

DOE SECTION 75 EQUALITY OF OPPORTUNITY SCREENING ANALYSIS FORM

Section 1

Introduction

This form is intended to help you to consider whether a new policy (either internal or external) or legislation will require a full equality impact assessment (EQIA). Those policies identified as having significant implications for equality of opportunity must be subject to full EQIA.

The form will provide a record of the factors taken into account if a policy is screened out, or excluded for EQIA. It will provide a basis for consultation on the outcome of the screening exercise and will be referenced in the Annual Report to the Equality Commission. Copies of completed forms should be retained on file within business areas (**and a copy sent to the Equality Unit**) and reference should be made to the outcome of the screening exercise and subsequent consultation in any submission made to the Minister.

Background

The Legal Background

Under section 75 of the Northern Ireland Act 1998, the Department is required to have due regard to the need to promote equality of opportunity:

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

The main groups within each of the nine categories, highlighted above, are identified at Appendix 1.

In addition, without prejudice to its obligations above, the Department is also required, in carrying out its functions relating to Northern Ireland, to have regard to the desirability of promoting good relations between persons of different religious beliefs, political opinion or racial group.

Advice on Completion of the Screening Form

It is important that the screening form is completed carefully and thoughtfully. Your Divisional or Agency Equality Officer and the Department's Equality Unit in room 413A Clarence Court (ext 40203/40813) will be happy to assist with all aspects of the screening process and will help with the completion of the form, if required.

Further advice on the screening process can be accessed at Section 4 of the Equality Commission's Guide to the Statutory Duties.

Policies included for EQIA

If, after screening, it is decided that a policy will require a full EQIA, a decision will be required on the priority and timing of the assessment. The screening form should be noted accordingly, signed off and copied to the Equality Unit for inclusion in the EQIA programme.

Policies excluded for EQIA

If a decision is taken to screen out the policy or where there is ambiguity about the equality implication of the proposal, the screening form should be signed off by a senior officer responsible for the policy and a copy sent to the Equality Unit. Copies of all screening out forms will be placed on the Department's website.

Section 2 – Policy to be Screened

Definition of Policy

There have been some difficulties in defining what constitutes a policy in the context of Section 75. To be on the safe side it is recommended that you consider changes to or any new initiatives, proposals, schemes or programmes as policies. The policies covered in the Equality Scheme EQIA programme are a reasonable guide both to the nature of external departmental policies and the level at which they should be considered.

The revised Guidance from The Equality Commission emphasises that the Statutory duties apply to **internal** policies (relating to people who work for the organisation) as well as **external** policies (relating to those who are, or could be, served by the organisations).

It is important to remember that even if a full EQIA has been carried out in respect of an “overarching” policy or strategy, it will still be necessary for the policy maker to consider if a further EQIA needs to be carried out in respect of those policies cascading from the overarching strategy.

OFMDFM Guidance on Legislative Procedures (Primary and Subordinate) sets out clearly the stages at which equality of opportunity considerations should be taken into consideration in the development of legislation.

Overview of Policy Proposals

The aims and objectives of the policy must be clear and well defined. You must take into account any available data or evidence that will enable you to come to a decision on whether or not a policy may or may not have a differential impact on any of the S75 categories. Evidence may be qualitative and or quantitative and may include research or internal information and or experience in relation to service and customer monitoring exercises. Where appropriate, arrangements should be made to obtain any data necessary to assist screening. The Equality Unit or Central Statistics & Research

Branch (Stephanie Harcourt ext 40878 or Michael Bennett ext 40916) are available to provide advice on data requirements.

2.1 Please insert below a brief description of the policy/legislation, including the title and all the main aims and objectives

Title	Policy
	(i) Proposed amendments to the existing legislative framework for the management of waste on land – Part 2 of the Waste and Contaminated Land (NI) Order 1997 (“the 1997 Order”);
	(ii) Proposed amendments to Part 3 of the 1997 Order – Contaminated Land;
	(iii) A number of proposals designed to clarify local government powers to enter into waste management contracts with the private sector;
	(iv) Proposals to clarify legislative issues that may need to be addressed to implement the Strategic Waste Infrastructure Fund offset mechanism;
	(v) Proposals for legislative clarifications to ensure that councils working together in unincorporated joint committees have the powers necessary to take forward the waste infrastructure programme.
	(vi) A proposal to include enabling legislation in the Waste Bill which would allow the creation of a Single Waste Disposal Authority;
	(vii) A proposed amendment to the Producer Responsibility Obligations (Northern Ireland) Order 1998.

Legislation

The Department has already secured a place for a Waste Bill in the Assembly’s legislative programme. Depending upon the outcome of the consultation exercise, it is anticipated that a number of the policy proposals outlined above will be included either in the Waste Bill or in other appropriate primary legislation.

Aims (i) Proposed amendments to the existing legislative framework for waste management in Northern Ireland

The aim of proposals (a)–(c) (below) is to ensure that both the Department and councils have sufficient statutory powers to deal effectively with illegal waste activity. This is essential in the promotion of an effective partnership between the Department and

local government in tackling the problems caused by illegal waste disposal in Northern Ireland.

The Department therefore proposes:

- a. giving councils new powers to carry out investigations and, where appropriate, prosecutions for alleged waste offences under Articles 4 and 5 of the 1997 Order – powers that are currently restricted to the Department;
- b. giving the Department and councils the option of issuing fixed penalty notices for flytipping offences as a more flexible alternative to prosecutions through the courts;
- c. giving the Department new powers in relation to the clean up of illegally deposited waste – powers which are currently restricted to councils – and strengthening these powers for both parties.

The aim of proposals (d)-(h) (below) is to counter problems experienced by the Department in using existing legislative provision to tackle illegal waste activity in Northern Ireland. Therefore:

- d. proposed amendments to Article 72 of the 1997 Order will remove the 24 hour notice period currently required before enforcement officers can bring machinery onto premises or enter residential premises and should assist in preventing the destruction or removal of evidence and the construction or placement of barriers to entry;
- e. the proposal to revise the definition of offences under Article 4 of the 1997 Order should effectively shift the burden of proof from the enforcing authority to the accused;
- f. the proposal to review references to “land” in Part 2 of the 1997 Order should assist in the prosecution of illegal waste cases where it is not clear what the original surface of the land was, or where waste has been buried or has been deposited in quarries or under water;
- g. the proposal to create a new offence of a failure to pay subsistence fees with respect to a Waste Management licence should strengthen the Department’s position to recover subsistence fees if a business does not pay. The lack of adequate sanction at present creates an accountancy and management problem in that fees received can fall far short of what is required to pay for regulatory staff;
- h. the proposal to strengthen the Department’s vehicle seizure powers to allow extended retention of vehicles suspected of involvement in illegal waste activity should provide a deterrent against such activity and should assist in preventing the work of an illegal operator continuing in a new location with a returned vehicle.

(ii) Proposed amendments to a planned Contaminated Land regime

Part 3 of the 1997 Order makes provision with respect to land contaminated by pollution. Experience of operating contaminated land regimes in England, Scotland and Wales has revealed some shortcomings which have been addressed by means of amendments to the regulations in force there. Similar issues would affect the proposed regime in Northern Ireland and the Department proposes to change the existing legislation to address these issues. Therefore it is proposed:

- a. that all appeals under the contaminated land regime should be heard by the Planning Appeals Commission to ensure consistency and bring the regime more into line with other environmental regimes;
- b. that the definition of "Contaminated Land" in the 1997 Order is amended to ensure that it more accurately reflects land which should fall within the contaminated land regime. On a similar theme, it is proposed that the notion of "significant" pollution of waterways or underground strata or the "significant possibility" of such pollution is included in the 1997 Order. Failure to do so could result in incidents of very minor pollution being captured by the contaminated land regime, leading to an unnecessary burden on regulators and operators alike;
- c. to amend the 1997 Order to make it clear how the contaminated land regime interacts with other regulatory regimes.

(iii) Proposals designed to clarify local government powers to enter into waste management contracts

The Department is already taking forward a Bill (the Local Government (Contracts and Compulsory Purchase) Bill) with the aim of clarifying the powers of councils to enter into long-term service contracts with the private sector. The provisions contained in the Contracts Bill are viewed as critical to the successful implementation of a major waste management infrastructure programme.

However key stakeholders in that process have highlighted a number of areas where they believe additional legislative provision is required in order to promote contractor confidence in the procurement process. The aim of the proposals set out below is to promote such confidence. The Department intends to bring forward legislation which would allow councils to:

- a. guarantee the obligations of other councils and incorporated joint committees for waste management purposes;
- b. provide warranties and indemnities for waste management

purposes;

- c. accept joint and several liability for waste management purposes;
- d. delegate their waste management functions to a company that is formed in connection with the delivery of waste management;
- e. borrow money on behalf of Waste Management Groups.

(iv) Payments from the Strategic Waste Infrastructure Fund

If necessary, it is proposed to make explicit the powers of the WMGs/councils to apply SWIF to the strategic waste infrastructure projects to ease the cost of these necessary facilities to the ratepayer.

(v) Unincorporated Joint Committees

A number of further legislative clarifications are proposed to ensure that councils working together in unincorporated joint committees, have the powers necessary to take forward the waste infrastructure programme.

(vi) Single Waste Disposal Authority

The Department believes that there is strong justification for the creation of a Single Waste Disposal Authority at an appropriate time. This should help to generate efficiencies through economies of scale, enhancing purchasing power and centralising procurement expertise. It would also facilitate future integrated waste management planning.

The Department therefore proposes, in the context of the overall Review of Public Administration, to include enabling legislation in the Waste Bill to provide for the establishment of such a body.

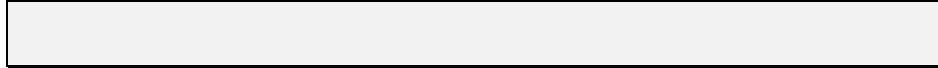
(vii) Proposed amendment to Producer Responsibility Obligations (Northern Ireland) Order 1998

The Department proposes an amendment of the 1998 Order to provide an inclusive definition of the Department's powers of entry and inspection. This would include powers to:

- (i) take photographs and make recordings, where these are deemed necessary for the purposes of any examination or investigation under the Order;
- (ii) take samples of anything found on the premises;
- (iii) require appropriate persons to answer questions relevant to the examination or investigation, and to sign a declaration of the truth of his answers.

It would also allow courts to authorise entry to premises in circumstances where an entry has been refused or is likely to be refused.

This change would therefore clarify the Department's powers of investigation of possible breaches of the Order.



It is essential that **all** the aims/objectives of the policy be clearly and fully defined.

2.2 On whom will the policies/legislation impact? Please specify

Businesses/individuals involved in transporting and handling controlled waste. Many of the proposals target those involved in illegal waste disposal.

Landowners/developers of potentially contaminated sites.

The Planning Appeals Commission where there may be a slightly increased workload.

Those **Northern Ireland Environment Agency (NIEA) and council enforcement staff** who will be responsible for carrying out enforcement operations.

The Northern Ireland Court Service where there may be an increased workload – for example it is proposed that a new offence is created which may impact on the number of prosecutions coming before the courts.

The PSNI – it is possible that the PSNI may be asked to assist with enforcement operations.

Councils/joint committees of councils.

2.3 Who is responsible for (a) devising and (b) delivering the policy, eg is it DOE, a Whitehall Department or EU? What is the relationship and have they considered this issue and any equality issues?

(a) **DOE – Planning and Environmental Policy Division (PEPG)** is responsible for devising the policy and drafting legislation as required.

(b) **DOE (NIEA) and the 26 councils** will be responsible for delivering the policies ie NIEA and council enforcement staff will be 'on the ground', responsible for enforcement operations.

Departmental officials in PEPG and NIEA have worked closely in developing the draft legislation including an assessment of its operational impact. Full consideration has been given to equality issues.

Liaison has also taken place with the Northern Ireland Local Government Association and other representatives from the local government sector in developing the proposals relevant to this sector.

2.4 What linkages are there to other NI Departments/NDPBs in relation to this policy/legislation?

NI Court Service - see answer to Q2.2 above.

The Planning Appeals Commission - - see answer to Q2.2 above.

2.5 What data are available to facilitate the screening of this policy/legislation?

No current data is available. However on careful analysis of the legislative proposals, there is nothing to suggest that they should impact adversely on any of the section 75 groups.

2.6 Is additional data required to facilitate screening? If so, give details of how and when it will be obtained.

Not required.

See Appendix 4 of the Equality Commission Practical Guidance on EQIA which provides a list of Sources of S75 data or speak to Central Statistics and Research Branch (Stephanie Harcourt, ext 40878, or Michael Bennett, ext 40916) or Equality Unit (Alex Boyle, ext 41194, or Laura McAleese, ext 40203).

Section 3 – Screening Analysis

In cases where there is no available quantitative evidence, you will need to take a pragmatic, common sense judgement as to whether the policy/legislation you are screening may have a particular/differential impact on any of the groups. Discussions with Equality Unit, Statistics Branch and organisations representing the Section 75 Groups will be important and helpful at this stage in obtaining qualitative evidence of impacts. Every effort should be made to ensure that assessments are evidence based.

The following criteria must be considered when screening.

3.1 Is there any indication or evidence of higher or lower participation or uptake by the following Section 75 groups?

	Yes	No
Religious belief		x
Political opinion		x
Racial group		x
Age		x
Marital status		x
Sexual orientation		x
Gender		x
Disability		x
Dependants		x

Please give details

Not applicable.

3.2 Is there any indication or evidence that any of the following Section 75 groups have different needs, experiences, issues and priorities in relation to this policy issue?

	Yes	No
Religious belief		x
Political opinion		x
Racial group		x
Age		x
Marital status		x
Sexual orientation		x
Gender		x
Disability		x
Dependants		x

Please give details

Not applicable.

3.3 Have consultations with the relevant representative organisations or individuals within any of the Section 75 categories, indicated that policies of this type create problems specific to them?

	Yes	No
Religious belief		x
Political opinion		x
Racial group		x
Age		x
Marital status		x
Sexual orientation		x
Gender		x
Disability		x
Dependants		x

Please give details of any consultations carried out, and any problems identified.

This section will be completed once public consultation on the policy proposals has been carried out.

3.4 Is there an opportunity to better promote equality of opportunity or community relations by altering the policy, or by working with others, in Government, or in the larger community in the context of this policy?

Yes No **x**

Please give details

Not applicable.

3.5 It may be that a policy/legislation has a differential impact on a certain Section 75 group, as the policy has been developed to address an existing or historical inequality or disadvantage. If this is the case, please give details below:

Not applicable.

3.6 Please consider if there is any way of adapting the policy to promote better equality of opportunity or good relations.

Please give details

Not applicable.

- 3.7 In relation to departmental obligations under Section 49A of the Disability Discrimination Act 1995 (DDA 1995) (as amended by the Disability Discrimination (Northern Ireland) Order 2006), please consider if there is any way of adapting the policy to show due regard to the need to promote positive attitudes towards disabled people and/or encourage participation by disabled people in public life.**

Please give details

Not applicable.

Section 4

EQIA Recommendation

You should consider carefully in this section whether full EQIA is necessary, particularly where answers to any questions in Section 3 are affirmative.

- 4.1 Full EQIA procedures should be carried out on policies considered to have significant implications for equality of opportunity. Please fill in the following grid in relation to the policy/legislation.

Prioritisation Factors	Significant Impact	Moderate Impact	Low Impact
Social Need.			x
Effect on people's daily lives.			x
Effect on economic, social and human rights.		x	
Strategic significance			x
Financial significance			x

Please give details

- 4.2 **In view of the considerations in Section 3 and 4 do you consider that this policy/legislation should be subject to a full EQIA? Please give reasons for your considerations. If you are unsure, please consult with affected groups and revisit the screening analysis accordingly. Yes/No/Unsure**

It is not considered necessary that a full EQIA on this policy/legislation should be carried out. There is no evidence to suggest, and it is not considered likely, that the range of policy proposals will impact disproportionately on any of the Section 75 groups or will have an impact on equality of opportunity.

However, the results of this screening will be included in the public consultation on the policy proposals. The Department will review

equality considerations when assessing the outcome of the consultation process.

4.3 If an EQIA is considered necessary please comment on the priority and timing in light of the factors in table 4.1.

Not applicable.

4.4 If an EQIA is considered necessary is any data required to carry it out/ensure effective monitoring?

Please give details

Not applicable.

Section 5

Endorsement

I can confirm that the proposed policy has been screened for equality of opportunity and good relations implications and has been screened out for equality impact assessment.

Signed: Donald Starritt

Agency/Division: Planning and Environmental Policy Division

Date: 2 April 2009

PLEASE FORWARD A COPY OF THE COMPLETED FORM TO:

**DOE EQUALITY UNIT
ROOM 413A
CLARENCE COURT
10-18 ADELAIDE STREET
BELFAST
BT2 8GB**

QUERIES TO: ALEX BOYLE, EXT 41194
alex.boyle@doeni.gov.uk

LAURA McALEESE, EXT 40203
laura.mcaleese@doeni.gov.uk

Section 6

For Completion by Equality Unit

Date

Screening result recorded: _____

Placed on website: _____

Screening out completed: _____

Screening to be reconsidered: _____

Give reasons:

Agency/Division notified date: _____



Main Groups Relevant to the Section 75 Categories	
<u>Category</u>	<u>Main Groups</u>
Religious belief	Protestants; Catholics; people of non-Christian faiths; people of no religious belief
Political opinion	Unionists generally; Nationalists generally; members/supporters of any political party
Racial Group	White people; Chinese; Irish Travellers; Indians; Pakistanis; Bangladeshis; Black Africans; Black Caribbean people; people with mixed ethnic group
Gender	Men (including boys); women (including girls); trans-gendered people
Marital status	Married people; unmarried people; divorced or separated people; widowed people
Age	For most purposes, the main categories are: children under 18, people aged between 18-65, and people over 65. However, the definition of age groups will need to be sensitive to the policy under consideration
“Persons with a disability”	Disability is defined as: A physical or mental impairment, which has a substantial and long-term adverse effect on a person’s ability to carry out normal day-to-day activities as defined in Sections 1 and 2 and Schedules 1 and 2 of the Disability Discrimination Act 1995
“Persons with dependants”	Persons with personal responsibility for the care of a child; persons with personal responsibility for the care of a person with an incapacitating disability; persons with personal responsibility for the care of a dependant elderly person
Sexual orientation	Heterosexuals; bi-sexuals; gays; lesbians

