

Section 75 training – Screening

Welcome to this training session on the topic of **equality screening**.

This training is for those in public authorities who have responsibility for developing or reviewing public policy.

Section 75 is the law, and it's good governance – public authorities **must** consider equality and good relations when revising and developing **all** their policies. It's a commitment in your organisation's equality scheme – read it and use it.

It's not as hard as you think! Today you'll learn what is meant by screening, including the basics of conducting screenings and how screening links to Equality Impact Assessments and other commitments in your equality scheme.

We're here to help – you can contact us for advice. Today we will be directing you to sources of further information which will help you to ensure that equality and good relations get the proper level of consideration when you're developing and reviewing policies - and that your decisions are soundly evidence-based.

Section 75 of the Northern Ireland Act

Section 75 of the Northern Ireland Act 1998, (or the Public Sector Equality and Good Relations duties), requires public authorities to consider how they might promote equality of opportunity and good relations when developing and reviewing their policies. The duties seek to influence how public authorities make policy decisions so as to improve the lives of people in Northern Ireland.

They are 'procedural' and each public authority has its own equality scheme, setting out the arrangements or procedures that must be followed to ensure that the duties are properly implemented. A failure to follow these arrangements may breach the Section 75 duties and may leave the organisation open to challenge in relation to any decision or policy to which the breach relates.

Equality schemes usually specify two tools for considering the equality and good relations goals of Section 75.

You have two tools:

- screening and
- equality impact assessments, also known as EQIAs.

Screening is the crucial first step and is the focus of this session.

The two goals of screening

First, we're going to look at what you need to know about the law. In short, it says that you must give consideration to **two** statutory goals - the **equality of opportunity** goal and the **good relations** goal.

First of all, equality of opportunity. Section 75 says public authorities must '*give due regard to the need to promote equality of opportunity*' between these groups of people:

- persons of different religious beliefs
- political opinion
- racial groups
- age
- marital status
- sexual orientation
- men and women generally
- persons with dependants and persons without
- persons with a disability and persons without.

And now good relations. Section 75 also says that public authorities must '*give regard to the desirability of promoting good relations*' between people of different

- religious belief
- political opinion
- racial group.

You don't need to know the legalities in detail. But remember that:

- the duties apply to **all of the functions** of a public authority, meaning that they are wide ranging and, without being exhaustive, they cover employment and service-provision policies, procurement, setting budgets, law-making and regulating the activities of others.
- they are **continuous** duties, meaning that they apply when developing new policies and when reviewing or revising existing ones.
- you must give **advance** consideration to the two statutory goals during the development or review or revision of a policy and before any key decisions are made, and not afterwards.
- you must do it **conscientiously, in substance** and with an **open mind** (or with a willingness to change your mind) and not as a mere "tick-box" exercise.
- the duties are **non-delegable**, meaning they lie on the actual decision-maker.

These principles do not oblige you to deliver or achieve a particular policy outcome.

But, in practical terms, these principles will require you to consider the likely impacts – positive and/or negative - that your policy proposals may have on people in the relevant Section 75 categories and, crucially, to consider how to reduce or eliminate such impacts or further promote equality and/or good relations.

When considering such matters, you should give more time, effort and attention to collecting and considering evidence and potential solutions in respect to those policies which are likely to be of greater relevance to people's lives and opportunities, that is, you should do what is **proportionate** in the circumstances.

How will you know whether you have reached that point, or whether you have done enough? In the first instance, it will be matter for your professional judgement, but be prepared to re-visit the matter if new information comes to light or if you're challenged that you have not done enough.

In practice, this will mean following your equality scheme arrangements in relation to screening and EQIAs. If followed, this will help you to comply with the Section 75 duties.

Getting started and what to do first – overview of the process

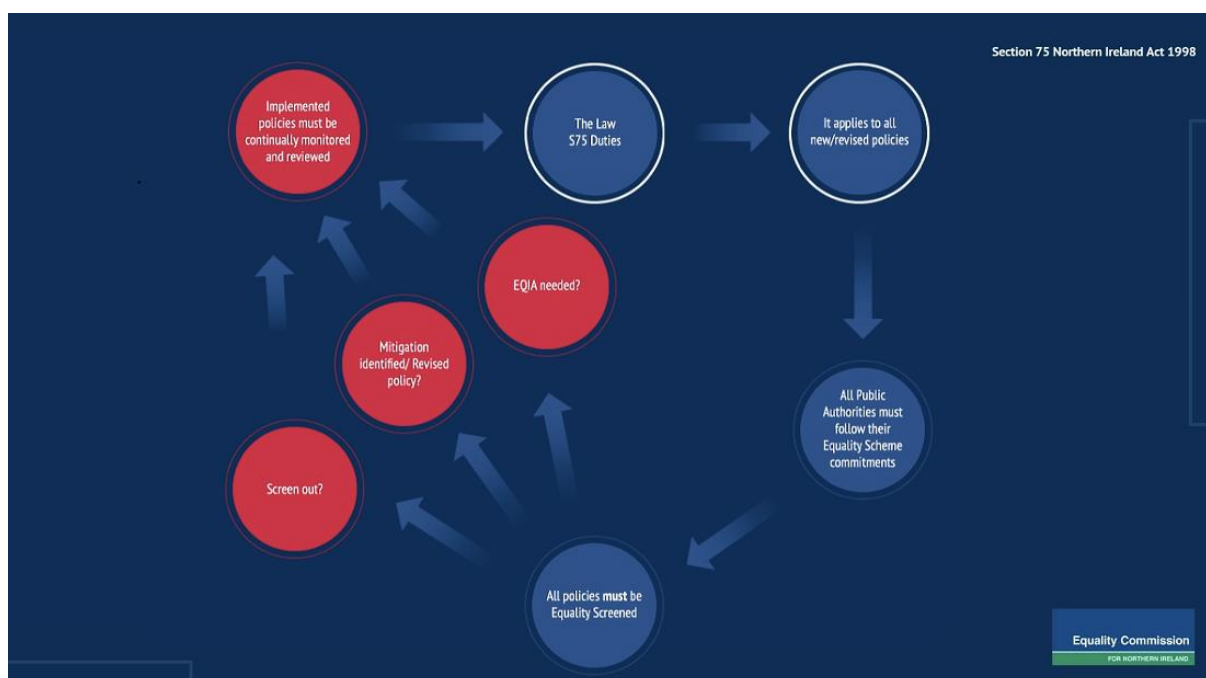
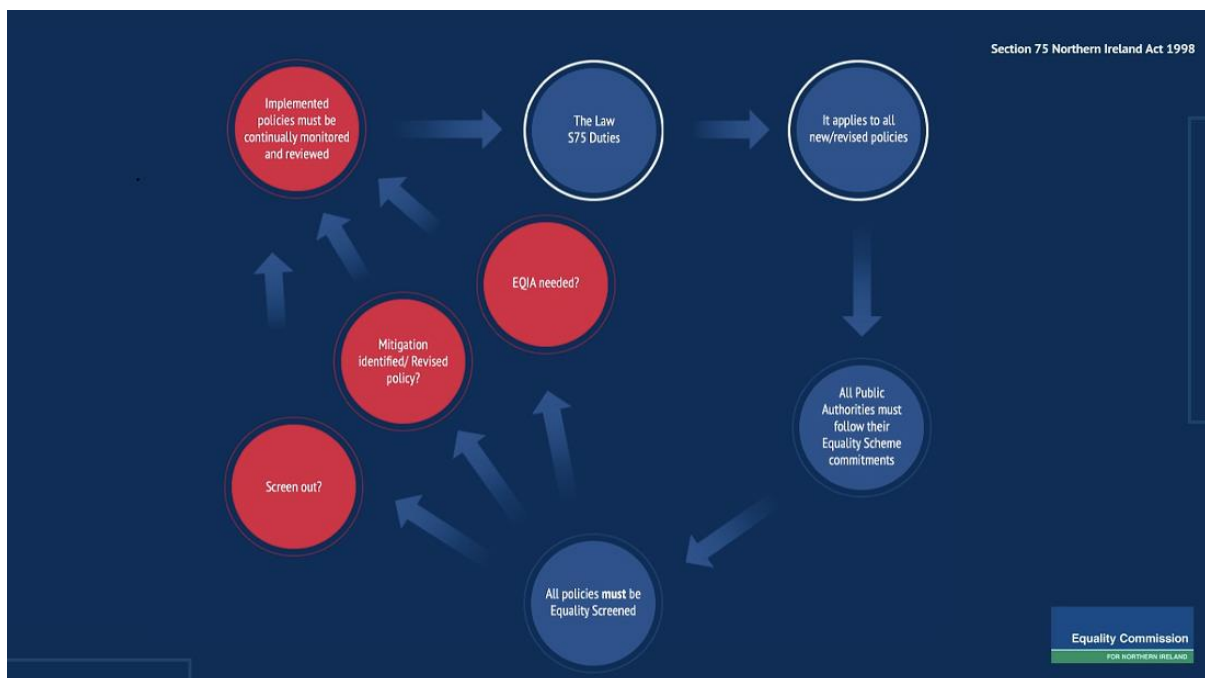


Diagram showing the screening cycle. Blue circle 1 reads 'The Law, S75 duties'. Blue circle 2 reads 'It applies to all new or revised policies'. Blue circle 3 reads 'All public authorities must follow their Equality Scheme commitments'. Blue circle 4 reads 'All policies must be equality screened'.

Here's an overview of how Section 75 screening should work in practice and how it links to other aspects of your equality scheme.

Starting with the **blue area** - If you have not already done so, you should get a copy of your own organisation's equality scheme and read it. Your organisation's arrangements for screening are outlined there. It's important that you know what is required and implement it at the right time, which usually means during the development or review of a policy and before any key decisions are made and not afterwards.

Also, you should get a copy of your own organisation's screening template, a form based on [one developed by the Commission](#). It outlines a process to follow and it will prompt you with the appropriate questions to consider. It will also enable you to record what you did, when you did it, your decisions and your rationale. This promotes transparency and can show you have complied with the duty.



Repeat of diagram showing the screening cycle. Red circle 1 reads 'Screen Out?'. Red circle 2 reads 'Mitigation identified/revised policy'. Red circle 3 reads 'EQIA required'. All three feed into final red circle which reads 'Implemented policies must be continually monitored and reviewed'.

Moving into the **red areas** - Your equality scheme will state that, in your organisation, **all** policies, whether new ones or existing ones that are being reviewed or revised, **will be screened** and, as we have said, this is the first step in the process of examining the potential impacts that the policies might have. But, screening also has a secondary purpose: that is, to determine whether further scrutiny may be needed before the policy is finalised, that is, it is also a process for **determining whether you should go on to complete an EQIA**. We'll come back to this question later.

If you decide that the screening exercise for a particular policy was sufficiently scrutinised in the circumstances, you may proceed to finalise the policy. If you have concluded that the policy might have some potential adverse impacts on some

people, your equality scheme obliges you to monitor the operation of the policy and keep it under review.

The detail of screening

Moving from the overview to the detail of screening, we're going to run through:

- what and when to screen and who does it?
- gathering data and assessing impacts
- drawing conclusions AND
- some of the pitfalls.

Once again, your organisation's equality scheme should be your guide and, although there may be some variations in the text used in different organisations' schemes, they all give answers very similar to the following lines.

What to screen

You should screen **ALL** your proposed **policies** and any that are being reviewed or revised. For this purpose, the term "policy" is very wide ranging – it includes all policies - functions, powers and duties,

- written or unwritten
- formal or informal
- high level strategies
- temporary policies
- immediate policies (for example, COVID related)
- policies addressing equality or
- policies initiated elsewhere.

It includes internal policies (such as employment ones) and external policies (such as service-provision ones).

When to screen

Screening should be done before and at the time that a particular decision or policy is being considered, not afterwards. Equality schemes usually specify that screening will be completed at the **earliest** opportunity in the policy development or review process.

If you are developing government strategies or higher level policies, again these should be screened as early as possible in the policy development process, even if they begin as broad aims and expected outcomes. They will likely require subsequent screening as they develop and as further information becomes available.

Who should screen?

The main decision maker in relation to the policy under consideration should have the lead role in the screening process. Other team members, perhaps those who will implement the policy, and other stakeholders, may also be involved.

In some cases, one public authority may take the lead in developing or reviewing a policy to be applied by it and other public bodies. For example, government departments may be responsible for developing the overall strategic direction, with a council or a health trust having a key role in implementing the policy. In these situations, each body should work together to identify and share any evidence on impacts. Each body should also take responsibility for its own functional remit, comply with its own equality scheme and give the appropriate level of consideration to the equality and/or good relations implications of its own role in the policy.

Gathering information and assessing impacts

The information you will need depends on the policy being considered.

It should be relevant and appropriate to the policy area and provide sufficient information to enable you to make rational decisions. The information should therefore relate to the equality grounds covered by Section 75 and not be generic data relating to impacts of the policy on people generally.

The information or data may be quantitative and/or qualitative.

Quantitative data: the Equality Commission, in conjunction with NISRA, the Northern Ireland Statistics and Research Agency, published [Section 75: Using Evidence in Policy Making](#) - a handy signposting guide to relevant sources of quantitative information - you can find it on our website.

Qualitative information: this may be particularly relevant where, to gain a better understanding of a policy's potential or likely impacts, you need to obtain people's opinions or information about their experiences.

An example of the value of drilling down to better understand data is shown by a council's evaluation of the people who were using its leisure centres. The data showed a 50/50 woman/man split, but a closer analysis showed that whereas 98% of the men were actual service-users, only 25% of the women were – the other 75% of women were dropping off or collecting their children. So this information enabled the council to more fully evaluate the profile of their service users and to consider the implications for their policies.

What should you do if there doesn't seem to be any suitable data? Case law has shown that the Section 75 duty is a duty of inquiry that **requires** public authorities to be properly informed before taking a decision. If the relevant data is not available, there is a **duty** to consider taking reasonable steps to acquire it.

How might that be done? You could consider any relevant data or analyses from other sources or jurisdictions and/or of conducting an EQIA or public consultation.

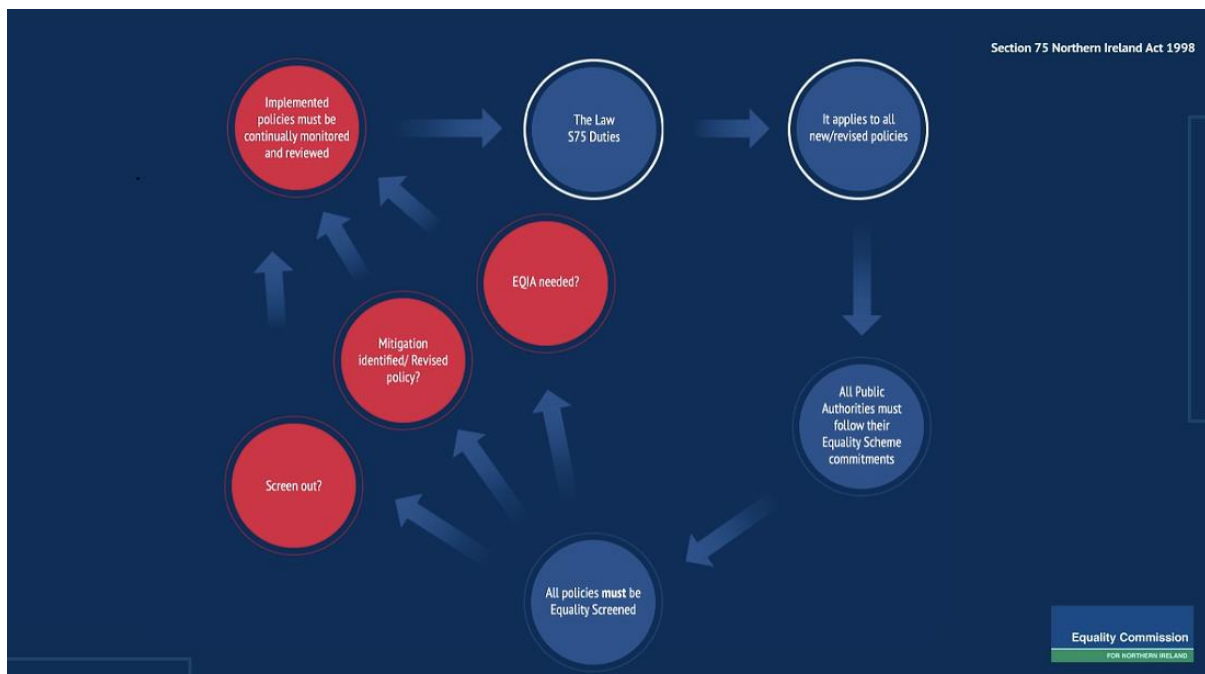
Drawing your conclusions

On the screening template that you will have used, there is a key set of questions relating to equality of opportunity that the statutory duty obliges you to consider after you have gathered your data and assessed the relevant impacts.

Your equality scheme also obliges you to consider a similar set of questions in relation to good relations.

The answers to these questions will dictate one of the three outcomes shown, that is, you will have concluded that the policy will have:

- **no** impact on equality of opportunity and good relations OR
- a **minor** impact, perhaps one that might be mitigated OR
- a **major** impact, calling for further examination or scrutiny in the form of an EQIA.



Repeat of screening cycle diagram

So how might you draw the appropriate conclusion?

1. if you can reasonably say that a particular policy has **no relevance** to the promotion of equality of opportunity, then its impact on that is likely to be “none” and no further scrutiny of the equality implications are needed.

This assessment is more likely to apply to policies which have little or no effect on how people gain access to important public goods and services, such as employment, housing, education, health, leisure, transport, social security and social protections and public safety.

2. If you can reasonably say that the policy has **some relevance** to the promotion of equality of opportunity, but that its impact on people is likely to be minor, while an EQIA may not be needed you should consider taking steps to eliminate or reduce any adverse impacts that have been identified before the final policy decision is made.
3. A conclusion that the policy has a major impact is one that says that the policy is **highly relevant** to the promotion of equality of opportunity and that its impact on that is likely to be major. There is a presumption in favour of doing an EQIA to further examine its likely implications and to consider other options or mitigating actions.

This conclusion is more likely to be appropriate where:

- the policy is highly relevant to the promotion of equality of opportunity
- where it affects a large number of people
- where it affects fewer people but where its negative impact on them is likely to be significant
- where it is a strategic policy or has a significant budget attached, OR
- where further assessment provides a valuable opportunity to examine evidence and develop recommendations.

Potential Pitfalls

Be **slow** to conclude that a policy will have a 'neutral' or "no" equality impact merely on the basis that it "*applies to everyone*". That conclusion is frequently simplistic. The danger is that if you overlook a real equality impact, or an opportunity to better promote equality of opportunity or good relations by adopting mitigating measures, then you will not have considered those matters and those omissions will leave the policy open to challenge.

Do not focus **only** on identifying the likely adverse impacts of a policy. Consider if you can promote or better promote equality of opportunity and good relations. For example, a policy designed to improve educational attainment for all children will benefit all children, but further consideration will be warranted to ensure that the differing experiences of children are considered too, for example, boys and girls, children who are disabled, or children whose first language is not English.

Remember that Section 75 does not require you to consider treating everyone in the same way – thinking that way is unlikely to promote equality of opportunity for people who may have particular needs that would go unmet if everyone was treated the same way. Therefore, giving consideration to taking positive action, where anti-discrimination law permits, is wholly consistent with Section 75.

If you are considering a policy and certain groups such as women, or people with disabilities, experience higher levels of inequalities than men, or non-disabled people, then this should be acknowledged in your screening or EQIA, and consideration given to eliminating or reducing those inequalities – that's giving 'due regard' to those facts and is what the duty requires of you.

Likewise, it is totally appropriate to consider developing policies that focus on people in particular equality groups, for example, developing particular services for gay men, as long as any resulting actions that are adopted or taken are informed by relevant information, such as evidence of existing inequalities, and are lawful under anti-discrimination or other laws.

Signing off

At the completion of the screening exercise, the senior officer in charge of the policy should sign it off.

The final policy decision-maker should read and take account of its findings when making the final policy decision. This is especially important where the final decision-maker had delegated work on the screening exercise to professional officers, as is likely to be so in the case of district councillors or government ministers.

Publish the screening template or associated report on your website as soon as possible.

Commitment to review. Remember that your organisation's equality scheme is likely to contain a provision committing you to reviewing the screening decision, should that be requested – check your scheme for further details.

If you are moving to a full Equality Impact Assessment, again follow the arrangements set out in your equality scheme and in associated guidance issued by the Equality Commission. This includes a seven stage process to conduct a more in-depth equality analysis which includes external consultation on the policy being developed. If the screening has identified specific concerns around the **impact** of a policy, for example, its effect on specific equality groups, this should inform the Equality Impact Assessment. Advice is available from the website and by contacting the Commission.

Monitoring and review

And finally, let's look at monitoring, review and potentially rescreening a policy, again emphasising the cyclical nature of the policy development process and that the duties are continuing duties. These are principles of good administration.

Briefly, most public authorities have committed to monitor any adverse impact on the promotion of equality of opportunity of policies adopted, to identify opportunities to better promote equality of opportunity and good relations and to take action to address any gaps in data.

So, **monitoring** a policy may provide further information to indicate that there are greater equality impacts than considered when the policy was initially screened – it may be for instance that service users raise equality issues which were not fully considered in the original screening. In such cases you may decide to re-screen the policy to take account of this additional information. If so, you may find that your assessment of likely impacts may have changed. You may also decide to do an EQIA, or take new mitigation measures or adopt an alternative policy.

So the 'takeaways' from today's session are:

Always follow your organisation's Equality Scheme

- ensure you use adequate **data**
- assess the **impacts**
- keep decision-makers informed
- **engage** with those directly affected
- monitor and publish
- review AND
- maintain **records**

Further Information

[View the training video on YouTube](#)

We have a wealth of information online, or you can phone or email the Equality Commission for advice. If you have any questions, please get in touch.

Useful information, templates and guides available at www.equalityni.org/S75duties

email: information@equalityni.org

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