

Equality Commission

FOR NORTHERN IRELAND

Procedures for Complaints and Investigations

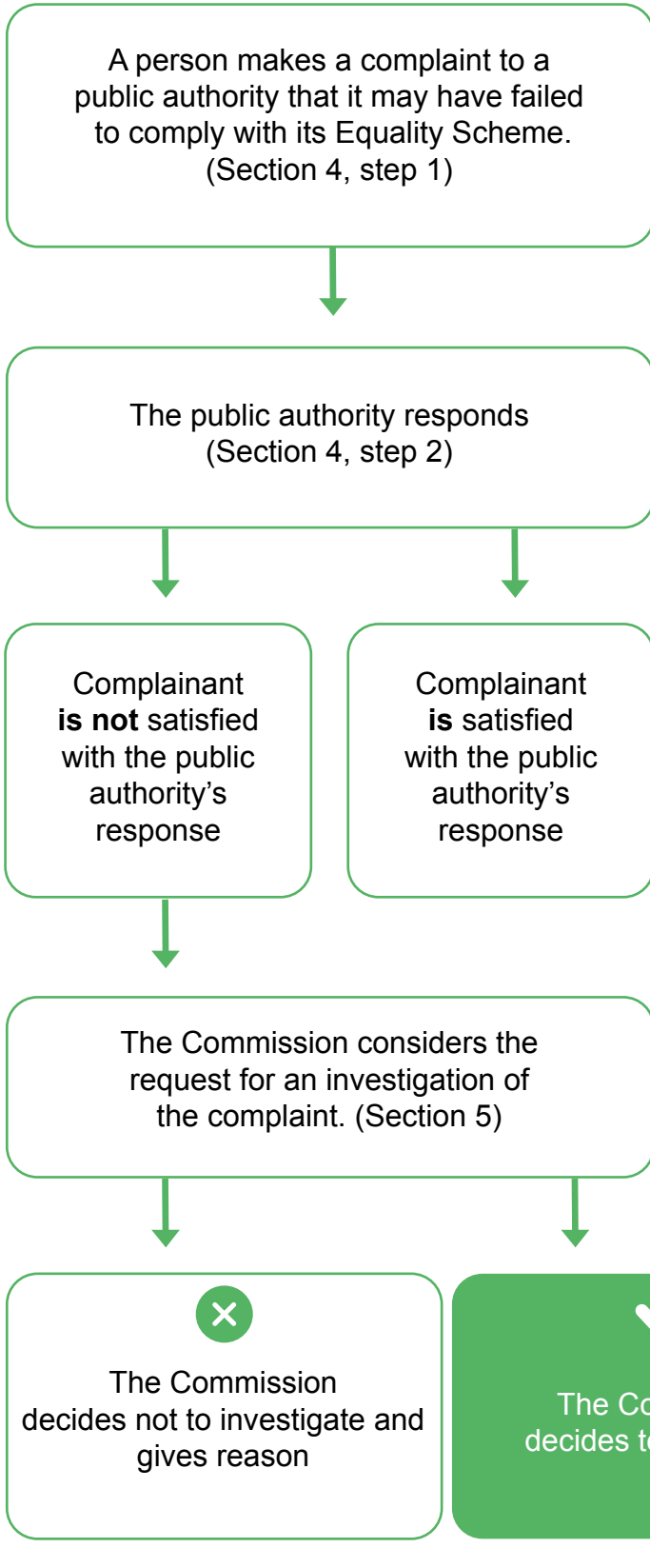


**Under Paragraphs 10 and 11
of Schedule 9 of the
Northern Ireland Act 1998**

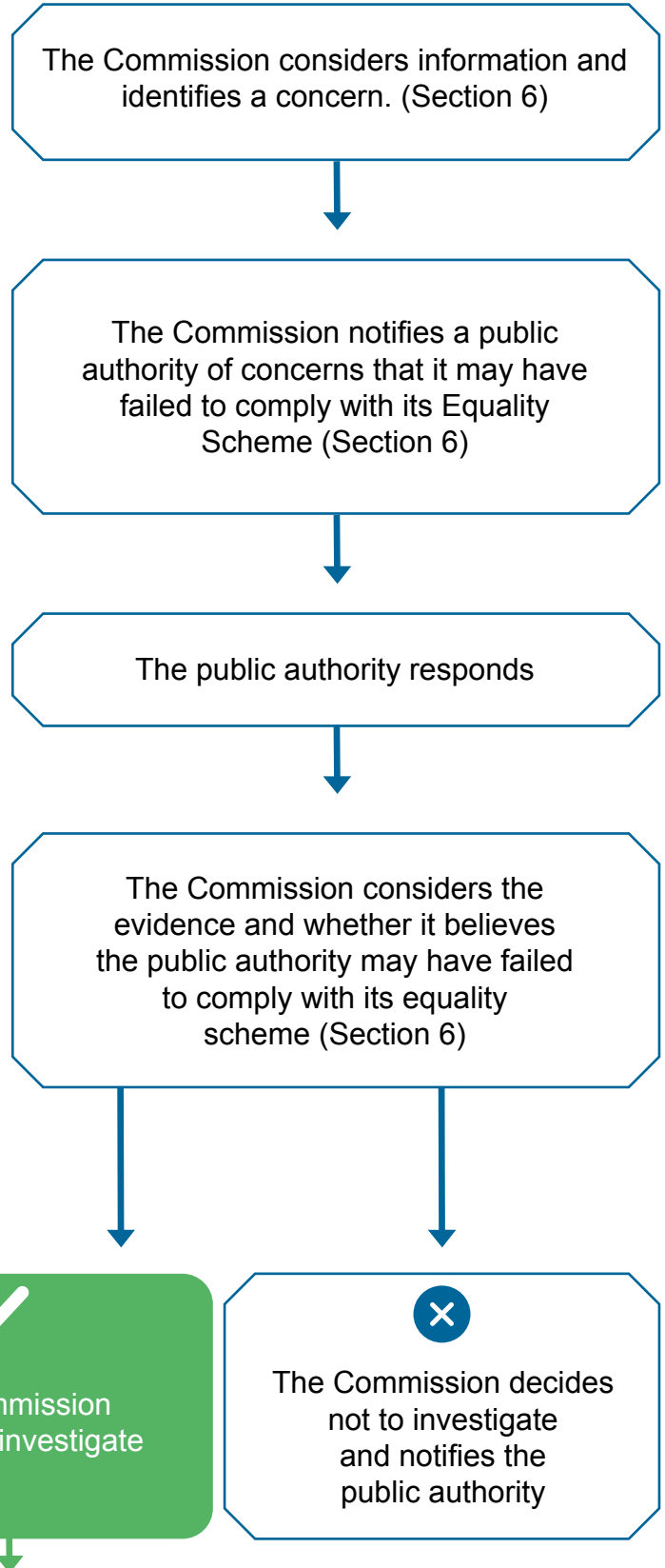
December 2019

Flowchart of procedures for complaints and investigations

Paragraph 10 (Complaints)



Paragraph 11 (Commission Initiative)



Flowchart of procedures for complaints and investigations

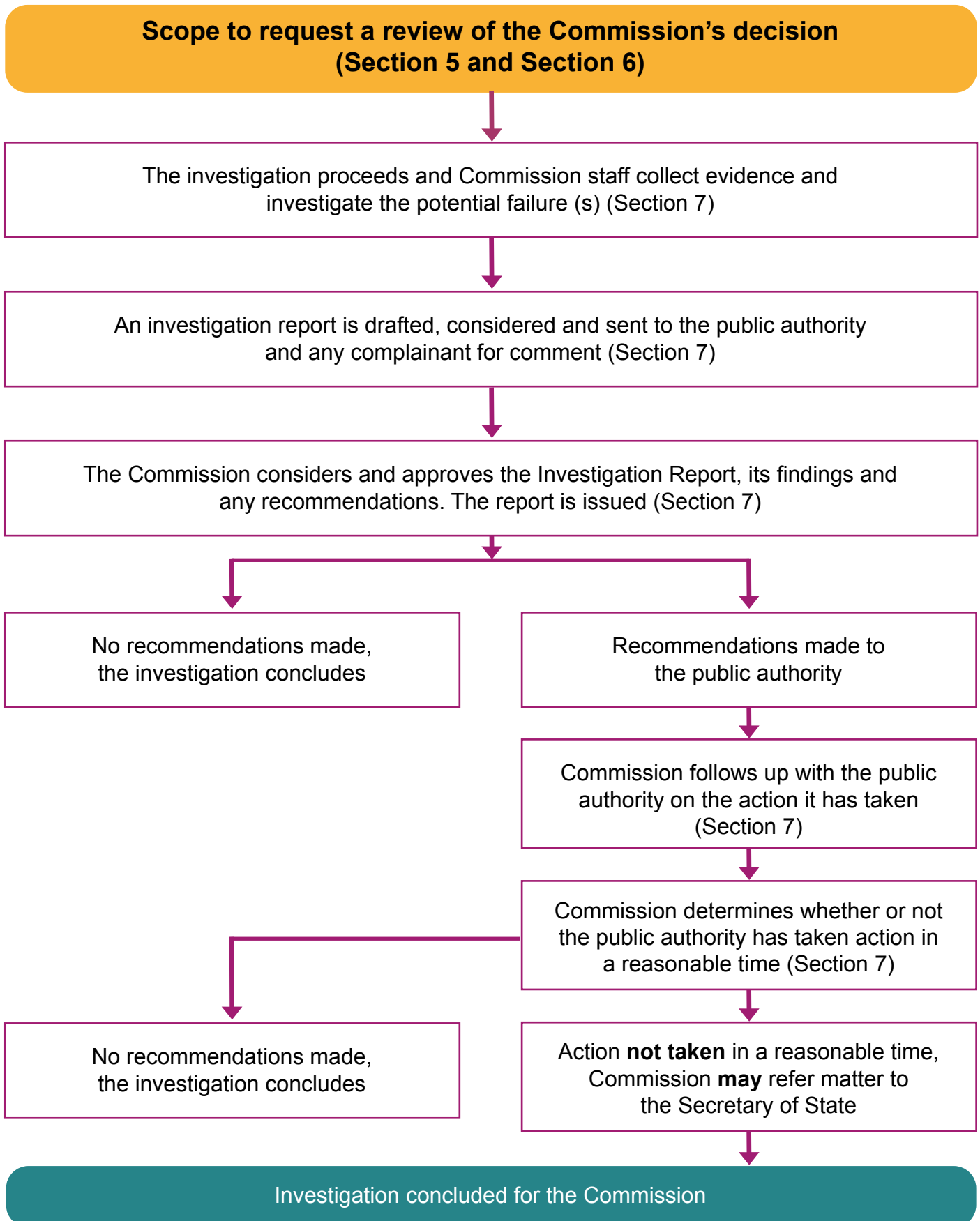


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1. Legislative framework

- 1.1. Section 75 of the Northern Ireland Act 1998 requires that all designated public authorities, in carrying out their functions relating to Northern Ireland, shall have due regard to the need to promote equality of opportunity and regard to the desirability of promoting good relations between various section 75 groups.
- 1.2. Designated public authorities are required to have an Equality Scheme, unless granted an exemption from doing so. The Equality Scheme shows the public authority's "arrangements" for **how it proposes to fulfil the duties** set out in Section 75, in accordance with the requirements set out in Schedule 9 of the Northern Ireland Act. It sets out the methods and processes that the public authority has committed to using in order for it to meet the statutory requirements to have "due regard to the need to promote equality of opportunity and regard to the desirability of promoting good relations".
- 1.3. The Equality Commission (Commission) approves the Equality Schemes of public authorities and provides guidance on what an Equality Scheme must, as set out in the legislation, and should include. The Commission's website provides a list of approved Equality Schemes.
- 1.4. The enforcement of Section 75 is governed by Schedule 9 of the Northern Ireland Act 1998 and the Commission has specific powers and duties set out in Schedule 9.
- 1.5. Paragraph 10 of Schedule 9 refers to complaints. A complaint made under this paragraph is about a public authority's alleged failure to comply with its Equality Scheme commitments.
- 1.6. Paragraph 11 of Schedule 9 refers to the Commission's investigation powers. The Commission can investigate a complaint made, as well as investigate where it believes that a public authority may have failed to comply with its Equality Scheme commitments.
- 1.7. The resolution from any investigation will be **a finding** that a public authority has failed to comply with its Equality Scheme, or not, and any recommendations made accordingly.

1. Legislative framework

- 1.8. Any recommendations will relate to how a public authority should conduct its business to ensure that it does comply with the arrangements in its Equality Scheme and uses those arrangements in order to have due regard to the need to promote equality of opportunity and regard to the desirability of promoting good relations. This is different to what is available under the anti-discrimination legislation where individuals may be compensated.
- 1.9. The Commission produces a report of an investigation, stating its findings and any recommendations for action by the public authority. The Commission shall send a copy of the report to the public authority concerned and any complainant. The Commission also sends a copy of the report to the Secretary of State and the Assembly¹.
- 1.10. The Commission will make an assessment of the action subsequently taken by the public authority and, as is required in Schedule 9, whether it was taken in a reasonable time. The specific recommendations made in the report will inform this assessment. If the Commission considers that the action has not been taken in a reasonable time, then it may refer the matter to the Secretary of State, who may give directions to the public authority in respect of any matter referred.
- 1.11. The Commission fulfils a statutory function where it **determines** whether a public authority has failed to comply with its approved Equality Scheme, or not. It does this through impartial and thorough investigation of the potential failures identified and making findings following an investigation.
- 1.12. The timeframe for the whole process - from receiving and assessing complaints, conducting any investigation, to reporting findings - will depend on the particular complaint made and/or the circumstances of the investigation, but will normally take a number of months. However, in the following stages set out in this procedure, there are a number of specific timescales that will normally apply for action by the Commission and others. There are also timeframes set out in Schedule 9 which provides the statutory framework for these procedures.

¹ Schedule 9 of the Northern Ireland Act 1998 at paragraphs 11.(2) and (4) sets out to whom the Commission must send the report.

1. Legislative framework

1.13. The following is a list of matters that could potentially amount to a complaint of failure to comply with an approved equality scheme (this is not an exhaustive list):

- failure to comply with an approved scheme's commitments on public access to information and services;
- failure to carry out consultation in accordance with an approved scheme's commitments;
- failure to assess the equality implications of an existing or a new/proposed policy;
- failure to put appropriate internal arrangements in place to ensure that Section 75 statutory duties are effectively complied with as included in an approved scheme's commitments; or
- failure to properly comply with the public authority's complaints procedure in its approved scheme.²

² Section 75 - Guide for Public Authorities, Equality Commission (2010) page 21

2. Roles and responsibilities and how the Commission discharges its statutory functions

- 2.1. This document refers to the Commission, which means the Equality Commission for Northern Ireland generally. This document also refers to **Commission staff**, the **Commission's Board** and the Statutory Duty Investigations Committee (**SDIC**) to provide clarity in the procedures.
- 2.2. On complaints arising from paragraph 10 of Schedule 9 of the Northern Ireland Act 1998, the Commission's Board has delegated responsibility for its duties to consider whether to investigate a complaint to a committee of its Commissioners. The Committee is called the Statutory Duty Investigations Committee.
- 2.3. The SDIC also has been delegated responsibility to oversee the investigation of any complaint under Paragraph 10.
- 2.4. The SDIC also has some delegated responsibilities in relation to investigations under Paragraph 11(b) of Schedule 9 of the Northern Ireland Act 1998. The SDIC can recommend the authorisation of an investigation under this paragraph.
- 2.5. The Commission's Board determines whether the Commission may form a belief that a public authority may have failed to comply with its approved Equality Scheme and authorises any investigation under Paragraph 11.
- 2.6. The SDIC has been delegated responsibility to oversee the investigation of the Commission's belief under Paragraph 11.
- 2.7. The Commission's Board considers and approves all Investigation Reports, their findings and recommendations.
- 2.8. The SDIC normally meets five times a year, but will meet more frequently in the event of, for example, decisions being required on written complaints received.

3. Advice, Information and Guidance

- 3.1. The following sections of this document set out the steps and stages that are to be followed to make a complaint that a public authority may have failed to comply with its approved Equality Scheme and asking the Commission to investigate that complaint. It also sets out steps and stages for the initiation of other investigations and the process of investigation through to conclusion.
- 3.2. The Commission can provide advice to anyone on the processes and stages of complaints and investigations as set out in paragraphs 10 and 11 of Schedule 9 of the Northern Ireland Act 1998. This advice can be, for example, to anyone considering making a complaint under paragraph 10, or in relation to the different steps and stages as set out in this document in order to make a complaint or ask the Commission to investigate the complaint. The Commission would encourage anyone to seek advice on the process at any stage.
- 3.3. The Commission can also advise, as appropriate, a third party in circumstances where a person may be unable to bring a complaint themselves – such as advising a parent or other representative where the complainant may be a child.
- 3.4. Please contact Commission staff in the Investigations Team for advice and information:
By email: InvestigationsTeam@equalityni.org
By Telephone: 02890 500 600

Or visit our website: www.equalityni.org/investigations

4. Making a complaint (Paragraph 10)

- 4.1. This section sets out details on what is needed to make a complaint about possible failures by a public authority to comply with its Equality Scheme and the stages on how to do this. The Commission can provide advice and information and encourages anyone thinking about, or in the process of, making a complaint to contact the Commission.

In Brief:

- A complaint must be about a public authority's failure to comply with its approved equality scheme
 - The complainant must bring the complaint to the notice of the public authority first
 - The complaint must be made by a person who claims to have been directly affected by the failure being complained about
 - The complainant must give the public authority a reasonable time to respond to the complaint
 - If the complainant is not satisfied with the response from the public authority, the complainant can ask the Commission to investigate the complaint
 - The written complaint must be sent to the Commission within 12 months, starting with the day on which complainant first knew of the matters alleged.
 - The Commission must either investigate the complaint, or give the complainant reasons for not investigating.
- 4.2. Paragraph 10 of Schedule 9 of the Northern Ireland Act 1998 sets out the statutory requirements for making a complaint about a public authority's failure to comply with its Equality Scheme; these requirements are summarised above.
- 4.3. **All complaints must meet all the requirements** set out in the legislation, in order for the Commission to consider them for investigation.

4. Making a complaint (Paragraph 10)

- 4.4. The written complaint to the Commission **must** be about the same complaint raised with the public authority, to meet the requirement in the legislation that the complaint must have been made to the public authority first, before a complainant can ask the Commission to investigate the matter (see also para 4.21).

Step 1

Make a complaint to a public authority

- 4.5. A public authority's Equality Scheme should be published and available on its website. It will have a section relating to complaints. In most Equality Schemes, this will be found in Chapter 8. This provides information on how each public authority deals with complaints about its Equality Scheme.
- 4.6. An Equality Scheme should also provide contact information, such as for the public authority's Equality Officer.
- 4.7. The complainant **must** be a "person". For the purposes of a complaint that a public authority may have failed to comply with its Equality Scheme, a person can be an individual, organisation or group, for example a company limited by guarantee or unincorporated body such as a voluntary organisation.
- 4.8. The complainant will need to be clear in their complaint to the public authority about how they believe the public authority has failed to comply with particular commitments set out in its Equality Scheme.
- 4.9. The complainant should identify, where possible, the paragraphs in the Equality Scheme they are complaining about and those commitments which the complainant thinks the public authority has failed to meet.

4. Making a complaint (Paragraph 10)

- 4.10. When raising the complaint with the public authority, a complainant can also include information about how they have been affected by the failure that they are complaining about, although there is no requirement in the legislation that they **must** at this stage. This is because a complainant must be able to **claim to have been directly affected by that failure** if they later send the complaint to the Commission.
- 4.11. A complaint to a public authority should be made as soon as possible following the circumstances or situation that occurred to prompt the complaint, as there are strict time limits involved if the complainant later sends a written complaint to the Commission. This time limit is that the written complaint to the Commission must be sent to the Commission **during the period of 12 months** starting with the day on which the complainant first knew of the matters alleged (see also para 4.22). The Commission cannot extend the 12 months.
- 4.12. The complainant should retain a copy of the complaint made to the public authority.

4. Making a complaint (Paragraph 10)

Step 2

Wait a reasonable time for a response from the public authority

- 4.13. A complainant **must notify the public authority of the complaint, i.e. a complainant** must raise their complaint in the first instance with the public authority, and give the public authority a reasonable time to respond.
- 4.14. The public authority's timescales for dealing with complaints that it may have failed to comply with its Equality Scheme should be set out in the relevant section of its Equality Scheme. The Commission advises that **20 working days** should normally be sufficient. Paragraph 10 of Schedule 9 is silent on what period of time is reasonable for in allowing the public authority an opportunity to respond. Approved Equality Schemes will normally set out a commitment to respond to complaints within a given period of time.
- 4.15. The Commission can provide advice to any complainant and others at this stage, but cannot act on any written request that it investigate the complaint until the public authority has been given a "reasonable opportunity to respond" as set out in the legislation.
- 4.16. The public authority should provide a response to the complaint in accordance with its procedures set out in its Equality Scheme. This may include action or proposals to the complainant to rectify the problem.
- 4.17. If the public authority does not respond within the timescales set out, the complainant should follow up with the public authority in the first instance, but can also ask the Commission for advice.
- 4.18. If the complainant is not satisfied with the response, **or the time taken** to respond - as the response must be made in a reasonable time - and still believes that the public authority has failed to comply with its Equality Scheme, they can write to the Commission and ask the Commission to investigate their complaint.

4. Making a complaint (Paragraph 10)

Step 3

Write to the Equality Commission

to request it investigates the complaint

- 4.19. A complaint **must** be made **in writing to** the Commission. The Commission can accept written complaints by letter and/or email, and will make reasonable adjustments, when needed, to help complainants meet this requirement.
- 4.20. A copy of the complaint made to the public authority and any response received from it should be included in the written complaint to the Commission. This helps the Commission to know that the **complaint has been notified to the public authority and it has had the opportunity to respond.**
- 4.21. The complaint brought to the Commission **must** be the same as the complaint made to the public authority in terms of the alleged failure by the public authority to comply with its approved Equality Scheme. This is required by the legislation.
- 4.22. The written complaint **must** be sent to the Commission **within 12 months** of the date on which the complainant first knew about the matters alleged. This date might not be the same date as when **the complainant first** understood the matter to be a potential failure by the public authority to comply with its approved Equality Scheme.
- 4.23. The written complaint should also set out how the complainant believes and therefore **claims they have been directly affected** by the matters being complained of.
- 4.24. The written complaint to the Commission must be of a failure by a public authority to comply with its approved Equality Scheme.

5. Equality Commission action on a written complaint

5.1 This section sets out details on what the Commission does when it receives a written complaint, under Paragraph 10 of Schedule 9 of the Northern Ireland Act 1998, from a person who alleges that a public authority has failed to comply with its Equality Scheme. It sets out how the Commission acts on the complaint received.

In Brief:

- The Commission receives a written complaint
- The public authority is informed of the complaint received and provided with copies of relevant correspondence
- The public authority is given the opportunity to provide any further information to assist the Commission staff's assessment of the complaint
- The Commission's Statutory Duty Investigations Committee considers requests that the Commission investigate a complaint.
- The SDIC first considers whether the complaint meets the requirements set out in the legislation
- If it does, the SDIC will consider the complaint made and will either investigate it or give reasons for not investigating
- The complainant and the public authority will be informed of the decisions on the complaint, and reasons given
- A review of the SDIC's decision can be requested by either party to a complaint, in certain circumstances

5.2. Under paragraph 10(1) of Schedule 9, if the Commission receives a complaint made in accordance with the statutory requirements of paragraphs 10 (2), (3) and (4), it must investigate the complaint

5. Equality Commission action on a written complaint

or give the complainant reasons for not investigating.

- 5.3. The Commission can only consider written complaints which have met all the criteria set out in Paragraph 10 of Schedule 9, as set out in Step 3 above (see paras 4.19 – 4.24). There are no provisions made in the legislation for any variation to this, even when the complainant considers the matters urgent.
- 5.4. A complaint can be withdrawn by the complainant at any stage prior to its consideration by the SDIC.

Assessment of the complaint

- 5.5. Once a written complaint has been made to the Commission, it will be acknowledged **within 5 days**. The Commission staff will meet or communicate with the complainant and outline the action that will be taken on the written complaint, as appropriate.
- 5.6. All written complaints alleging a public authority's failure are considered by the SDIC in a timely manner. In order to do this, the complaint is assessed by Commission staff and presented to the SDIC.
- 5.7. The assessment process will include:
 - Ensuring receipt of the written complaint, and evidence of the complaint first made to the public authority
 - Any clarification needed from the complainant
 - Informing the public authority, normally **within 10 working days**, of the written complaint received and what the complainant has provided to show prior notification to the public authority
 - Providing the public authority with an opportunity to present any information, normally **within 20 working days**, to inform the Commission staff's assessment of the complaint

5. Equality Commission action on a written complaint

- An assessment of whether the complaint meets the criteria set out in Paragraph 10 of Schedule 9 (see paragraphs 4.19 – 4.24). The Commission staff will normally do this **within 20 working days and in parallel to the preceding point**
 - A summary of all the information gathered on the allegations that the public authority may have failed to comply with its approved Equality Scheme. Commission staff aim to do this **within a further 20 working days** of receipt of any further information from the public authority.
- 5.8. The assessment process may therefore take at **least two months** to complete.

Consideration of the written complaint for investigation (or not)

- 5.9. The assessment of the complaint is presented to the SDIC.
- 5.10. The SDIC will decide first if it is made **in accordance with the criteria set out in Paragraph 10 of Schedule 9** (see paragraphs 4.19 – 4.24).
- 5.11. If the SDIC decides that the criteria for a Paragraph 10 investigation **have not been met**, Commission staff will inform both the complainant and the public authority of this, **within 10 working days**.
- 5.12. If the SDIC accepts the complaint as having been made in accordance with the criteria set out in Paragraph 10, it will go on to consider whether there are reasons **not to** investigate the complaint made.
- 5.13. The SDIC will give consideration to a range of factors in order to reach its determination on whether to investigate a complaint.
- 5.14. The following provides some examples of some of the factors that may be considered. There are also further examples of factors set out at paragraph 6.8 below. The factors will be specific to the written complaint received and the reasons for the SDIC's determination will be given. The following factors are for illustration only and are not an exhaustive list:

5. Equality Commission action on a written complaint

- The public authority has committed to action to apply its Equality Scheme commitments to the matters complained of.
- The matters alleged in the complaint relate more to policy outcomes sought by the public authority than breach of its Equality Scheme commitments.
- The Complainant is not co-operating with Commission staff.
- The alleged failure to comply with the approved Equality Scheme is already subject to Commission investigation and can augment a current investigation.
- There is not an arguable case that a failure to comply with the approved Equality Scheme has occurred.
- The extent to which the likely resources required for an investigation is commensurate with the benefits to be gained.

5.15. If the SDIC decides **to investigate** the complaint made, **both parties will be notified, within 10 working days**, that the complaint will be investigated. The notification will confirm the scope of the investigation authorised and provide the assessment presented to the SDIC.

5.16. If the SDIC **decides not to investigate the complaint** made, there must be reasons given to the complainant for this. Commission staff will notify both the complainant and the public authority of the reasons **within 10 working days** and provide the assessment presented to the SDIC.

5.17. The SDIC's decisions are published in accordance with the Commission's Publication Scheme where the Minutes of Board and SDIC meetings are made available once approved. And further information on complaints and investigations generally can be accessed on its website.

www.equalityni.org/investigations

5. Equality Commission action on a written complaint

Asking for a review of the decision whether to investigate a written complaint

- 5.18. Commission staff will work with the complainant and the public authority complained about to make sure the information relating to the complaint is accurate. Commission staff will interpret and assess the facts and the available evidence, it is a matter for the SDIC to make a decision on whether to investigate the complaint or give reasons not to.
- 5.19. A complainant and/or the public authority can ask for a review, on the following grounds:
- that the SDIC made its decision based on evidence that contains information that was not accurate.
 - that there is new, relevant information that was not previously available and that affects the decision.
 - that the SDIC was mistaken in relation to its determination on the statutory criteria for a written complaint in Paragraph 10 of Schedule 9.
- 5.20. A request for a review **must** be made in writing, setting out clearly the grounds on which the request is made, and with the supporting evidence for the grounds. The Commission can accept written complaints by letter and/or email, and will make reasonable adjustments when needed, to help complainants meet this requirement.
- 5.21. A request must normally be made **within 20 working days** from the date on the correspondence notifying the complainant and public authority of the SDIC's decisions on the complaint.
- 5.22. Should either the complainant or the public authority request a review, the other party will be notified and provided with an opportunity to comment and/or provide any additional information.
- 5.23. The request will be assessed by Commission staff and presented to the SDIC for its decision.
- 5.24. Both parties will be notified of the outcome of the review request **within 10 working days**.

6. The Equality Commission, on its own initiative, forms a belief that a public authority may have failed to comply with its Equality Scheme (Paragraph 11)

6.1. This section sets out details about when and how the Commission decides, at its discretion and own initiative, that it might investigate where it believes that a public authority may have failed to comply with its approved Equality Scheme.

In Brief:

- The Commission has discretion to investigate where it believes that there may have been a failure by a public authority to comply with its approved Equality Scheme
- The Commission assesses information from a range of sources to identify matters of concern
- When the Commission identifies a matter of concern, it will contact the relevant public authority and outline the concern and relate this to the public authority's equality scheme arrangements
- The public authority will have the opportunity to respond to the concerns raised
- The Commission will assess the available evidence to decide whether it believes that the public authority may have failed to comply with its approved Equality Scheme
- The Commission will consider whether to investigate or not.

6.2. Paragraph 11 (1) (b) of Schedule 9 sets out that the Equality Commission may investigate '*where **it believes** that a public authority **may have failed to comply with***' its approved Equality Scheme. This is separate from any complaints made or complainant's request that the Commission investigate a complaint made.

6. The Equality Commission, on its own initiative, forms a belief that a public authority may have failed to comply with its Equality Scheme (Paragraph 11)

How the Commission identifies what to investigate, on its own initiative

- 6.3. The SDIC assesses information³ from a range of sources to identify evidence that may present concerns about a public authority and potential failure to comply with its approved Equality Scheme.
- 6.4. Commission staff will raise the concern with the relevant public authority within **10 working days** of the SDIC's identification of its concern, asking that the public authority respond **within 20 working days**.
- 6.5. An assessment of the facts and evidence gathered on the matters of concern will be presented to the SDIC.
- 6.6. The SDIC will consider whether there is sufficient evidence to form a belief that the public authority may have failed to comply with its approved Equality Scheme. If so, it will also consider whether there should be an investigation.
- 6.7. The SDIC refers its recommendation of a belief that the public authority may have failed to comply with its approved Equality Scheme, to the Commission's Board for consideration and approval. The Commission's Board will also determine whether to approve an investigation or not.
- 6.8. In determining whether there should be an investigation or not, the SDIC **and** the Commission's Board **will both** take into account the following⁴:
- Is the perceived failure one of substance and/or of strategic importance?
 - Is there potential to raise awareness of Section 75 and/or of the Commission's role in this regard?

³ This may include, amongst other things, information in relation to written complaints received under Paragraph 10 but which were not considered for investigation as the complaint did not meet the statutory criteria set out in Paragraph 10 (see paragraphs 4.19 – 4.24)

⁴ These criteria are continuing Commission Policy and will be subject to further consideration through a planned wider review of the Commission's approach to investigations generally as indicated in its 2019-20 Business Plan.

6. The Equality Commission, on its own initiative, forms a belief that a public authority may have failed to comply with its Equality Scheme (Paragraph 11)

- Is there potential to change policies, practices and/or attitudes in public authorities?
 - Is the perceived failure one that might not otherwise be pursued?
- 6.9. If the Commission's Board decides **to investigate** its belief that a public authority may have failed to comply with its approved Equality Scheme, Commission staff will notify, **within 10 working days**, the public authority of the investigation. The notification will confirm the scope of the investigation authorised and the information used to inform the decision.

Asking for a review of the Commission's decision to carry out an investigation of a public authority under Paragraph 11(b)

- 6.10. The public authority can ask for a review of the decision to investigate, on the following grounds:
- that the Commission made its decision based on evidence that contains information that was not accurate.
 - that there is new, relevant information that was not previously available and that affects the decision.
- 6.11. A request for review **must** be made in writing, setting out clearly the grounds on which the request is made, and the supporting evidence for the grounds. The Commission can accept written requests by letter and/or email.
- 6.12. The request will be assessed by Commission staff and presented to the Commission's Board for its decision.
- 6.13. The public authority will be notified of the outcome of the review request **within 10 working days**.

7. Investigations into a complaint (paragraph 10) or belief held by the Commission (paragraph 11)

7.1. This section sets out details of the Commission's powers to investigate and how it carries out investigations. It also sets out the processes through to the conclusion of the investigation and action on any recommendations.

In Brief:

- The Commission can investigate a complaint made, as well as investigate when it believes a public authority may have failed to comply with its Equality Scheme
- Any complainant and the public authority will be kept informed of progress on the investigation
- Commission staff will assess the evidence and prepare a report of the investigation
- Findings of whether a public authority has failed to comply with its approved Equality Scheme, or not, will be presented in the report
- Any complainant and the public authority have the opportunity to see and comment on the Commission's findings and the evidence assessed before the Commission finalises the investigation report
- The other resolution to any complaint, in addition to the findings, is that the Commission can make recommendations for a public authority to act upon
- The Commission assesses the action taken on the recommendations and whether this action has been in a timely manner.
- The Commission concludes the investigation following the assessment of action on any recommendations, or following a finding that the public authority did comply with its approved Equality Scheme.

7. Investigations into a complaint (paragraph 10) or belief held by the Commission (paragraph 11)

- 7.2. When the Commission authorises an investigation, it will proceed to establish whether the allegations made in the complaint, or belief that a public authority may have failed to comply with its approved Equality Scheme, can be substantiated.
- 7.3. Paragraphs 11 and 12 of Schedule 9 of the Northern Ireland Act 1998 set out the statutory provisions governing the reporting of investigations by the Commission.
- 7.4. In paragraph 11 (3) of Schedule 9, there are requirements set out in relation to the report arising from the investigation, requirements for where it is sent and what the Commission may do following public authority action on any recommendations made.

How the Commission carries out investigations

- 7.5. The Commission staff will use the information and evidence gathered during the initial assessments in its investigation. Further information will also be sought during the course of the investigation. An assessment of the facts and evidence gathered will be undertaken. The Commission staff will carry out the assessment of the evidence available in a timely manner.
- 7.6. Commission staff may seek information and evidence from any complainant, the public authority concerned, as well as evidence and views of relevant interest groups with particular expertise in the area or other public authorities in the same sector, particularly if the matter is complex or technical.
- 7.7. Where the complaint alleges a failure to apply a process at all (to screen, consult on an assessment), there **may** be little further evidence gathering required. In such circumstances, Commission staff will aim to complete the assessment of the evidence in order to present the report of the investigation to the next scheduled SDIC meeting.
- 7.8. Commission staff will keep any complainant informed of progress on the investigation of their complaint, as appropriate

7. Investigations into a complaint (paragraph 10) or belief held by the Commission (paragraph 11)

Findings of the investigation

7.9. Commission staff will prepare an Investigation Report through and as a result of the investigation process. This Report will be considered in draft by the SDIC.

7.10. The report will normally include the following:

- the scope of the investigation as authorised;
- an assessment of the matters and the supporting evidence and information;
- findings in relation to the allegations made/ belief ;
- recommendations for the public authority, if appropriate.

7.11. Once the SDIC has approved the report in draft, it will be issued to all parties to the investigation at the same time, i.e. any complainant and the public authority. They will be asked to comment on the facts and evidence presented in the report, the findings and any recommendations, and to do so within **20 working days**.

7.12. The comments received will be presented to the SDIC in full, for consideration.

7.13. The SDIC considers all investigation reports, whether investigations of complaints (Paragraph 10) or of the Commission's belief (Paragraph 11), their findings and any recommendations. The SDIC refers investigation reports to the Commission's Board.

7.14. The Commission's Board considers and approves **all** investigation reports.

Publishing and issuing the Investigation Report

7.15. The Commission must send a copy of the Investigation Report to the public authority concerned and to any complainant. Commission staff will do so **within 10 working days** of its approval.

7. Investigations into a complaint (paragraph 10) or belief held by the Commission (paragraph 11)

- 7.16. The Commission also sends a copy of the report to other third parties, according to what is required by Schedule 9.
- 7.17. The Commission normally publishes its investigation reports on its website and may publicise its publication.
- 7.18. If there are no recommendations made in the Investigation Report, the investigation is concluded on issuing and publication of the report.

Recommendations for action by the public authority

- 7.19. The Commission will follow up on any recommendations made with the public authority, within the timescales as set out in the report.
- 7.20. An assessment of the action taken by the public authority and whether action has been taken within a reasonable time (which is what is required by Paragraph 11(3) of Schedule 9 of the Northern Ireland Act 1998, but which does not define “reasonable time”) will be considered by the SDIC.
- 7.21. Any complainant will be informed of the follow up with the public authority and the consideration of the public authority’s implementation of the recommendations.
- 7.22. If the Commission considers that the public authority’s action on the recommendations has not been taken in a reasonable time, the Commission **may** refer the matter to the Secretary of State.
- 7.23. If the Commission considers that the public authority’s action on the recommendations has been taken in a reasonable time, the investigation is concluded and the public authority is notified to this effect.
- 7.24. Paragraph 11 (3) (b) and Paragraph 11 (5) in Schedule 9 set out provisions for the Secretary of State to take action on receipt of a referral from the Commission. The Secretary of State may give directions to the public authority.

8. Reasonable Adjustments and Accessibility

- 8.1. The Commission will make appropriate reasonable adjustments to the services it provides. When contacting the Commission, the complainant should indicate any particular needs and requirements for accessing services.
- 8.2. This policy and procedure document has to address a range of terms and phrases that are set out in the legal framework that governs our work on complaints and investigations. A glossary of terms is included at the back of this document.

9. Data Protection

- 9.1. The Commission is a data controller for the purposes of the General Data Protection Regulations. The Commission's registration number is Z5830438 and a copy of the Commission's register entry can be viewed at www.ico.org.uk or by request to the Commission.
- 9.2. The Commission is fully committed to protecting the rights of individuals in accordance with the General Data Protection Regulation. The Commission has developed a Data Protection Policy to ensure that it fully complies with the rules which protect an individual's personal data. A copy of this policy is available to view on the Commission's website or on request. The Commission also has a file retention and destruction policy to ensure that an individual's personal data/sensitive personal data is retained by the Commission only for as long as necessary. A copy of this policy is available to view on the Commission's website or on request.
- 9.3. The Commission staff will ensure that a complainant's consent is provided at all relevant stages in order to progress with any written complaint that a public authority's failure to comply with its approved Equality Scheme.

10. Confidentiality and Publicity

- 10.1. A report is produced from every investigation and the Commission is required by Schedule 9 to issue it to the parties to the investigation – any complainant and the public authority. The Commission must also send the report to the Secretary of State and the Assembly.
- 10.2. The Commission will normally publicise the outcome of investigations; the investigation report is normally published on the Commission's website.
- 10.3. The Commission undertakes its work on complaints and investigations with fairness and impartiality with respect to the conduct of its powers as set out in Schedule 9. It makes determinations on the matters and so normally maintains confidentiality of the matters complained of or subject to investigation

11. Variation of procedures

- 11.1. The Commission may, at any time and at its own discretion, adjust and/or make small scale amendments to these procedures. For example, should the names and operational structures change, this document will be updated to reflect this.

12. Section 75 and Schedule 9 of the Northern Ireland Act 1998

Northern Ireland Act 1998, Section 75

Statutory duty on public authorities

75. (1) A public authority shall in carrying out its functions relating to Northern Ireland have due regard to the need to promote equality of opportunity -
- (a) between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
 - (b) between men and women generally;
 - (c) between persons with a disability and persons without; and
 - (d) between persons with dependants and persons without.
- (2) Without prejudice to its obligations under subsection (1), a public authority shall in carrying out its functions relating to Northern Ireland have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group.
- (3) In this section “public authority” means -
- (a) any department, corporation or body listed in Schedule 2 to the Parliamentary Commissioner Act 1967 (departments, corporations and bodies subject to investigation) and designated for the purposes of this section by order made by the Secretary of State;
 - (b) any body (other than the Equality Commission) listed in Schedule 2 to the Commissioner for Complaints (Northern Ireland) Order 1996 (bodies subject to investigation);
 - (c) any department or other authority listed in Schedule 2 to the Ombudsman (Northern Ireland) Order 1996 (departments and other authorities subject to investigation);

12. Section 75 and Schedule 9 of the Northern Ireland Act 1998

(d) any other person designated for the purposes of this section by order made by the Secretary of State;

(4) Schedule 9 (which makes provision for the enforcement of the duties under this section) shall have effect.

5) In this section -
“disability” has the same meaning as in the Disability Discrimination Act 1995; and

“racial group” has the same meaning as in the Race Relations (Northern Ireland) Order 1997.

Northern Ireland Act 1998, Schedule 9

Equality: Enforcement of Duties

The Equality Commission

1. The Equality Commission for Northern Ireland shall -

(a) keep under review the effectiveness of the duties imposed by Section 75;

(b) offer advice to public authorities and others in connection with those duties; and

(c) carry out the functions conferred on it by the following provisions of this Schedule.

Equality schemes

2. (1) A public authority to which this sub-paragraph applies shall, before the end of the period of six months beginning with the commencement of this Schedule or, if later, the establishment of the authority, submit a scheme to the Commission.

12. Section 75 and Schedule 9 of the Northern Ireland Act 1998

(2) Sub-paragraph (1) applies to any public authority except one which is notified in writing by the Commission that that subparagraph does not apply to it.

3. (1) Where it thinks appropriate, the Commission may -

(a) request a public authority to which paragraph 2(1) does not apply to make a scheme;

(b) request any public authority to make a revised scheme.

(2) A public authority shall respond to a request under this paragraph by submitting a scheme to the Commission before the end of the period of six months beginning with the date of the request.

4. (1) A scheme shall show how the public authority proposes to fulfil the duties imposed by Section 75 in relation to the relevant functions.

(2) A scheme shall state, in particular, the authority's arrangements

(a) for assessing its compliance with the duties under Section 75 and for consulting on matters to which a duty under that section is likely to be relevant (including details of the persons to be consulted);

(b) for 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;

(c) for monitoring any adverse impact of policies adopted by the authority on the promotion of equality of opportunity;

(d) for publishing the results of such assessments as are mentioned in paragraph (b) and such monitoring as is mentioned in paragraph (c);

(e) for training staff;

(f) for ensuring, and assessing, public access to information and to services provided by the authority.

12. Section 75 and Schedule 9 of the Northern Ireland Act 1998

3) A scheme shall -

(a) conform to any Guidelines as to form or content which are issued by the Commission with the approval of the Secretary of State;

(b) specify a timetable for measures proposed in the scheme; and

(c) include details of how it will be published.

(4) In this paragraph -

“equality of opportunity” means such equality of opportunity as is mentioned in Section 75(1);

“the relevant functions” means the functions of the public authority or, in the case of a scheme submitted in response to a request which specifies particular functions of the public authority, those functions.

5. Before submitting a scheme a public authority shall consult, in accordance with any directions given by the Commission -

(a) representatives of persons likely to be affected by the scheme; and

(b) such other persons as may be specified in the directions.

6. (1) On receipt of a scheme the Commission shall -

(a) approve it; or

(b) refer it to the Secretary of State.

(2) Where the Commission refers a scheme to the Secretary of State under sub-paragraph (1) (b), it shall notify the Assembly in writing that it has done so and send the Assembly a copy of the scheme.

12. Section 75 and Schedule 9 of the Northern Ireland Act 1998

7. (1) Where a scheme is referred to the Secretary of State he shall -
- (a) approve it;
 - (b) request the public authority to make a revised scheme; or
 - (c) make a scheme for the public authority.
- (2) A request under sub-paragraph (1) (b) shall be treated in the same way as a request under paragraph 3(1) (b).
- (3) Where the Secretary of State -
- (a) requests a revised scheme under sub-paragraph (1) (b); or
 - (b) makes a scheme under sub-paragraph (1) (c), he shall notify the Assembly in writing that he has done so and, in a case falling within paragraph (b), send the Assembly a copy of the scheme.
8. (1) If a public authority wishes to revise a scheme it may submit a revised scheme to the Commission.
- (2) A revised scheme shall be treated as if it were submitted in response to a request under paragraph 3(1) (b).
- (3) A public authority shall, before the end of the period of five years beginning with the submission of its current scheme, or the latest review of that scheme under this sub-paragraph, whichever is the later, review that scheme and inform the Commission of the outcome of the review.

Duties arising out of equality schemes

9. (1) In publishing the results of such an assessment as is mentioned in paragraph 4(2)(b), a public authority shall state the aims of the policy to which the assessment relates and give details of any consideration given by the authority to -
- (a) measures which might mitigate any adverse impact of that policy on the promotion of equality of opportunity; and

12. Section 75 and Schedule 9 of the Northern Ireland Act 1998

(b) alternative policies which might better achieve the promotion of equality of opportunity.

(2) In making any decision with respect to a policy adopted or proposed to be adopted by it, a public authority shall take into account any such assessment and consultation as is mentioned in paragraph 4(2)(b) carried out in relation to the policy.

(3) In this paragraph “equality of opportunity” has the same meaning as in paragraph 4.

Complaints

10. (1) If the Commission receives a complaint made in accordance with this paragraph of failure by a public authority to comply with a scheme approved or made under paragraph 6 or 7, it shall -

(a) investigate the complaint; or

(b) give the complainant reasons for not investigating.

(2) A complaint must be made in writing by a person who claims to have been directly affected by the failure.

(3) A complaint must be sent to the Commission during the period of 12 months starting with the day on which the complainant first knew of the matters alleged.

(4) Before making a complaint the complainant must -

(a) bring the complaint to the notice of the public authority; and

(b) give the public authority a reasonable opportunity to respond.

12. Section 75 and Schedule 9 of the Northern Ireland Act 1998

Investigations

11. (1) This paragraph applies to -

(a) investigations required by paragraph 10; and

(b) any other investigation carried out by the Commission where it believes that a public authority may have failed to comply with a scheme approved or made under paragraph 6 or 7.

(2) The Commission shall send a report of the investigation to -

(a) the public authority concerned;

(b) the Secretary of State; and

(c) the complainant (if any).

(3) If a report recommends action by the public authority concerned and the Commission considers that the action is not taken within a reasonable time -

(a) the Commission may refer the matter to the Secretary of State; and

(b) the Secretary of State may give directions to the public authority in respect of any matter referred to him.

(4) Where the Commission -

(a) sends a report to the Secretary of State under sub-paragraph (2)(b); or

(b) refers a matter to the Secretary of State under sub-paragraph (3)(a), it shall notify the Assembly in writing that it has done so and, in a case falling within paragraph (a), send the Assembly a copy of the report.

(5) Where the Secretary of State gives directions to a public authority under sub-paragraph (3)(b), he shall notify the Assembly in writing that he has done so.

12. Section 75 and Schedule 9 of the Northern Ireland Act 1998

Government departments

12. (1) Paragraphs 6, 7 and 11(2)(b) and (3) do not apply to a government department which is such a public authority as is mentioned in Section 75(3)(a).
- (2) On receipt of a scheme submitted by such a government department under paragraph 2 or 3 the Commission shall -
- (a) approve it; or
 - (b) request the department to make a revised scheme.
- (3) A request under sub-paragraph (2)(b) shall be treated in the same way as a request under paragraph 3(1)(b).
- (4) Where a request is made under sub-paragraph (2)(b), the government department shall, if it does not submit a revised scheme to the Commission before the end of the period of six months beginning with the date of the request, send to the Commission a written statement of the reasons for not doing so.
- (5) The Commission may lay before Parliament and the Assembly a report of any investigation such as is mentioned in paragraph 11 (1) relating to a government department such as is mentioned in sub-paragraph (1).

13. Glossary

- **Belief of failure** – This refers to Paragraph 11 (b) of Schedule 9 of the Northern Ireland Act 1998 which allows the Equality Commission to investigate where it believes that a public authority may have failed to comply with its Equality Scheme.
- **Complainant** - The person making a complaint – ‘Person’ can be an individual, organisation or group, for example a company limited by guarantee or unincorporated body such as a voluntary organisation.
- **Commission** – used to refer to the Equality Commission for Northern Ireland generally, and the Commission staff, Commission Board and Statutory Duty Investigations Committee (SDIC) are used to clarify roles and responsibilities in the procedures.
- **Public authority** – refers to a public authority subject to Section 75 of the Northern Ireland Act 1998 as set out in Section 75 (3) of the Act.
- **Comply** – both complaints and investigations are about allegations that a public authority may have failed to comply with its approved Equality Scheme. A public authority complies with its Equality Scheme when it carries out the processes and/or fulfils the commitments it has made and/or takes action and steps on the things it says it will in that Scheme.
- **Failure** – this refers to the allegations made about a public authority, as a complaint under Paragraph 10 of Schedule 9 of the Northern Ireland Act 1998 will allege a failure by a public authority to comply with its Equality Scheme.

Equality Commission

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