

FINAL EQUALITY IMPACT ASSESSMENT

**Following Consultation on a
Disability Discrimination Order in Council
by
The Office of the First Minister and Deputy First Minister**

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1 Background

1.1 Section 75 of the Northern Ireland Act 1998 requires all public authorities, in carrying out their functions relating to Northern Ireland, to have due regard to the need to promote equality of opportunity –

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

In line with commitments in its approved Equality Scheme (which are provided for by Schedule 9 of the Act), the Office of the First Minister and Deputy First Minister is committed to

adhering to the principles of section 75 of the Act when reviewing and developing policy.

This Equality Impact Assessment ('EQIA') was prepared as part of its consultation on proposed legislation to enhance disability rights.

2 Aims of the proposed legislation and implementation method

2.1 The proposed legislation, which takes the form of an Order in Council, is designed to enhance protection for the rights of disabled people and to introduce more of the measures previously proposed in the 2001 Northern Ireland Executive Response to the report of the Disability Rights Task Force ('the DRTF').¹

2.2 Although in its report the DRTF recognised the effectiveness of the framework set out in the Disability Discrimination Act 1995 ('the DDA'), it did recommend that more work be undertaken to refine the Act and extend its coverage.

2.3 The Office of the First Minister and Deputy First Minister has already taken forward the main employment proposals set out in the Task Force's report by way of the Disability Discrimination Act 1995 (Amendment) Regulations (NI) 2004 ("the Amendment Regulations"), made under section 2(2) of

¹ Improving Civil Rights For Disabled People – Northern Ireland Executive Response To The Disability Rights Task Force, OFMDFM 2001.

the European Communities Act 1972, in order to implement the disability aspects of the Framework Directive². These Regulations, which came into operation on 1 October 2004, make significant changes to the DDA which were also proposed by the Task Force including: ending the exemption of small employers from the scope of the DDA; and bringing within its ambit a number of excluded occupations, such as the police, fire-fighters, prison officers and partners in business partnerships.

2.4 A Disability Order in Council is the next step towards fulfilling the Department's commitments on civil rights for disabled people. The draft Order gives effect not only to remaining Task Force recommendations, but also to some of the recommendations made by the Equality Commission in its extensive paper 'Enabled? – Recommendations for change to the Disability Discrimination Act in Northern Ireland'. The measures contained within the draft Order seek to extend and strengthen disabled people's rights by, amongst other things: protecting more people with HIV, cancer and MS; and by placing significant new duties on transport operators, those renting premises, larger private clubs and district councils.

² Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

3 Consideration of available data and research

A review by the Northern Ireland Statistics and Research Agency of how we collect data and information on disability is currently underway, with a view to improving available data. The information below is based on the best available data for use at this time.

Quantitative data

- 3.1** Recent surveys suggest that around 1 in 5 of the population of Northern Ireland currently has a disability - approximately 330,000 people.³

Northern Ireland figures (based on a UK wide figure) indicate that 0.7% more people than currently covered would fall within the scope of the DDA should the definition of disability be extended. Furthermore, the overall measures contained in the draft Order in Council would create new or improved civil rights for almost all disabled people in Northern Ireland.

Research highlights the fact that disabled people face difficulties when accessing public and social services such as transport, housing, financial services, etc.⁴

³ 2001 census figure for those stating a limiting long-term illness, which covers any long-term illness, health problem or disability which limits daily activities or work.

⁴ "Difficulties Faced by Disabled People when accessing services and participating in social activities (Report 3)" NIDC & DHSS, 1999.

Main findings indicate that:

- 47% of disabled people experience difficulty when using services like going to the cinema or eating out;
- of those, 41% have difficulty using public transport: and
- 33% have problems getting around the shops.

Qualitative data

3.2 A recent case study report by the Equality Commission for Northern Ireland significantly illustrates the ongoing difficulties faced by disabled people in accessing/using public transport.⁵ Overarching themes within the report indicate that, for those who took part in the study (referring to difficulties with transport generally), frequently “procedures weren’t there”, “the system wasn’t there” or difficulties were experienced because of the “inconsistency of service”.

Although it should be noted that the case studies within the report were not gathered as part of a rigorous scientific study into the impact of transport on the lives of disabled people, they do, nevertheless, outline the obstacles confronting individuals in using transport and serve to highlight ongoing concerns about the exemption in Part III of the DDA for public transport and certain other transport related services.

⁵ All Aboard? The Experience of Disabled People using Transport in Northern Ireland: Equality Commission for Northern Ireland, 2003.

Initial consultation on a Single Equality Bill for Northern Ireland

3.3 We have also taken account, where relevant, of responses to a consultation on proposals for a Single Equality Bill, which took place during the summer of 2001.⁶ Responses were received from a wide range of interested parties including voluntary and community representatives, business and trade union organisations and the churches.

On the issue of discriminatory advertisements, for example, 97% of responses indicated that there should be a standard approach to discriminatory advertisements and enforcement proceedings for those who act unlawfully in publishing such advertisements. In more general terms, the area of exemptions (in relation to discrimination), also raised a range of issues with the majority of responses indicating that current provisions should be reviewed and efforts made to narrow the list of exemptions and identify throughout legislation “justifiable exemptions” more clearly. Finally, 97% of respondents felt that existing legislation should be amended to ensure that all public functions, rather than just services, were covered.

⁶ Initial consultation on a Single Equality Bill for Northern Ireland available at www.ofmdfmi.gov.uk/equality

4 Assessment of Impact

4.1 It is our view that the proposed Order will have a positive impact on equality of opportunity by building on the DDA in order to strengthen, widen and deepen its coverage, in particular by:

- a. making it unlawful for district councils to discriminate against disabled local councillors;
- b. ensuring that, with some exceptions, those functions of public authorities not already covered by the Act are brought into its scope;
- c. placing public authorities under a new duty to promote positive attitudes towards disabled people and to encourage participation of disabled people in public life;
- d. clarifying that the Chief Constable of the Police Service for Northern Ireland is vicariously liable for unlawful acts of discrimination committed by police officers in the course of their employment;
- e. clarifying the exemption of transport services from Part III of the DDA and introducing a regulation making power to enable such services to be brought within the scope of the DDA (this proposal was consulted on by DOE and DRD during the summer/autumn of 2004⁷ and so is not part of this EQIA);

⁷ Full consultation papers can be found at

- f. providing for amendments to enable an 'end date' to be introduced after which rail vehicles which do not comply with the Rail Vehicle Accessibility Regulations (Northern Ireland) cannot be used; requiring existing trains going through significant refurbishment to be upgraded to compatibility either in part or in total supported by the setting up of a certification and civil enforcement regime and changes to the exemption process (this proposal was consulted on a UK wide basis by the Department for Transport in London in November 2003)⁸ and so is not part of this EQIA;
- g. making third party publishers (e.g. newspapers) liable for publishing discriminatory advertisements;
- h. amending the way the DDA applies to group insurance to clarify the responsibilities of those concerned with its provisions;
- i. bringing membership of larger private clubs (i.e. those with 25 or more members) within scope of Part III of the DDA;
- j. extending to those who let or manage rented premises the duty of reasonable adjustment, apart from in respect of physical features;

<http://www.consultationni.gov.uk/> or from the Vehicle Standards and Agencies Policy Branch, Clarence Court, 10-18 Adelaide Street, Belfast, BT2 8GB, Telephone: (028) 9054 0074

⁸ Full consultation papers can be found at www.mobility-unit.dft.gov.uk

- k. providing a power to rationalise or end the small dwellings exemption;
- l. introducing into Part III of the DDA a questionnaire procedure which is similar to that in Part II of the Act;
- m. extending the definition of disability to more people with cancer, multiple sclerosis and HIV; and removing the requirement that people with a mental illness must show that it is a “clinically well recognised” illness before it counts as a mental impairment.

4.2 The new duty at (c) above was consulted on separately following the first phase of consultation. This separate EQIA showed that placing a duty on public authorities to promote positive attitudes towards disabled people and encourage participation of disabled people in public life was not likely to have a direct impact on equality of opportunity. In fact, it may in the long term have a positive, indirect effect.

5 Mitigation

5.1 These proposals are not expected to have any adverse impact on any of the section 75 groups and therefore mitigating action is unnecessary.

6 Alternative Policies/Options

6.1 By taking forward separate disability legislation in Northern Ireland, similar to the Disability Discrimination Act 2005, we are ensuring that disabled people in Northern Ireland will

enjoy the same legal protection as their counterparts in England, Scotland, and Wales. The alternatives to taking forward separate legislation in this way are:

- a. provide less protection for disabled people than that outlined in the draft Order, or
- b. do nothing; or
- c. provide further protection for disabled people beyond that outlined in the draft Order.

6.2 Since providing less protection would not have the positive impact we outlined previously and, would also be out of line with the Government's commitment to implement the DRTF recommendations, the first option is rejected.

6.3 Although providing further protection could achieve greater promotion of equality of opportunity, the draft Order is intended to implement existing recommendations of the DRTF and those recommendations have been consulted on already. Adding new policies at this stage would require further consultation and therefore cause delay. Furthermore, as already mentioned above, equivalent legislation is being made for the rest of the UK, and the Government is committed to ensuring that disability discrimination law here should correspond to that provided for in the rest of the UK and also keep pace with it where possible. The second option is, therefore, also rejected.

6.4 The policies contained in the draft Order are equivalent to

those in the Disability Discrimination Act 2005, with one exception. The exception relates to a new statutory duty to be imposed on public authorities in the rest of the UK. That statutory duty is similar, but not identical to, the duty imposed by section 75 of the Northern Ireland Act 1998. Enacting a directly equivalent duty would result in major changes to the way that section 75 operates. However, as section 75 applies not only in relation to disability, but also to eight other categories of equality of opportunity (such as persons of different religious belief or political opinion, or between men and women generally), it is not desirable or practical to amend section 75 in relation only to disability. Furthermore, section 75 is already under review. That review will seek the views of all public authorities designated under section 75 and key stakeholders in the voluntary and community sector with regard to the operation of it. It will document and analyse the implementation of section 75, identify good practice and make recommendations to ensure effective implementation in the future.

It would therefore be premature to amend it before that review is complete.

The possibility of amending section 75 – by the draft Order – is therefore also at present rejected.

7 Decisions and Publication

7.1 Following public consultation, the results of the Equality Impact Assessment were gathered and published in the form

of a report available at
<http://www.ofmdfmi.gov.uk/index/equality/disability/proposal-for-a-draft-disability-order.htm>. Any findings arising from the consultation have been taken in finalising the draft Order.

8 Monitoring

8.1 No adverse impact for any of the section 75 groups is anticipated from any of these proposals.