

Our Ref: EJC/Secretariat

21 June 2013

Ms Clarita Frazer
AG6 – Assistant Assembly Clerk
Committee for Finance and Personnel
Room 419 Parliament Buildings
Ballymiscaw
Stormont
Belfast BT4 3XX

Dear Ms Frazer

The Committee has sought our further views, having indicated that we would consider the screening of the Legislative Consent Motion in our letter of 4 June 2013. We have now considered the information available.

The Commission's guidance refers to the way legislative proposals should be treated for Section 75.

“The Section 75 statutory duties apply to the development of legislative proposals. Proposals to the Northern Ireland Executive or memoranda to the Northern Ireland Assembly Committees should confirm that the legislative proposal has been subjected to the requirements of the Section 75 statutory duties.”¹

The Commission understands that the screening template will today be placed on the Department's website.

In general, the screening form provides evidence of the Department's action to fulfil the requirement to have due regard to the need to promote equality of opportunity and regard to the desirability of promoting good

¹ Section 75 of the Northern Ireland Act 1998, A Guide for Public Authorities (2010)



relations. The methods it will use to do this, such as screening, are set out in its equality scheme.

The screening document contains a confirmation of the options considered and the resultant policy proposed, which is the Legislative Consent Motion as tabled, at section 2.3. The Commission notes that the option to do nothing as set out would have resulted in no Legislative Consent Motion. We recognise that had this option been adopted, it would have resulted in same sex couples married in England and Wales having no legal status in the event that they move to Northern Ireland.

Comments about the policy proposals and substantive issues

The Commission recommends that authorities use evidence from a wide range of sources to inform a screening exercise. In this case, the Commission would have recommended to the Department that it not only considers evidence within the limited scope of the policy under consideration, but could also usefully anticipate evidence gathering for the wider policy context of same sex marriage.

The screening form **does** reflect that wider policy environment in places, but does not give the matters full consideration. The Commission will discuss this with the Department directly and will propose that as a result of screening this policy further monitoring information should be collected to inform any potential future policy options and the potential equality impacts.

Procedural consideration of the screening report

The screening form sets out clear policy aims and presents information in a standard template. The policies considered are very specific in scope and the options available for the final policy are determined to be very limited. However, there are a number of points about the way the information is presented that the Commission would like to draw the Committee's attention to.

- The aims identified relate directly to the provisions in the Legislative Consent Motion (section 2.1); the wider policy goal of whether or not there should be same sex marriage is not the policy under consideration. However, the information in the subsequent sections does not limit itself to the stated aims.

- While the policy aims set out refer to matters of recognition of same sex marriages and issues in relation to gender reassignment, the assessment made only relates to the former. The evidence received and discussed by the Committee in relation to pension entitlements, for example, is not reflected in the screening document. The evidence from the Committee report suggests that consideration has been given to the pensions matter, but it is not described.
- To follow this through, the policy/legislation will also impact on those whose marriage would fall within scope of the policy by virtue of the gender reassignment of one partner, albeit the numbers impacted are small.
- The section that discusses evidence of higher or lower participation rates or uptake (Section 2.1) appears to introduce consideration of the wider issue of same sex marriage and the introduction of considerations based on religious belief. The Legislative Consent Motion, as reflected in the policy aims, considers **only** the circumstances affecting those who have entered into a same sex marriage elsewhere and their treatment in Northern Ireland.
- There is no evidence presented of the nature or estimated size or scale of the LGBT community; nor the numbers who currently have civil partnerships, nor any associated information which could have been presented to illustrate how this is likely to impact on those affected.
- (Section 2.3). The screening prompts the question of whether there is an opportunity to better promote equality of opportunity. Option 3 as outlined clearly provides a way to better promote equality of opportunity, but is presented as not being achievable in Northern Ireland as the NI Assembly has voted against same sex marriage.
- The screening form notes the consideration by the Committee of the Legislative Consent Motion (Section 2.4), but it does not reflect whether or how any evidence arising from the Committee's work, relating to the Section 75 duties, would be considered for the purposes of any final decisions on the policy.

- If the Department had engaged with external organizations at an early stage of preparing the screening document, information that has subsequently been provided to the Committee from representatives of the LGBT community could have informed the Department and better enabled it to consider and present the potential equality impacts between persons of different sexual orientation.

The Committee will note that the Department commits in its approved equality scheme to publishing the screening assessments. In doing so, there may be further evidence forthcoming, and the Department's scheme further commits to reviewing a screening decision if a consultee raises a concern which is based on supporting evidence.

The Commission will be advising the Department directly in relation to the screening form and its equality scheme commitments.

Finally we refer again to our recommendation in our earlier letter to the Committee that civil partners should have the right to have their civil partnerships registered on religious premises, in circumstances where faith groups do not object to hosting civil partnerships on their premises

Yours sincerely

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