



SECTION 75

Section 75 of the Northern Ireland Act 1998:
A Guide for Public Authorities
An Outline Guide

Equality Commission

FOR NORTHERN IRELAND

Further information and advice

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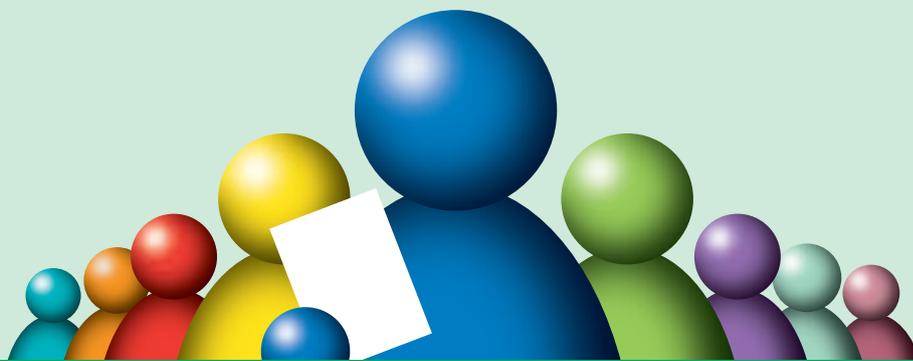
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Contents

1. Introduction	2
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2. Leadership and Commitment	3
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3. Northern Ireland Act 1998 – scope of the legislation	5
<hr/>	
4. What are Public Authorities required to do? Statutory requirements and Commission advice	8
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Introduction

The Commission has produced a revised Guide to the Section 75 Statutory Duties (the Guide¹), approved by the Secretary of State for Northern Ireland in April 2010. The Guide provides detailed guidance for public authorities on the effective implementation of the Section 75 duties arising out of the Northern Ireland Act 1998, including guidance on the form and content of public authority *equality schemes*².

The decision to review and revise the Guide follows the conclusion of the Section 75 Effectiveness Review³ which the Commission undertook between 2006-2008, in order to assess the effectiveness of the legislation. The effectiveness review highlighted that *strong leadership* is necessary within public authorities in particular, to ensure that the Section 75 statutory duties are integrated into core business activities and put into effective and visible practice.

This publication is a summary of the key issues outlined in the Guide that leaders, decision makers and senior policy makers within public authorities need to know. However, it is also a useful document for leaders and practitioners within the Community and Voluntary sector, in order to highlight the opportunities for engagement with the public sector in the effective implementation of the duties.

It provides a brief overview of the scope of the legislation as well as highlighting the requirements and the recommendations for effective implementation of the Section 75 statutory duties by public authorities. It focuses on the elements of the legislation which require active demonstration of leadership and commitment.

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- 1 Equality Commission for Northern Ireland (ECNI), Section 75 of the Northern Ireland Act 1998 – A Guide for Public Authorities, April 2010 (the Guide).
 - 2 ECNI, the Guide, Chapter 6, Page 32.
 - 3 ECNI, Keeping it Effective: Reviewing the Effectiveness of Section 75 of the Northern Ireland Act 1998 – Final Report (November 2008).



Leadership and Commitment

Section 75 was intended to be transformative. Its aim was to change the practices of government and public authorities so that equality of opportunity and good relations are central to policy making, policy implementation, policy review and service delivery.

The Section 75 statutory duties aim to encourage public authorities to address inequalities and demonstrate measurable positive impact on the lives of people experiencing inequalities. Its effective implementation should improve the quality of life for all of the people of Northern Ireland.

Leadership and commitment provided at the highest levels in a public authority, for example, Minister and Permanent Secretary or Chair and Chief Executive are critical to the successful achievement of the intended outcomes of Section 75.

Effective implementation of the Section 75 statutory duties can be attained if there is ongoing top-level commitment within public authorities to:

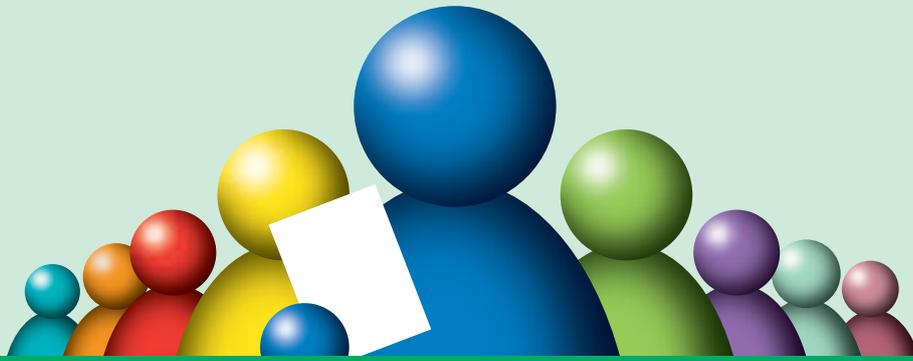
- The production of an effective *equality scheme*, that conforms to the Commission's Guide.
- The *allocation of necessary resources*, establishment of clear lines of responsibility, effective communication and training, and a system or systems for monitoring and ensuring progress.
- Mainstreaming of the Section 75 statutory duties through the evaluation of all policies at all levels and at all stages, for their likely impact on the promotion of equality of opportunity and good relations, using the tried and tested tools of *screening and equality impact assessment (EQIA)*.⁴

4 For further information on Mainstreaming see ECNI, the Guide, Pages 8-9 and 86.

- Undertaking an *audit of inequalities* which is relevant to the public authority's functions and developing *action measures / action plans* that contribute to addressing these inequalities.
- The *discharge of both* of the Section 75 (1) and (2) duties to promote equality of opportunity and good relations. The promotion of equality of opportunity and good relations entails more than the elimination of discrimination. It requires public authorities to seek out opportunities to promote equality of opportunity and good relations and may require taking proactive measures.

The Commission's Section 75 Effectiveness Review found that public authorities have focussed mainly on the equality of opportunity duty. It is vital that public authorities also focus on the good relations duty as it too is a legal requirement.

Commitment by leaders of public authorities to all of the requirements *and* recommendations of the revised Guide, outlined in this summary document, should have a real and tangible impact on reducing inequalities that exist for people within Northern Ireland.



Northern Ireland Act 1998 – scope of the legislation

Section 75 Statutory Duties

Section 75 of the Northern Ireland Act 1998 (the Act) requires public authorities designated⁵ for the purposes of the Act to comply with two statutory duties.

- (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.

The promotion of equality of opportunity entails more than the elimination of discrimination. It requires proactive action to promote equality of opportunity between the categories identified in Section 75 (1).

The equality duty encourages a public authority to take action to address inequality among the specified groups.

- (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.

The Commission emphasises that the good relations duty embraces and extends beyond the religious / political dimension of ‘community relations’. Consideration of the needs and interests of all minority ethnic groups is also important in this context.

Due regard and Regard⁶

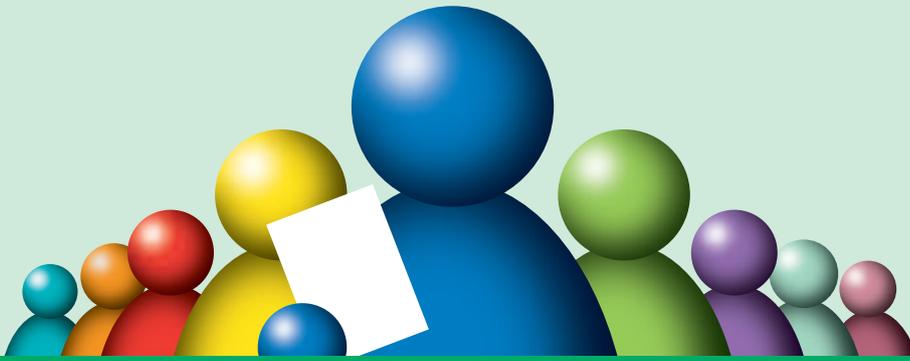
Having ‘due regard’ and ‘regard’ means that the weight given to the need to promote equality of opportunity and good relations is proportionate to the relevance of the particular duty, to any function of a public authority.

Therefore, having ‘due regard’ or ‘regard’ entails taking a proportionate approach in determining the relevance of equality of opportunity and / or good relations to a particular function or policy.

Relationship between the Section 75 (1) and (2) duties

The term ‘due regard’ was intended to be, and is, stronger than ‘regard’, but in either case an authority is required by the Act to take them into account and give them the required weight when carrying out its functions relating to Northern Ireland. Recognition of the inter-dependence of equality and good relations is crucial.

6 ECNI, the Guide, Chapter 5, Page 27.



Both duties always apply. Where a public authority may perceive a tension between the two duties, it should be noted that both duties have to be discharged in all circumstances. What Section 75 provides is that the discharge of the good relations duty cannot be an alternative to or cannot set aside the equality of opportunity duty.

Schedule 9

Schedule 9 of the Northern Ireland Act 1998 sets out a range of requirements, on public authorities, to give effect to the duties under Section 75. In particular it requires that public authorities develop an equality scheme which details how they propose to fulfil the duties imposed by Section 75 in relation to their relevant functions.



What are Public Authorities required to do?

Statutory requirements and Commission advice

Public authorities in carrying out their functions relating to Northern Ireland are required by the Section 75 statutory duties, to have due regard to the need to promote equality of opportunity between the nine equality categories and have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group.

To implement the Section 75 statutory duties, designated public authorities are required to prepare and submit an equality scheme⁷ which conforms to Commission guidance (the Guide). An equality scheme is a statement of the public authority's commitment to fulfilling its Section 75 statutory duties. The equality scheme is an important written document which must be submitted to and approved by the Commission.

The Commission is of the view that the following statutory requirements and statutory advice should be incorporated into a public authority's equality scheme to ensure the effective discharge of the Section 75 statutory duties.

7 ECNI, The Guide, Chapter 6, Page 32.

The public authority's arrangements for assessing its compliance with the Section 75 statutory duties and for consulting on matters relevant to the duties;

This section of an equality scheme must include how a public authority intends to assess its compliance with the Section 75 statutory duties and details of arrangements for consultation. The legislation requires consultation on the equality scheme itself, on the impact of policies and on matters to which the Section 75 statutory duties are likely to be relevant.

The Commission recommends that a public authority commits to consult with people directly affected by any policy to be assessed and that consultations will be conducted in accordance with the consultation recommendations detailed in Chapter 7 of the Commission's Guide, including a consultation period of 12 weeks.

The Commission recommends that an equality scheme includes a general introductory statement, including a specific statement of leadership commitment to the Section 75 statutory duties e.g. allocation of necessary resources in terms of people, time and money, to the Section 75 statutory duties and that this is signed off at the most senior level within the public authority.

An outline of internal arrangements should also be included in the equality scheme. It is important that a public authority designates primary responsibility for the duties to a specific senior member of staff, operating at Board level, with clear lines of responsibility throughout the organisation, to ensure accountability.

The Commission also recommends that public authorities include in their equality scheme a commitment to developing action measures / action plans, relative to the functions of the public authority, detailing actions to promote equality of opportunity and good relations.

Action measures / action plans should be developed in parallel to the mainstreaming of the Section 75 duties through the evaluation of all policies using the tools of screening and EQIA. Action plans should outline the desired outcomes, for the Section 75 equality and good relations categories, a public authority aims to achieve with related performance indicators and timescales.

Further guidance on the development of action measures / action plans is outlined in Chapter 8 of the Guide. One of the key steps in relation to the development of action measures / action plans is to provide an evidence base by undertaking an audit of inequalities i.e. a systematic review and analysis of inequalities which exist for service users and those affected by a public authority's functions.

The Commission recommends that public authorities should include in their equality scheme a commitment to conducting an annual review of progress, by the 31 August each year, on the implementation of their equality scheme, including progress on delivery of actions they have identified to promote equality of opportunity and good relations. This will assist leaders in organisations to assess their organisation's progress in relation to the Section 75 Statutory Duties.

The public authority's arrangements for assessing and consulting on the likely impact of policies on the promotion of equality of opportunity;

Public authorities are required by the legislation to assess and consult on the likely impact of their policies on the promotion of equality of opportunity. An equality scheme must specify how the public authority is going to assess the likely impact of policies on the promotion of equality of opportunity and how they will consult on the likely impact of policies.

The Commission recommends *screening*⁸ and *equality impact assessment*⁹ as tools to be utilised for assessing the likely impact of a policy on the promotion of equality of opportunity and on good relations and that public authorities commit in their equality scheme to using these tried and tested tools. If screening identifies that a policy has a major potential to impact on equality of opportunity and good relations, then it should be subjected to an equality impact assessment.

It is important that public authorities, when assessing policies, commit to doing so at the start of the policy development process, rather than when the policy has been established. It is also important to remember that the assessment of the policies includes the assessment of any high level strategy / policies as well as those developed at other stages of implementation.

The lead role in the assessment of policies e.g. screening of a policy should be taken by the policy decision-maker with the authority to make changes to that policy and a copy of any screening exercise of a policy should be 'signed off' and approved by the senior manager responsible for the policy.

The public authority's arrangements for monitoring any adverse impact of policies on the promotion of equality of opportunity;

Public authorities must outline their monitoring arrangements in their equality scheme. Public authorities must monitor any adverse impact of policies adopted.

In addition, the Commission recommends that a public authority makes a commitment to monitoring more broadly than for adverse impacts. Monitoring can assist public authorities to deliver better public services and continuous improvements. The Commission recommends that public

8 ECNI, the Guide, Annex1, p51.

9 ECNI, Practical Guidance on Equality Impact Assessment (2005).

authorities monitor policies to identify opportunities to better promote equality of opportunity and good relations¹⁰.

The public authority's arrangements for publishing the results of assessments of policies;

An equality scheme must state how an authority will publish the results of assessments and publish the results of monitoring adverse impacts of policies adopted.

The public authority's arrangements for training staff on issues relevant to the duties;

This section of the equality scheme must state the public authority's arrangements for the training of staff on both the equality of opportunity and good relations duties.

The public authority's arrangements for ensuring and assessing public access to information and to services provided by the authority;

This section of the equality scheme must specify how the authority will ensure that both the information which it disseminates and the services which it provides are made accessible in a way which promotes equality of opportunity.

The public authority's arrangements for dealing with complaints arising from a failure to comply with the equality scheme;

This section of the equality scheme should detail a procedure for dealing with complaints including where and how complaints may be raised and a timetable for responding.

10 ECNI, Monitoring Guidance for Use by Public Authorities, July 2007.

The public authority's timetable for measures proposed in the equality scheme;

A timetable of measures proposed within the scheme must be included within the scheme.

Measures included in a timetable should include training, undertaking assessments of policies, monitoring of policies, consultation and any other measures proposed in the equality scheme. The Commission recommends that this timetable is linked to a public authority's corporate plan.

Details of how the equality scheme will be published;

The equality scheme must be published. This can be done and notified via press releases, prominent advertisements in the press, the internet and direct mail shots to groups representing the various Section 75 categories.

A commitment to conducting a review of the equality scheme;

A public authority must, within five years of submission of an equality scheme to the Equality Commission, review the equality scheme and submit a report of the review to the Equality Commission.

A commitment that 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 and consultation carried out in relation to the policy;

An equality scheme must detail the public authority's commitment that in making any decision with respect to a policy, it shall take into account any assessment and consultation carried out to inform policy development and decisions.

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