

Equality Commission

FOR NORTHERN IRELAND

# Effective Section 75 Equality Assessments: Screening and Equality Assessments

**T**he Equality Commission provides advice and support to aid public authorities' compliance with their responsibilities under Section 75 of the Northern Ireland Act 1998 ("the Act").

This includes the provision of advice on conducting screening and Equality Impact Assessments (EQIAs) and complying with equality scheme commitments in this regard.

*Evidence from the Commission's ongoing advisory role and recent research<sup>1</sup> suggests that, while there is some good screening practice, there is also evidence that in some cases screening exercises are not meaningful and have become a 'tick box' process. Evidence also suggests that the number of EQIAs conducted by public authorities is low.*

**Who is this guidance for?** This guidance is primarily intended to provide clarity for equality practitioners and policy makers with regards to screening and EQIA requirements.

The Commission reiterates that strong leadership is necessary within public authorities to ensure that the Section 75 duties are integrated into core business activities and put into effective and visible practice. Effective implementation should be assured by ongoing top level commitment, allocation of necessary resources, establishment of clear lines of responsibility, effective communication, training and systems for monitoring progress<sup>2</sup>.

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<sup>1</sup> Section 75 Screening and Equality Impact Assessment: A Review of Recent Practice. Policy Arc Limited and Kramer Consultancy Services Ltd, June 2016

<sup>2</sup> Section 75 of the Northern Ireland Act 1998: A Guide for Public Authorities, Equality Commission for Northern Ireland, April 2010

**What is the aim of this guidance?** This guidance aims to highlight particular aspects of [existing Commission guidance](#) on conducting equality screenings and EQIAs, focusing on those areas of the processes where it appears that practices may not comply with equality scheme commitments. Further detailed advice on conducting screenings and EQIAs is contained in existing Commission guidance<sup>3</sup>.

## Summary

- **What is the purpose of conducting equality assessments (EQIA/screening)?** An equality assessment (EQIA/screening) is a policy development tool which assists policy makers/decision makers to take into account the needs and effects of a particular policy on people within the Section 75 equality groups. Equality assessments (EQIA/screening) enable openness, transparency and early engagement in the policy development process.
- **What is the purpose of screening?** Screening identifies policies that are likely to have an impact on equality of opportunity<sup>4</sup> and helps to draw considerations of equality of opportunity into the policy making process. It is one of the two methods by which the necessary level of “regard” is demonstrated as being paid to the statutory equality duty and public authorities must follow the arrangements contained in equality schemes. Screening should be proportionate in enabling public authorities to assess the level of relevance that a proposed policy has to the statutory goal (i.e. the need to promote equality of opportunity) and should enable consideration of any equality impacts, mitigation measures and/or opportunities to further promote equality of opportunity.
- **What policies should be screened?** Where a decision or activity, proposed or existing, comes within the definition of ‘policy’, then in accordance with equality scheme commitments, it should be subject to equality screening and/or EQIA before it is adopted or implemented.

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<sup>3</sup> Section 75 of the Northern Ireland Act 1998: A Guide for Public Authorities, Equality Commission for Northern Ireland, April 2010. Section 75, Northern Ireland Act 1998 and Section 49A Disability Discrimination Act 1995. The public sector equality, disability and good relations duties. A series of short guides. June 2015. Section 75 of the Northern Ireland Act. Guidance on Conducting a 5 Year Review of an Equality Scheme, 2016.

<sup>4</sup> Most designated public authorities have committed to using the Commission’s recommended tools of screening and equality impact assessment in respect of the equality of opportunity duty and the good relations duty. This briefing primarily refers to the Section 75 (1) duty, i.e. in respect of the equality of opportunity duty and is also relevant to good relations where the public authority scheme uses these tools in respect of the Section 75 (2) duty, i.e. the good relations duty.

- **When should screening take place?** Screening must be taken into account by policy makers before and at the time that a particular decision or policy is being considered, and not afterwards.
- **Who screens a policy?** The main decision maker in relation to the policy under consideration i.e. a manager with the authority to make changes to the policy should have a lead role in the screening process.
- **How does Section 75 apply where more than one public authority has responsibility for a policy being developed / reviewed?** Each public authority should satisfy itself that it has paid the appropriate level of regard to the equality of opportunity goal that is necessary to comply with the equality duty and that it has complied with its own scheme commitments.
- **What processes should a public authority use for screening and/or EQIA?** Most public authorities have committed, in their equality schemes, to conduct their screening exercises and EQIAs in a prescribed manner and it is important that these processes are adhered to<sup>5</sup>.
- **What assessments are required?** Equality scheme commitments require public authorities to determine if there are any impacts on equality of opportunity and if there are opportunities to better promote equality of opportunity between people within the Section 75 equality categories.
- **When should an EQIA be conducted?** Where screening would not be an adequate means of gathering the information that is needed to assess the relevant equality impacts or opportunities, the public authority should proceed to do an EQIA. When making a screening decision and considering whether to conduct an EQIA, public authorities should follow their equality scheme arrangements.
- An EQIA is likely to be necessary:
  - where the policy is highly relevant to the promotion of equality of opportunity
  - where it affects a large number of people

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<sup>5</sup> Screening Flowchart and Template issued by the Equality Commission ( [Annex 1, pages 51 to 73 of the main Section 75 Guide](#)) and. the step-by-step process outlined in the Equality Commission's publication, [Practical Guidance on Equality Impact Assessment \(2005\)](#).

- where it affects fewer people but where its impact on them is likely to be significant.
- where it is a strategic policy or has a significant budget attached and
- where further assessment provides a valuable opportunity to examine evidence and develop recommendations.
  
- **Effective equality assessments (screening/EQIA) include:**
  - **Ensuring Adequate Data:** Screening decisions based on relevant information and evidence.
  - **Assessing Impacts:** The policy maker seeking out opportunities to better promote equality of opportunity; not simply determining adverse impacts or neutral impacts of a policy.
  - **Conducting an EQIA:** Doing an EQIA where the policy is highly relevant to the promotion of equality of opportunity.
  - **Engaging with those directly affected:** Early, ongoing and meaningful engagement with those directly affected by a proposed policy.
  - **Monitoring and Publishing:** Section 75 monitoring arrangements – to monitor the actual impacts of any policy adopted by the public authority on the Section 75 groups.
  - **Maintaining records:** it is good practice to keep adequate records that show that the public authority has considered the statutory goals. This includes the information to inform the public authority’s decision making process as to whether to screen the policy in for an EQIA or not and the identification of mitigation measures. The maintenance of adequate records promotes transparency and discipline in the decision making process.

### Equality Assessments: Complying with Equality Scheme Commitments

Public authorities are required<sup>6</sup> to establish arrangements for assessing and consulting on the likely impact of their policies on the promotion of equality of opportunity. These arrangements are outlined in a public authority's equality scheme and policy makers are obliged to follow these procedural arrangements when developing and making new policies or when revising existing ones<sup>7</sup>.

An equality assessment (EQIA/screening) works best when used as a policy development tool to assist policy makers/decision makers to take into account the needs and effects of a particular policy on people within the Section 75 equality groups.. Equality assessments (EQIA/screening) enable openness, transparency and early engagement in the policy development process.

### What is the Purpose of Screening?

- Screening has a number of purposes:
  - It identifies those policies likely to have an impact on equality of opportunity<sup>8</sup>.
  - When used appropriately, screening is an analytical tool which helps to draw considerations of equality of opportunity into the policy making process.
  - Screening is the first of the two methods by which the necessary level of “regard” is demonstrated as being paid to the statutory equality goal. Screening provides evidence that the decision-maker has paid some regard to the need to promote equality of opportunity, though not necessarily the appropriate level of ‘regard’.

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<sup>6</sup> Schedule 9 of the Northern Ireland Act 1998 4(2)(b)

<sup>7</sup> Most designated public authorities have committed to using the Commission's recommended tools of screening and equality impact assessment in respect of the equality of opportunity duty and the good relations duty. This briefing primarily refers to the Section 75 (1) duty, i.e. in respect of the equality of opportunity duty and is also relevant to good relations where the public authority scheme uses these tools in respect of the Section 75 (2) duty, i.e. the good relations duty.

<sup>8</sup> Section 75 of the Northern Ireland Act 1998: A Guide for Public Authorities, Equality Commission for Northern Ireland, April 2010, page 54

- Screening practices must follow the arrangements contained in equality schemes and should be proportionate to enable public authorities to assess the level of relevance that a proposed policy has to the statutory goal (i.e. the need to promote equality of opportunity). Screening should consider equality impacts, mitigation measures and/or opportunities to further promote equality of opportunity. The higher the level of relevance of a policy to the promotion of equality of opportunity, then the more detailed the consideration of those matters will be required. When screening, the public authority will need to consider whether it would be proportionate to conduct an EQIA in order to adequately consider the equality impacts, mitigation and/or opportunities to further promote equality of opportunity.

### What policies should be screened?

- In the context of equality schemes, a “policy” is a trigger for the screening process. Public authorities have adopted the Commission’s definition of a ‘policy’ as, ‘denoting any strategy, policy (proposed / amended / existing) or practice and/or decision, whether written or unwritten’<sup>9</sup>. A policy is therefore wide ranging and may include such matters as planning decisions, corporate strategies, ‘temporary’ policies and service charges.
- Public authorities are required to have the appropriate level of regard to the ‘statutory goals’ when they are carrying out any relevant function in Northern Ireland.
- Where a decision or activity, proposed or existing, comes within the definition of a ‘policy’, then in accordance with equality scheme commitments, it should be subject to equality screening and/or EQIA before it is adopted or implemented.

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<sup>9</sup> [Section 75: A Guide for Public Authorities \[2010\] at pages 29-31](#)

- Screening and/or EQIA should be applied to strategic and high level policies. Such policies are likely to have several stages of development, review and/or implementation and screening should be conducted at each of these stages.
- Public authorities should take care not to ‘screen out’ policies that have an employment or procurement aspect if there is the potential to promote equality of opportunity. Likewise, budgetary decisions which may impact on the delivery of services, for example, reducing services for some people, should be subject to screening. Further information can be found [here](#).
- It is good practice to consider policies and practices with similar aims and objectives within a strategic framework for screening and/or EQIAs. This enables a public authority to adopt a consistent and coherent approach to policy development.

### When should screening take place?

- Screening must be taken into account by policy makers before and at the time that a particular decision or policy is being considered, and not afterwards. This principle is established in case law<sup>10</sup> and is contained in equality scheme commitments.
- To ensure compliance with this principle, equality schemes typically specify that screening will be completed at the earliest opportunity in the policy development or review process. This helps to ensure that the policy itself and alternative options are still under active consideration and is at a time when mitigating measures or alternative policy proposals can be given realistic consideration.
- When a policy is being consulted on as part of the policy development process, it is important that the screening exercise is issued alongside any policy documentation

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<sup>10</sup> Section 75 of the Northern Ireland Act 1998: A Guide for Public Authorities, Equality Commission for Northern Ireland, April 2010, page 54

as part of the consultation process, to ensure the equality assessment is clear.

### Who screens a policy?

- The main decision maker in relation to the policy under consideration i.e. a manager with the authority to make changes to the policy should have a lead role in the screening process. It is ultimately for each public authority to decide who conducts the relevant data gathering and analysis to support the screening exercise in the knowledge that the screening may provide the main source of information to ensure that the appropriate level of regard is paid when developing the policy.
- Each stage of the screening process should be authorised by the appropriate senior manager, with other senior managers, including, for example, the Senior Management Team and Board being made aware of screening exercises undertaken and their outcomes.
- The screening of a policy may also involve other relevant team members, those who implement the policy and staff members from other relevant work areas. It may be helpful to include key stakeholders in the screening process.
- Although the nature of the decision-making process will differ depending on the policy area and the public authority, the general rule applies that decision-makers must be made aware of their Section 75 duties prior to making a decision about a proposed policy and the data, its analysis and conclusions must be brought to their attention<sup>11</sup>. Thus while it is unlikely that Ministers or Councillors will be directly involved in the gathering and analysis of relevant data they must nevertheless be aware of their Section 75 duties and what this entails.

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<sup>11</sup> “*Decision-making bodies in the position of the [council] here are not required to give personal detailed attention to every strand of fact and argument capable of bearing on the decision they are making. But they are required to have drawn to their attention the main lines of relevant debate.*” – see R (007 Stratford Taxis)-v- Stratford-upon-Avon Council [2011] EWCA Civ 160



- Where more than one public authority has some responsibilities for developing a policy each public authority should satisfy itself that it has paid the appropriate level of regard to the equality of opportunity goal that is necessary to comply with the equality duty and that it has complied with its own scheme commitments. The level of regard required may differ for each public authority depending on, for example, respective functional responsibilities. Public authorities should share information and work collaboratively with other public authorities who may have some responsibility or interest with regard the policy being developed.
- It would be permissible for a public authority to delegate certain tasks to another public authority (or to a consultant), such as data analysis, consultation, or even screening. The delegating authority must be satisfied that the delegated work is conducted to an adequate standard, i.e. a standard that adequately addresses, gathers and analyses the information that is needed by the ultimate decision-maker. The authority must also ensure that the ultimate decision-maker of the policy appropriately considers the data, with rigour and an open-mind, before and at the time that it makes the relevant decision and not after.

### **What processes should a public authority use for screening/EQIA?**

- Most public authorities have committed, in their equality schemes, to conduct their screening exercises and EQIAs in a prescribed manner i.e. the systematic, written process outlined in a Screening Flowchart and Template issued by the Equality Commission ( [Annex 1, pages 51 to 73 of the main Section 75 Guide](#)) and the step-by-step process outlined in the Equality Commission's publication, [Practical Guidance on Equality Impact Assessment \(2005\)](#).
- Maintaining records: it is good practice to keep adequate records that show that the public authority has considered the statutory goals. This includes the information to inform the public authority's decision making process as to whether to screen the policy in for an EQIA or not and the identification of mitigation measures. The

maintenance of adequate records promotes transparency and discipline in the decision making process.

## Ensuring Effective Equality Assessments: Screening/EQIA

### Ensuring Adequate Data

- Public authorities should ensure that screening decisions are based on relevant information, which may be qualitative and/or quantitative. Examples of the sources of information/data include:
  - Information obtained from consultation (qualitative and/or quantitative).
  - statistical data held in respect of the policy, (eg NISRA equality information).
  - Information from authorities' audits of inequalities.
  - Relevant policy positions available from a number of sources e.g. Equality Commission policy positions. See [ECNI Website](#)
  - Information that those who have experience of the operation of the same or similar policies – this would include information from other authorities.
- It is important that the information is relevant to the policy being screened and not generic data on that Section 75 group. Relevant information will enable a public authority to clearly demonstrate the reasons for a policy being 'screened in' for equality impact assessment, 'screened out' from an equality impact assessment and the identification (or not) of appropriate mitigation measures or alternative policy proposals.
- The absence of information does not necessarily indicate that there are no impacts or no opportunities to better promote equality of opportunity. A public authority should make arrangements to obtain relevant information, whether quantitative or qualitative. In the event of data not being available the Commission recommends that the public authority considers impact assessing the policy as a way of further

investigating its impact<sup>12</sup>. Any appropriate action required to address data gaps should also be identified and be recorded in the Monitoring section of the screening template.

## Assessing Impacts

- Equality scheme commitments require public authorities to determine if there are any impacts on equality of opportunity and if there are opportunities to better promote equality of opportunity between people within the Section 75 equality categories. As such, even where a policy's aim is to (directly or indirectly) promote equality for one or more of the equality groups and no adverse impacts are identified on any of the equality grounds, it may still be proportionate to further examine the policy (by conducting an EQIA) to consider if there are opportunities to better promote equality of opportunity.

## Conducting an equality impact assessment

- When making a screening decision and considering whether to conduct an EQIA, public authorities should follow their equality scheme arrangements.
- An EQIA is likely to be necessary:
  - where the policy is highly relevant to the promotion of equality of opportunity
  - where it affects a large number of people
  - where it affects fewer people but where its impact on them is likely to be significant.
  - where it is a strategic policy or has a significant budget attached and
  - where further assessment provides a valuable opportunity to examine evidence and develop recommendations

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<sup>12</sup> Section 75, A Guide for Public Authorities, ECNI, Page 64 Paragraph (b)

### Engaging with those directly affected

- Consultation must be done where an EQIA is undertaken. In such situations the duty will follow from the equality scheme commitment to conduct the EQIA in accordance with the procedure outlined in the Equality Commission's publication, [Practical Guidance on Equality Impact Assessment \(2005\)](#).
- Consultation should entail early, ongoing and meaningful engagement with those directly affected by a proposed policy. Decision-makers should consider and balance factors such as whether they can duly have regard to the relevant equality impacts and opportunities in the absence of the information that would be gathered through a consultation exercise and whether the consultation is proportionate to the scale and nature of the policy decision in question.

### Monitoring and Publishing

- Public authority equality schemes include arrangements for monitoring any adverse impacts of policies adopted and for publishing such assessments and monitoring information<sup>13</sup>. Public authorities are therefore obliged to ensure that the specific monitoring arrangements are in place before a policy is implemented. These should be recorded on the monitoring part of the screening template.
- In publishing information, public authorities must also comply with the commitments made in their equality schemes. Most public authorities have committed in their schemes to monitoring more broadly and proactively in regard to Section 75 and publishing this information also. Further information can be found in the Commission's [monitoring guidance](#).

### And finally.....

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<sup>13</sup> Schedule 9, paragraph 4(2)(b)-(d)

## Clarity of language in implementing the Section 75 Duties

- Public authorities often use terminology in relation to their Section 75 duties which has relevance to the public authority and the policy being developed, for example, referring to the screening and/or EQIA as 'Initial', 'High Level' or 'Ongoing'. It is important that public authorities clarify, as part of the equality assessment (screening/EQIA), how such terms relate and adhere to their equality scheme commitments.

## Outcomes Based Accountability and Section 75

- The Outcome Based Accountability (OBA) approach to the Programme for Government is anticipated to continue and is welcomed by the Commission in terms of its potential for improving people's lives and embedding an inclusive approach to policy development.
- It is important that the data development and evidence base required for OBA, is analysed by the section 75 categories and that each public authority clearly demonstrates that it is paying the appropriate level of regard and is complying with its equality scheme commitments in the context of the OBA approach to policy development.

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