

Written Evidence to the Committee for the Executive Office, Inquiry into Gaps in Equality Legislation from the Equality Coalition Co-Conveners

Introduction

1. The Equality Coalition is co-convened by the Committee on the Administration of Justice (CAJ) and UNISON. It is a network of over 100 non-governmental organisations and trade unions that cumulatively work across all nine equality categories within Section 75 of the Northern Ireland Act 1998 (as well as on other protected equality grounds). The Equality Coalition provides a forum for unity between multiple sectors when campaigning for equality and is the representative umbrella forum for the equality sector. The Equality Coalition has a long track record of campaigning for the full implementation of the rights-based commitments of the peace agreements and compliance with international treaty-based obligations, including single equality legislation and the implementation of the ‘Section 75’ Statutory Equality duty.
2. This written evidence is submitted to the Committee’s *Inquiry into Gaps in Equality Legislation*.¹ The inquiry, in summary, seeks to map the differences and divergence in NI equality legislation with other jurisdictions; assess relevant recommendations from human rights treaty bodies; and make recommendations for change to legislation in Northern Ireland.
3. We welcome the invitation to the Equality Coalition co-conveners to provide Oral Evidence on the 11 September 2024 and to provide this written evidence in advance of same. In summary our evidence will focus on the following areas:

1: Absence of Single Equality Legislation:

- Despite over two decades of work, commitments in the bilateral agreements of the peace process and numerous treaty body recommendations, Northern Ireland still does not have single equality legislation.
- The multiple gaps, differentials and divergence this creates have been already mapped comprehensively by the Equality Commission, in accordance with its remit. There are also gaps in protection required by treaty-based and peace process commitments, including in relation to the grounds of language, irrelevant criminal record and socio-economic rights.
- The technical work has been done and it appears the barrier is a political blockage over progress, despite apparent majority support and international obligations. This is a source of immense frustration for our equalities sector given the gaps in protections. It also has a significant impact on employers and service providers alike having to deal with numerous statutes rather than consolidated legislation.
- Should the blockage remain, an alternative route to progress on single equality legislation would be the taking forward of the Bill of Rights for NI, as advised by the Human Rights Commission, which would have compelled freestanding and overarching anti-discrimination legislation. A further option for the UK Government would be to accede to Protocol 12 of the ECHR which would require a free-standing right to equality and could prompt further NI legislation.

¹ [Inquiry into Gaps in Equality Legislation \(niassembly.gov.uk\)](https://niassembly.gov.uk/inquiry-into-gaps-in-equality-legislation/)

2: Section 75: Enforcement of equality duty – legislative and practice reform

- Central to the equality duty is the ‘impact assessment’ process which is to ascertain whether a proposed policy would positively impact on equality of opportunity or whether the policy would constitute a discriminatory detriment (‘adverse impact’) on equality against one or more section 75 groups. This is generally undertaken through a two-stage process of equality screening followed by, if necessary, full Equality Impact Assessment (EQIA). The identification of potential discriminatory detriments through this process requires public authorities to consider mitigating measures or alternative policies. The Equality Commission for NI (ECNI) has complaint-based and own-initiative investigation powers to enforce the equality duty, with powers of direction then vested in the Secretary of State.
- The Equality Coalition has a significant body of participatory research regarding the effectiveness of Section 75 and its enforcement by the ECNI, centred on two reports: *Equal to the Task?* (2018) and the Equality Duty Enforcement – Project (‘EDEP’) report (2022).
- Despite examples of good practice, significant issues of non-compliance with the duties were captured in this research. This included public authorities not conducting equality screenings on key decisions or conducting screenings in a box ticking fashion. The research also raised significant concerns regarding the ineffective use of enforcement powers by the ECNI. This included lengthy delays by the ECNI in taking decisions or initiating investigations and the ECNI declining to investigate most valid complaints; as well as rare use of their own-initiative powers.
- We recommend that an independent review takes place in regard to the effectiveness of the ECNI exercise of enforcement powers over the Section 75 duties; including the interface between the ECNI advice and enforcement functions; and whether legislative change, including strengthening the powers or an alternative enforcement mechanism, would be more effective.

3: Section 75: Good Relations Duty: lack of definition and improper application

- The second limb of the Section 75 duties is the ‘good relations’ duty. There is a significant legislative gap in that ‘good relations’ is not defined on the face of the NI legislation. This contrasts with the wording of the Equality Act 2010, where the concept focuses on tackling prejudice and promoting understanding. The NI gap remains despite recommendations from treaty bodies and others, including the FICT Commission that ‘good relations’ should be defined in NI law.
- The legislation and ECNI Practical Guidance on EQIAs provide that the impact assessment duty *relates to the equality limb of the Section 75 duty only and not the ‘good relations’ limb*. This is also the case with the consequent duties to consider alternative policies and mitigating measures in the legislation. Despite this, and in contradiction to its advice on EQIAs, the ECNI from 2010 suggested that public authorities conduct ‘good relations impact assessments’ and this process is now incorporated into many Equality Schemes.
- The combined consequence of both these factors has been a pattern whereby the purpose of the Section 75 duties (i.e. an objective legal safeguard to assess whether a policy constitutes a discriminatory detriment) has been frustrated by ‘good relations impact assessments’ operating with a lay definition of ‘good relations’ turning the duty into a subjective political veto over politically contentious policy. This has been most notable over policies *which promote equality and rights*, frustrating the purpose of the Section 75 equality duty.

Absence of Single Equality Legislation

4. Equality Coalition members have been working on and pressing for single equality legislation since at least the beginning of this century. Over two decades on, there remains a frustrating political blockage over progress, despite majority support and international obligations.
5. This has also been the case with the NI Bill of Rights which, as advised by the Human Rights Commission, would have included freestanding equality and non-discrimination duties, and required legislation to be enacted to prevent and prohibit unfair discrimination. This would have covered a broader set of protected characteristics, including for example ‘irrelevant criminal record’ (to remedy issues of unfair discrimination against ex-prisoners), language and others.²
6. A single equality bill was to be advanced as part of the bilateral agreements of the peace process. Building on previous work, the bilateral Joint Declaration by the British and Irish Governments 2003 references the Single Equality Bill as a vehicle to give legislative effect to rights contained within the Good Friday Agreement. This was followed, during a further period of ‘direct rule’, by a consultation from the Executive Office³ on a single Equality Bill for Northern Ireland in 2004.
7. The St. Andrews Agreement 2006 reaffirmed the commitment to a Single Equality Bill and provided (pre-devolution) that the British government “*will work rapidly to make the necessary preparations so that legislation can be taken forward by an incoming Executive at an early date*”.⁴ A good faith interpretation of these internationally agreed commitments is that a Single Equality Bill would have been taken forward as a matter of priority by the devolved institutions, with the preparatory work having been already undertaken. There had also been several treaty body recommendations that comprehensive single equality legislation be introduced in order to comply with international obligations⁵ by this stage.
8. A Sinn Féin Assembly motion was debated in 2007, encouraging the Executive to bring forward a Single Equality Bill at the earliest opportunity.⁶ Whilst the legislation was supported by other parties, the DUP opposed it being progressed at that time.⁷ The Single Equality Bill was not subsequently included in the then 2008-11 Programme for Government.⁸ There was no further progress in the mandate.
9. Following this, the UN and Council of Europe treaty bodies raised further concerns regarding compliance with the UK’s treaty-based obligations in the absence of single equality legislation in NI (by 2010 the Equality Act was in place in Great Britain). In 2011 the UN Committee on the Elimination of Racial Discrimination (‘CERD’) recommended that immediate steps were taken to ensure that a single equality law is adopted in

² NIHRC ‘A Bill of Rights for Northern Ireland: Advice to the Secretary of State for Northern Ireland, 10 December 2008, pp 80-85.

³ Then named the Office for the First and Deputy First Minister (OFMDFM).

⁴ St Andrews Agreement 2006, Annex B.

⁵ See, for example, para 63, ACFC/OP/II(2007)003, where the FCNM Advisory Committee recommended that ‘existing inconsistencies in anti-discrimination legislation are removed’ and para 29, CERD/C/63/CO/11, the UN Committee recommended the introduction of ‘a single comprehensive law, consolidating primary and secondary legislation’ (2003).

⁶ Official Report Tuesday 22 May 2007 Private Members’ Business, [Single Equality Bill](#) Martina Anderson MLA: “*That this Assembly recognises that discrimination operates in many different ways and on many different levels and encourages the Executive to bring forward harmonising legislation, in a single equality Bill, for discussion and consultation at the earliest opportunity.*”

⁷ Response of Nelson McCausland MLA to the motion.

⁸ <https://www.northernireland.gov.uk/publications/programme-government-2008-2011-and-related-documents>

Northern Ireland.⁹ In the same year, the Advisory Committee on the Council of Europe's Framework Convention on National Minorities ('FCNM') recommended that the "*authorities responsible for the implementation of the Belfast/Good Friday Agreement and the St Andrews Agreement should also step up efforts to adopt a Single Equality Act*" for Northern Ireland.¹⁰ Despite this, no commitment was made in the 2011 Programme for Government, which remains the most recent PfG adopted by Stormont. An Assembly Question in 2012 from Robin Swann MLA seeking "an update on the introduction of the Single Equality Bill" drew a response that there were 'no plans' to take forward the legislation.¹¹

10. This is not the first time Northern Ireland has lagged behind Great Britain in relation to equality law. The UK's first race relations legislation in the 1960s was resisted by the then Stormont Parliament and racial discrimination remained lawful in Northern Ireland until 1997. At the time of (and as a consequence of) the GFA, Northern Ireland was briefly ahead of other jurisdictions. This is no longer the case, in particular since the passage of the Equality Act 2010.
11. The Equality Commission for NI, further to its statutory remit to advise on equality law, has conducted mapping across protected characteristics of the gaps resultant from having multiple differential equality statutes rather than consolidated legislation.¹² The technical and background work to mapping the present areas of deficiencies in NI equality law have therefore been undertaken. Political blockage remains the issue. This is exacerbated by the current structures of Stormont whereby the rights-based safeguards envisaged by the GFA have largely not been implemented and instead mutual political vetoes can prevent progress on issues that do not infringe rights, even when there is majority support within the Executive and Assembly.
12. UN and Council of Europe treaty-bodies have continued to raise the lack of a single Equality Bill in NI. The UN Committee on Economic, Social and Cultural Rights (ICESCR) in 2016 urged the UK to ensure it provided similar levels of protection across grounds of discrimination in Northern Ireland as other parts of the state party.¹³ The Council of Europe Framework Convention for National Minorities (FCNM) Advisory Committee also in 2016 recommended that the state party to "*Adopt robust and comprehensive unified legislation on equality or otherwise strengthen racial equality in Northern Ireland*".¹⁴ This was reiterated by FCNM Advisory Committee in 2022.¹⁵
13. A further gap in Northern Ireland legislation relates to there not being any anti-discrimination legislation covering 'language' as a protected characteristic, save for limited protection under the domestic incorporation of the ECHR.¹⁶ Discrimination against speakers of minority ethnic languages can be protected under 'racial group'. In some instances, Irish speakers have been able to utilise fair employment law, when the discrimination has been grounded in sectarianism. Beyond this is however there is no free-standing protection on the ground of language. This (and the absence of the NI Bill of Rights) leaves significant gaps in protection for Irish and Ulster Scots speakers, both

⁹ CERD/C/GBR/CO/18-20 (2011) at para 19.

¹⁰ ACFC/OP/III(2011)006, at para 128.

¹¹ <https://aims.niassembly.gov.uk/questions/printquestionssummary.aspx?docid=142517>

¹² <https://www.equalityni.org/Delivering-Equality/Addressing-inequality/Law-reform/Tags/Gaps-in-equality-law>

¹³ E/C.12/GBR/CO/6, para 22-23

¹⁴ ACFC/OP/IV(2016)005, p50.

¹⁵ ACFC/OP/V(2022)003 para 23

¹⁶ The domestic incorporation of the ECHR in NI law is provided for through the (UK) Human Rights Act 1998, with Article 14 ECHR encompassing non-discrimination on the grounds of language, This is limited however to non-discrimination in relation to the other substantive ECHR rights, i.e. it is not a freestanding right to non-discrimination in other spheres. The UK is not currently party to Protocol 12 ECHR on the free-standing right to non-discrimination.

recognised as linguistic minorities under Council of Europe treaties which expressly contain core obligations to protect linguistic minorities from discrimination.¹⁷

14. Protection in relation to Ulster Scots should also be viewed in light of the decision by the former UK Government in 2023 to shift recognition of Ulster Scots under the Framework Convention beyond language, to instead provide recognition of Ulster Scots as an ethnic minority group (in the Minister's words 'a 'distinct people').¹⁸ This change was largely unnoticed and occurred without consultation with Ulster Scots speakers as to whether they would wish to self-identify as such. Despite core obligations under the Framework Convention, the Written Ministerial Statement at the time deferred to the courts as to whether Ulster Scots would now be protected as a racial group under the Equality Act 2010 (legislation that in any case does not apply in Northern Ireland).¹⁹
15. There is also a gap in NI in relation to a public sector duty regarding socio-economic inequalities. Such a provision is made section 1 of the Equality Act 2010.²⁰ This duty had been commenced in Scotland and Wales, by devolved authorities, but not in England (albeit some local authorities in England had voluntarily adopted the duty). The 2024 Labour Manifesto now commits to enacting the duty in England.²¹
16. A positive development has been the enactment of Article 2 of the NI Protocol/Windsor Framework which ensures continued legal underpinning of certain rights under the Good Friday Agreement. In essence, Article 2 guarantees that there will be no diminution in the legal protection for GFA rights previously underpinned by EU law, as a result of Brexit. This safeguard has already been successful in protecting Northern Ireland from some of the most extreme policies of the previous Conservative Government, with the courts disapplying provisions of the Legacy Act and Illegal Migration Acts which conflict with the GFA. The 'dedicated mechanisms' – the NI Human Rights and Equality Commissions-have also undertaken an extensive body of work on scope, interpretation and application of Article 2. It is concerning in this context that the previous UK Government have actively sought to roll back the scope of the Article 2 safeguard, in pursuing appeals against the above rulings. Whilst the Labour manifesto committed to 'implementing the Windsor Framework in good faith' and respecting international legal obligations, the new Government has decided to continue the appeals.
17. Effective remedy for many of the above gaps could be undertaken through the Assembly now progressing single equality legislation. Should there remain political blockages to achieving this, as the matter engages compliance with international treaty-based obligations – the UK government could also discharge its functions under the GFA to legislate for the NI Bill of Rights, inclusive of a stand-alone equality and anti-discrimination provisions; or proceed to ratify Protocol 12 of the ECHR.

2: Section 75: Enforcement of equality duty – legislative and practice reform

18. This section sets out the scope of the Section 75 equality duty and our concerns that, with some exceptions, it is not being effectively applied by many public authorities or enforced by the Equality Commission.

¹⁷ Under Article 4(1) of the Framework Convention and Article 7(2) of European Charter for Regional and Minority Languages (ECRML).

¹⁸ [HL Hansard Volume 823: debated on Wednesday 6 July 2022](#)

¹⁹ <https://questions-statements.parliament.uk/written-statements/detail/2022-05-25/hcws56>

²⁰ "An authority to which this section applies must, when making decisions of a strategic nature about how to exercise its functions, have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage."

²¹ See <https://justfair.org.uk/campaigns-2/1forequality/>

The scope of the equality duty

19. Schedule 9 of the Northern Ireland Act 1998 provides an implementation framework for the Section 75 statutory public sector equality duty covering nine protected characteristics (in summary: *age, disability, sex, ethnicity, religious belief, political opinion, disability, dependents and sexual orientation*). Schedule 9 requires public authorities to adopt 'Equality Schemes' setting out how they will implement Section 75. Mandatory elements of Equality Schemes are arrangements for (emphasis added):
 - assessing and consulting on the **likely impact of policies** adopted or proposed to be adopted by the authority **on the promotion of equality of opportunity**.
 - for monitoring any **adverse impact** of policies adopted by the authority on the **promotion of equality of opportunity**.²²
20. To comply with these arrangements, public authorities have adopted a two-stage methodology recommended by the ECNI and set out in Equality Schemes. The first stage is an initial 'Equality Screening' of a proposed policy. Then, if the screening identifies major adverse impacts, the screening decision is usually to proceed to a full Equality Impact Assessment (EQIA). There are further commitments in the equality scheme to consultation and monitoring.
21. If a public authority fails to comply with the commitments in their equality scheme, a directly affected individual can file a complaint, first with the public authority, and then with the ECNI as the enforcement body. The ECNI evaluates the complaint and decides whether to investigate the alleged breach of equality scheme. The ECNI also has "own initiative" powers to investigate public authorities for breaching their schemes without needing an individual to make a complaint.

Patterns of deficiencies and lack of enforcement by the ECNI

22. The Equality Coalition has a significant body of research regarding Section 75. Published in January 2018, the Equality Coalition's *Equal to the Task?* Report²³ was designed to review the application and impact of enforcement powers over the 'Section 75' statutory equality duties, and to make recommendations to improve effectiveness.
23. In participation with member groups, the *Equal to the Task?* report researched and detailed the patterns and problems of compliance with equality schemes. The research found that there was a general sense that while the duties were not working effectively, they could work, if operationalised properly. There were significant patterns of noncompliance including, 1) Lack of data gathering and monitoring, 2) public authorities not Equality Screening at all, 3) EQIAs rarely being undertaken, and 4) issues with the quality of equality screening.
24. The *Equal to the Task?* report indicated that most participants were frustrated by the efforts to challenge the poor application of Section 75 with public authorities. There was an expectation that the ECNI should be doing more as an enforcement body, and that the ECNI was too heavily invested in their advice provision to public authorities rather than challenging practices of adverse impacts on equality. Member groups felt mystified that the ECNI would also agree with many of the concerns of the sector about systematic poor practices in screening exercises yet did not appear to regard it as the Commission's role to address this through its enforcement powers.

²² <https://www.legislation.gov.uk/ukpga/1998/47/schedule/9/paragraph/4>.

²³ <https://caj.org.uk/2018/01/31/equal-task-investigative-powers-effective-enforcement-section-75-equality-duty-jan-2018/>

25. Amongst the recommendations made to the ECNI were that the Commission develop a strategic enforcement strategy; proactively identify opportunities for ‘Own-Initiative’ investigations; give clear reasons for not investigating an admissible complaint; and address the long delays in relation to initiating investigations.
26. A further report into Section 75 enforcement powers was completed in 2022.²⁴ This report also found that, when utilised, the ECNI formal enforcement powers prompt the type of Section 75 compliance that the ECNI advice provision alone has not been able to achieve. We have also seen conflicts arise between the ECNI advice function and enforcement powers.
27. The report raised concerns that many procedurally valid complaints were still not investigated by the ECNI. For example, from 2014 to February 2021, 38 complaints were submitted to the ECNI, and 30 were deemed procedurally valid. Out of these 30 valid complaints, only five were investigated. The reasons given by the ECNI for not investigating valid complaints were often vague and based on a subjective assessment of the value of the investigation. The main findings and recommendations of the report to the ECNI were:
- The ECNI should investigate all valid Paragraph 10 complaints, save where there are exceptional circumstances. There should be no requirement for the investigation of a valid paragraph 10 complaint to fulfil a broader strategic goal.
 - There should be a timeframe for investigations in ECNI procedures.
 - The ECNI should ensure that their assessment of a request for a paragraph 10 complaint does not predict the outcome of an investigation or substitute for an investigation. The ECNI should not use confidential legal advice in lieu of investigating a valid complaint.
 - The ECNI should develop a ‘fast track’ process for requests for paragraph 10 investigations into complaints where the breach is obvious and/or time sensitive.
 - The ECNI should develop a strategic enforcement strategy including using its powers under paragraph 11 to conduct strategic ‘own initiative’ investigations.
 - Investigations should ensure that the actions of Ministers are also scrutinised when they contribute to breaches of equality schemes.
28. We are yet to see a significant improvement from the ECNI in the exercise of its enforcement powers. The ECNI is under a statutory duty to keep under review the effectiveness of the Section 75 duties and could commission an external review. We recommend:

An independent review takes place in regard to the effectiveness of the ECNI exercise of enforcement powers over the Section 75 duties; including the interface between the ECNI advice and enforcement functions; and whether legislative change, including strengthening the powers or an alternative enforcement mechanism, would be more effective.

3: Good Relations Duty – gaps and problems

29. The second limb of the Section 75 duties is the ‘good relations’ duty. We have significant concerns that the way this limb of the duty is currently being operationalised frustrates the statutory purpose of the equality duty to be an objective legal safeguard. In practice, the

²⁴ <https://caj.org.uk/publications/reports/equality-duty-enforcement-project-edep-a-narrative-report-2018-to-2021/>

‘good relations’ limb of the duty is being used as a subjective veto over politically contentious policies, including those which promote equality (the purpose of the equality duty). The main problems are:

- **The continued lack of a definition of ‘good relations’ on the face of the legislation** allowing ‘lay’ interpretations of the concept. This contrasts with legislation in Great Britain (where the concept focuses on tackling prejudice and promoting understanding); and has been heavily criticised by treaty-bodies, who have recommended definition (focusing on respect, understanding, integration and combatting discrimination and intolerance) but the matter remains unaddressed.
- **A practice of conducting ‘good relations impact assessments’ during screening and EQIAs.** This is expressly not provided for or required by the legislation or ECNI guidance on EQIAs, but, in contradiction, was subsequently recommended by ECNI for equality screening from 2010. A subsequent proposal to change the legislation to include ‘Good Relations Impact Assessments’ was roundly opposed by the equalities sector and not legislated for. Many public authorities continue to act as if the legislation had changed.

30. In contrast to the broader patterns within public authorities towards an underuse of proper equality screening to assess discriminatory detriments on equality, some public authorities have instead enthusiastically focused on the good relations limb of the duty. An example is when Belfast City Council made provision for a screening exercise to be conducted on potentially *each and every* application for a bilingual street sign. Such an approach does not apply to *any other* application process within the Council. The approach departs from the Council’s own equality scheme and focuses on assessing ‘community tensions’ rather than equality impacts.²⁵ The concept of ‘good relations’ as defined in the Council’s own Equality Scheme as concerning promoting diversity is substituted for a lay definition of ‘good relations’ grounded in an assessment of ‘community tensions’ due to potential hostility to bilingual signage.

31. The problems created by the 2010 ECNI recommendation to include ‘good relations impact assessments’ in Model Equality Schemes have led to a number of public authorities subsequently removing this provision from their equality schemes, but most retain it. We have asked the ECNI on a number of occasions for a positive example of success from the model of ‘good relations impact assessments’ but no examples have been forthcoming. This section will further detail the problems created by the gap in the legislation regarding a definition of ‘good relations’ and ‘good relations impact assessments.’

Background

32. Whilst there was no reference to ‘good relations’ in the GFA, a second limb was added to the Section 75 duties that a relevant public authority shall ‘*have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group.*’²⁶

²⁵ The Council’s Screenings of individual applications for street signage follows a process of ‘initial assessment’ that is not provided for under the Council’s Equality Scheme and whose methodology is unknown. (Correspondence to CAJ, BCC ref DDI: 028 90500508 8 February 2024). Screenings which have been released to CAJ under FOI, were ‘drafts’, but had led to *decisions* to place signage applications at the back of the queue, find no adverse equality impacts but do find minor ‘good relations impacts’ on the basis of a risk of ‘community tension’ in areas where there are signs of ‘unionist identity’.

²⁶ <https://www.legislation.gov.uk/ukpga/1998/47/section/75>

33. Following concerns by CAJ and others, a safeguard was placed on the face of the Section 75 legislation during parliamentary passage that the ‘good relations’ limb of the duty must be discharged *without prejudice* to obligations under the equality duty. This was to prevent the scenario whereby a policy that promotes equality is blocked by a *lay interpretation* of the ‘good relations’ duty that a policy offends ‘good relations’ (i.e. as it is politically contested) which would frustrate the purpose of the equality duty.

34. This safeguard has however proved insufficient. Problematic interpretations of the ‘good relations’ duty have been prevalent in a number of areas engaging economic, social and cultural (ESC) rights.²⁷

35. Regarding an authoritative interpretation of the concept of ‘good relations’ in international standards, the Council of Europe has set out that that:

Promoting good relations between different groups in society entails fostering mutual respect, understanding and integration while continuing to combat discrimination and intolerance.²⁸

36. The equivalent concept in legislation Great Britain, in the Equality Act 2010, explicitly frames the focus of the ‘good relations’ duty as “*tackling prejudice and promoting understanding*”.²⁹ Whilst there remains no definition of ‘good relations’ on the face of the Section 75 duty in Northern Ireland, it is clearly not intended to be an entirely different concept.

37. There has been significant criticism from Council of Europe treaty-bodies about the interpretation *in practice* of the good relations duty in NI, where the lack of proper definition has been a contributory factor. The Advisory Committee on the Framework Convention for National Minorities has referred to interlocutor reports of the ‘good relations’ duty appearing “*on several occasions to take priority over wider equality and minority rights initiatives, which were blocked on grounds that they would lead to ‘community tensions’*” and elaborated that:

This would be due to the fact that, unlike the rest of the country, Northern Ireland does not interpret the ‘good relations’ duty as including a duty to tackle racism, including sectarianism. Instead, the lack of proper definition allows this notion to be used rather as a ‘tool’ to set aside politically contentious issues, such as legislating on the Irish language, and to justify a “do-nothing” attitude, eventually based on ‘perceptions’ rather than objective criteria. The Advisory Committee reiterates its opinion that the concept of ‘good relations’ apparently continues to be substituted for the concept of intercultural dialogue and integration of society, which would include other national and ethnic minorities present in the region, and regrets that this is used to prevent access to rights by persons belonging to these minorities. [85]³⁰

[The Committee recommended that]

The authorities should begin to implement the ‘good relations’ duty as provided for under the Northern Ireland Act 1998 in a manner that does not run counter to the equality duty and that does not prevent access to rights by persons belonging to all national and ethnic minorities. [89].³¹

²⁷ See CAJ ‘Unequal Relations’ report: <https://caj.org.uk/wp-content/uploads/2017/03/No.-64-Unequal-Relations-%E2%80%93-Policy-the-Section-75-duties-and-Equality-Commission-advice-etc-May-2013.pdf>

²⁸ [ECRI General Recommendation no 2 \(revised\), explanatory memorandum](#), para graph 21

²⁹ s149 of the Equality Act 2010.

³⁰ <https://www.coe.int/en/web/minorities/-/united-kingdom-publication-of-the-4th-advisory-committee-opinion>

³¹ <https://www.coe.int/en/web/minorities/-/united-kingdom-publication-of-the-4th-advisory-committee-opinion>

38. Following a CAJ report raising concerns on the issue in 2013 the ECNI, which has a statutory function to advise on the Section 75 duties, has also promoted the ‘*tackling prejudice, promoting understanding*’ definition in the Equality Act 2010. In addition, also drawing on legislation in Britain in guidance to NI Councils, the ECNI elaborates that:
- Good relations can be said to exist where there is a high level of dignity, respect and mutual understanding; an absence of prejudice, hatred, hostility or harassment; a fair level of participation in society.³²
39. The Commission on Flags, Identity Culture and Tradition (FICT) report (2021) raises the lack of definition of ‘good relations’ in NI law, drawing on the definition in Great Britain, and the representations of the ECNI on the utility of this definition. The FICT commission consequently recommends that “the legal duty of Good Relations should be clearly defined in law.” and that “the delivery of Good Relations interventions, has reductions of sectarian and race hate incidents as key outcomes.”³³
40. Notably many equality schemes follow a previous ECNI working definition of good relations as *inter alia* seeking to promote respect and ‘*embrace diversity in all its forms*’.³⁴
41. These definitions provide a sound basis of how ‘good relations’ at least *should be* interpreted by public authorities in NI.
42. There is no obligation to conduct ‘good relations impact assessments’ in the Section 75 legislation. The impact assessment provisions of the Section 75 duties, cited above, expressly relate to the ‘equality of opportunity’ limb of the duty only. *The duties to consequently consider mitigating measures and alternative policies also likewise only relate to the equality of opportunity duty.*
43. There was a proposal under the Executives T:BUC strategy to amend the legislation and provide for ‘good relations impact assessments’ with EQIAs becoming Equality and Good Relations Impact Assessments. This was opposed by the Equality Coalition and was never legislated for.
44. The 2005 ECNI Practical guidance on conducting EQIAs makes no reference at all to ‘good relations’ or ‘good relations’ impact assessments, rather EQIAs are (rightly) entirely focused on the equality limb of the duty only.³⁵ The Equality Schemes tend to expressly commit to following this ECNI Guidance.³⁶
45. In contradiction, the 2010 ECNI general guide on the Section 75 duties confuses matters in recommending good relations ‘impacts’ be measured in Equality Screening, although the guidance on EQIAs remains largely focused on the equality limb of the duty.³⁷ A more

³² Equality Commission advice on Good Relations in local Councils’ 2015

³³ [Commission on Flags, Identity, Culture and Tradition - Final report | The Executive Office \(executiveoffice-ni.gov.uk\)](https://www.executiveoffice-ni.gov.uk/Commission-on-Flags-Identity-Culture-and-Tradition-Final-report/)

³⁴ The Councils Equality Scheme references a previous ECNI ‘working definition’ of Good relations as follows: “Although not defined in the legislation, the Commission has agreed the following working definition of ‘good relations’: ‘the growth of relations and structures for Northern Ireland that acknowledge the religious, political and racial context of this society, and that seek to promote respect, equity and trust, and embrace diversity in all its forms’. (e.g. see <https://www.belfastcity.gov.uk/Documents/Equality-Scheme-for-Belfast-City-Council#appendix5>)

³⁵ ECNI ‘[Section 75 of the Northern Ireland Act 1998: Practical Guidance on Equality Impact Assessment](#) February 2005. Notably this document setting out the methodology for EQIA’s does not mention ‘good relations’ at all, rather the focus is on the equality limb of the duty in line with the legislation. The only use of the term is where the document reproduces the whole text of Section 75.

³⁶ Paragraph 4.17 of the Councils Equality Scheme contains the following commitment “we will carry out the EQIA in accordance with Equality Commission guidance.”

³⁷ ECNI Section 75 of the [Northern Ireland Act 1998: A Guide for Public Authorities](#): April 2010. See pages 40-41 and 68. The section on screening makes reference to its purpose being to identify policies that are likely to have an impact on either equality or ‘good relations’. Whilst the section on EQIAs, states that an EQIA can be triggered by ‘good relations’ considerations, the focus on the EQIA itself is only in reference to equality, in line with the legislation.

recent ECNI Short Guide on Screening and EQIAs from 2017 indicates that ‘good relations’ assessments are not mandatory for Screening or EQIAs.³⁸

46. Whilst some public authorities have now removed ‘good relations impacts’ questions from equality screening, most equality schemes continue to incorporate the notion of ‘good relations impacts’ into its equality *screening* methodology.³⁹ There has also been resistance from ECNI when public authorities have sought to remove Good Relations Impact Assessments from Equality Schemes at the request of the Equality Coalition. Notably the ECNI started to advise public authorities that they did not *have to consult when reviewing their Equality Scheme*. This meant consultees did not have the opportunity to proposed changes (including removing Good Relations Impact Assessments).
47. Equality Schemes tend to reference an EQIA being an opportunity to demonstrate the likely positive outcomes of a policy and to seek ways to more effectively promote equality and good relations. This is very different to the notion of a ‘good relations impact assessment’. Rather it is to focus on how the policy could effectively promote good relations. Such measures could include a public authority taking steps to promote diversity and tolerance, and measures to tackle prejudice and promote understanding.
48. Despite this, our research has encountered recurring problems of ‘good relations impact assessments’ being used to block draft policies that promote equality. By way of remedy to this we would recommend:
 - As recommended by treaty bodies and the FICT Commission: A definition of ‘good relations’ – in line with international standards – is placed on the face of the legislation.
 - That the ECNI rescind its 2010 advice to include ‘good relations impact assessments’ in equality screening.
 - Positive Good relations promotional measures should be in line with the authoritative definitions of ‘good relations’ set out in international standards and by the ECNI.

**Equality Coalition
September 2024**

³⁸ ECNI ‘[Effective Section 75 Equality Assessments: Screening and Equality Assessments](#)’ (2017) See footnotes 4 & 7 in particular.

³⁹ For example, see, Belfast City Council, Equality Scheme, paragraphs 4.4-4.14.