

The Section 75 Equality Duty – an Operational Review –

Consultation on key themes and proposed actions

The Government, with the Equality Commission (Equality Commission), has been considering the conclusions reached by Professor Eithne McLaughlin and Neil Faris in their independent report, *The Section 75 Equality Duty – An Operational Review*. This consideration has focused on the terms of reference of the current Joint Declaration review of the operation of the existing Section 75 mechanisms.

Six key emerging themes have been identified as follows:-

1. Integration of equality duty with policy formulation
2. Enhancing performance and sharing good practice
3. Consultation
4. Monitoring
5. Communication and raising the profile of Section 75
6. Matters for the Equality Commission Review

There is inevitable overlap between the various themes but it has proved useful to follow this approach in identifying associated actions including possible areas for further action. We would now welcome comments on these themes and actions and on any other operational issues consultees wish to raise.

1. Integration of equality duty with policy formulation.

The report found that there is insufficient understanding of the intricacies of policy and policy formation (in other words low levels of policy literacy). It also found tension in integrating the participative ethos of Section 75 into the more hierarchical decision making accountability structures of traditional policy making. Section 75 is an ongoing process and openness and good relationships between all participants are necessary to help ensure success. There is a need to ensure that Section 75 is the responsibility of every policy maker and that consultative engagement remains inclusive.

Action already under way

- Guide to Policy Making published by OFMDFM and associated training under way within Government departments – this includes focus on Section 75.
- Arising from ‘Investing Together’, OFMDFM to work with the voluntary and community sector to develop training materials and skills to engage in the policy development process.
- The Equality Commission’s Revised Guide and revised Practical Guidance have clarified in greater detail requirements, expectations and good practice in terms of consultation and consultative processes/tools.

Proposed Action

- Training needs on policy making to be reviewed by all public authorities, possibly on a sectoral basis.

2. Enhancing performance and sharing good practice.

This theme covers the role that public authorities can play in improving the implementation of Section 75 both in terms of internal management and encouraging best practice. Authorities need to build up the confidence to take their own initiatives, share success with other bodies and keep stakeholders bought in to what it is possible to achieve. A key area for action here may be to develop a dynamic interaction between authorities with similar stakeholders and between the authorities and their consultees to spread good practice and to refine Section 75 processes.

Action already under way

- The Equality Commission's revised Guide and revised Practical Guidance provide specific examples of good practice throughout the documents to clarify requirements and encourage enhanced performance.
- The Equality Commission's published annual reports of progress contain examples of good practice and enhanced performance of public authorities on specific Section 75 processes and outcomes.
- Regular meetings between the Equality Commission and sectoral specific networks provide ongoing opportunities to share good practice and encourage enhanced performance.
- The Equality Commission has placed on its website, a database of good practice and equality outcomes.

Proposed Action

- The Equality Commission to consider a greater use of "audit approach" to capturing innovative practice, recommend improvements and provide for wide dissemination of these.
- The Equality Commission to consider opportunities to bring key stakeholders and public authorities together to help build a more shared understanding of Section 75 and to share good practice.

3. Consultation

Within this strand, McLaughlin and Faris make a number of broad recommendations around consultors and consultees working together to make consultation work, and around assessing and improving training. The strand is linked closely to capacity building in the Voluntary and Community Sector which was seen as a key issue for both this review and the forthcoming Equality Commission review of effectiveness. The

report cites insufficient feedback and a lack of understanding by some public authorities as well as some within the sector as leading to unrealistic expectations of the role of consultation, and some instances of inefficient and wasteful use of resources. The importance of adequate resources for both public authorities and the voluntary and community sector were highlighted. The report also raised a need for further development of procedures for consultation with children and young people and in regard to consultation processes in Northern Ireland for bodies with a UK wide remit and especially for those with a GB remit.

Action already under way

- Guide to consultation and Review of Consultation drafted by OFMDFM;
- “Investing Together”, which considers resourcing of the voluntary and community sector, has been published.
- Equality Commission to develop guidance on Section 75 consultation with Children and Young People through a group including OFMDFM, the Commissioner for Children and Young People, the NIHRC and the voluntary and community sector.
- Equality Commission to take forward training on this guidance with public authorities.
- OFMDFM enhancing www.consultationni.gov.uk website in line with recommendations of E-participation Scoping Study.
- The Equality Commission’s Revised Guide and revised Practical Guidance have clarified in greater detail requirements, expectations and good practice in terms of consultation and consultative processes/tools.
- Series of focused workshops organized 2003/4 by the Equality Commission on engaging disabled people and representative groups in Section 75 consultative and other processes. An evaluation of the initiative was very positive.
- The Equality Commission facilitates “UK Bodies” network, which meets regularly, and continues to provide ongoing opportunities to clarify consultation requirements.
- Advice is consistently given by the Equality Commission to public bodies on the need to provide feedback to consultees, including reasons for not including recommendations in the final policy, as reflected in the Guide to the Statutory Duties

Proposed Action

- OFMDFM to consider and amend as appropriate Guide to Consultation and Review of Consultation taking account of McLaughlin and Faris report and “Investing Together”;
- Public authorities to put in place systems for effective feedback on consultation and greater “knowledge management” systems to capture learning from previous consultations and build on relationships with key stakeholders.

4. Monitoring

The Report recommended that assessment of the equality implications of policy should not be ‘one-off’. It stressed the importance of assessment and monitoring of the equality impact of policy and recommended that this should include outcome measurement from the perspective of policy and service users. .

Action already under way.

- The Equality Commission’s revised Practical Guidance provides greater detail on monitoring requirements.
- Equality monitoring advisory group has been set up by Equality Commission. OFMDFM represented on the group and assisting with research through its Equality and Social Need Research and Information Strategy.

Proposed Action:

- Equality monitoring advisory group to consider recommendations of McLaughlin and Faris and guidance on monitoring to be published by Equality Commission in the coming financial year.

5. Communication and raising the profile of section 75

It is important to establish in the public mind what section 75 can reasonably be expected to achieve. The Report sees opportunities for raising the profile of s. 75 with the public at large, key stakeholders, policy-makers and the academic community and relevant professions. The actions suggested in the Report in relation to communication and profile raising have an overlap with both the training and dissemination of good practice actions described under other themes. The authors also suggest that practical experience needs to be underpinned by legal and other post-graduate training opportunities. The profile can in particular be raised by Ministers, officials, Equality Commission personnel and other key stakeholders taking opportunities to deliver key messages about section 75 in their public speeches and statements across the range of policy areas.

Action already underway

- The Equality Commission issues press releases on a range of Section 75 related matters as relevant and public speaking opportunities and engagement with the media are sought and responded to.
- Government ministers and senior public servants regularly include key messages about equality in speeches and at events.

Proposed Action

- The Equality Commission to consider publication of user friendly information and guidance on the statutory duties and greater use of the popular media to raise the public profile.
- The Equality Commission to consider how to widen dissemination of the objectives and benefits of Section 75.
- The Equality Commission to deliver specific training on Section 75 to the legal sector and identify further professions/ sector which may benefit from training or awareness raising.
- The Equality Commission, in consultation with Government departments, to discuss with Universities and Colleges how Section 75 and the knowledge and skills associated with it might be mainstreamed into existing courses and/or the development of existing courses/qualifications.
- Public authorities to continue to ensure that high level commitment to equality is communicated both within the organisations and elsewhere.

6. Matters for the Equality Commission Review

The Report recognizes that actions already undertaken by the Equality Commission, including publication of the revised guidance will meet a number of concerns raised by consultees. In addition a number of the recommendations are acknowledged to better await the Equality Commission's review of the effectiveness of Section 75. The reviewers believe that it would be appropriate for a fully independent audit of compliance to be part of the Equality Commission's 5 year review, but whether that will be so is a matter for them to decide as part of their review processes.

Proposed Action

- The Equality Commission will publish the terms of reference and programme of work for its Review of the Effectiveness of the duties imposed by the legislation in October 2005. This review will consider relevant issues emerging from the operational review and associated consultation. It will also consider issues arising from the Equality

Commission's annual progress reports, and ongoing dialogue with stakeholders. In particular the review will include:

- an independent report on the extent of compliance with section 75, including an audit of consultation practices,
 - an independent assessment of the adequacy of the Equality Commission's enforcement powers.
 - a comparative analysis of the experience of mainstreaming equality in different jurisdictions.
- The Equality Commission to provide a Report of its review, including recommendations, to Government, which will then consider any implications for the legislation and practice.