

MAINSTREAMING FAIRNESS?

**A discussion paper on
“Policy Appraisal and Fair Treatment”**

by

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November 1996

This discussion document was prepared by Dr Christopher McCrudden and is being circulated by the Committee on the Administration of Justice (CAJ) as part of a broad consultative process.

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FOREWORD

Substantial inequalities between different groups continue to mar our society. Anti-discrimination legislation cannot bear the full burden of reducing that inequality, though it is a necessary part of the armoury of tools for doing so.

Discussion in Britain, Ireland and elsewhere has increasingly concentrated on how to complement anti-discrimination approaches, and that debate in Northern Ireland led to Government acceptance of the following principle in 1993: "Equality and equity" it said, "are central issues which must condition and influence policy making in all spheres and at all levels of Government activity ...". This principle appears in a document known, rather awkwardly, as "Policy Appraisal and Fair Treatment" (commonly referred to as "PAFT"). PAFT was an attempt to establish a procedure within Government decision-making by which that principle could be made effective.

The issue with which this discussion paper is concerned can be simply stated. It is the extent to which, and the methods by which, that commitment can be made *more* effective.

It is important, at a time when the Government's review of employment equality is being undertaken by the Standing Advisory Commission on Human Rights (SACHR), that a public debate on how that principle can be better secured should take place. It is, perhaps, particularly important when there is so much apparent confusion on the status and application of PAFT following the judicial review taken by UNISON, and the Formal Investigation on compulsory competitive tendering undertaken by the Equal Opportunities Commission for Northern Ireland.

There has been, most notably over the past year, a significant amount of consideration of the PAFT initiative specifically, both inside government and by academic and policy-related researchers and consultants. This discussion paper takes a somewhat different perspective. Rather than focusing on the details of the operation of PAFT itself, it draws instead from research in which the author is currently engaged which examines attempts to "mainstream" equality and fairness in other jurisdictions, as well as in Northern Ireland, in order to draw up policy options in the area.

The full study will consider in detail the experience of existing attempts at mainstreaming equality issues in several European and other countries, as well as internationally. This discussion document is part of the process of completing that research, which will recommend policy options for a revised PAFT approach. The aim of this paper is to suggest some possible ways forward, based on the preliminary results of this research. It is written in as non-technical a way as possible, in the hope that it will have as wide an audience as possible. The issues which PAFT raises touch the lives of all in Northern Ireland, however apparently obscure and little known PAFT is to the general public.

This research has been funded by UNISON, to which I am most grateful. Inez McCormack, as always, has been immensely supportive, without in any way attempting to constrain, and I am particularly grateful to her for agreeing to write an introduction to this discussion document.

Wanting to ensure a wider audience for the discussion, UNISON, with my ready agreement, approached the Committee on the Administration of Justice (CAJ) for its assistance. The Committee agreed to act as a conduit for the discussion document to reach the general public and to facilitate and stimulate debate on the paper. CAJ, with the assistance of an advisory group consisting of the Fair Employment Commission, the Equal Opportunities Commission and the Disability Council, will hold a series of consultative meetings with a view to considering my preliminary findings further and assessing various options as to the way forward. In several places, options are put forward, with no definite recommendation. Whilst comment is welcome on all of the proposals and recommendations, views are particularly encouraged on these issues.

Christopher McCrudden

Preface - Where this study is coming from

UNISON's membership is largely female, largely low-paid, and largely poorly protected by existing equality provisions. The various constituencies to which the Policy Appraisal and Fair Treatment guidelines are meant to apply are all represented in our membership, their families and their community. It is not surprising, therefore, that we have consistently pressed government to put their equality proofing measures into real effect. Only if this is done, can people be sure that decisions taken by the state and its agents do not disadvantage those already suffering economic and social inequity. More positively, effective equality proofing measures ensure that government pursues the positive goal of equality of opportunity to which they have committed themselves.

Hence our decision to commission Dr Christopher McCrudden to apply his experience and skill to a critical examination of PAFT. We asked him to examine how the policy should be developed to, in his phrase, make fairness and equity part of the social mainstream in which we all swim. The pages that follow are the result of that decision and that skill. UNISON will use the paper in order to further develop our members' awareness of the ways in which equity strategies can enable them to inform and shape the decisions which centrally affect their lives. Moreover, it will help develop a sense of ownership of these processes through participation and partnership. My experience of our members leaves me in no doubt that they will use Dr McCrudden's expertise to make the dream of equality a daily, lived reality.

We are particularly pleased that this debate of mainstreaming fairness will be extended beyond the confines of our own membership by the good offices of the Committee on the Administration of Justice. We look forward to contributing to their broad consultative process.

Inez McCormack, Northern Ireland Regional Secretary, UNISON

Preface - Moving Ahead

The Committee on the Administration of Justice (CAJ) is very pleased to have been asked by Dr McCrudden to facilitate consultation around his paper - Mainstreaming Fairness. As part of its contribution to the Employment Equality Review, CAJ has published its own submission and has also responded to the large volume of research which SACHR has commissioned. In addition the Committee has organised a series of seminars designed to ensure the widest possible debate of the issues involved in this important subject. Dr McCrudden kindly contributed to two of these seminars. The most recent focused specifically on the government's Policy Appraisal and Fair Treatment (PAFT) guidelines and brought together representatives from the various groups which are meant to benefit from PAFT.

In the course of our work it has become clear that there is a growing consensus around the potential which PAFT has to contribute to greater fairness for everyone within our society - especially to those within society who need change the most and who crucially

need to be involved in decisions about such change. The outstanding question now seems to be how best to embed PAFT. Dr McCrudden's work provides a number of concrete proposals as to how best to achieve this goal. We are pleased that he has undertaken this work at the request of UNISON and that we have been approached with a view to helping in its wider dissemination and discussion.

Over the next few months CAJ intends to hold consultations on the document with a wide variety of groups and individuals. We are also keen to receive written comments (an address for replies is given elsewhere). We are particularly pleased that the Fair Employment Commission, the Equal Opportunities Commission and the Disability Council have agreed to act in an advisory capacity. We feel sure that you will find Dr McCrudden's study to be a valuable and stimulating contribution to the ongoing debate around mainstreaming fairness.

Committee on the Administration of Justice

Chapter 1

Mainstreaming from a Comparative Perspective

1.1 International origins

There are several sources from which the idea of mainstreaming has emerged. One source is the European Commission's Third Action Programme, which stressed the importance of integrating equality issues into government decision-making. Most recently, the European Commission has become heavily involved in attempting to develop such approaches further.

"Mainstreaming" is central to the recently published Fourth Action Programme on Equal Opportunities (1996 - 2000). The Commission's proposal (now approved in general terms by the Council of Ministers) is that equality issues should be integrated into the decision making of the Commission and of Member State governments. A group of Commissioners, chaired by President Santer, has produced a communication on mainstreaming of equality in all appropriate Community policies this year.

The European Commission was also instrumental in having the idea of mainstreaming adopted as a major policy for future action at the Fourth United Nations World Conference on Women, which took place in Beijing in September 1995 (for example in Strategic Objective H.2, which calls for the integration of gender perspectives in legislation, public policies, programmes and projects). As regards Northern Ireland, an attempt has been made to integrate equality concerns through the development of the Peace and Reconciliation initiative.

1.2 Examples of gender mainstreaming

There are several other examples of "mainstreaming" policies, some in existence, some in embryo. The Government's PAFT initiative has already been mentioned and this extends the ideal of equality to include a gender dimension. In Britain, there are also requirements to "equal opportunity proof" policy proposals for their gender effect. Model guidelines were drawn up in 1988, and reviewed in 1991 (a further review is currently underway). These guidelines, which are little known outside (and perhaps even inside) the Civil Service are similar in their terms to PAFT, though (unlike PAFT) they remain unpublished.

Equivalent mechanisms are either being considered, or have been adopted in other countries. Such an initiative had been in place in the Netherlands for some years. In Sweden, the Equality Affairs Division of the Ministry of Health and Social Affairs is responsible for ensuring that gender issues are considered in the formulation of government legislation and other policies prior to discussion by Cabinet. Luxembourg has established an Inter-Ministerial Council to attempt to ensure that ministries take account of equal opportunities in policy making. In Ireland, the National Economic and Social Forum has recently produced a report on equality proofing issues.

Outside the European Community, there are also significant developments. In Canada, mainstreaming has recently been adopted by the federal government, and draft guidelines are currently in preparation. In Australia, a novel way of assessing the impact of government policies has been to produce a "women's budget statement" each year to accompany the budget proposals. In New Zealand, guidelines for gender impact analysis have just been published. The Council of Europe has recently established a committee to consider the issue of mainstreaming.

In several of these countries, an important technique has been developed to attempt to make the idea of mainstreaming effective in practice. Most of these countries have required that some form of "impact assessment" be carried out as part of the process of considering proposals for legislation or major policy initiatives. Put simply, the idea of an impact assessment involves an attempt to try to assess what the effect of the legislation or policy would be on particular groups, such as women or minorities. Indeed, the idea of impact assessment is now being taken as central to the operation of PAFT by several decision-makers in Northern Ireland, and local experience is therefore developing.

A second important feature of this experience is the extent to which it reflects a concern to integrate those affected by proposals subject to impact assessment into the policy making process. Mainstreaming, in these jurisdictions, is not intended to be a technical mechanism of assessment within the bureaucracy, but an approach which encourages the participation of those with an interest. Rather than leaving it to pressure groups to participate at their own initiative, it requires policy makers actively to seek out the views of affected interests. Unlike more traditional mechanisms of consultation, however, it does this by requiring impact assessments of a degree of specificity which establishes a clear agenda for discussion between policy makers and those most affected. We can see, therefore, the interlinked nature of the two crucial features of mainstreaming: impact assessment, and participation.

1.3 Relationship to anti-discrimination law

One of the central ways in which governments in North America, western Europe, and the Commonwealth have sought to address complaints of inequalities between ethnic groups, or between women and men, has been by developing anti-discrimination law. In all countries of western Europe, and much of the Commonwealth, such legislation is now in place. Such legislation plays several vital functions, but it was never intended to be the *only* approach to the tackling of inequalities between these groups. One of the most popular additional ways of tackling these problems, for example, has been the development of positive action initiatives in various situations, sometimes voluntary, sometimes compulsory.

Mostly, anti-discrimination legislation and positive action initiatives are targeted at the point of service delivery, and employment decisions. Anti-discrimination legislation usually prohibits employers, for example, from discriminating; and positive action initiatives are often attempts to stimulate employers also to take action (beyond simply not discriminating) which would contribute to tackling these inequalities. The Northern Ireland Fair Employment legislation attempts to go further, and attempts to put requirements in place which would ensure that employers also provide "fair participation" to Catholics and Protestants. Such approaches remain a key element in tackling

discrimination and inequality of opportunity. But the focus is the same in this legislation too: the individual employer.

There is considerable concern in many countries, including Northern Ireland, about the extent to which these traditional mechanisms of securing non-discrimination, equality of opportunity, and fairness (anti-discrimination law, and positive action by particular employers) are adequate. This is a particularly important issue if the problem is defined, as it increasingly is, as involving not only the problem of "discrimination", but the larger issue of unacceptable inequalities affecting women and particular minority groups, whether caused by discrimination or not. There have, therefore, been attempts to develop other types of mechanisms which may complement these traditional approaches.

In particular, there have been attempts to develop policies which bring the weight of government to bear more directly. Anti-discrimination law involves government, of course: the government, in most cases, initiates the legislation, and provides enforcement mechanisms, and usually binds itself to act in accordance with the legislation in its actions as employer, for example. But, under such legislation, government can be seen as acting at one remove. The issue which is currently generating debate is the extent to which government can intervene and use its influence and power more directly.

One example which links anti-discrimination law, and the more direct use of governmental power is the use of government contracts and grants to require the private sector which deals with government to introduce equality policies. There is now significant experience of the operation of such policies. More recently, however, there have been attempts to take such approaches further, by requiring that government and public bodies should attempt to weave policies of equality of opportunity and non-discrimination into the fabric of decision making across *all* spheres of government -- in short, to "mainstream" fairness issues in public policy.

1.4 Constitutional equality provisions

So far, this discussion has concentrated on the approach which anti-discrimination law generally takes. In addition, of course, many jurisdictions (including the Republic of Ireland) also have a provision relating to non-discrimination and/or equality. Unlike anti-discrimination legislation which, as we have seen, applies generally to specific types of employment or service provider, constitutional equality and non-discrimination provisions generally apply primarily (if not exclusively) to the actions of the state, across a broad range of state activity. To that extent, they attempt much more than traditional anti-discrimination legislation does to apply equality principles to governmental policy making generally. The Northern Ireland Constitution Act 1973 includes just such provisions, and some have advocated a Bill of Rights for Northern Ireland, which would contain an anti-discrimination provision.

There is no reason why a PAFT approach could not be constitutionalized (and, indeed, there is much that might be said in favour of it) but, for the moment, this issue need not delay us. The alternative issue worth considering at this point is the rather more limited issue of whether a constitutional equality or non-discrimination provision renders a PAFT approach unnecessary.

The answer, unfortunately, is clearly "no". Indeed, several of the jurisdictions which have recently introduced "mainstreaming" mechanisms (Canada, in particular) also have strong anti-discrimination provisions at the constitutional level. The reason is two-fold. First, even constitutional equality provisions are generally formulated, or are interpreted, as being anti-discrimination provisions. The best example is the Equal Protection Clause of the United States Constitution. They are, essentially, negative: they aim to prevent discrimination, rather than positively to promote equality. Second, at least in the context of North American jurisdictions, the formal mechanisms which are established as the primary enforcement mechanisms involve complaints by individuals or groups who are aggrieved at an alleged breach of the constitutional provisions. Such enforcement usually involves litigation in either the ordinary or special constitutional courts. Where it involves challenges to legislation, this is almost invariably limited to challenges immediately prior to the coming into effect of the legislation, or litigation challenging the legislation after it has come into effect.

Such formal constitutional enforcement provisions hide the reality, of course. In most jurisdictions, there is a significant amount of internal (and sometimes external) legal advice which governments have available to them in drawing up proposals for legislation, and in the drafting process itself, in order to ensure that the provisions are constitutional. In addition, in some jurisdictions, there is extensive consideration of constitutional requirements in the legislative debates, and in some cases select committees of the parliament (or their equivalent) are involved in assessments of constitutionality. Such additional mechanisms tend, however to be (and to be seen to be) external to the policy making of those centrally responsible for particular areas. Where interventions take place, they tend to be relatively late in the policy-making process. They tend to involve relatively enclosed groups of legal experts and parliamentarians. They tend to be relatively formal and limited, reflecting the (usually) negative constitutional provisions in issue.

We shall see that some examples of "mainstreaming" go well beyond this limited approach. That is not to say that mainstreaming is inconsistent with such approaches. Indeed, it might be thought that PAFT-type provisions are natural extensions of these approaches. They differ, however, in several crucial respects. Mainstreaming approaches are intended to be anticipatory (rather than essentially retrospective, or relatively late insertions into the policy-making process), to be extensively participatory (rather than limited to small groups of the knowledgeable), and to be integrated into the policy-making of those primarily involved (rather than external add-ons perceived to be external by policy makers).

1.5 Mainstreaming and impact assessments in other contexts

There is substantial evidence of such approaches in situations other than where equality is the purpose of the policy. For example, in the area of *environmental* policy (both under United States and European Community law, for example), "environmental impact assessments" must be prepared for major projects. Equivalent requirements are also operated by several of the international financial institutions. The concept is relatively simple, however complicated it becomes in practice: to require those putting forward a

proposal to assess what its adverse impact would be on the environment, and whether that adverse impact could be lessened, or removed.

So too, there is experience of attempts to mainstream other policies in government. Since the 1980s, in particular, *regulatory* impact assessments have often been required throughout British and American government, as have occasional attempts to require cost/benefit analysis to be conducted of proposed projects, or to require compliance cost assessments of regulatory proposals. The difference between these relates both to the techniques, and the focus of the assessment required. For the moment these need not concern us. The point of the example is simply to demonstrate that attempts at mainstreaming of other policy preferences are not at all uncommon.

1.6 Potential advantages of mainstreaming fairness and equality

Underlying all these attempts at mainstreaming is a common perception: that unless special attention is paid to a particular policy preference, that policy preference will become too easily submerged in the day to day concerns of policy makers who do not view that particular policy preference as central to their concerns.

The motivation for mainstreaming fairness and equality lies not only, therefore, in the perception that anti-discrimination law, positive action initiatives, and even traditional methods of constitutional protection of equality) are limited, but also in the perception that questions of equality and non-discrimination may easily become *sidelined*.

A specific agency, or other enforcement mechanism, dedicated specially to equality issues may be viewed as satisfying concern about inequality, yet have little effect on the large decisions of government which have the greatest impact on the life chances of women and minorities. Mainstreaming, by definition, attempts to address this problem of sidelining directly, by requiring all government departments to engage directly with equality issues.

Mainstreaming may also encourage a crucial link between government and "civil society", encouraging greater *participation* in decision-making by marginal groups, thus lessening the democratic deficit -- a common, and growing problem of modern democratic government, with its built in bias towards centralising, top-down decision-making.

There are various methods by which such mainstreaming could take place, but it is arguable that all would require significant input of information and analysis of the impact of proposed policies from sources external to government. Non-governmental organisations such as community groups, pressure groups, and unions may wish to assist in supplying such information. This is not to say, of course, that the involvement of such groups is unproblematic, raising issues of the competence of such groups in this field, due to lack of information and lack of resources. In principle, however, a major argument in favour of mainstreaming is that it may contribute to increased participatory democracy -- what the European Commission currently terms "civil dialogue".

Mainstreaming may also encourage greater *openness* in government, and greater *transparency* in decision-making since it necessitates consultation among affected interests at an earlier stage of policy making, and to a greater extent, than is currently

usually contemplated. It should therefore lead to the greater *accountability* of government decision-making.

Lastly, to the extent that mainstreaming initiatives can develop criteria for alerting policy makers to potential problems before they happen, the more likely it is that a generally reactive approach to problems of inequality can be replaced by *proactive* early-warning approaches. Current government policy in many countries in the area of equality has often been criticised as tending to be too reactive to problems which might well have been identifiable before they became problems.

1.7 Potential disadvantages of mainstreaming fairness and equality

There are, however, several reservations about the policy of mainstreaming which will need to be taken into account in developing any policy initiatives of this type.

“Mainstreaming” may result in the over-fragmentation of equality policy, especially if it were to become an alternative to traditional anti-discrimination and other equality mechanisms. If *all* public bodies have responsibility, there is the danger that *none* will regard it as an important part of their function.

Mainstreaming is, in addition, controversial, and not without considerable practical difficulties. Building such a requirement into civil service decision-making will come up against both departmental exclusiveness, and collective responsibility, both features which can be seen as important features of, for example, the traditional British *civil service tradition*. Mainstreaming may well cut across the working practices (and even, potentially, the ethos) of the civil service bureaucracy.

Mainstreaming is a good example of an attempt to have an *inter-departmental* policy, and it will suffer therefore in circumstances where inter-departmental co-ordination is weak or difficult. In addition, there is a delicate balance to be maintained between the need to supervise and oversee the effectiveness of the requirements, whilst at the same time not undermining the objective of making the bureaucracy think by alienating it.

We have seen that mainstreaming should encourage (and may depend on) effective co-operation and dialogue between “civil society” and government. If this is not forthcoming, or is not effective either because of the lack of competence of non-governmental groups, or their lack of resources, or the inability of government to “read” the responses effectively, then a policy of mainstreaming may well be undermined.

The policy of mainstreaming thus needs to be based on an ability of all parties to participate themselves and understand the participation of others. But it needs something more; it also needs a degree of trust among the participants -- trust, on the one hand, that the process will not become simply a mechanism for blocking change; trust, on the other hand, that the process will not become simply a mechanical process without any real attempt at accommodation in light of demonstrated adverse impact.

Where a regional administration is concerned, there are further problems arising from the constraints which central government may put in place relating to major areas of policy-making. Whereas mainstreaming encourages context-specificity, and flexibility of

response by regional government, central government may wish to require homogeneity, and the avoidance of inconsistency across regions. An equivalent problem arises in the European context, where member state governments may have little *discretion* as to policy in certain areas, for example agriculture, due to European Community requirements.

A further crucial issue relates to the resources available to carry out a mainstreaming approach. Depending on such critical issues as the scope of the impact analysis required, the groups to be included, and the extent of any preliminary weeding out of issues which need to be assessed, the resource implications may be significant, particularly the increased time taken by public servants in the preliminary stages of policy making.

Finally, two larger political issues arise. First, is a mainstreaming approach consistent with, or even compatible with, liberal economic policies based on the free-market? Does market capitalism depend on material inequalities between classes, and therefore (at least in some countries) between ethnic or gender groups to the extent that there is a significant overlap? Second, to the extent that the mainstreaming approach facilitates, perhaps even increases the occasion for participatory democracy, will this undermine, to an unacceptable extent, arrangements for representative democracy. Put crudely, will elected politicians become, if not redundant, at least of reduced importance and, if so, is that a problem which needs to be addressed?

Given all these potential constraints, therefore, the *political will* to overcome such problems will be crucial. Where such political will is not present, either because of hidden antagonism from ministers, or because of the effective absence of ministerial interest or influence, mainstreaming may again be threatened.

Chapter 2

Mainstreaming: A possible model

2.1 Introduction

Based on this experience, the second part of the paper now considers in detail a possible model for a mainstreaming approach in Northern Ireland. It does not attempt to be comprehensive in its recommendations, and on several important issues recommendations are not made. Its aim, rather, is to attempt to identify the issues which will have to be addressed, and to suggest a possible approach.

2.2 General principles

PAFT should become an anticipatory, participatory, and integrative tool for identifying where proposed actions are likely to advance or retard the achievement of the greater material equality of particular groups in Northern Ireland. It should not be seen as a procedure which will necessarily prevent actions with significant adverse impacts on material equality from being implemented, but rather for ensuring that if such actions are authorised this decision takes place in the full knowledge of their consequences, and with public participation and accountability.

2.3 Legal basis

One main question which needs to be examined is whether "mainstreaming" can, and should, be given a legal basis, and (if so) of what type. Hitherto, these policies have usually been envisaged as operating as (at most) internal guidance within Departments (and, possibly, external reassurance), rather than as something which is legally based. Should there be a statutory requirement on government departments (and other public bodies) to provide equality of opportunity in the exercise of all their responsibilities? There are already British precedents for having a statutory basis for the similar compliance cost assessment procedure.

There may be thought to be some advantages in retaining the present approach, under which PAFT is based on no firm legal basis, but rather on very general guidance from the Central Secretariat of the Northern Ireland Office. These advantages could be said to consist in: the desirability of voluntary compliance, the avoidance of judicial involvement, and the retention of extensive Departmental discretion in the interpretation of the guidance.

On the other hand, there are indications that these supposed advantages are illusory. In practice, the theoretical advantages associated with a largely informal discretionary system based for the most part on voluntary compliance have not materialised. A more formal approach may already be developing, because of the impact of the UNISON

judicial review case, and the Formal Investigation by the Equal Opportunities Commission for Northern Ireland into compulsory competitive tendering.

Further arguments in favour of developing a more formal and less discretionary system may be summarised as: permanence and evidence of commitment; the lessening of uncertainty as to what the requirements actually are; the provision of a firm basis for public participation; and the availability of enforcement mechanisms. Lastly, it is probably worth noting that the trend in the area of environmental impact assessment has been that where such requirements began as voluntary internal guidance, the clear trend is for them now to be placed on a statutory basis.

It is *recommended* that the PAFT system should be based on clear and specific legal provisions. The legal provisions should be sufficiently unambiguous in application to avoid other than infrequent litigation. PAFT requirements should be clearly differentiated from other legal provisions. Each step in the PAFT process should be reviewable through the courts and/or by other means. Time limits for the various steps in the PAFT process should be specified. The overall aim should be to provide in legislation for a clear outline of procedures and time limits for the PAFT system as a whole.

2.4 Responsibility

Currently, overall political responsibility for PAFT lies with the Secretary of State for Northern Ireland, while day to day administrative responsibility lies with the Central Community Relations Unit in the Central Secretariat of the Northern Ireland Office. However, as the First and Second Annual Reports on PAFT indicate, substantial discretion is given to Departments and other bodies to which PAFT applies as to how to put their PAFT responsibilities into effect. This has contributed to widely varying methods, leading to confusion, inconsistency, and (in some cases) unacceptably low standards of conformity with the PAFT objectives. It is *recommended* that overall responsibility for PAFT remain with the Secretary of State, and that he (or she) should be given powers to ensure that public bodies comply with their duties under a revised PAFT.

2.5 Relationship of PAFT with other legislation

The current ambiguous legal basis of PAFT has contributed to uncertainty as to how far, if at all, PAFT is relevant in the interpretation of statutory provisions, whether primary or secondary. It is *recommended* that this uncertainty be removed so that enactments passed or to be passed would be interpreted and administered to the fullest extent possible in accordance with the PAFT principle.

2.6 Coverage

The coverage of PAFT relates to the type of impact which a PAFT analysis would undertake to consider, the groups included, the range of actions subject to PAFT

analysis, the public bodies subject to PAFT, and to the range of impacts regarded as relevant.

(a) type of impact

Currently, the PAFT guidelines place considerable emphasis on the need to avoid unlawful discrimination (both direct and indirect), to ensure that there is no unjustifiable inequality or inequity, and to incorporate a fair treatment dimension into public administration. While arguably suitable for a loose set of guidelines, the breadth and ill-defined nature of these terms is probably inappropriate for a PAFT which is intended to have legally enforceable elements. There is an important issue as to what type of impact should be defined, therefore, as that at which PAFT is targeted.

There are two major sources from which a useful standard may be extracted. The first is the Beijing Declaration and Platform for Action adopted by the Fourth World Conference on Women: Action for Equality, Development and Peace (15 September 1995). This states as a primary goal that women should attain an "*equal access*" to resources (e.g. Strategic Objective F2). The second major source is the Framework Convention on National Minorities proposed by the Council of Europe and signed by the United Kingdom Government. This provides in Article 4(2) that the national governments "undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, *full and effective equality* between persons belonging to a national minority and those belonging to the majority."

It is *recommended* that "material inequality" should be the focus of a redefined PAFT approach, for several reasons. First, it refocuses attention away from discrimination. This is advantageous for several reasons. The extended meaning of discrimination in the legislation (which includes the concept of indirect discrimination) has been poorly understood. More importantly, one of the important limitations of the anti-discrimination approach is the limited nature of the concept of discrimination even when defined to include indirect discrimination. An approach based on "material inequality" also enables a clearer base-line for empirical assessment, an important point given the difficulty of empirical assessment of the other concepts such as equity, being somewhat more objective in its meaning. The Secretary of State would be placed under a responsibility to ensure that material inequalities between certain groups would be progressively reduced.

There are several aspects to the concept of "material inequality" which may be thought to be problematic. First it implies that the gap must be reduced to zero, and this concept does not allow, for example, for inequalities which are genuinely due to the choice of the apparently less well off group. Second, it is relatively crude too in not addressing the problem of differences within certain groups (the group "Catholics" now contains a significant middle class -- "Malone Road Catholics" should not mask the problems of "West Belfast Catholics"). Nor does it establish a clear time scale within which the inequalities are to be reduced.

One way in which these problems could be resolved, but it is an important area on which comments would be particularly useful, is that the concept of "material inequality" would set out the aim which the procedure established in the rest of the legislation would seek to achieve. It would be programmatic and aspirational, rather than in itself justiciable. It would be duty-based, rather than rights conferring. To that extent, though in legislation, it

would in itself amount to little more than the self-imposed duty currently undertaken in PAFT.

Given that, some of the problems which would have arisen were the "material inequality" concept to be directly enforceable (such as those adverted to above) are significantly diminished by not establishing it as conferring legally enforceable rights. In only one respect would the duty envisaged go beyond the current PAFT self-imposed duty, in providing for the legal authority to bring forward proposals for fulfilling the duty. Such an authority would provide a useful statutory basis for the "Targeting Social Need" programme, which has sometimes been described as "PAFT in action".

(b) groups included

Currently, PAFT requires an assessment of the impact of policies on people of different religious belief or political opinions, men and women, married and unmarried people, people with or without dependents (including women who are pregnant or on maternity leave), people of different ethnic groups, people with or without a disability, people of different ages, and people of differing sexual orientation. There are arguments both for and against this broad-based approach.

There are several arguments in favour. These include the need to avoid distinctions being introduced which would make effective implementation more difficult. An example would be where PAFT required an analysis of the effect of a policy on Catholics, but not on women, where the adverse impact could best be seen as applying to Catholic women. A broad based approach is also likely to gain greater support, at least in principle, within the administration because it would be seen as not privileging any one type of equality over others. A further argument in favour of the broad-based approach is the growing interest, and expectations, which have developed among community groups serving those groups mentioned in the existing PAFT guidelines. It may now be too late politically to try to restrict PAFT to a smaller core group.

There are, however, several arguments against the broad-based approach. One is the increased burden on the administration of attempting to include a rigorous analysis of policy across all these dimensions; concentrating on one or two, it might be argued, would be likely to be more effective, given limited resources. A second argument for restricting the dimension even further is that it is the material inequality between the two communities (i.e. Catholics and Protestants) which is a crucial element in the continuing instability of Northern Ireland. A final difficulty with the inclusive approach is that the amount and quality of statistical and other information available for different groups differs significantly -- were an inclusive approach to be adopted there would need to be a sustained effort to develop appropriate information systems.

There seem to be three possible options. The first is that the current set of groups would be retained, with the same requirements applying to all. The second is that a much smaller set of groups would be retained, but with the same requirements applying to that smaller group. The third option is to have a two-tiered approach, with different requirements applying to different groups. *No recommendation* is made on this issue at this stage, and views on the best approach to adopt are encouraged.

(c) range of actions

PAFT currently applies to the “policy proposals, including legislation, other initiatives and strategic plans for the implementation of policy and the delivery of services” (para 6). Currently, there is somewhat more evidence of detailed PAFT analysis at the level of the delivery of services than at the stages of policy development. There is also significant experience of applying environmental impact analysis at the project level, rather than at the level of policies, plans and programmes (so called “strategic environmental assessment”).

The issue to be decided, then is whether a revised PAFT approach should apply to the programmes, plans, policies and projects of all public bodies, as well as to proposed legislation, primary and secondary. For the purposes of the remaining discussion, these will collectively be termed “actions”. It is worth considering, in this context: (a) whether “strategic equality assessment” should be continued under a revised PAFT approach, (b) whether it should be the *only* type of action which would be covered, or (c) whether a revised PAFT would also cover all stages of policy development and project delivery.

Turning first to the question of whether strategic assessment should be included. On the one hand, it might be thought that there are problems with such a strategic approach, relating to the difficulty of predicting impacts, lack of definition, and the difficulties of full public participation at the policy planning stage where, arguably, the need for confidentiality is greater. More importantly, there are likely to be political difficulties relating to the reluctance of politicians and senior bureaucrats in powerful departments to cede any role in the making of decisions.

On the other hand, several potential benefits of strategic assessment can be identified. It allows the analysis of the impacts of policies which may not be implemented through projects; it facilitates consideration of long range and delayed impacts; it allows more effective analysis of the cumulative effects of both large and small projects; it encourages consideration of alternatives often ignored or not feasible at the project level; it may render detailed impact analysis at the project level unnecessary if impacts have been assessed adequately at the policy level.

In favour of restricting the PAFT-type analysis to general *policy* evaluation only (or perhaps that and only very major projects only) are arguments primarily derived from the resource implications of going beyond this. A further argument against might be made, however: that to focus on strategic assessment would enable expertise to be concentrated within Departmental power structures, ensuring that issues are fully considered by the policy makers directly responsible, thus (arguably) giving them greater “ownership” of the results. To take a broader approach would probably require recourse to expertise outside the public service, and the danger that the process is seen as an external imposition by policy makers, rather than central to ordinary policy making itself.

Against this view is the argument that accurate, meaningful assessments of future impact might well be near to impossible in many circumstances given the generally unspecific nature of high-level policy statements. It may only be in the way in which the policy is worked out in detail in specific projects that the adverse impact of the policy may become apparent. In addition, to exclude projects from scrutiny would run the risk of creating an incentive for policy makers to formulate the policy in unspecific terms thereby intentionally closing off meaningful scrutiny.

No recommendation is made on the range of actions to be included, in part because of the previous issues, in part because the range of actions covered should perhaps also be decided on taking into account the groups covered. It would be unsurprising if it were thought that the broader the groups covered, the narrower the range of actions included, whereas the narrower the set of groups covered, the wider the range of actions covered.

(d) public bodies

Currently, PAFT applies to Departments and Next Step Agencies. Departments are required to use all appropriate means at their disposal to ensure that Non Departmental Public Bodies comply with PAFT. Departments are also to “use their best endeavours, consistent with legal and contractual obligations, to secure compliance with PAFT by those performing contracted out services on their behalf” (para 8). PAFT does not appear to apply to local authorities directly. It is *recommended* that a revised PAFT should apply to those public bodies specified from time to time in the Schedule to the Fair Employment Act 1989. This would include local authorities, Northern Ireland Departments, United Kingdom departments operating in Northern Ireland, and existing NDPBs and Next Step agencies.

(e) range of impacts

Currently, a PAFT analysis is required irrespective of the degree of impact found or suspected. However, given the increased specificity of the PAFT analysis proposed below, it is probably desirable for there to be some screening of those impacts which would attract a full PAFT analysis in the form of an impact statement. It is *recommended* that the relevant impact of all “significant” actions should be assessed. This issue will be discussed further below.

2.7 Alternatives

The consideration of alternatives is a crucial element in making a PAFT system effective. It is implicit in the current PAFT guidelines, where the approach to justification of disparate impacts is based on the “necessity” of the particular approach adopted, an approach which can only be adequately carried out if alternative approaches which have a less adverse impact are considered as well.

It is *recommended* that evidence of the consideration, by the proposer of the action, of the impact of reasonable alternative ways of meeting the objective should be demonstrated in the PAFT process. Clear evidence of the consideration of the impacts of alternatives should be apparent in preliminary PAFT documentation, and the realistic consideration of the impacts of reasonable alternatives should be evident in the final PAFT report. Justifications should be given if these reasonable alternatives have not been accepted.

2.8 Mitigation of impacts

The consideration of the mitigation of adverse impacts is intertwined with the consideration of alternatives. Mitigation can take three different forms: avoidance (e.g. using an alternative approach to reduce the adverse impact), reduction (lessening the severity of the impact) and remedy (such as compensation). It is *recommended* that the mitigation of action impacts should be considered at the various stages of the PAFT process. Clear evidence of the mitigation of impacts should also be apparent in the preliminary PAFT assessment, and details of mitigation and its implementation should be included in the PAFT report itself. Evidence of the consideration of mitigation should be presented during decision making and during monitoring.

2.9 Screening

“Screening” involves the attempt to restrict the type of action which is considered for a full PAFT analysis. Under the existing guidelines, there does not appear to be a clear mechanism for such screening. However, as argued above, without some form of screening, large numbers of actions would be assessed unnecessarily, with the risk that actions which have significant adverse impacts will not be adequately considered. It is *recommended* therefore that screening of actions which have significant impact on material equality between the relevant groups should take place at a preliminary stage.

The more difficult question is how to accomplish such screening. Two main approaches are possible, in theory. (i) Lists of identified actions, and thresholds could be stipulated, or (ii) a more open test of “significance” could be specified which would require interpretation and application case-by-case, or (iii) an open test could be specified with guidelines being made available from time to time in a code of practice.

No recommendation is made on which approach should be adopted, and comments on this issue would be particularly helpful. There are, however, several general principles which should govern the choice: there needs to be a clear specification of the type of action to be subject to PAFT assessment; the screening decision should be made by a publicly accountable body; the reasons for making the decision about significance should be made public and notified to the statutory equality bodies. The aim should be to establish a procedure whereby those actions with significant impacts (and only those actions) should be subject to the full PAFT process.

2.10 Scoping

“Scoping” is the name applied to the process of determining the range of issues to be addressed in a PAFT assessment of impact, and for identifying the significant issues relating to a proposed action. Scoping is intended to ensure that a more focused impact assessment is prepared: currently, there appears little guidance on scoping in PAFT.

It is *recommended* that the scope of a PAFT impact assessment should take place in each case. The proposer of the action should consult the relevant statutory equality body (the Fair Employment Commission, the Equal Opportunities Commission, and the Standing Advisory Commission on Human Rights) early in the PAFT process. Irrelevant

or insignificant impacts should be screened out. There should be published guidance on scoping. Consultation and participation should be required in scoping decisions.

2.11 Report preparation and review

The preparation of a report detailing the results of a PAFT analysis is obviously a crucial element in any satisfactory PAFT process. Currently, little guidance is given in the PAFT guidelines on what such a report should contain, and there have been wide variations in practice, in content, in completeness, and in accuracy.

It is *recommended* that, in future, PAFT reports should meet prescribed content requirements. Internal administrative checks should be established to prevent the release of inadequate PAFT reports. Checks on the content, form, objectivity and accuracy of the information presented should occur before publication of the PAFT report. PAFT reports should describe the action proposed, the group affected, forecast impacts, indicate their significance, consider alternatives, consider mitigation, and include discussion of subsequent monitoring. Information held by other governmental authorities about the impact or type of action should be made available to the proposer. Consultation and participation should be an integral part of PAFT report preparation.

It is also worth considering whether draft PAFT reports should be publicly reviewed for adequacy, objectivity, and completeness and the proposer required to respond to the points raised. In view of the possibility that internal review may not be effective, at least in the early stages, it is recommended that the existing statutory agencies, such as the Fair Employment Commission, the Equal Opportunities Commission, the Disability Council and the Standing Advisory Commission on Human Rights should be involved in this review. Other statutory bodies may be added to this list in due course - for example, the body with statutory responsibility for overseeing race relations legislation. Such bodies should be given sufficient resources to develop the appropriate expertise. The findings of the PAFT report review should be published.

2.12 Decision-making

Currently, the PAFT guidelines leave the decision whether or not to approve a particular action to the Minister without specifying what weight, if any, should be given to the PAFT report. In any revised PAFT system, it is *recommended* that it should be made clear that the findings of the PAFT report and the review should be a central determinant of the decision on the action proposed. The decision whether to go ahead, and (if so) on what conditions or with what modifications, should be postponed until the PAFT report has been prepared and reviewed. The decision, the reasons for it, and the conditions or modifications attached should be published. These reasons should include an explanation of how the PAFT report and review influenced the decision.

2.13 Monitoring and auditing

The current PAFT guidelines approach the issue of monitoring from a limited perspective. They state: "When the development of new policies and services suggests that they could have a differential impact ..., or where the review of existing policy indicates a differential impact ..., and there is insufficient information to determine if it can be objectively justified, Departments should consult Central Secretariat, who will advise on monitoring in the light of data availability and resource considerations" (para 20). This approach to monitoring is too restricted. Monitoring should be regarded as an integral part of the PAFT process so that experience can be built up over time of how accurate the predictions of impact have been. Without monitoring of actions taken, and their actual effects, no experience of the adequacy of the PAFT process over time is possible.

It is *recommended* that monitoring of action impacts should be undertaken. Action monitoring arrangements should be specified in the PAFT report. The proposer should be required to take ameliorative action if monitoring demonstrates the need for it. The results of such monitoring should be compared with the predictions in the PAFT report. The results of this monitoring and auditing should be published.

2.14 Consultation and participation

Consultation and participation, as argued above, should be integral to a revised PAFT approach. Currently, consultation does occasionally take place, but it has tended to be under pressure from those subsequently consulted rather than as a normal part of the PAFT assessment process, and thus has often become confrontational rather than co-operative. There is no provision for consultation in the current PAFT guidelines.

There are several reasons in favour of extensive consultation and participation in the PAFT process from outside government: first, it is necessary to consult amongst groups affected to identify the impacts which a proposed action may have; second, participation in the process by the groups affected is more likely to result in a greater sense of ownership of the result by those involved, and thus greater consensus on the action proposed; third, policies which do not involve the people intended to be beneficiaries will often prove ineffective and wasteful of resources.

On the other hand, participation is likely to involve increased financial and time costs for the public body. It is a recurring theme that the major costs result from the increased expenditure of staff resources arising from public participation. A balance needs to be struck, therefore, between the positive benefits of consultation and participation, and the costs involved. The appropriate way of striking this balance is to impose realistic, but clear, time limits within which such participation is to take place.

It is *recommended* that the consultation of and participation by those interested should take place prior to, and following, PAFT report publication. Consultation and participation should take place prior to scoping, during PAFT report preparation, during decision making, and during monitoring. Copies of PAFT documents should be made public at each stage of the PAFT process. Copies of PAFT documents should be able to be obtained at a reasonable price. Considerations of confidentiality should inhibit consultation and participation to the smallest degree possible. The methods of consultation and participation should be appropriate to the stage of the PAFT process at which they are employed. Obligatory consultees (such as the statutory equality Commissions) should be specified at various stages in the PAFT process.

Providing mechanisms for such consultation and participation assumes that interested individuals and organisations will choose, and be able to participate. This assumption may or may not be correct. Without assistance, groups may feel unable to contribute effectively. If they do not contribute, then the major benefits following from participation will fail to materialise and participation procedures will be likely to be taken over by those who already have access because of their expertise or political power. Thus there is a danger that the powerless and inarticulate may be the very groups unable to participate effectively. It is *recommended*, therefore, that financial assistance to public participants from public funds should be provided for. The questions of from whom such funding should be available, on what criteria, and within what limits, are issues on which comments could usefully be made.

2.15 Resolving conflicts

It is surely a truism that the nature of the political process is such that not all objections are resolved satisfactorily from everyone's point of view. Any system must anticipate that difficulties will remain unresolved. What, if anything, should be done about that in this context? One possibility would be to provide a mechanism, which would presumably have to be independent, to resolve any unresolved areas of dispute between those representing groups, and the proposers of the actions in dispute. In some jurisdictions a Commission mechanism has been established in the context of environmental impact assessment to act as an arbitrator or mediator to resolve conflicts. Whether such a procedure would be useful in the PAFT context is a suitable issue for comment, and no *recommendation* is made pending receipt of comments.

2.16 Accountability

The accountability of the public body undertaking a PAFT analysis is unclear under the existing PAFT guidelines. There are several examples of political methods being used to bring public bodies to account for their action (or inaction) under PAFT. However, there is no provision under the existing guidelines for either internal or external mechanisms of formal accountability. The Central Community Relations Unit of the Northern Ireland Office plays an advisory and co-ordination role but is not seen as making public bodies accountable in any formal sense. Judicial review has, however, proven to have the potential to be a formal mechanism of accountability, although its limits and effectiveness have yet to be established.

The omission of any formal mechanisms of accountability needs to be addressed in any revised PAFT system. It has been recommended above that internal methods of review should be developed to ensure the adequacy of PAFT reports, and that the statutory equality commissions should play a role in commenting on the adequacy of the PAFT reviews as well. There are four further possibilities for external review of the PAFT process. One is that the Northern Ireland Parliamentary Commissioner for Administration should be entrusted with an oversight role, perhaps even one which involved prospective rather than merely reactive oversight. A second possibility is that judicial review should remain as the primary mechanism for review of the PAFT system. The third option is to provide some specific appeal to an independent body (whether judicial or not). The

fourth is that Parliament, or a Select Committee of Parliament, might be charged with an oversight role.

Regarding judicial mechanisms, one possibility would be to provide for an individual remedy (on the application of any person with sufficient interest) by way of an application to the High Court for an injunction presenting a breach of the statutory duties. Alternatively, and more draconian, would be to provide that actions in breach of the statutory duty were void, and this would provide a powerful incentive to public bodies to conform to their duties.

No recommendations are made on these issues, and comments would be useful.

2.17 Monitoring of the PAFT system

Whilst it has earlier been recommended that there should be a system of monitoring and audit of specific actions, this is inadequate unless there is also a system for the regular monitoring of the operation of the PAFT system as a whole, with provision for it to be amended to incorporate feedback from experience. Currently, PAFT is supervised by CCRU, but this has not proven a successful method for regular effective monitoring, partly because of its weak position in the Northern Ireland civil service bureaucracy. An external review of PAFT is currently being conducted by the Standing Advisory Commission on Human Rights as part of the Employment Equality Review.

It is *recommended* that provision be made for a formal review of the operation of the PAFT system. In the first instance, this should take place at the end of the first year of operation of the new system, then at the end of the third year, and thereafter every five years. This review should be conducted by an independent, external review body.

To facilitate such a review, there should be a more effective system for the collection of information by the Central Secretariat of the Northern Ireland Office. A record of PAFT reports for various types of action should be kept and made public. Records of the financial costs of PAFT should be kept and made public. Information on the time required for PAFT should be collected and made public. In future, information should be obtained on: whether the financial costs of the PAFT process to proponents, consultees, the public and the decision-making authorities exceed those which would have been incurred in any event; whether the times required to complete the various stages of the PAFT process exceed those specified; whether the participants in the PAFT process believe that it has altered the behaviour of proponents, consultants, consultees, the public and the decision-making authorities; whether the participants in the PAFT process believe that the quality and acceptability of decisions are improved by it. In addition, empirical evidence should be generated to determine whether the PAFT process has significantly altered the outcome of decisions. In addition, it will be necessary to monitor the actions which were screened out at a preliminary stage in order to assess whether too many actions are being screened out.

2.18 Training

There is now, rather belatedly, some training of those responsible for PAFT in the Northern Ireland government departments. Training should be made an important part of the process for initial implementation of a revised PAFT system. This should apply across the public service (including non-departmental public bodies, next step agencies, etc.) and training materials, which should be made public, should be prepared for such seminars. Training should also be considered for those groups outside the public service which are most likely to want to participate in the PAFT process.

2.19 Type of legislation

If a revised PAFT is to be given a statutory basis, there is a further issue regarding the more technical question of what the form of the legislation should be. This involves two separate issues. The first is the issue of how much should be in the form of primary legislation as opposed to regulations. It is *recommended* that the bare bones of the scheme should be in primary legislation, with a power in the Secretary of State to bring forward regulations to fill out the details. This would permit swifter adjustment in the light of the early reviews recommended above, than if all the details were in primary legislation.

The second issue is whether the legislation incorporating PAFT-type requirements should be in a separate stand-alone Act, (or whether it should be in a revised Northern Ireland Constitution Act, a revised Fair Employment Act, or a new Act dealing with fairness in the areas of goods, facilities and services. The latter could include PAFT-type elements through which the public sector would ensure that these wider statutory requirements would be met. One final issue which would need to be considered is what, if any, relationship there would be between a statutory basis for a revised PAFT, and any future Bill of Rights for Northern Ireland. *No recommendation* is made on these issues, and comments on them would be welcome.

Chapter 3

Providing a Legislative Basis for PAFT: A Draft Bill

In this third and final section, a draft Bill is set out in order to enable the model discussed in the second section to be seen as a coherent whole. Within the text of the Bill, some specific issues for further discussion are detailed.

Part I

Duties of the Secretary of State

1. *(1) The Secretary of State shall ensure that material inequalities [between the groups] shall be progressively reduced.*
(2) The Secretary of State shall bring forward measures and policies which, in his judgment, will achieve the principle set out in section 1(1).
(3) The Secretary of State shall lay an annual report before each House of Parliament with respect to measures and policies to advance the principle set out in section 1(1).

Interpretation

2. *Any enactment, passed or to be passed, shall be interpreted and administered to the fullest extent possible in accordance with the principle set out in section 1(1).*

Regulations

3. *The Secretary of State shall by regulations make such provision as appears to him to be necessary or expedient to ensure that public bodies comply with their duties as set out in Part II of this Act.*

Part II

Duties of public bodies

General duties

4. *It shall be the duty of every public body to make appropriate arrangements with a view to securing that their various functions and responsibilities are carried out with due regard to the need to use all practicable means and measures to foster and promote the principle set out in section 1(1).*
- [5. *Without prejudice to section 4, it shall be the duty of every public body to review every policy, programme, plan, or project for which it is responsible within three years of the coming into effect of this Act, and once every five years thereafter, taking into account the duty specified in section 4.]*

Preliminary assessment

6. *(1) It shall be the duty of every public body to make a preliminary assessment, which shall be published, whether a proposal for [legislation or other policy, programme, plan or project for which it is responsible] is likely to have a significant impact on material inequality [between the groups]. For the purposes of this Act such a proposal shall be termed a “relevant action”.*

(2) Where a relevant action is identified, the public body shall consult with [the Fair Employment Commission, the Standing Advisory Commission on Human Rights, the Equal Opportunities Commission for Northern Ireland,] and other interested individuals or organisations on the scope of the impact assessment to be prepared in accordance with section 7.

Impact assessment

7. *(1) It shall be the duty of every public body to include in every proposal for a relevant action a detailed assessment (“impact assessment”) on:*
 - (a) the aims and purposes of the action;*
 - (b) the significant impacts of the action on material inequalities between [the groups];*
 - (c) the significant impacts on material inequalities between [the groups] which cannot be avoided should the action proceed;*
 - (d) alternatives to the action,*

(i) which would be likely to have a less adverse effect on material inequalities between [the groups], and

(ii) which would be likely to have the effect of reducing material inequalities between [the groups];

(e) a justification of the rejection of any alternatives identified in subsection (d);

(f) proposals to mitigate any unavoidable impacts of the action which would be likely to have an adverse impact on material inequalities between [the groups], together with a description of the mechanisms proposed to ensure compliance with such mitigation;

(g) a description of mechanisms to monitor the impacts of the action, following its enactment or introduction.

(2) For the purposes of this section, a “significant impact” includes the direct effects and any indirect, secondary, cumulative, short, medium and long term, permanent and temporary effect of the relevant action.

8. *(1) It shall be the duty of every public body to ensure that impact assessments shall be made available to the public within a reasonable time, once a decision is taken that it is minded to embark on the relevant action.*

(2) No final decision may be taken by the public body on any relevant action within four weeks of the notification to the public of a proposed impact assessment.

Participation and consultation

9. *(1) It shall be the duty of the public body to consult [the Fair Employment Commission, the Standing Advisory Commission on Human Rights, and the Equal Opportunities Commission for Northern Ireland], and other interested individuals and organisations on the content of any proposed impact assessment in sufficient time to enable effective comment on it within four weeks of notification of the proposed impact assessment.*

(2) Any interested individuals or organisation, other than public bodies, may apply to the Secretary of State for financial assistance to enable effective comment to be made on a proposed impact assessment.

Duty of the Fair Employment Commission, etc.

- 10.** *The [Fair Employment Commission, the Standing Advisory Commission on Human Rights and the Equal Opportunities Commission] shall comment on the adequacy of any proposed impact assessment within four weeks of notification by the public body of the content of any proposed impact assessment, and shall make its views public.*

Duty of the public body

- 11.** *(1) The proposed impact assessment and the results of the consultation on it shall be taken into account by the public body in any relevant decision whether to proceed with the relevant action.*
- (2) Following a decision to proceed with the relevant action, the public body shall publish the decision together with a final impact assessment containing the information detailed in section 7, amended as necessary.*

**A Discussion paper
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Published and distributed by the



**Committee on the Administration of Justice (CAJ),
45/47 Donegall Street, Belfast BT1 2FG**

November 1996