

The Equality Coalition is a broad alliance of non-governmental organisations whose members cover all the categories listed in section 75 of the Northern Ireland Act 1998), as well as other equality strands. It was founded in 1996 and was instrumental in putting equality at the forefront of the agenda at that time, specifically in relation to the Belfast/Good Friday Agreement and ultimately the public sector duty in section 75.

The Equality Coalition now has over 80 members (listed in the appendix), many of which are umbrella organisations. It is co-convened by the Committee on the Administration of Justice (CAJ) and UNISON. The Equality Coalition continues to provide a forum for unity between all sectors when working for equality, through recognising multiple identities, mutual support between members and respect for the diversity of its members’ work and views.

**Understanding the Scope and Application of s75**

Given the enduring inequalities in our society[[1]](#footnote-1), section 75 was introduced to ensure that public policy was developed and implemented in a manner that helps promote equality of opportunity and mitigate any adverse impacts on the nine named equality groups (relating to religious belief, political opinion, racial group, age, marital status, sexual orientation, gender, disability and dependants).

The existence of section 75 is well known, but the requirements for fulfilling the duty in practice are often misunderstood. Section 75 requires that a designated public authority, shall in carrying out its functions relating to Northern Ireland have due regard to the need to promote equality of opportunity between the nine equality groups. In order to fulfil this duty, public authorities must comply with both:

* the definition of ‘due regard’; and
* the requirements of Schedule 9 Northern Ireland Act 1998 (‘Schedule 9’).

Each of these provide more detailed information to inform public authorities how to apply section 75.

**Definition of ‘Due Regard’**

‘Due regard’ is considered by the Equality Commission for Northern Ireland (‘ECNI’) to mean that ‘the weight given by a public authority to the need to promote equality of opportunity is proportionate to the relevance of the particular duty to any function of the public authority.’[[2]](#footnote-2) For a similar public sector race equality duty in Great Britain,[[3]](#footnote-3) Dyson LJ defined due regard as:

‘the regard that is appropriate in all the circumstances. These include on the one hand the importance of the areas of life of the members of the disadvantaged racial group that are affected by the inequality of opportunity and the extent of the inequality; and on the other hand, such countervailing factors as are relevant to the function which the decision-maker is performing’.[[4]](#footnote-4)

The above definition has also been applied to the meaning of ‘due regard’ in section 75 by our local High Court in 2011.[[5]](#footnote-5) In that case, the Lord Chief Justice Sir Declan Morgan, referred to other caselaw[[6]](#footnote-6) which summarised some key principles for having ‘due regard’.

These principles were confirmed and added to by the English Court of Appeal,[[7]](#footnote-7) as follows:

* the duty must be fulfilled before and at the time of the decision, not as justification after the fact;
* the duty is to have due regard, not to achieve results or to refer in terms to the duty (although it is good practice to keep an adequate record);
* the test of whether a decision maker has had due regard is a test of the substance of the matter, not of mere form or box-ticking,
* the duty must be performed with vigour and with an open mind;
* it is a continuing duty; and
* it is a non-delegable duty.

**Requirements of Schedule 9**

In addition to the need to have ‘due regard’, Schedule 9 provides more detailed information on how section 75 is applied. It provides that an equality ‘scheme shall show how the public authority proposes to fulfil the duties imposed by s75.’[[8]](#footnote-8) It specifies that each equality scheme must contain (among others):

* arrangements for assessing and consulting on the impact on equality of opportunity of policies adopted or proposed;
* arrangements for monitoring and publishing any adverse impact of such policies;
* arrangements for publishing the results of the assessments of equality impacts, including: measures which might mitigate any adverse impact; and
* alternative policies which might better achieve the promotion of equality of opportunity; and
* arrangements for ensuring and assessing public access to information and services.

Schedule 9 also requires 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 the assessment and consultation carried out in relation to equality impacts. It sets out procedures for complaints and investigations to ensure that public authorities do not breach any of the commitments included in their equality schemes.

In addition, Schedule 9 sets out that the equality schemes must conform to any guidelines as to form or content which are issued by ECNI with the approval of the Secretary of State (‘Guidelines’). The ECNI’s 2010 guide[[9]](#footnote-9) on section 75 also contains information on how to assess a policy’s impact on equality of opportunity, namely through screening and systematic analysis in equality impact assessments (‘EQIA’). The ECNI has released practical guidance on EQIAs.[[10]](#footnote-10) This guidance sets out the steps required to carry out an EQIA and underlines the importance of:

* the consideration of available data and research;
* the use of that information to decide whether the is (likely to be) a differential

impact on a relevant group;

* consideration of measures which might mitigate any adverse impact and
* alternative policies which might better achieve the promotion of equality of opportunity; and
* taking into account all of the above when making a decision with respect to the proposed policy.

In order for a public authority to have ‘due regard’ within the meaning of section 75, it must consider available data. Otherwise, it would merely be guessing as to what impacts a proposed policy might have on the nine equality groups. It is clear from Schedule 9 that a public authority must ‘assess’ (not guess) the impacts, and so sufficient data must be required. Furthermore, the equality scheme recognises that, without sufficient information, it is not possible to conduct meaningful analysis of the impact of its policies on all of the nine categories.[[11]](#footnote-11) In its practical guidance on EQIAs, the ECNI states that ‘relevant, reliable and up to date information is essential’ to carrying out an EQIA.[[12]](#footnote-12)

Schedule 9 states 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 the assessment and consultation carried out’ in relation to the policy’s equality impacts. This is repeated in the ECNI Guidelines on section 75, which also states that ‘this is an important commitment and failure to comply with it could lead to complaints of failure to comply with a scheme’ The ECNI practical guidance on EQIAs also makes it clear that ‘the public authority shall take into account any EQIA and consultation carried out in relation to the policy’ and states that it is ‘essential that the public authority fully complies with this commitment.’[[13]](#footnote-13)

The practical guidance on EQIAs clarifies that ‘it is not sufficient merely to take equality into account; it must be accorded considerable weight. That is, the need to promote equality of opportunity must be given due regard or weight in accordance with Section 75.

‘At this point all available information should be combined in a decision or decisions on an existing or proposed policy or policies, together with the rationale for that decision. Decision-making documentation must show how the impact of alternative policies and mitigation, and that the implications for other policies associated with the EQIA were considered.’[[14]](#footnote-14)

These requirements are echoed in the many judgments that require the equality duty to be carried out ‘with vigour and an open mind’ in order for ‘due regard’ to be satisfied. Therefore, in order to comply with section 75 it is necessary for the public authority to consider its EQIA of the draft budget at the earliest stage possible.

**Appendix**

List of Member Organisations of the Equality Coalition

Action Mental Health

Age NI

An Teasmann TSG

An Munia Tober

Artsekta

Aware Defeat Depression

Banardos

Belfast Feminist Network

Belfast Islamic Centre

Business and Professional Women

Committee on the Administration of Justice

Cara- Friend

Carers NI

Children in Crossfire

Children in Northern Ireland

Childrens Law Centre

Chinese Welfare Association

Citizens Advice Bureau

City Bridges

Coiste na nIarchimí

Community Development and Health Network

Confederation of Community Groups

Conference of Religious of Ireland- Northern Ireland

Community Organisations of the South Tyrone Area

Corrymeela Community

Craigavon Travellers Support Committee

Disability Action

Falls Community Council

Fermanagh Women's Network

Ginger Bread

Housing Rights Service

Human Rights Consortium

Include Youth

Inclusive Mobility and Transport Advisory Committee

Irish Congress of Trade Unions

Law Centre NI

HERe NI

Local Initiatives for Needy Communities

Mencap

Mindwise

National Children’s Bureau

National Energy Action

NEET Strategy Forum

Northern Ireland Association for Mental Health

North West Community Network

Northern Ireland Anti Poverty Network

Northern Ireland Association for the Care and Resettlement of Offenders

Northern Ireland Council for Ethnic Minorities

Northern Ireland Community for Refugees and Asylum Seekers

Northern Ireland Community Voluntary Association

Northern Ireland Hospice

Northern Ireland Gay Rights Association

Northern Ireland Public Service Alliance

Northern Ireland Rural Women's Network

Northern Ireland Women's European Platform

NSPCC

NUS-USI Students

Omagh Women's Area Network

Opportunity Youth

Parents Advice Centre

Participation and the Practice of Rights Project

Pobal

Princes Trust

Pat Finucane Centre

Public Interest Litigation Support Project

Queens University Human Rights Centre

Queer Space

Rainbow Project

Relate NI

Rural Community Network

Sai-Pak Chinese Community Association

Save the Children

Social Economy Agency

South Tyrone Empowerment Programme

The National Deaf Children's Society

Training for Women Network

UNISON

Upper Springfield Development Trust

Victim Support NI

Women into Politics

Women's Aid Federation Northern Ireland

Women's Resource and Development Agency

Women's Support Network

Women’s Tec

Youth Net

174 Trust

1. Evidence of the many inequalities in our society is included in the audits of inequalities carried out by public authorities designated under s75. [↑](#footnote-ref-1)
2. ECNI, S75: A Guide for Public Authorities, April 2010, page 27. [↑](#footnote-ref-2)
3. S71 Race Relations Act 1976, as amended; now superseded by s149 Equality Act 2010. [↑](#footnote-ref-3)
4. Baker [2008] EWCA Civ 141. [↑](#footnote-ref-4)
5. ‘Tasers’, JR1 Application [2011] NIQB 5 [↑](#footnote-ref-5)
6. Brown [2008] EWHC 3158. [↑](#footnote-ref-6)
7. Domb [2009] EWCA Civ 941 [↑](#footnote-ref-7)
8. Para 4(1) Schedule 9 Northern Ireland Act 1998. [↑](#footnote-ref-8)
9. See <http://www.equalityni.org/archive/pdf/S75GuideforPublicAuthoritiesApril2010.pdf>. [↑](#footnote-ref-9)
10. See http://www.equalityni.org/archive/pdf/PracticalGuidanceEQIA0205.pdf. [↑](#footnote-ref-10)
11. See point 4.8 of the DFP equality scheme <http://www.dfpni.gov.uk/final-equality-scheme-april-2011.pdf> [↑](#footnote-ref-11)
12. ECNI practical guidance on EQIAs 2005, at page 11. [↑](#footnote-ref-12)
13. ECNI practical guidance on EQIAs 2005 page 44 [↑](#footnote-ref-13)
14. ECNI practical guidance on EQIAs 2005 page 45 [↑](#footnote-ref-14)