislation is expected to be included and harmonized in a Single Equality Act.

### **3.10 Single Equality Act**

3.10.1 The Government has proposed a Single Equality Bill which aims to harmonize all existing anti-discrimination and equality measures as far as practicable, and to update and extend existing provisions where appropriate. The Single Equality Bill for Northern Ireland which was consulted in 2004 and received a high level of responses<sup>148</sup> will be brought forward in 2007 either by the Assembly or Direct Rule, but may not become law until 2008. The Act is expected to become law and into force in Britain in October 2007.

### **3.11 A Shared Future Policy**

3.11.1 *A Shared Future Policy* was launched for consultation on 28 January 2003<sup>149</sup> and published as policy in July 2005. The document sets out the vision, policy aims, fundamental principles, actions to be taken at local, regional and central government level, along with proposals for monitoring and evaluation. An assessment of equality impact was also included.

3.11.2 *A Shared Future Policy and Strategic Framework for Good Relations in Northern Ireland* was published by way of a Written Ministerial Statement in the House of Commons in March 2005 by the Rt. Hon. John Spellar, the then Secretary of State for Northern Ireland. The present Secretary of State the Rt. Hon. Peter Hain MP re-affirmed the Government's support for the policy in a speech<sup>150</sup> on Tuesday 25 April 2006. He said:

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<sup>148</sup> <http://www.ofmdfm.gov.uk/single-bill-consultation.pdf>

<sup>149</sup> <http://www.asharedfutureni.gov.uk/policy-strategic.pdf>

<sup>150</sup> <http://www.ofmdfm.gov.uk/sospeech250406.pdf>

The government is determined to set the direction towards a normal civic society in which all people are of equal value, where differences are resolved through dialogue, and where people are treated impartially. A society in which there is equity, respect for diversity and recognition of our interdependence. The document, *A Shared Future*, which the Government published last year, clearly indicated the direction in which we wish to go.<sup>151</sup>

3.11.3 The Northern Ireland (St Andrews) Act also reaffirms the Government's commitment to Section 75, and incorporates a duty to hold devolved ministers and the Assembly to account for delivery of the aims and objectives of equality of opportunity for all, a shared future and the furtherance of good relations.

### **3.12 The Northern Ireland Act 1998 - Section 75**

3.12.1 The legislative and policy developments around Section 75 provide a framework in Northern Ireland for a unique approach to equalities with the potential as a best practice model for economic progress and sustainable community cohesion. In all these developments, 'a society in which racial diversity is supported, understood, valued and respected, where racism in any of its forms is not tolerated and where we can all live together as a society and enjoy equality of opportunity and equal protection,'<sup>152</sup> is envisaged. In effect, the uniqueness of Section 75 lies in its ability to develop a culture of equality and good human relations which, in this author's view, is essential for social stability and further economic progress. Two sections of the Act which set out the statutory duty on public authorities follow, without comment.

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<sup>151</sup> <http://www.ofmdfm.gov.uk/sosspeech250406.pdf> page 7.

<sup>152</sup> St Andrews Agreement, paragraph 8, p. 2. See also *A Shared Future Policy and Strategic Framework for Good Relations in Northern Ireland*, (March 2005), section 1.3.1, p. 11.

### 3.12.3 Section 75

(1) A public authority shall in carrying out its functions relating to Northern Ireland have due regard to the need to promote equality of opportunity-

- (a) between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
- (b) between men and women generally;
- (c) between persons with a disability and persons without; and
- (d) between persons with dependants and persons without.

(2) Without prejudice to its obligations under subsection (1), a public authority shall, in carrying out its functions relating to Northern Ireland, have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group.

(3) In this section "public authority" means-

- (a) any department, corporation or body listed in Schedule 2 to the Parliamentary Commissioner Act 1967 (departments, corporations and bodies subject to investigation) and designated for the purposes of this section by order made by the Secretary of State;
- (b) any body (other than the Equality Commission) listed in Schedule 2 to the Commissioner for Complaints (Northern Ireland) Order 1996 (bodies subject to investigation);
- (c) any department or other authority listed in Schedule 2 to the Ombudsman (Northern Ireland) Order 1996 (departments and other authorities subject to investigation);
- (d) any other person designated for the purposes of this section by order made by the Secretary of State.

(4) Schedule 9 (which makes provision for the enforcement of the duties under this section) shall have effect.

(5) In this section- "disability" has the same meaning as in the Disability Discrimination Act 1995; and "racial group" has the same meaning as in the Race Relations (Northern Ireland) Order 1997.

### **3.12.4 Schedule 9**

Equality: Enforcement of Duties

The Equality Commission

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

### **Equality Schemes**

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

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

“the relevant functions” means the functions of the public authority or, in the case of a scheme submitted in response to a request which specifies particular functions of the public authority, those functions.

5. Before submitting a scheme a public authority shall consult, in accordance with any directions given by the Commission –
  - (a) representatives of persons likely to be affected by the scheme; and
  - (b) such other persons as may be specified in the directions.
  
6.
  - (1) On receipt of a scheme the Commission shall -
    - (a) approve it; or
    - (b) refer it to the Secretary of State
  
  - (2) Where the Commission refer a scheme to the Secretary of State under subparagraph (1) (b) it shall notify the Assembly in writing that it has done so and send the Assembly a copy of the scheme.
  
7.
  - (1) Where a scheme is referred to the Secretary of State he shall –
    - (a) approve it;
    - (b) request a public authority to make a revised scheme; or
    - (c) make a scheme for the public authority.
  
  - (2) A request under sub-paragraph shall be treated in the same way as requested under paragraph 3 (1) (b).
  
  - (3) Where the Secretary of State –
    - (a) requests a revised scheme under sub-paragraph (1)(b); or
    - (b) makes a scheme under sub-paragraph (1)(c), he shall notify the Assembly in writing that he has done so and, in a case falling within paragraph (b), send the Assembly a copy of the scheme.

8. (1) If a public authority wishes to revise a scheme it may submit a revised scheme to the Commission.
- (2) A revised scheme shall be treated as if it were submitted in response to a request under paragraph 3(1)(b).
- (3) A public authority shall, before the end of the period of five years beginning with the submission of its current scheme, or the latest review of that scheme under this sub-paragraph, whichever is the later, review that scheme and inform the Commission of the outcome of the review.

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

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

### **Complaints**

10. (1) If the Commission receives a complaint made in accordance with this paragraph of failure by a public authority to comply with a scheme approved or made under paragraph 6 or 7, it shall –

- (a) investigate the complaint; or
    - (b) give the complainant reasons for not investigating.
  - (2) A complaint must be made in writing by a person who claims to have been directly affected by the failure.
  - (3) A complaint must be sent to the Commission during the period of 12 months starting with the day on which the complainant first knew of the matters alleged.
  - (4) Before making a complaint the complainant must –
    - (a) bring the complaint to the notice of the public authority; and
    - (b) give the public authority a reasonable opportunity to respond.
11. (1) This paragraph applies to –
- (a) investigations required by paragraph 10; and
  - (b) any other investigation carried out by the Commission where it believes that a public authority may have failed to comply with the scheme approved or made under paragraph 6 or 7.
- (2) The Commission shall send a report of the investigation to –
- (a) the public authority concerned;
  - (b) the Secretary of State; and
  - (c) the complainant (if any).
- (3) If a report recommends actions by the public authority concerned and the Commission considers that the action is not taken within a reasonable time –
- (a) the Commission may refer the matter to the Secretary of State; and
  - (b) the Secretary of State may give directions to the public authority in respect on any matter referred to him.
- (4) Where the Commission –
- (a) sends a report to the Secretary of State under sub-paragraph (2)(b); or
  - (b) refers the matter to the Secretary of State under sub-paragraph (3)(a)

it shall notify the Assembly in writing that it has done so and, in a case falling within paragraph (a), send the Assembly a copy of the report.

- (5) Where the Secretary of State gives directions to a public authority under sub-paragraph (3)(b), he shall notify the Assembly in writing that he has done so.
12. (1) Paragraphs 6, 7 and 11(2)(b) and (30) do not apply to a government department which is such a public authority as is mentioned in section 75(3)(a).
- (2) On receipt of such a scheme submitted by such a government department under paragraph 2 or 3 the Commission shall -
    - (a) approve it; or
    - (b) request the department to make a revised scheme.
  - (3) A request under sub-paragraph (2)(b) shall be treated in the same way as a request under paragraph (3)(1)(b).
  - (4) Where a request is made under sub-paragraph (2)(b), the Government department shall, if it does not submit a revised scheme to the Commission before the end of the period of six months beginning with the date of the request, send to the Commission a written statement of the reasons for not doing so.
  - (5) The Commission may lay before Parliament and the Assembly a report of any investigation such as mentioned in paragraph 11(1) relating to a Government department such as is mentioned in sub-paragraph (1).

## **Appendix E**

### **INTERVIEW SCHEDULE**

#### **OFMDFM**

Head, Good Relations and Reconciliation Division	Billy Gamble
Community Relations Council: Chief Executive	Duncan Morrow
Head, Equality & Social Needs Division /Steering Group	Gerry Mulligan
Finance and Personnel: Budget Director / responsibility for Comprehensive Spending Review	Leo O'Reilly
Department for Social Development	David Malcolm (John McGrath was unavailable)
Education and Library Boards: Chief Executive, Staff Commission	Deidre Vaugh (refused)

#### **NIO**

Head of Central Management Unit The Arches, Bloomfield Avenue, BT5 5TW NIO, London	Donna Knowles Susan Nicholson
Equality Unit	Chris Flatt Brian Porter

#### **The Commission**

Director of Policy	Grainia Long
Head of Policy and Development	Antoinette McKeown
Chief Executive ECNI	Evelyn Collins
Policy Officer	Judith Cross

#### **VOLUNTARY AND COMMUNITY ORGANISATIONS**

The Equality Coalition	Tim Cunningham
Northern Ireland Law Centre	Ursula O'Hare
Children's Law Centre	Natalie Strain/ Paddy Kelly
NI Council for Voluntary Action	Anne Moore
NI Anti-Poverty Network	Frances Douds
NICVA/ Institute of Governance	Bronagh Hinds

#### **RESEARCHERS & OTHERS**

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Simon Bridge Associates	Irene Kingston