

## EQUALITY COMMISSION FOR NORTHERN IRELAND

### Final Report of Commission Investigation under Paragraph 11 of Schedule 9 of the Northern Ireland Act 1998

#### NORTHERN IRELAND OFFICE (NIO) (BY WAY OF NORTHERN IRELAND COMMISSIONER FOR CHILDREN & YOUNG PEOPLE (NICCY)

#### SUBJECT OF INVESTIGATION

This investigation relates to the period of time allowed by the Northern Ireland Office (4 weeks increased to 5) on the legislative stage of the Anti-Social Behaviour Order(ASBO) proposals. The Northern Ireland Office consulted on the ASBO policy proposals for some 12/13 weeks, which led to a decision to screen the policy out for Equality Impact Assessment. It then issued a draft Order in Council, which it consulted upon for four weeks, subsequently increased to five.

The NIO's scheme, paragraph 4.1, commits it to consult on the following matters;

*“matters relating to the duties*

*The Equality Scheme*

*Screening*

*Impact Assessment”.*

In **paragraph 4.5** it makes the following further commitment;

*“.....the department will also, from time to time, have a need to consult on legislation ...”.*

At **paragraph 4.6** it further commits;

*“In consulting representative groups of the s.75 categories the Department will aim to provide a period of response of at least 8 weeks and to begin consultation as early as possible. However, exceptionally, there may be circumstances when this timescale is not feasible; and the Department has identified the following circumstances when consultation of this duration will not be possible:*

- The urgent protection of life or property*
- Policies responding urgently to changes in the political situation; and*
- Policies which must be implemented urgently to comply with Court judgement or with international obligations;*

*When this occurs it will be justified very clearly, carefully monitored, kept under review, and explained in the next Annual Report”.*

The Commission considered that the matter raised by the Northern Ireland Commissioner for Children and Young People identified a potential failure by the Northern Ireland Office to comply with its commitment to “aim to allow” eight weeks for consultation, or justify and explain why such consultation was not possible, and Investigation of same was authorised under paragraph 11.

## **INVESTIGATION FINDINGS**

The Northern Ireland Office made the case that the purpose of its reference to “legislation strategies, reviews and other plans” in paragraph 4.5 of its equality scheme was to include matters for consultation that do not fall within its equality scheme definition of policy. It argued that the purpose is to identify “stand-alone considerations” from policy considered under the Scheme. The Northern Ireland Office argues that the development of the policy on ASBOs does not fall within the “stand-alone” matters and therefore did not fall within the ambit of paragraph 4.5.

The Northern Ireland Office emphasised that it consulted on the (entire) policy process on ASBOs (initial policy proposals and subsequent legislative stages) for longer than the 8 weeks required by the Guide to the Statutory Duties and the longer 12 weeks stipulated in the Cabinet Office Guidelines. It states that the latter Guidelines are clear that there is no requirement to consult at every stage

and state that such a requirement would significantly slow down government business.

The Commission considered the Guide to the Statutory Duties which states;

*“Adequate time should be allowed for groups to consult amongst themselves as part of the process of forming a view. The Commission recommends a period of at least two months for consultation exercises”.*

The Commission did not consider that the Guide made it clear that the minimum 8 week period is required for each separate consultation exercise involved in the process of policy development, thereby requiring the minimum 8 week period for consultation on the policy proposals, and then a second minimum 8 week period for the legislative stage.

The Commission concluded that a failure to comply with the Northern Ireland Office’s equality scheme had not been established, on the basis that the scheme does not clearly state that it must consult for at least 8 weeks on each stage of policy development.