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The Section 75 Statutory Duty: changes to Equality Commission guidance

Introduction

This briefing paper outlines the recent changes to Equality Commission (ECNI) guidance for public authorities on meeting their statutory duties under Section 75 of the Northern Ireland Act 1998.

What is the Statutory Duty?

The Statutory Duty is a duty that falls on public authorities in Northern Ireland to ‘mainstream’ equality of opportunity in public policy and promote good relations¹. The duty arises from legislation namely, Section 75 of the *Northern Ireland Act 1998*².

The duty to promote equality of opportunity applies to:

- Persons of different religious belief, political opinion, racial group, age, marital status, or sexual orientation,

¹ The statutory duties require public authorities to “have due regard” to the need to promote equality of opportunity and also “to have regard” to the desirability of promoting good relations. A public authority is defined by inclusion in several other statutory provisions and by designation by the Secretary of State.

² <http://www.legislation.gov.uk/ukpga/1998/47/contents>

- Between men and women generally,
- Between persons with a disability and persons without
- Between persons with dependents and persons without

Public authorities are also required to have due regard to the desirability of promoting good relations between persons of different religious belief, political opinion and racial group.

The Equality Commission have responsibility for drawing up guidance on how public authorities can comply with their Statutory Duty and publishes a *Guide to the Statutory Duties*. The most recent version of this document (February 2005)³ has recently been updated.

Why has the ECNI Guidance been revised?

The Equality Commission published revised guidance in April 2010. This was as the result of a review of the effectiveness of the legislation since its implementation (on 1 January 2000)⁴. The ECNI effectiveness report states:

*Section 75 was intended to be transformative: to change the practices of government and public authorities so that equality of opportunity and good relations are central to policymaking and implementation.*⁵

Although the effectiveness review found evidence of positive change, it also found that public authorities were focusing primarily on the *process* of implementing the duties rather than on *achieving outcomes* for individuals. A number of recommendations for change were made.

What are the changes?

As a result of the effectiveness review the primary legislation has not changed and Schedule 9 of the Act continues to define duties and responsibilities. The Equality Commission decided to make some changes to its guidance however, for example, that there should be a shift in emphasis in the guidance from *process* to *outcomes*, the guidance should be more user-friendly and the guidance should provide more help for public authorities with the screening of their policies. The new guidance directs public authorities to:

³ *Guide to the Statutory Duties* February 2005 ECNI

<http://www.equalityni.org/archive/pdf/GuidetoStatutoryDuties0205.pdf>

⁴ *Section 75 Keeping it Effective*. Equality Commission for Northern Ireland. November 2008

<http://www.equalityni.org/archive/pdf/EffectivenessReviewFinalRpt1108.pdf>

⁵ page 4 *Section 75 Keeping it Effective* Equality Commission for Northern Ireland November 2008

Produce a revised equality scheme

An Equality Scheme outlines a public authority's arrangements for:

- assessing its compliance with the duties under section 75;
- assessing and consulting on the likely impact of policies on the promotion of equality of opportunity;
- monitoring any adverse impact of policies on the promotion of equality of opportunity;
- publishing the results of such assessments;
- training staff on issues relevant to the duties;
- ensuring and assessing public access to information and services provided by the public authority.

The form and content of equality schemes will remain largely unchanged; however there are some new elements. Until now equality schemes contained a five year plan for performance on the duties. In future an authority must ensure that its scheme reflects its own corporate planning cycle so that the scheme coincides with corporate plans and disability action plans. Public authorities will therefore be permitted to develop equality schemes for a period of three years.

Follow revised guidelines on consultation

An Equality Scheme will state the authority's arrangements for consulting on the likely impact of policies or proposed to be adopted. Authorities must ensure that they seek the views of the public and those directly affected by the policy, rather than focussing wholly on representative organisations. This is to achieve a more effective assessment of the impact of policies, better reporting of the impact of consultation on policy outcomes, encourage a greater emphasis on targeted consultation and a wider range of consultation mechanisms.

Follow a revised screening process

Screening is to become a more efficient and effective 'filter' in early identification of equality considerations. This will help public authorities quickly to see whether a policy is relevant for the promotion of equality of opportunity and good relations.

The guidance contains new screening forms and a series of four new questions which should be applied to all policies as part of the screening process. The questions are

intended to identify those policies that are likely to have an impact on equality of opportunity and good relations. There is now the potential to mitigate adverse impact during the screening stage.

New screening questions

- *What is the likely impact on equality of opportunity for those affected by this policy, for each of the Section 75 equality categories? (major/minor/none)*
- *Are there opportunities to better promote equality of opportunity for people within Section 75 equality categories?*
- *To what extent is the policy likely to impact on good relations between people of a different religious belief, political opinion or racial group? (major/minor/none)*
- *Are there opportunities to better promote good relations between people of a different religious belief, political opinion or racial group?*

Screening decisions

- If the conclusion is MAJOR in respect of one or more of the S75 categories then consideration should be given to subjecting the policy to the equality impact assessment procedure.
- If the conclusion is MINOR in respect of one or more of the S75 categories then consideration should still be given to proceeding with an equality impact assessment, or to measures to mitigate the adverse impact or the introduction of an alternative policy to better promote equality of opportunity and good relations.
- If the authority's conclusion is NONE in respect of all of the S75 categories then the authority may decide to screen the policy out.

If a consultee/stakeholder, including the Equality Commission raises a concern with supporting evidence about a screening decision, a public authority should reconsider screening its policy again.

The new guidance gives particular attention to the topic of procurement - the ECNI wishes to ensure any policy with a procurement element should be screened in.

Screening reports

The authority should prepare and publish for information regular reports on their screening exercises. There is now more regular recording of screening (quarterly). The screening report should detail all policies screened over a three month period and include decisions reached. An electronic version, or hard copy should be sent to all consultees on a quarterly basis.

A model screening template is provided in Appendix 1 of the new guidance.

Carry out an Audit of Inequalities

A new aspect of Equality Schemes will be Action Plans. To ensure that measures included in an action plan are relevant to the functions of a public authority, the Equality Commission recommends that they are developed on the basis of a systematic review and analysis or 'audit' of inequalities that exist for the public authority's service users and those affected by its policies. The audit should identify potential areas for further or better discharge of the Section 75 duties. The audit will involve the collection of data and provide baseline information.

Create Action Plans

The Audit of Inequalities should inform the development of an Action Plan. Action Plans must be included with Equality Schemes. In its Action Plan the authority will specify actions to achieve equality of opportunity. Action Plans should be linked to the corporate planning cycle and the business planning cycle.

Plans should include measures which are specific, measurable, achievable, realistic and timely to promote equality of opportunity and good relations for the relevant equality and good relations categories. The Equality Commission recommends Action Plan measures are accompanied by performance indicators for their completion or review and are linked to a public authority's strategic aims and functions.

The Equality Commission recommends that public authorities consult on their Action Plans prior to submission to the Commission.

The new guidance states that public authorities should review and update Action Plans over the lifetime of their equality schemes to ensure that they remain effective and relevant to their functions and work.

The Equality Commission states that effective ongoing monitoring should be considered at all stages of the implementation of Action Plans to allow for measurement and reporting of progress on their delivery.