

## The Section 75 duties when developing Covid-19 related policies

In these unprecedented times, the Commission recognises that policymakers may need to make quick and often challenging policy decisions. Yet, even if justified by the needs of the moment, it is important to recognise that such decisions may have different impacts on different groups of people. It is important that public authorities recognise that the duties set out in Section 75 of the Northern Ireland Act 1998 continue to apply, even when implementing Covid-19 related policies. These duties provide a mechanism to identify and mitigate any adverse impacts of policies being developed and are important duties, particularly at a time of crisis and when policies need to be developed at pace.

### The Section 75 duties – a summary

- Public authorities are required to have **due regard to the need to promote equality of opportunity** between people in relation to nine specific categories<sup>1</sup> and **regard to the desirability of promoting good relations** between people in relation to three specific categories.<sup>2</sup>
- The need to promote equality of opportunity and the desirability of promoting good relations are, thus, statutory goals that must be given appropriate consideration with a view to taking action, if possible, to achieve them.
- When developing a new policy, this means giving those goals a level of consideration that is proportionate to the proposed policy's relevance to equality of opportunity and good relations. Where a large number of people are likely to be adversely affected by the policy, then the level of consideration needed is likely to be proportionately high.
- The duties are continuing and they require public authorities to consider the statutory goals **during** the decision-making process, **not afterwards**. The

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<sup>1</sup> The nine *equality of opportunity* categories are people of different religious belief, political opinion, racial group, age, marital status, sexual orientation, men and women generally, people who are disabled and those who are not and people who have dependants and those without.

<sup>2</sup> The three *good relations* categories are people of different religious belief, political opinion, and racial group.

exercise must be undertaken in substance and with an open mind. It must not be a tick-box exercise.

- To help to fulfil these two duties, each public authority has established a set of procedural arrangements, and these are outlined in its **equality scheme**. Each scheme details a number of matters, including procedures for screening and impact assessing proposed policies, together with arrangements for conducting any associated consultation exercises.

Public authorities should continue to follow their equality scheme arrangements in full in relation to any proposed policies that are not related to the ongoing Covid-19 crisis; such as policies that are being developed regardless of the crisis and which are not intended to alleviate or deal with the consequences of the crisis.

### **The Section 75 duties when developing Covid-19 related policies**

The Section 75 duties continue to apply at this time. The Commission has no legal authority to revoke them, or to suspend their operation at any time, including the present. Therefore, all of the advice provided above remains applicable and decisions made by public authorities when developing Covid-19 related policies may still be subject to challenge for alleged breaches of the duties. Such challenges may be by way of applications for judicial review or through complaints to and investigations by the Equality Commission. It would, therefore, be prudent for public authorities to be able to demonstrate how they have met their equality scheme commitments.

The remainder of this advice note recognises the exceptional context in which some public authorities may be working to ensure policies are in place to deal with Covid-19. Some of these policies may relate to the powers derived from the Coronavirus Act 2020, which has made some temporary changes to statutory law to help public authorities to cope with the current challenges by modifying or alleviating some of their legal duties. No such changes have been made in relation to the Section 75 duties or to the anti-discrimination laws.

### **Screening and Equality Impact Assessments of proposed policies**

Each public authority's equality scheme commits it to screen proposed policies in the first instance, and subsequently, where appropriate, to conduct equality impact assessments.

Screening is one of the key tools to enable public authorities to fulfil their statutory obligations and mainstream the Section 75 duties into policy development. It provides an opportunity to identify policies that are likely to have an impact on equality of opportunity and helps to draw considerations of equality of opportunity into the policy making process.

We recognise that the development of policies that are intended to alleviate and/or deal with the consequences of the Covid-19 crisis, and that need to be developed and implemented with the utmost urgency, may be occasions where a public authority's commitment to following the screening arrangements outlined in its equality scheme may permit some modification.

In relation to any such urgent Covid-19 related policies, we recommend that public authorities continue to try to focus on the duties, as far as is practicable, and be able to demonstrate this with a written record. For example, screening should at least begin when a policy is being developed and, if the screening cannot be completed before the policy is implemented, regular ongoing monitoring and screening should be undertaken to examine any equality impacts. Such information should be used to review the operation of the policy and in any future decision-making as to whether to extend and/or continue the policy or not. Throughout this process, it is especially important to give due consideration to mitigating the anticipated or actual adverse equality impacts of the proposed policies. When making these assessments, public authorities should try, as far as is practicable, to base their decisions on relevant information.<sup>3</sup>

If, in the course of a screening exercise, a public authority decides that it would be appropriate to proceed to do an EQIA in relation to a proposed policy, the Commission would expect it to be conducted according to the public authority's equality scheme arrangements.

In the context of Section 75, if a **consultation** exercise is to be conducted around the present time, it will likely be done as part of an EQIA. The question of whether the usual EQIA consultation arrangements may be modified (e.g. a shorter consultation period) will depend on what each public authority's equality scheme arrangements allow. Most, if not all, public authorities' current schemes allow for some such modifications in special circumstances, including to address urgent public health matters. Clearly, the present is such a time.

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<sup>3</sup> A range of data has been collated and published by a number of reliable external sources relating to the Coronavirus pandemic such as NISRA and the Office for National Statistics. The Commission has also collated a number of data sources into one document and will make this available on our website.

## **Annual progress reports**

Each public authority's equality scheme commits it to preparing an annual report detailing the progress they have made in implementing their equality schemes, and to send a copy of that report to the Equality Commission by no later than 31 August each year. All such reports should be prepared in conformity with any guidance issued by the Equality Commission.

## **Further advice and assistance**

The Commission continues to provide advice to public authorities during this time and our advice lines remain open.

Public authorities seeking advice should call 028 90 500 600 and ask for **Advice and Compliance** team, or you can email [information@equalityni.org](mailto:information@equalityni.org) and we will answer as soon as possible. Individual members of staff can also be contacted on their direct lines or by email. Our [website](#) remains up to date, as do our social media channels on [Twitter](#) and [YouTube](#).