

Section 75

Consultation on a Draft Audit of Inequalities and Draft Action Plan for the Northern Ireland Law Commission

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INTRODUCTION

The Northern Ireland Law Commission (the Law Commission) is fully committed to the promotion of equality and good relations, as set out in Section 75 of the Northern Ireland Act 1998. The Law Commission takes into account equality issues throughout its law reform work. It introduces equality considerations at the beginning of each law reform project and builds up its understanding of these issues through effective consultation throughout the course of the project - particularly working with groups representing the nine categories of Section 75. In this way the Law Commission can be confident that its law reform recommendations, and any draft legislation presented to the Northern Ireland Department of Justice, are fully equality proofed and tested on the need to build good relations between persons of differing beliefs, political opinion or racial group.

The Law Commission applies the highest equality standards in carrying out its internal services. It conducts its recruitment, personnel and public procurement activities with careful adherence to the Northern Ireland Civil Service codes and equality and fair employment legislation and the practice in these areas.

Background – The function of the NI Law Commission

The Law Commission was established in April 2007 under the Justice (Northern Ireland) Act 2002 following on from the recommendations of the Criminal Justice Review Group. The Review Group reported in March 2000: *Review of the Criminal Justice System in Northern Ireland*.

The Law Commission was set up as an independent statutory body whose aim is to consider the law of Northern Ireland with a view to advising government on the law's systematic reform.

When policing and justice functions in Northern Ireland were devolved to the Northern Ireland Assembly on 12 April 2010, the Department of Justice was established as a new Northern Ireland Department by the Department of Justice Act (Northern Ireland) 2010.

From this date, the Law Commission became an independent advisory non-departmental public body (NDPB) of the Department of Justice.

The 2002 Justice Act (as amended) provides that the Law Commission should consider any proposals for the reform of the law of Northern Ireland referred to it and submit to the Department of Justice programmes for the examination of different branches of the law with a view to reform. The Department of Justice has to consult with the Attorney General before approving any programme submitted by the Commission.

Our main task is to review areas of the law and to make recommendations for change. The Commission seeks to ensure that the law is as simple, accessible, fair, modern and cost-effective as possible. A number of specific types of reform are covered by the provisions in the Justice (Northern Ireland) Act 2002:

- Simplification and modernisation
- Codification
- The elimination of anomalies,
- The repeal of legislation which is no longer of practical utility,
- and the reduction of the number of separate legislative provisions.

Mission Statement of the NI Law Commission

The Law Commission will provide the Department of Justice (and as appropriate other Northern Ireland Departments) with independent and well researched proposals and advice on law reform.

Strategic Objectives

The strategic objectives of the Law Commission are:

Strategic Objective 1: To establish and maintain a centre of law reform excellence for Northern Ireland which can provide the Northern Ireland Department of Justice with robust and timely recommendations on the reform of the law of Northern Ireland. And to do so within the resources provided by the Department of Justice.

Strategic Objective 2: To take forward Programmes of Law Reform for Northern Ireland.

Law reform work to date

The Law Commission submitted its First Programme of Law Reform in 2009 and is now finalising its Second Programme. Its public consultation on both programmes specifically included section 75 groups. A copy of the First Programme can be obtained at www.nilawcommission.gov.uk.

The Law Commission has published the following Consultation Papers and Reports

NILC 1 (2008) Consultation Paper: First Programme of Law Reform
First Programme of Law Reform

- NILC 2 (2009) Consultation Paper: Land Law
- NILC 3 (2010) Supplementary Consultation Paper: Land Law
- NILC 4 (2010) Consultation Paper: Special Measures for Vulnerable Witnesses in Civil Proceedings
- NILC 5 (2010) Consultation Paper: Business Tenancies
- NILC 6 (2010) Consultation Paper: Second Programme of Law Reform
- NILC 7 (2010) Consultation Paper: Bail in Criminal Proceedings
- NILC 8 (2010) Report: Land Law
- NILC 9 (2011) Report: Business Tenancies
- NILC 10 (2011) Second Programme of Law Reform
- NILC 11 (2011) Report: Special Measures for Vulnerable Witnesses in Civil Cases

Working Methods

A legal team consisting of a combination of lawyer and legal researcher and headed by a Commissioner or Commissioners is created for each project. The Commissioner has responsibility for providing the strategic leadership for his project along with a level of detailed legal and policy work commensurate with his part-time commitment. Teams are encouraged to exchange information freely across the project boundaries, and governance mechanisms ensure that Commissioners have a degree of involvement across all projects. The aim of such mechanisms is to build a corporate policy approach for the Law Commission and to ensure that any inter-dependencies or linkages between projects is recognised and reflected in the Law Commission's considerations.

The legal team researches the current law. The comparative research includes examination of the related law in England and Wales, Scotland

and the Republic of Ireland. The research work also includes scanning for and examination of any potential equality impacts or good relations implications.

A Consultation Paper is prepared. The Commission carries out stakeholder consultation exercises to inform the contents of the consultation paper. This includes consultation with Section 75 groups.

In the Consultation Paper the law as it currently stands is set out, the perceived weaknesses/defects in the law and its operation are discussed and possible options for reform are set out. The results of the screening for equality impacts and any resultant equality impact assessments are published with the consultation paper for discussion.

The Consultation Paper is widely disseminated. Section 75 groups are included in the circulation of the consultation paper. During the consultation process various consultation mechanisms are utilised. These include individual face to face meetings, group stakeholder meetings, public meetings and questionnaires. The Commission meets with representatives of Section 75 stakeholder groups (these will vary from project to project depending on the subject matter of the project).

The responses to the public consultation are analysed including any comments on the equality screening or impact assessments. If necessary as a result of consultation further screening and assessments are required these are carried out. The Law Commission takes account of the responses as part of its final considerations. A Report with recommendations and, where appropriate, draft legislation is drawn up and presented to the Department of Justice and is laid before the Northern Ireland Assembly.

The Law Commission's function and its equality focus

The NI Law Commission is an independent advisory body of the Department of Justice. The outcome of its work is a Report on the state of a particular aspect of Northern Ireland law with recommendations on its reform. Draft legislation may accompany a Report. These recommendations must be considered by the Department of Justice and/or the Northern Ireland Department with policy responsibility for the area of law and laid before the Northern Ireland Assembly. But the decision on whether to implement the Law Commission's recommendations lies with the Northern Ireland Administration and the Northern Ireland Assembly. The Law Commission does not implement policy nor sponsor legislation within the NI Assembly legislative process and it does not have an operational role. It therefore has a very different function to that of a Department with its policy making role or to that of public bodies who are responsible for implementing policy and delivering services. The advisory role of the Law Commission means that its ability to address equality outcomes is indirect and is a matter of influence rather than any authority to directly bring about outcomes.

The NI Law Commission has two main objectives when carrying out its equality and good relations obligations. The first is to ensure that equality and good relations considerations are carefully and comprehensively reflected in its law reform recommendations and draft legislation. In order to do this it must have effective public consultation especially with the Section 75 groups. It must also have the necessary policies and expertise within the Commission to facilitate and promote consideration of equality and good relations issues. This means positive leadership at Chair, Commissioner and Chief Executive level. It also means that staff must have the necessary training and development opportunities.

The Commission is fortunate in having legal experience on equality matters both at staff and Commissioner level.

The second objective is to ensure that as an employer and procurer of services the Law Commission conforms to the highest equal opportunities standards.

The Commission's audit of inequalities and its action plan reflect this position.

The Action Plan for the Law Commission reflects these two main objectives.

With regard to the first objective, the Law Commission's role in achieving improved outcomes for equality groups is to ensure that its law reform recommendations, if adopted into legislation, will (where relevant) help achieve improved equality outcomes and promote good relations between persons of differing beliefs, political opinion or racial group.

With respect to the second objective, the Commission aims to be an employer and procurer of services that complies fully and wholeheartedly with its equality obligations.

The Action Plan and Audit of Inequalities

The objective of this audit and Action Plan has been to scan the Commission's law reform work and identify relevant social trends and any key inequalities continuing or emerging which the Commission's advisory responsibilities could impact on. Similarly we looked at social trends and key inequalities within the context of our internal services.

Given the advisory nature of the Commission's work we have looked in particular at the Commission's practices and procedures to see whether there were any improvements that we could make in terms of the Law Commission's Section 75 responsibilities. Improvements in these areas could enhance the focus on and understanding of equality issues in the Commission's work.

Work to promote equality across the Section 75 categories will continue in all aspects of the Law Commission's business.

The Audit approach

In the audit we have separated the work of the Commission into three areas: the development of the Commission's Second Programme of law reform; the individual law reform projects and the internal services of the Commission.

We have begun the audit by examining equality practice and procedure currently operating within the Commission.

Equality Policies and practice in the Law Commission

The Law Commission has adopted generally the equality policies and procedures operating within the Northern Ireland Civil Service. It receives advice and guidance on its Section 75 statutory obligations through the Central Co-ordination Division (CCD) of the Department of Justice. The Chairman and Chief Executive of the Law Commission take ultimate shared responsibility for ensuring that equality considerations are built into all policies and decision making processes within the organisation.

The Law Commission's working methods put into practice its equality policies.

The Second Programme of Law reform

Introduction

On the 9 of August 2010 the Northern Ireland Law Commission published a consultation paper on its Second Programme of Law Reform. The Commission received twenty responses from a variety of sources including individuals, law firms, public bodies and the voluntary sector. In all, 14 new law reform proposals were submitted for consideration by the Commission – as several respondents had made submissions in respect of the same area. Overall, twenty-four proposals in total were considered in respect of the Commission's Second Programme.

The content of the Second Programme was therefore compiled from the following:

- 14 new proposals
- 10 proposals which had been submitted to the Commission's First programme of Law Reform (and which had then been assessed as suitable for future consideration).

All of these proposals were explored and researched in terms of their suitability for inclusion within the Second Programme. In conjunction with consideration of equality obligations, the projects were carefully analysed and assessed according to the following criteria:

evaluation of the extent to which the existing law is unsatisfactory;
the nature and scale of any perceived deficiencies or disadvantages;
the potential benefits and costs arising from reforming the law in any particular sphere;

the desirability of having a good mix of law reform projects at any given time;
the expertise of the appointed Commissioners and their legal staff;
the Commission's resources;
and the question of whether any other agency (for example, a particular Government Department) is better equipped (e.g. on account of expertise or resources) to undertake law reform in a given area.¹

Equality Proofing

The Commission performs its obligations under Section 75 of the Northern Ireland Act 1998 consistent with the guidance of the Equality Commission of Northern Ireland.² Section 75 of this Act requires public authorities designated for the purposes of the Act to comply with two statutory duties.³

(1) Due regard must be had to the need to promote equality of opportunity between the following groups:

- (a)** between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
- (b)** between men and women generally;
- (c)** between persons with a disability and persons without; and
- (d)** between persons with dependants and persons without.⁴

(2) Without prejudice to its obligations under subsection (1), a public authority shall in carrying out its functions relating to Northern Ireland have

¹ Northern Ireland Law Commission Consultation Paper – Second Programme of Law Reform' (2011) *NILC* 6 (2010) at p.v-vi.

² Northern Ireland Act (1998) 'Statutory Duty on public authorities,' at <http://www.legislation.gov.uk/ukpga/1998/47/section/75> (accessed 21/03/2011).

³ *Ibid.*

⁴ *Ibid.*,s.75 (1) (a)-(d).

regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group.⁵

As stated in the revised guidelines (2010) by the Equality Commission 'Section 75 makes equality and good relations central to the whole range of public policy decision-making.'⁶ All public authorities are required to engage directly with and good relations issues through all stages of policy-making and delivery to ensure that questions of equality are not sidelined in organisations and which will contribute to a joined-up approach to policy review and to positive action. Section 75 is therefore part of the public policy agenda, which is aimed at ultimately, 'developing policies and services that address the needs of all people, especially those experiencing inequalities.'⁷ As a policy tool, section 75 aims to facilitate better public policy-making and outcomes by focusing particular attention on the promotion of both equality of opportunity and good relations.⁸ However, promotion of both should be action-based 'in a way that is tailored to the specific functions, duties, objective and policies of the organisation.'⁹

Consultation

To this end and in light of the revised guidelines issued by the ECNI, the Commission in preparing its Second Programme of Law Reform consulted with a wide range of groups, organisations, individuals and bodies. Consultation not only builds relations with those potentially affected by any recommendations the Commission might make it also assists the

⁵ Ibid, s.75 (2).

⁶ Equality Commission for Northern Ireland - Section 75 of the Northern Ireland Act (1998) A Guide for Public Authorities at

http://www.equalityni.org/sections/default.asp?secid=8&cms=Publications_statutoryduty&consid=7_43&id=43 (accessed 21/03/2011).

⁷ Ibid p.8.

⁸ Ibid pp.9-10.

⁹ Ibid p.12.

Commission in becoming aware of any problems that policies may pose for individuals or groups.¹⁰ The Commission recognises that effective consultation in conjunction with monitoring, screening and the conduction of impact assessments are important tools in ensuring effective and relevant outcomes and practices.

Second Programme: Process of Consultation

The Law Commission, in respect of the commencement of the Second Programme of Law Reform began the process of consultation with the publication of its Consultation Paper in August 2010, both on-line and in written format.¹¹ (This was the first step which culminates in Ministerial approval of this Programme). The purpose of this paper was to ensure that all had the opportunity to ‘influence the content of the Second programme.’¹² Submissions were invited from the public (i.e. individuals, groups organisations and any interested parties) to make known their views and suggestions in respect of areas or issues which may require reform.¹³ For this purpose, simple guidelines in respect of the submission of proposals to the Commission were inserted into the Consultation Document.¹⁴ It was made clear that proposals could be submitted by any means, including in writing, on-line, or by telephone.¹⁵ In addition, it was emphasised that the Commission was ‘anxious to receive a broad spectrum of ideas and proposals, all of which will be carefully and independently scrutinised.’¹⁶

¹⁰ Ibid.

¹¹ See ‘Northern Ireland Law Commission Consultation Paper –Second Programme of Law Reform’ (2011) *NILC 6* (2010) at http://www.nilawcommission.gov.uk/nilc_2010_consultation_pap (accessed 20/02/2011).

¹² Ibid. p.v.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Northern Ireland Law Commission Consultation Paper – Second Programme of Law Reform’ (2011) *NILC 6* (2010) p. vii.

¹⁶ Ibid p.v.

Furthermore, consultation was conducted in compliance with the seven cardinal principles contained in the Cabinet Office “Code of Practice on Consultation,” which are evidently in accord and marry well with the guidelines issued by the Equality Commission (NI) as follows:

- Formal consultation should take place at a stage when there is scope to influence the [policy] outcome (*in this case the contents of the Commission’s Second Programme of Law reform*)
- Consultation processes should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible
- Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals
- Consultation documents should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach
- Keeping the burden of consultation to the minimum is essential if consultations are to be effective and if consultees’ buy-in to the process is to be obtained
- Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation
- Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.¹⁷

Data-Gathering – Socio-Economic Trends – Inequalities

The revised guidelines from the ECNI stress the importance of gathering information from existing sources – both internal and external – and disaggregated by s.75 categories. This will act as an evidence base which

¹⁷ Ibid p.viii.

will enable identification of and level of inequalities and which will in turn feed into the Commission's overall audit of inequalities.

Following the consultation period, data concerning each proposal submitted was collected and collated from a variety of sources, both qualitative and quantitative, including data-bases and statistical data. Individual meetings were held with groups who had submitted these proposals and with relevant governing departmental bodies and officials. Information was obtained from other relevant organisations including the Law Commission (England & Wales), Law Centre (NI); Public Prosecution Service (NI); Departmental Solicitor's Office, and Northern Ireland Courts and Tribunals Service via online discussion or by phone. Statistics were collated from a variety of sources, including the Northern Courts and Tribunals Service (NICTS); Police Service Northern Ireland (PSNI); Census and from the Northern Ireland Statistics and Research Agency (NISRA). From these sources, the main socio-economic trends were extrapolated and inequalities identified. All of the proposals underwent this process.

Subsequently, this wider consultation process produced a greater understanding of the law in each area, its practice, changes required and of the impact of the law on groups outlined in section 75. Each proposal was duly scanned for identification of inequalities.

Second Programme: Selection of Projects

Subsequently, following this process and in light of all the information and data gathered, the Commission's selection criteria were applied to each submission as follows:

- evaluation of the extent to which the existing law is unsatisfactory;
- the nature and scale of any perceived deficiencies or disadvantages;

- the potential benefits and costs arising from reforming the law in any particular sphere;
- the desirability of having a good mix of law reform projects at any given time;
- the expertise of the appointed Commissioners and their legal staff;
- the Commission's resources;
- and the question of whether any other agency (for example, a particular Government Department) is better equipped (e.g. on account of expertise or resources) to undertake law reform in a given area.¹⁸

The Commission's overall project selection criteria are:

1. Importance to Northern Ireland:

- This incorporates an assessment of potential benefits to and impact on the public, complexity, accessibility and the need for simplification and modernisation. It also includes a recognition of any equality impacts identified at the sift stage.

2. Suitability:

- The application of this criterion includes an assessment of the demands and dimensions of the candidate project; the desirability of having a good mix of law reform projects at any given time: the skills, expertise and experience of Commissioners and Commission legal staff; and the desirability of any other agency undertaking the candidate law reform project.

¹⁸ Northern Ireland Law Commission Consultation Paper – Second Programme of Law Reform' (2011) *NILC* 6 (2010) at p.v-vi.

3. Resources:

- The Commission will consider the human and financial resources, current and projected, at its disposal.

4. Timing

- The Commission estimates the duration of each candidate project, taking account of the desirability of completing projects within a three to four year period.

Development of NILC's Second Programme: Selected Projects

From this process, projects will be selected and a programme of work submitted to the Department of Justice for approval. The Department of Justice must consult with the Attorney General for Northern Ireland before approving any Programme. Following approval the Programme will be laid before the Northern Ireland Assembly.

Second Programme: Feed-Back

When the content of the Second programme has been finalised and approved, all of the respondents will be contacted in writing to inform them of the results of the consultation process. Those submissions selected as law reform projects within the Commission's Second programme will be published on the Commission's web-site.

Further Auditing/Screening

Upon the commencement of the Second programme, each team will also conduct their own consultation process in respect of the particular area of law reform, which will give the opportunity for all, – especially s.75 groups

to make known their views and opinions. Diverse methods of data gathering, including focus groups, in-depth interviews, meetings with representative groups and stakeholders and questionnaire will be utilised within these projects. It is likely that additional inequalities (as has occurred in on-going projects) will come to light following this process. Screening will duly take place in respect of the impact or likely impact of changes in policy, practice, or decisions taken on each affected group and s.75 category. In conjunction, any potential impacts upon multiple identity and good relations will be screened. Where relevant, equality impact assessment(s) will be conducted.

The current law reform projects

General approach – as user friendly as possible

The Law Commission deals with areas of law which are sometimes very technical and discussion of the issues may be less than straightforward for people not familiar with the legal concepts. In many instances it is not feasible when writing about or discussing legal issues to avoid the use of technical legal language. Nevertheless, the Commission is alert to the need to write in as clear and reader friendly manner as possible. In drawing up its consultation papers and reports, where appropriate the Law Commission will prepare a summary version of the consultation paper which will minimise as far as possible technical legal terms. Such summary versions may be helpful in improving access by children and young people. This exercise was carried out for the consultations on bail law and practice and for the Special Measures for Vulnerable Witnesses project. It was not carried out for the land law reform or business tenancies projects on the grounds that reform of this area of law had very little particular impact for section 75 groups (other than as part of the wider property purchasing/owning or business property renting community); it is very difficult to avoid using technical terms in land and conveyancing law; and the audience was for the most part lawyers or professionals involved in the conveyancing process.

In those projects where the equality scan at the outset of the project (when the project initiation documentation is drawn up) has indicated that the policies involved are likely to impact on Section 75 groups, considerable efforts have been made to ensure early and extensive consultation with representatives of these groups. (This occurred with the bail and vulnerable witnesses projects).

Equality issues are researched at the same time as the legal research is being carried out. This involves both desk work and early consultation with section 75 representative groups. In this way equality considerations are mainstreamed into the Commission's research work. As proposals for reform are worked up Section 75 screening is carried out before the proposals are published for consultation. The screening exercise and any consequent impact assessments are published for consultation. Responses to the consultation are analysed and if necessary further screening and impact assessments are carried out before settling recommendations.

Law Commission staff have attended equality training including training on carrying out equality impact assessments.

Internal services

The main internal services of the Commission are recruitment, personnel management and public procurement of legal services. The Commission works through HR Connect and Central Procurement Directorate (DFP) for its personnel, recruitment and procurement services. NICS equal opportunities recruitment, personnel and procurement procedures are strictly adhered to.

The Audit of Key Inequalities

The Law Commission is a small organisation. It has a Chairman, 4 Commissioners, a Chief Executive, 8 legal staff and 4 administrative staff. The person designated as Equality Officer has a number of other responsibilities within her post.

ECNI's revised guide describes the audit of inequalities as, *"...a systematic review and analysis of inequalities that exist for service users and those affected by policies"*. ECNI's guide states, *"The scale and size of an audit of inequalities should be proportionate to the size and relative functions of a public authority. The Commission recognises that this is a developing process with the focus on priorities and outcomes improving over time."*

The audit of key inequalities, draft Action Plan and the Equality Scheme have been developed by the Law Commission's Equality Officer working with the Chief Executive. Legal staff, the Chairman of the Law Commission and the Commissioners have also been consulted on the contents of these documents. The audit, action plan and equality scheme have been developed to reflect the function and scale of the Law Commission.

Having looked at existing practice, the next step was to consider how the work of the Commission could be audited using the tools suggested in the Guidance. This meant identifying the social trends relevant to the work of the Commission, identifying any key inequalities, and considering how the Commission's work might improve the outcomes in those areas of inequalities.

As recommended by ECNI the identification of key inequalities was achieved by using a range of sources and evidence including: available

research data; surveys; monitoring information; Equality Impact Assessments; reports; and reviews.

The Law Commission wrote to Section 75 groups informing them that it was carrying out its audit of inequalities and drawing up its Action Plan. The Law Commission offered the groups the opportunity to raise any relevant issue. One response was received.

A key element of the audit was evidence-based research with the collation and analysis of existing information. This was categorised into Section 75 categories which was used to develop indicators for levels of inequalities and other sources including:

- recommendations from relevant reviews and reports;
- feedback/complaints information;
- Section 75 research;
- annual reports, consultee feedback;
- Section 75 Screening exercises, Equality Impact Assessments and monitoring information;
- data on uptake of services; and
- professional knowledge/judgement.

One element of the evidence based approach is the identification of data gaps. Project teams were asked to investigate and consider gaps in the data which had become evident through the project research and equality screening and impact assessment exercises.

As a rule, information tends to be strongest on determinative categories such as age and sex and progressively weaker on those categories where assessment relies on self-reporting of the data subjects, e.g. existence of

dependants, ethnic classification, political opinion and sexual orientation. By making use of supporting research and available data, key inequalities were considered for each policy area against each of the Section 75 categories. Performance indicators and action measures for tackling the inequality, timescales for achieving outcomes and monitoring mechanisms were developed.

Data gaps

The Law Commission has highlighted the data gaps as an action area in its action plan. Although the Law Commission is not directly responsible for gathering equality related data, nevertheless, it can take a number of steps to try and improve availability of data. These steps are set out in the Action Plan.

The data sources used by the Law Commission in its equality considerations are referenced under each law reform project heading.

The Commission's projects

Review of bail law practice and procedure

The main social trends relevant to bail were identified as follows.

The single largest grouping affected by any changes to criminal law and practice, including bail and remand, are young males and boys, particularly those who are socially deprived in terms of poverty, unemployment and poor educational attainment.

The key persistent/emerging inequalities were identified as:

Many potential inequalities were highlighted by the Equality screening exercise completed in April 2011. Some of the main inequalities identified were the very high representation of young men and boys in the bail/remand system and the particular vulnerability of children and young persons, particularly "looked after" children and young persons. Other potential inequalities which will be considered further in the Equality Impact Assessment on the bail proposals and the Final Report include issues surrounding ethnic minorities, persons with mental health and/or learning difficulties, single persons, persons with dependant children and Catholic persons.

When preparing the consultation paper *Bail in Criminal Proceedings*, the Commission was mindful of the needs and experiences of different groups and conducted wide ranging preliminary discussions with many individuals and organisations representative of the interests of section 75 groupings, including:

African Cultural Centre
An Munia Tober
Children's Law Centre
Church of Ireland
Contact Youth Counselling
Fermanagh Women of the World
Include Youth
Lakewood Centre
Lesbian, Gay and Bisexual Group
Multi Cultural Resource Centre
North Belfast Parents Group
Northern Ireland Commissioner for Children and Young People
(NICCY)
Northern Ireland Council for Ethnic Minorities (NICEM)
Woodlands Juvenile Justice Centre
Women's Aid
Youth Justice Agency

The Commission also considered the treatment of different groups in the comparative analysis of bail law and practice in other jurisdictions and devoted a separate chapter and distinct consultation questions to considerations concerning children and young persons.

The Commission conducted an initial screening exercise of the issues under discussion and the view was taken that the proposals contained within the Consultation Paper would not impact adversely on any of the Section 75 categories. Consultees were invited to submit their views on this provisional conclusion. Consultees were also invited to draw the Commission's attention to any data which may be relevant to any screening or EQIA of this policy.

The Consultation Paper was widely circulated to groups and individuals representative of the interests of section 75 groupings, including those included in the “Guidance on the Distribution of Departmental Publications and Consultation Documents” (OFMDFM). During the consultation period four public meetings were conducted in order to promote the Bail consultation and encourage a broad response. Meetings were held in two venues in Belfast, one in Dungannon and one in Derry/Londonderry.

Acknowledging the potential impact of the proposals on children and young persons the Bail team worked with Participation Network during the consultation period to engage directly with children and young people in relation to the bail proposals. A Children and Young People's version of the Paper was developed in partnership with Participation Network and several meetings were arranged with children and young persons. The Bail team visited Hydebank Young Offenders Centre and Woodlands Juvenile Justice Centre and, with the help of Include Youth, consulted with several young people there. Further meetings with young persons, some of whom had experience of the care system, were carried out in Enniskillen and Derry/Londonderry with the assistance of VOYPIC and Include Youth. VOYPIC also created a questionnaire for young persons from the Children and Young People's version of the Paper and posted it on their website. Twenty four responses to this questionnaire from children and young persons were submitted to the Commission via VOYPIC.

The Commission conducted a further screening of the bail proposals when all responses to the consultation were received. The Bail

proposals have been 'screened in' for Equality Impact Assessment and data is currently being collected to inform this exercise.

Review of law and practice relating to special measures for vulnerable witnesses in civil proceedings

The main social trends relevant to this project were identified as:

The Commission is mindful that in Northern Ireland the higher incidence of relationship breakdown, in recent years, has led to increased numbers of children participating in the civil justice system.

It is recognised that rates of domestic violence in Northern Ireland have remained persistently high. However, the Commission notes a new commitment at the level of government to raise awareness and find solutions to this problem.

Since the ratification by the United Kingdom of the United Nations Convention on the Rights of the Child nearly twenty years ago, there is now more widespread awareness in society of the rights of children.

The Commission also considers that in Northern Ireland, in recent years, a heightened awareness has developed of issues relating to physical disabilities or disorders, mental illness, learning disabilities or personality disorders. This has been accompanied by a greater sensitivity to the challenges faced by those who are living with these conditions.

The key emerging/persistent inequalities were identified as:

Children and people living with a physical disability or disorder, mental illness, learning disability or personality disorder experience

particular difficulties when presenting evidence in civil proceedings. Therefore, these witnesses may not be able to participate fully in the civil process in which they are involved.

The Commission seeks to enhance equality of opportunity for these witnesses by recommending that a range of special measures should be available in civil proceedings. In making its final proposals the Commission has considered the guidance outlined in publications such as *Achieving Best Evidence in Criminal Proceedings: Guidance on Interviewing Victims and Witnesses Using Special Measures and Provision of Pre-trial Therapy*.

The Commission's policy does not assume that all children and people living with a disability will wish to avail of special measures. It does, however, offer them protection and support to give their best evidence.

The Consultation Paper, entitled *Vulnerable Witnesses in Civil Proceedings*, was issued on 1 April 2010. The Initial Equality Impact Screening of the Commission's preliminary policy views was set out at Chapter 8 of that document. This exercise was principally informed by data obtained from the Northern Ireland Courts and Tribunal Service, the Northern Ireland Office and the Police Service of Northern Ireland. Consultees were invited to comment on the Commission's preliminary conclusions in relation to the initial screening.

The Vulnerable Witnesses team sent electronic and hard-copies of the Consultation Paper to a wide range of groups and individuals including non-governmental organisations, political parties, local

government, non-departmental public bodies, legal practitioners and members of the judiciary.

Specifically the Consultation Paper was issued to all the groups that are listed on the DFP equality database and in the OFMDFM “Guidance on Distribution of Departmental Publications and Consultation Documents”. These lists include groups representing Section 75 interests such as Women’s Aid, the Northern Ireland Council for Ethnic Minorities, the National Society for the Protection of Cruelty to Children and Disability Action.

The Vulnerable Witnesses team have informed consultees that publications can be made available in an alternative format or language. Consultees are also invited to advise the Commission on how it can best provide copies of documents that met their needs. In accordance with equality guidelines, the cover letter which accompanied the Consultation Paper sent to Disability Action was written in Arial font size 14. Furthermore, the Commission advised that a copy of the consultation document could be made available to Disability Action in a larger font size, if required.

At the consultation stage of the project, the Vulnerable Witnesses team liaised with the organisation Participation Network. The flyer set out at Annex 1(a) was prepared and displayed on the Participation Network site. This provided a child-friendly summary of the Consultation Paper and informed organisations that the team sought to consult with children and young people on the proposed introduction of special measures in civil proceedings. As a result of this exercise, the Vulnerable Witnesses team met with the following groups and individuals:

- Include Youth (Young Voices Programme) at their offices in Rosemary Street, Belfast;
- National Society for the Prevention of Cruelty to Children, Young Witness Service Manager at the Commission's office; and
- National Children's Bureau (NI) at Mountpottinger Church Hall, East Belfast

Additionally Include Youth (Young Voices Programme) arranged three consultation meetings with the Young Offenders Centre at Hydebank Wood in Belfast, a community group and the Juvenile Justice Centre at Woodlands in Bangor and the outcome of these meetings were reported to the Commission.

In its Final Report the Vulnerable Witnesses team has also included an Equality Screening. This contains updated information and material additional to that included in the Initial Equality Impact Screening. On the basis of this information and an analysis of the views of consultees, the team has concluded that it will not be necessary to conduct an Equality Impact Assessment in relation to its policy. Although impacts on a number of Section 75 groups are noted, they are minor in nature, entirely positive and serve to enhance the opportunities of these groups to access justice. The Commission has also conducted a Regulatory Impact Assessment.

Review of aspects of business tenancies law and practice

The main social trends identified as relevant to this project were:

The Business Tenancies Project seeks to examine the current prohibition on contracting out of the Business Tenancies (Northern Ireland) Order 1996. The main premise of the legislation seeks to ensure that tenants have security of tenure in their commercial premises. The Commission received representations that the current prohibition is a hindrance to legitimate transactions in certain more complex commercial transactions such as PFI/PPP, outsourcing arrangements etc where tenants are professionally represented and both parties have equal bargaining power. The position in Northern Ireland is in direct contrast to that in our neighbouring jurisdictions who permit contracting out of their equivalent legislation, with the result that Northern Ireland can be perceived to be a more difficult place to do business.

There are a number of social trends which impact upon the project. In recent years political stability has brought about a growth in private sector activity and investment into Northern Ireland. One of the goals of the Programme for Government is to “grow a dynamic and innovative economy”. The Programme seeks to particularly encourage the small and medium sized private sector of the economy and create conditions in which enterprise can flourish. There is a general focus on moving away from reliance on public sector activity and encouraging investment into the economy. The Commission believes there is an opportunity to make a positive impact on the economy by examining whether this barrier to economic activity can be removed in certain instances where it serves no useful end.

According to data supplied by Land and Property Services there are approximately 72,000 non domestic properties in Northern Ireland. The Department for Business Innovation and Skills have released statistics that small and medium sized enterprises account for 99% of all private sector enterprises in Northern Ireland. Therefore while the Commission recognises that it is important that 'vulnerable' small tenants have sufficient protection there is scope for reform in this area.

The key emerging/persistent inequalities identified were:

The Commission does not consider there to be any emerging or persistent inequalities in this area. Should the law be reformed in this area, there would be a positive impact on society as a whole by facilitating and encouraging more complex transactions and encouraging further investment into the local economy.

Throughout the course of the Project due consideration was given to equality issues as the Project progressed. At the consultation stage of the Project we carried out an Equality of Opportunity Screening Analysis in which the Commission was minded to conclude that there were no negative impacts on any of the section 75 groups due to the technical nature of the Project. The screening was informed with data obtained from the Lands Tribunal, Land and Property Services and the Northern Ireland Statistics and Research Agency, although it should be highlighted that there was a limited amount of data available in this area. We also carried out a Regulatory Impact Assessment at this stage. The Screening Analysis and Regulatory

Impact Assessment were published in the Consultation Paper and consultees were invited to comment upon our initial conclusions.

The Consultation Paper was widely circulated to various groups on 1 June 2010 including those detailed in the OFMDFM, Machinery of Government Division “Guidance on the Distribution of Departmental Publications and Consultation Documents” to ensure that the relevant equality bodies had access to the Consultation Paper. This guidance also includes other relevant information such as consultees who require the document in a specified form – for example Disability Action request documents to be provided in size 14 font. The covering letter to Disability Action complied with this request. We also sent copies of the Consultation Paper to those detailed in the DFP Equality List.

During the consultation period we held a series of consultation meetings with representatives from those directly affected by the policy proposals such as commercial solicitors, property agents, the Federation of Small Businesses and Public Sector individuals. We also indicated a willingness to meet with any other individuals or bodies that may have an interest in the Project.

One consultation response highlighted that further consideration should be given to ethnic minorities when considering the issues involved in the Project. We considered this matter carefully when formulating our final recommendations and made contact with the Northern Ireland Council of Ethnic Minorities and the UK Department of Business, Innovation and Skills. Whilst it is recognised that ethnic minorities may experience more barriers to business we do not

consider that the policy which we recommended creates any additional negative impacts than those already faced.

We carried out a further Equality of Opportunity Screening Analysis when formulating our final recommendations contained in the Report in which the Commission was minded to conclude that there were no negative impacts and therefore we would not be minded to carry out a full Equality Impact Assessment. We also carried out a Regulatory Impact Assessment on the final policy. Both documents are published in the Report. The Report will be circulated to those equality groups who were consulted at the consultation stage.

Our equality duty became particularly relevant in formulating our final policy as our ultimate choice was between market regulation and market freedom. We felt that on balance, and particularly in light of our section 75 duty, that we had to retain market regulation as removing protections for tenants would create adverse impacts on certain section 75 groups e.g. ethnic minorities. We believe that the final recommendations will have a positive impact on many as it will make it easier to do business in Northern Ireland.

Review of Multi-unit Developments (flats) law practice and procedure

The main social trends relevant to this project were identified as:

(a) Increasing demand for apartment living as a result of:

- an increase in the number of one person households;
- an ageing population and the desire to down-size;
- a demand for high standard accommodation in urban areas;
- the need to provide affordable housing for first-time buyers;
- and
- the evolution of the multi-unit development sector, to include more sophisticated developments with a broader range of amenities including leisure facilities, shops, restaurants, etc.

(b) Emerging problems in practice:

- disputes with managing agents;
- neighbour disputes;
- poor management structures;
- over-charging of service charges;
- poor maintenance; and
- deteriorating buildings.

In selecting the Multi-Unit Developments Project, the Commission has taken account of the social trends outlined above. The Project recognises that multi-unit developments are now an established feature of the property landscape in Northern Ireland which will continue to evolve in light of demand for increased choice and

amenities. The Project seeks to address the significant social problems which are emerging and which are due, in part, to a lack of proper regulation. The Commission's recommendations for law reform in this area will address the problems identified in practice and provide a new statutory framework to support the sustainability of this sector over time.

The key emerging/persistent inequalities identified to date are:

None.

The Multi-Unit Developments Project is at an early stage. Equality screening has not yet been carried out but will be undertaken as the Commission's policy develops.

Internal Services

Recruitment to the Commission

Recruitment to the Commission adheres strictly to NICS and HR Connect recruitment procedures. These take full account of equal opportunities statutory obligations and best practice. All Law Commission recruitment panel members are provided with up to date equal opportunity training.

The Commission was conscious that its legal staff was all female and in the last recruitment exercise explicitly welcomed male applicants.

Public procurement of services

The Law Commission procures its services through a public tendering exercise assisted by the Central Procurement Agency. The Commission adheres carefully to the guidelines and procedures set down by Central

Procurement. These take full account of equal opportunities statutory obligations and best practice. All Law Commission procurement panel members are provided with up to date equal opportunity training.

The main services procured by the Law Commission are legal/legislative drafting services.

Next Steps

The Law Commission will review and update the published Action Plan at six monthly intervals over the lifespan of the Equality Scheme. This will ensure the Plan remains effective and relevant to the function and work of the organisation.

Progress on the delivery of the Action Plan will be monitored through regular assessment of progress against targets and the use of the performance indicators.

ACTION PLAN TO ADDRESS KEY INEQUALITIES

Introduction

The Law Commission's draft Action Plan highlights the main areas where we may be able to improve the incorporation of equality considerations in the Law Commission's law reform process.

This audit of inequalities shows that the Law Commission has developed good practice in the way it takes account of equality considerations in its research work and in the way it runs its internal services. Nevertheless the audit of inequalities and Action Plan have assisted the Law Commission in further developing its approach to equality and good relations practice.

The purpose of the actions in the draft Action Plan is to deliver outcomes that are achievable and realistic.

The draft Action Plan has classified the key inequalities in the audit as they relate to the law reform work of the Law Commission. The inequalities and the type of measurement used to assess progress in tackling them, have been identified for each action. In addition, the associated research and the timescale for delivery have been set out.

Conclusions

The audit highlights the information gaps on some of the nine Section 75 categories e.g. political opinion, sexual orientation, persons with dependants. The Law Commission will draw these gaps to the attention of the Department of Justice. It will also where possible seek to address the gaps during its consultation processes.

The work to develop the Audit and Action Plan have helped strengthen the Law Commission's focus on equality and good relations practice.

The attached draft Action Plan sets out the key initiatives planned to tackle the inequalities highlighted by the audit.

Consultation, Monitoring and Review

The purpose of consultation is to seek the views of stakeholders, including organisations (particularly those representing Section 75 groups) and individuals affected by the work of the Commission. The consultation is intended to assist the Commission to formulate policies and develop solutions which will work and gain acceptance in practice. The Commission encourages engagement with stakeholders and will respond positively to stakeholder comments in respect of this Action Plan.

In particular, should any individual or organisation wish to discuss this Action Plan during the period of this consultation, please contact the Law Commission to arrange.

Mrs Cathy Lundy
Equality Officer
Northern Ireland Law Commission
Linum Chambers
2 Bedford Square
Bedford Street
BELFAST BT2 7ES

The draft Action Plan will be sent to all consultees on the Commission's Section 75 database.

Consultation process

Consultees will be notified by e-mail of the consultation. Copies will also be made available in accessible formats on request.

The consultation will commence on 27 June 2011 for 15 weeks. If you have any concerns about the consultation process you should contact the Commission at the address below.

The Disability Discrimination Act 1995 (DDA) requires public authorities to due regard to the need to:

- promote positive attitudes towards disabled people;
- encourage participation by disabled people in public life; and
- prepare a disability action plan (including an annual report on implementation and a review of the plan in four years).

The Commission is currently developing a disability action plan and will consult separately on the plan with representative groups.

Following consultation the final Action Plan will be published on the Law Commission's website, with copies sent electronically to all those who responded to the consultation.

The Law Commission will formally update the ECNI as part of the Law Commission's Section 75 Annual Progress Report. A list of those organisations that respond to this consultation will be published on the website at www.nilawcommission.gov.uk.

Written comments may be submitted by post, fax or e-mail to arrive no later than 10 October 2011 to the Equality Officer at the address below:

Mrs Cathy Lundy
Equality Officer
Northern Ireland Law Commission
Linum Chambers
2 Bedford Square, Bedford Street
BELFAST BT2 7ES

Evaluation

The Equality Commission's revised Section 75 guidance "...recognises that this is a developing process and public authorities should focus on priorities and outcomes improving over time". A key element of the evaluation of the Action Plan will involve ongoing monitoring and six monthly reporting on progress for the Performance Indicators listed against each of the key inequalities to determine if they are on track for achievement and remain relevant.

In addition to this, the Law Commission will also formally report to the Equality Commission as part of the Annual Progress Report.

June 2011

Bail Law and Practice

PROJECT	INEQUALITY IDENTIFIED/EVIDENCE	SECTION 75 CATEGORIES	PERFORMANCE INDICATORS	ACTION MEASURES	TIMESCALE
Bail law and practice	<p>Research and preliminary discussions conducted for the Consultation Paper suggested that current bail law and practice is complex, uncertain and often inconsistent. This may impact upon all section 75 groupings but particularly young men and boys as the largest grouping in the criminal justice system</p> <p>Children and young persons are particularly vulnerable in the bail system, particularly 'looked after' children.</p>	<ul style="list-style-type: none"> • Males; • Children and young persons; • Ethnic minorities; • Persons with mental health and/or learning difficulties; • Single persons; • Persons with dependant children; • Catholic persons. 	<ul style="list-style-type: none"> • Identification and engagement with relevant stakeholders at the earliest opportunity; • Completion of Equality screening and, if necessary, Equality Impact Assessment, drawing on relevant quantitative and qualitative data; • Consideration of responses to any equality consultation when formulating policy with a view to recommending law and/or policies which promote equality of opportunity. 	<p>Following the completion of the Consultation Paper and the Equality screening:</p> <ul style="list-style-type: none"> • Completion of and public consultation on Equality Impact Assessment; • Full consideration of equality issues (including responses to consultation) when making policy decisions; • Formulation of policy recommendations which have a positive impact on equality of opportunity. 	2011-2012

Vulnerable Witnesses

INEQUALITY IDENTIFIED	EVIDENCE/ RESEARCH	SECTION 75 CATEGORIES	PERFORMANCE INDICATORS	ACTION MEASURES	TIMESCALE
Difficulties with full participation in the civil justice system	Various sources including: <ul style="list-style-type: none"> • NI Courts and tribunals statistics; • Goodman, Taub, Jones, England, Port, Ruby and Prado <i>Testifying in Criminal Court: Emotional Effects on Child Sexual Assault Victims</i> (1992); • Plotnikoff and Woolfson, <i>Measuring Up? Evaluating the implementation of government commitments to young witnesses in criminal proceedings</i> (July 2009); • McLeod, Philpin, Sweeting, Joyce and Evans, <i>Court Experience of adults with mental health conditions, learning disabilities and limited mental capacity</i> (Ministry of Justice Research Series 10/10 July 2010); and • Insights from meetings with s 75 groups. 	<ul style="list-style-type: none"> • Children and young people; and • Persons with a disability 	<ul style="list-style-type: none"> • Number of responses from s 75 consultees; and • Positive responses to the Commission's proposals from s 75 groups 	<ul style="list-style-type: none"> • The Commission's policy provides for special measures to be made available to children and persons with a disability who are giving evidence in civil proceedings; • The Commission's policy affords an extra tier of protection for children who are giving evidence in proceedings under the Children (Northern Ireland) Order 1995; and • The Commission's policy has not assumed that children and persons with a disability will need or wish to avail of special measures. 	

Business Tenancies Project

INEQUALITY IDENTIFIED	EVIDENCE/ RESEARCH	SECTION 75 CATEGORIES	PERFORMANCE INDICATORS	ACTION MEASURES	TIMESCALE
No inequalities identified	Statistics and information obtained from: <ul style="list-style-type: none"> • Northern Ireland Statistics and Research Agency • Land and Property Services • Lands Tribunal • UK Department for Business, Innovation and Skills • Northern Ireland Council for Ethnic Minorities • Ethnic Minority Business Task Force (EMBTf) in 'The Economic Case for Investment in Ethnic Minority Business: Final Report' (2009) 	Not applicable	<ul style="list-style-type: none"> • Responses received from section 75 consultees, which supported the view of the Commission 	The Commission will monitor any potential emerging inequalities throughout the course of the Project through: <ul style="list-style-type: none"> • Discussions with section 75 consultees • Analysing any new evidence/research obtained 	Continuous process throughout the duration of the Project

Action Plan for Commission Processes

INEQUALITY IDENTIFIED	EVIDENCE/ RESEARCH	SECTION 75 CATEGORIES	PERFORMANCE INDICATORS	ACTION MEASURES	TIMESCALE
<p>Accessibility of Law Commission consultations/law reform process generally and legislation</p> <p>Legislation and documents relating to the law are difficult to access for many citizens including Section 75 groups.</p>	<p>A request by an ethnic minority group for an interpreter to assist at a consultation meeting highlighted possible language barriers for ethnic minority communities, children & young people, people with no experience of legal language. While the Law Commission has already taken steps to address this issue there is scope to further develop our approach.</p> <p>Feedback Insights through meeting with different S.75 groups. Many adults & children find legal language inaccessible.</p>	<ul style="list-style-type: none"> ● Persons with a Disability; ● Racial Groups ● Children & Young people ● Elderly 	<p>Positive feedback from relevant S.75 groups.</p> <p>No of responses from S.75 groups</p> <p>Host a seminar on legislative drafting in 2011.</p>	<ul style="list-style-type: none"> ● Continued use of Consultation Paper and report summaries in reader friendly form ● Directly raise question of accessibility in pre-consultation discussions. ● Increase number of focus groups/oral discussion. ● Accessibility directly addressed in every consultation paper and on agenda for all initial pre-consultation discussions. 	

INEQUALITY IDENTIFIED	EVIDENCE/ RESEARCH	SECTION 75 CATEGORIES	PERFORMANCE INDICATORS	ACTION MEASURES	TIMESCALE
Data gaps for measuring equality impacts in justice system particularly criminal justice system.	During research across its projects the Law Commission became aware of the gaps in data on equality groups in the justice system.	<ul style="list-style-type: none"> ● Gender: men ● Sexual orientation ● Persons with a disability ● Racial groups 		<ul style="list-style-type: none"> ● Assess gaps and report to the Department of Justice. ● Review equality data availability in own Annual Report. ● Positively support best practice in other organisations whose data the Commission uses. ● Positively examine how the Commission can use its own consultation process to access data. 	

INEQUALITY IDENTIFIED	EVIDENCE/ RESEARCH	SECTION 75 CATEGORIES	PERFORMANCE INDICATORS	ACTION MEASURES	TIMESCALE
The Law Commission identified scope for a strengthened focus and increased level of co-ordination and sharing views within the organisation in relation to its equality obligations.		Across all Section 75 groups	Increased uniformity of approach adopting best practice across projects.	<ul style="list-style-type: none"> ● Equality and good relations to be standing item on agenda for monthly team meetings. ● Equality and good relations as standing item on agenda for Law Commissioners meeting every 3 months. 	

INEQUALITY IDENTIFIED	EVIDENCE/ RESEARCH	SECTION 75 CATEGORIES	PERFORMANCE INDICATORS	ACTION MEASURES	TIMESCALE
Looking at how the Law Commission addressed the equality screening questions we concluded that we could benefit from placing greater emphasis on the question relating to the opportunities to <u>promote</u> equality of opportunity.	Screening and EQIAs carried out on law reform projects.	Across all Section 75 groups	Evidence of reform proposals which can contribute to promotion of equality.	<ul style="list-style-type: none"> • The Commission will more positively address the potential to <u>promote</u> equality of opportunity when screening its law reform proposals. 	