

Draft Disability Discrimination (Northern Ireland) Order

Consultation Document



Office of the
**First Minister and
Deputy First Minister**

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Foreword

In a modern day society, which embraces diversity, all of our citizens should be able to take advantage of the widest possible range of services, facilities and employment opportunities without artificial barriers being placed in their way. Disabled people, in particular, often have to tackle persistent forms of discrimination and it is vital that effective legislation is in place to deal with this.

The Disability Discrimination Act 1995 was a significant building block in providing a comprehensive and enforceable rights framework for disabled people. However, since then, we have made important changes to the legislation in order to further extend and strengthen disabled people's rights. Last year alone saw the introduction in October of the final phase of the duties on access for disabled people as well as major changes in the employment field with the removal of many exemptions including the ending of the exemption of small firms.

As many of you will know, I announced in March 2004 that further separate disability legislation, similar to the draft Great Britain Disability Bill, would be taken forward in Northern Ireland in the form of an Order in Council. The draft Order proposes taking forward other measures we identified in "Improving Civil Rights for Disabled People", our 2001 response to the Disability Rights Task Force.

This new legislation will ensure that more people than ever before are protected by the Disability Discrimination Act. We intend to bring more people with the progressive conditions of HIV, cancer and multiple sclerosis within the scope of the disability discrimination legislation. It will also change the law in relation to the rights of disabled people using transport services and in joining private clubs. Furthermore, it will extend the legislation to cover the exercise of functions of public bodies so that it would apply to most of their activities, not just those that consist of the provision of services. Other important measures will be the strengthening of existing rights in the areas of renting of premises and discriminatory job advertisements.

This is an important piece of legislation for disabled people, bringing about major reforms while building on the wide range of civil rights measures we have already introduced. The measures we have put in place since the setting up of the Disability Rights Task Force in 1997 are helping to ensure that disabled people have the opportunity to participate in the workplace, in society and in the economy along with everyone else. Once this Order is brought into effect, disabled people will have in place truly comprehensive legislation which will help in eliminating the barriers which prevent them from leading independent and fulfilling lives.

Rt Hon John Spellar MP
Minister of State

Introduction

1. Over the last ten years, the way in which society has perceived disabled people has evolved considerably, to the extent that disabled people are not viewed simply as victims and passive recipients of assistance but rather as full participating members of society who deserve and should expect fair treatment as a right. Indeed, the Disability Discrimination Act 1995 (DDA) exists because of a recognition that disabled people face discrimination, for reasons related to their disability, which prevents them from fulfilling their potential as individuals and as members of society more broadly.
2. There is little doubt that, since 1995, the DDA has steered significant change in UK society and granted many long overdue civil rights to disabled people. Nevertheless, the Government has since recognised that there were many areas in which rights could be further improved. To report on how best to secure improvements and extra rights, the Government set up the Disability Rights Task Force (DRTF) in 1997 which brought groups from all sectors of society together to consider the state of disability rights law in the UK.
3. In December 1999, the Task Force published “From Exclusion to Inclusion” which contained 156 recommendations for Government action across all areas of

disabled people's lives. In March 2000, the Government published an interim response to the recommendations for non-legislative action in many areas including housing, the environment and access to public life. Their final response, "Towards Inclusion - Civil Rights for Disabled People", was published on 5 March 2001. In September 2001, the Northern Ireland Executive produced its own response to the recommendations entitled "Improving Civil Rights for Disabled People - NI Executive Response to the Disability Rights Task Force". This outlined comprehensive proposals to improve the protection afforded by the DDA.

4. Importantly, one of the Task Force's earliest proposals addressed the need for an enforcement body responsible for ensuring compliance with disability rights legislation. Consequently, the Equality Commission's role in relation to disability was enhanced in order to allow it to perform this role.
5. In November 2000, the significance of the Task Force's report was further underlined by European legislative commitments which included the requirement on member states to implement the Framework Directive¹. At this stage it became clear that many of the changes required by the Directive had been foreshadowed by the DRTF.
6. Some of the most significant changes to be implemented by the Disability Discrimination Act 1995 (Amendment)

¹ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

Regulations (Northern Ireland) 2004 which followed included the employment provisions of the DDA, particularly the ending of the small employer exemption from 1st October 2004 and also the ending of a number of occupational exclusions (for example, the police, prison officers, barristers and partners in business partnerships).

7. It should be noted that the Regulations do go further than the Task Force recommendations in a number of aspects. For example, the Regulations outlaw harassment of disabled people, bring practical work experience placements within the scope of the DDA and ensure that discrimination motivated by prejudice can never be justified.
8. Work has been ongoing to build on the significant steps already taken. In December 2003, a draft Disability Discrimination Bill was published in GB, intended to introduce further measures proposed in “Towards Inclusion” and close fundamental gaps in the coverage of the DDA. In Northern Ireland, it was announced in March 2004 that separate disability legislation similar to the draft GB Disability Bill would be taken forward and that work on preparing the necessary legislation in the form of a Disability Discrimination Order in Council would begin as soon as possible to ensure that people with disabilities in Northern Ireland could enjoy the same legal protection as their counterparts in GB.
9. Measures proposed in the draft Order in Council make a significant contribution to the major programme of legislative

reform in the area of disability that has been ongoing since 1995.

10. The purpose of this consultation is therefore to outline in detail the wording and effect of the draft Order, and its financial and equality implications, and to seek your views. This is a significant piece of legislation for disabled people, and it would introduce new and improved rights in a variety of areas. Your views therefore are very important to us.
11. The consultation gives you an opportunity to comment on the wording and effect of the draft Order. We are eager to receive responses from as many people as possible and would be grateful if you would let us know about your opinions on the draft Order. You may find it helpful to use the accompanying questionnaire. Responses can be returned by post, fax or e-mail (you will find details below). Responses should be received no later than 28 March 2005.
12. If this document is not in a format that meets your requirements, please contact us at the address below.

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DRAFT EXPLANATORY MEMORANDUM

Draft Disability Discrimination (Northern Ireland) Order 2005

Introduction

1. This Explanatory Memorandum has been prepared by the Office of the First Minister and Deputy First Minister (“the Department”) in order to assist the reader in understanding the draft Disability Discrimination (Northern Ireland) Order 2005 (“the Order”). It does not form part of the Order. The Order contains measures corresponding to measures in the Disability Discrimination Bill.
2. Disability discrimination is a transferred matter under the Northern Ireland Act 1998 and is therefore within the legislative competence of the Northern Ireland Assembly. However, as devolution is suspended, the Order is being made in accordance with the Schedule to the Northern Ireland Act 2000.

Background and policy objectives

3. The Disability Discrimination Act 1995 (DDA), as originally enacted, contained provisions making it unlawful to discriminate against a disabled person in relation to employment, the provision of goods, facilities and services, and the disposal and management of premises. It also enabled regulations to be made with a view to facilitating the

accessibility of taxis, public service vehicles and rail vehicles for disabled people.

4. In December 1997, the Government established the Disability Rights Task Force, an independent body comprising members from disability organisations, the private and public sectors and trade unions, to advise it on how best to secure comprehensive and enforceable civil rights for disabled people.
5. The Northern Ireland Executive has consulted extensively on the policies underlying the Order. In 2001, the Northern Ireland Executive published its response to the Task Force's recommendations "Improving Civil Rights for Disabled People". That response, which was also a consultation document, set out the Executive's proposals for taking forward those of the Task Force's recommendations with which it agreed.
6. The main employment proposals set out in "Towards Inclusion" have already been taken forward in The Disability Discrimination Act 1995 (Amendment) Regulations (Northern Ireland) 2004² ("the Amendment Regulations"), made under section 2(2) of the European Communities Act 1972 in order to implement the disability aspects of the EC Employment Directive (2000/78/EC). These regulations, which came into operation on 1st October 2004, made significant changes to the DDA, which were also proposed by the Task Force,

² S.R. 2004/55

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. The Regulations also make other changes not proposed by the Task Force.

7. Consultation on the policy underlying the removal of the transport exemption (Article 6) was carried out jointly by the Department of the Environment and the Department for Regional Development. The consultation was entitled - "Disability Discrimination Act 1995 - Access to Goods, Services and Facilities: Consultation on the Government's proposals to lift the exemption for transport services from some of the civil rights duties in Part III of the Disability Discrimination Act" and was issued to NI consultees on 5 August 2004.
8. Consultation on the policy underlying the rail vehicle accessibility provisions (Articles 7 to 9) was carried out by the Department for Regional Development. The consultation paper, entitled " Rail Vehicle Accessibility Consultation" was issued to NI consultees on 8 March 2001.

Consultation

9. The Order in Council is the next step towards fulfilling Government's commitment on civil rights for disabled people and contains measures previously proposed in the 2001

Northern Ireland Executive response to the Disability Rights Task Force.

Financial Effects of the Order

10. The Regulatory Impact Assessment, which has been published to accompany the Order, estimates the quantifiable costs for business, and others, and is available at www.ofmdfmni.gov.uk/equality. This Regulatory Impact Assessment estimates that the quantifiable compliance costs are as follows:

- (i) extension of the DDA to cover more people with HIV, cancer and MS may result in just over £2,000 recurring costs;
- (ii) extension of the duty to make reasonable adjustments to landlords will result in £44,000 recurring costs;
- (iii) bringing local councillors within scope of Part II of the DDA will result in a one off cost of £6,800, with a cost of £200 per new disabled councillor elected estimated;
- (iv) removing the Disability Discrimination Act Part III exemption for providers of transport services will result in a one off cost of approximately £4.068M and recurring costs of £5.106M per annum mainly being used on disability awareness training for staff throughout the public and private transport sector.

Human Rights Issues

10. The provisions of the Order are compatible with the Convention on Human Rights.

Equality Impact Assessment

12. Full details of the Equality Impact Assessment can be found on the Department's website at:
www.ofmdfmni.gov.uk/equality.

Summary of the Regulatory Impact Assessment

13. A Regulatory Impact Assessment has been published to accompany the Order and full costings are provided in that. Full details of the Regulatory Impact Assessment can be found on the Department's website at:
www.ofmdfmni.gov.uk/equality.

Main Elements of the Order

14. Outlined below are the main elements of the Order.

Public authorities

- i) **Article 3:** amends Part II of the DDA so as to make it unlawful for district councils in Northern Ireland to discriminate against their councillors in relation to the carrying out of official business;

- ii) **Article 4:** ensures that, with some exceptions, functions of public authorities not already covered by the DDA are brought within its scope (so that it would be unlawful for a public authority, without justification, to discriminate against a disabled person when exercising its functions);
- iii) **Article 5:** amend section 64A of the DDA so as to clarify who the correct defendant is in the case of a claim of discrimination being made against a police officer under Part III of the DDA, and authorise payment of compensation from the police fund in relation to such a claim;

Transport

- iv) **Article 6:** clarifies that the current exemption from sections 19 to 21 for transport services extends only to the vehicles themselves, and creates a power to enable that exemption to be lifted for different vehicles at different times;
- v) **Article 7:** amends the definition of 'rail vehicle' in Part 5 of the DDA to enable rail vehicle accessibility regulations to be applied to all rail vehicles, and not just those first brought into use after 1998, at a date to be specified in regulations. A further effect of this change is to enable such regulations to also be applied, to the extent prescribed in rail vehicle accessibility regulations, to vehicles when they are refurbished. It amends and extends the scope of the power to exempt rail vehicles from requirements of rail vehicle accessibility regulations, and ensures that such orders are not required to be made by statutory rule;

- vi) **Article 8:** introduce new provisions requiring rail vehicle accessibility compliance certificates to be obtained for prescribed rail vehicles;
- vii) **Article 9:** replace the existing criminal offence for use of a rail vehicle which does not conform with rail vehicle accessibility regulations with a civil enforcement system, and set out the procedure for imposing civil penalties, including a right of appeal to a court;

Other matters

- viii) **Article 10:** amends the DDA's new provisions on discriminatory advertisements (section 16B, as inserted by the Amendment Regulations) so as to cover a third party who publishes a discriminatory advertisement (for example, a newspaper) as well as the person placing the advertisement;
- ix) **Article 11:** amends the DDA so as to make it clear that discrimination by an insurer in relation to group insurance provided to the employees of a particular employer is covered by sections 19 to 21 of the DDA (which deals with the provision of goods, facilities and services to the public);
- x) **Article 12:** brings within the scope of Part III of the DDA private clubs with 25 or more members;

- xi) **Article 13:** extends aspects of the duty to provide reasonable adjustments to landlords and others who manage rented premises;
- xii) **Article 14:** confers a power to modify or end the current small dwellings exemption in section 23 and new sections 24B and 24H (as inserted by Article 14 of the Order in Council) of the DDA;
- xiii) **Article 15:** extends section 56 of the DDA so as to provide a questionnaire procedure not only for claims under Part II of the DDA but also claims under Part III of the DDA;
- xiv) **Article 16:** amends the definition of disability in respect of people with mental illnesses; deem people with HIV infection, multiple sclerosis, or cancer to be disabled for the purposes of the DDA; and extends the scope of the regulation-making power which enables people to be deemed to be disabled;

Supplementary

- xv) **Article 17:** deals with minor and consequential amendments and repeals.

Commentary on Articles

Article 3: District Councils

- 15. Article 3 inserts new sections 15A, 15B and 15C into Part II of the DDA, as amended by the Amendment Regulations.

The new provisions make it unlawful for a district council to discriminate against its members in relation to the carrying-out of official business. The new provisions apply to all 26 district councils in Northern Ireland.

16. The duties imposed on district councils by the new provisions only apply where a member is carrying out “official business”.
17. New section 15B makes it unlawful for a district council to discriminate against a disabled member by subjecting the disabled member to any detriment in relation to the carrying-out of official business. It also makes it unlawful for a district council to subject a disabled member to harassment in relation to the carrying-out of official business.
18. Certain matters to be excluded from the scope of the duties imposed by new section 15B. These include, for example, appointments to offices or committees of a district council.
19. New section 15C sets out the duty of a district council to make reasonable adjustments in relation to its disabled members, and broadly follows the pattern of Part II of the DDA. A district council will be under a duty to make an adjustment where a provision, criterion or practice it applies, or which is applied on its behalf, or a physical feature of premises which it occupies or controls, places a disabled member at a substantial disadvantage in comparison with non-disabled members in relation to the carrying-out of official business.

Article 4: Discrimination by Public Authorities

20. This Article extends its scope of the DDA to cover the functions of public authorities. This brings the DDA into line with Article 20A of the Race Relations (Northern Ireland) Order 1997 (“the Race Relations Order”) as amended by the Race Relations (Amendment) Regulations (Northern Ireland) 2003.
21. The Article will prohibit discrimination in the exercise of all public functions other than (in broad terms) those of legislation, prosecution, judicial acts and state security. The definition of discrimination mirrors, insofar as it is possible to do so, the definition of discrimination used for service providers in section 20 of the DDA. This new prohibition of discrimination will therefore cover decisions by Ministers, district councils, the police and other governmental organisations. Discrimination can in certain circumstances be justified.
22. The Article imposes on public authorities a duty to make reasonable adjustments for disabled persons where such persons are – by reason of their disability – disadvantaged in some way by, or in relation to, the carrying-out of the function. The duty requires public authorities to anticipate the requirements of disabled persons and the adjustments that may need to be made for them.

23. The prohibition will not apply where a public authority is exercising a statutory power and has no discretion as to whether or how to exercise that power, or no discretion as to how to perform its duties.

Article 5: Police

24. Article 5 clarifies who the correct defendant is in the case of a claim of discrimination being made against a police officer under Part III of the DDA (for example, where it is alleged that a police officer has discriminated against a disabled person when carrying out a function). The clause also authorises payment from the police fund of compensation or of costs of settlement in relation to such a claim.

Article 6: Application of sections 19 to 21 of the 1995 Act to transport vehicles

25. Article 6 replaces the existing exclusion of transport services from sections 19 to 21 of the DDA with a more precise exclusion, relating only to transport services consisting of the provision and use of a vehicle. It also confers a regulation-making power to enable such services to be brought within the scope of those sections (which make it unlawful to discriminate against a disabled person in the provisions of goods, facilities and services). This will enable the exclusion to be narrowed or removed in whole or in part, or in relation to different transport vehicles at different times.

Article 7: Rail vehicles: application of accessibility regulations

26. Article 7 enables the Department for Regional Development to achieve the policy objectives of applying rail vehicle accessibility regulations to rail vehicles first brought into use before 1st January 1999, and to set a date by which time all rail vehicles must comply with the requirements of the regulations. It also means that the Department for Regional Development can apply the regulations to rail vehicles when they are refurbished.

Article 8: Rail vehicles: accessibility compliance certificates

27. This Article will require prescribed rail vehicles to have a rail vehicle accessibility compliance certificate. It prohibits a prescribed rail vehicle from being used for carriage unless a valid compliance certificate has been issued for that vehicle. It is intended that the requirement to have a certificate will apply to all new rail vehicles and vehicles that are refurbished. The effect is to set up a certification scheme for rail vehicle accessibility. The provisions include power for the Department for Regional Development to make regulations providing for the appointment of independent assessors, setting out the procedure for obtaining certificates, and charging fees in relation to certification.

Article 9: Enforcement and penalties

28. Article 9 replaces the existing criminal sanctions in the DDA for non-compliance with rail vehicle accessibility regulations

with a civil enforcement regime which enables penalties to be levied. The Article will enable the Department for Regional Development to inspect vehicles and to issue an operator with an improvement notice, which sets a deadline for a non-compliance to be rectified. If the non-compliance continues after the improvement deadline, a final notice can be issued. If the final deadline is missed a fine can be imposed. An operator can lodge an objection against either the imposition or the level of a fine. The provisions also provide a right of appeal to the court.

Article 10: Discriminatory Advertisements

29. The DDA (as amended by the Amendment Regulations) prohibits employers and others covered by the newly extended scope of Part II of the DDA (employment field) from publish, or causing to be published, a discriminatory advertisement inviting applications for a job, training or other relevant benefit.
30. Article 10 extends the scope of the prohibition to cover third party publishers (for example, newspapers) who publish a discriminatory advertisement on behalf of another.
31. The Article exempts a third party publisher from liability under new subsection (1) if he can prove that, in publishing the advertisement, he relied on a statement about the lawfulness of an advertisement made by the person who placed it. It also makes it an offence for a person knowingly or recklessly to make a false or misleading statement about

the lawfulness of an advertisement, carrying on summary conviction a fine not exceeding level 5 on the standard scale (currently £5000).

Article 11: Group insurance

32. Article 11 clarifies that persons who provide group insurance services to employees of particular employers would be regarded as a “provider of services”, and consequently liable under Part III (services) of the DDA for acts of discrimination they commit against disabled employees. An act of discrimination by the employer in relation to a group insurance scheme, e.g. refusing for discriminatory reasons to permit a disabled employee to have access to the scheme, will fall within Part II (employment) of the DDA.

Article 12: Private clubs, etc.

33. Under the DDA, private members’ clubs are not prohibited from discriminating against their members. Clubs are only prevented from discriminating against disabled persons in their capacity as employers (under Part II of the DDA) and as service providers (under Part III of the DDA) in respect of any service the club offered to members of the public.
34. Article 12 makes it unlawful for clubs with 25 or more members to discriminate against disabled members, prospective members or associates and guests in certain circumstances. The new sections are modelled on the

provisions of Article 25 of the Race Relations (Northern Ireland) Order 1997.

35. Examples of a club which would be covered by this new section 21F include a golf club or a gentlemen's club, to which applicants for membership are required to make a personal application, be sponsored by other members and then go through some kind of selection process, such as voting by existing members. A club which does not operate such a policy of membership selection is already covered by sections 19 to 21 of the DDA.
36. Unlawful discrimination for the purposes of Article 12 is defined as less favourable treatment of a disabled person for a disability-related reason in circumstances in which that treatment cannot be justified. The conditions set out broadly correspond to those found in the DDA in relation to service providers, but have been adapted to suit the circumstances of private clubs.
37. Unlawful discrimination also includes a failure to comply with a duty to make adjustments imposed on a club by Article 12 when it cannot show that such a failure is justified. The Article enables regulations to be made prescribing the circumstances in which clubs will be under a duty to make reasonable adjustments (which could include the alteration of physical features or the provision of an auxiliary aid).
38. As the Department intends to consult before imposing such duties, the draft provisions only set out the framework of this

duty. It is not expected that the duties to will go further than those which providers of goods, facilities or services are already under by reason the DDA. In addition, it is expected that regulations will make provision for the failure to make a reasonable adjustment to be justified in certain circumstances.

Article 13: Discrimination in relation to the letting of premises

39. Disabled people are already protected against some forms of discrimination in relation to premises. It is unlawful for persons who are selling or letting premises to discriminate against a disabled person in the way they offer to dispose of the premises to the disabled person, by refusing to offer to dispose of the premises to the disabled person, in their treatment of the disabled person in relation to any waiting list for the premises, or in the way they permit the disabled person to use any benefits of facilities, or by evicting the disabled person or subjecting him to any other detriment.
40. Article 14 will make it unlawful for landlords and managers, in relation to premises they wish to let or that are let, to discriminate against a disabled tenant or prospective tenant by failing without justification to comply with a duty to provide a reasonable adjustment for the disabled person.
- 41 The letting of commercial and residential premises is covered. "Letting" is defined widely.

42. The new provisions would require a landlord or manager to take reasonable steps to change a policy, practice or procedure which makes it impossible or unreasonably difficult for:
- a disabled person to take a letting of the premises, or
 - (where there was a letting already in existence) a disabled tenant - or other disabled person lawfully occupying the premises - to enjoy the premises or use a benefit or facility conferred with the lease, so that the policy, practice or procedure concerned no longer had that effect.
43. For example, a landlord or manager may be obliged (where it was reasonable to do so):
- to allow a tenant who has mobility difficulties to leave his rubbish in another place if he cannot access the designated place;
 - to change or waive a term of the letting which prohibited the keeping of pets, in order to allow a blind tenant to keep an assistance dog on the premises;
 - to change or waive a term of the letting which forbade any alterations to the premises, so as to allow a disabled tenant to make (at his own expense) alterations needed by reason of his disability with the consent of the landlord.

44. The provisions would also require a landlord or manager to take reasonable steps to provide an auxiliary aid or service which would either enable or facilitate a disabled person's enjoyment of the premises or use of a benefit or facility conferred with the letting, or (as the case may be) enable or make it easier for a disabled person to take a letting of a premises. This duty would apply if, were the auxiliary aid or service not provided, it would be impossible or unreasonably difficult for a disabled person or occupier to enjoy the premises, to make use of any benefit or facility they were entitled to or (as the case may be) to take a letting. For example, a landlord or manager may need to put correspondence in large print for a visually impaired person.
45. These duties would not require the making of any alteration to the physical features of a premises. Moreover, a landlord would not have to take any steps under the new provisions unless requested to do so by the tenant or prospective tenant. There is an exemption in respect of small dwellings. In limited circumstances, a landlord or manager may justify less favourable treatment or a failure to take reasonable steps.
46. The Article confers power on the Department to make supplementary provisions by regulations, for example to prescribe what steps it is reasonable for a landlord to have to take, or as to what constitutes an auxiliary aid or physical feature.

Article 14: Power to modify or end small dwellings exemption

47. Article 14 confers a power on the Department, by order, to amend the exemption for small dwellings for the purpose of restricting the cases in which the small dwellings exemptions are available; or by removing those exemptions.
48. The small dwellings exemption is set out in section 23 and Article 14. Broadly speaking, the exemption applies to owner-occupiers either where they share living accommodation with those not of their own household and let out accommodation to not more than two other households, or where there is not normally residential accommodation on the premises for more than six persons in addition to the landlord or manager and members of his household. Where the exemption applies, the DDA's provisions relating to premises generally do not apply.
49. Any order to modify or end any of those exemptions will be consulted on.

Article 15: Generalisation of section 56 of the 1995 Act in relation to Part III claims

- 50 Section 56 of the DDA sets out a framework for a questionnaire procedure which may be used by complainants in deciding whether to bring a claim or in bringing claims under Part II (employment) of the DDA. Article 15 extends that framework so that it will also apply to

claims brought or to be brought under Part III (services) of the DDA.

Article 16: Meaning of “disability”

51. Article 16 removes the requirement that a mental illness must be “clinically well-recognised” before it can amount to a mental impairment for the purposes of the DDA. The removal of this requirement does not affect the need for people with a mental illness to demonstrate that they have an impairment which has a long-term and substantial adverse effect on their ability to carry out normal day-to-day activities.
52. Article 16 also deems people with HIV, cancer or MS to be disabled, and enables the Department to make regulations excluding persons who have cancer of a prescribed description from the provisions of sub-paragraph (1). This power could be exercised, for example, to exclude those types of cancer which do not require substantial treatment.
53. Paragraph 7(5) of Schedule 1 to the DDA as currently drafted contains a power. Despite its apparent breadth, this power is subject to the limitations imposed on it by the other provisions of Schedule 1. For example, paragraph 8 of Schedule 1 contains special provisions dealing with progressive conditions and the power conferred by paragraph 7(5) could not be relied upon to deem a person with a progressive condition to be disabled.

54. Article 16 also has the effect of generalising the existing power to deem a person to have a disability in prescribed circumstances and hence to be a disabled person for the purposes of the DDA, thus enabling it to be relied upon to deem as disabled any person who does not currently meet the definition of disability.

SCHEDULE 1

55. Schedule 1 contains minor amendments consequential on the changes made by the Order.

SCHEDULE 2

56. Schedule 2 provides for the repeal of certain provisions in the DDA and in other enactments in consequence of amendments made by the Order.

DRAFT EQUALITY IMPACT ASSESSMENT

Consultation on a

Draft Disability Discrimination Order in Council

by

The Office of the First Minister and Deputy First Minister

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DRAFT EQUALITY IMPACT ASSESSMENT

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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.

It has therefore prepared this draft Equality Impact Assessment ('EQIA') 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').³

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

³ 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 Directive⁴. 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.

⁴ 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.⁵

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.⁶

⁵ 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.

⁶ "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.⁷ 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.

⁷ 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 2001.⁸ 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.

⁸ 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 should 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. 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;
- d. 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 2004⁹ and so is not part of this EQIA);
- e. providing for amendments to enable an 'end date' to be introduced after which rail vehicles which do not comply with the Rail Vehicle Accessibility

⁹ Full consultation papers can be found at <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

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)¹⁰ and so is not part of this EQIA;

- f. making third party publishers (e.g. newspapers) liable for publishing discriminatory advertisements;
- g. amending the way the DDA applies to group insurance to clarify the responsibilities of those concerned with its provisions;
- h. bringing membership of larger private clubs (i.e. those with 25 or more members) within scope of Part III of the DDA;
- i. extending to those who let or manage rented premises the duty of reasonable adjustment, apart from in respect of physical features;
- j. providing a power to rationalise or end the small dwellings exemption;
- k. introducing into Part III of the DDA a questionnaire procedure which is similar to that in Part II of the Act;
- l. 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

¹⁰ Full consultation papers can be found at www.mobility-unit.dft.gov.uk

show that it is a “clinically well recognised” illness before it counts as a mental impairment.

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 Bill introduced to Parliament on 25th November 2004, 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 Bill, 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 Consultation

7.1 This draft assessment forms part of the consultation and we would welcome your views on it. To enable us to complete an Equality Impact Assessment of the proposals contained in the Order, it is important that we have your views during this consultation process on how they will impact on equality. For example:

- Is there any additional data or information that might be used to assess the equality impact of the proposals in this consultation?
- Do you agree that the proposals do not have any adverse impact on any of the groups included within section 75 of the Northern Ireland Act 1998, listed at paragraph 1.1 above? If you do not agree, please explain why.

- Have you any thoughts or views on an alternative approach?
- Do you have any other comments on the equality impact of these proposals?

8 Decisions and Publication

8.1 Following this public consultation, the results of the Equality Impact Assessment will be gathered and published in the form of a report. Any findings arising from the consultation will be taken into account prior to final decisions being made.

9 Monitoring

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

Draft Regulatory Impact Assessment

Draft Disability Discrimination (Northern Ireland) Order

As the majority of the measures were consulted upon, and costed, in the 2001 document "Improving Civil Rights for Disabled People: Northern Ireland Executive Response to the Disability Rights Task Force", this is an updated version of the earlier RIA contained in that consultation¹¹. Measures relating to ending the exemption of transport operators from the first and second phases of Part III of the DDA were consulted upon separately by DOE and DRD in summer 2004.¹²

Purpose and Intended Effect

1. Disabled people are protected against unlawful discrimination by the Disability Discrimination Act ('the DDA'). In December 1997, the UK Government established a Disability Rights Task Force ('the DRTF'), comprising members from disability organisations, organisations representing large and small employers, trade unions, businesses and local authorities, to consider how the Act could be improved.

¹¹ The RIA included in "Improving Civil Rights for Disabled People" built upon the UK-wide RIA carried out by the Department for Education and Employment in its report "Towards Inclusion"

¹² DoE / DRD consultation document published for consultation on 11th August 2004.

2. In Northern Ireland, the DRTF proposals led to the enhancement of the Equality Commission's role in relation to disability from 25th April 2000 to allow it to perform a similar role to that of the Disability Rights Commission in Great Britain¹³. The Task Force's final report was made in December 1999 ("From Exclusion to Inclusion"). It contained 156 recommendations for action (both legislative and non-legislative) across a number of areas: defining disability; education; employment; access to goods, facilities, services and premises; travel; the environment and housing; participation in public life; local government; and health and social services.

3. The DRTF's recommendations on civil rights in education are being taken forward in Northern Ireland by the Special Educational Needs and Disability Order in Council which has been consulted on and is expected to be made in 2005. Many recommendations on employment have also been met by the implementation of the disability provisions of the EU Employment Framework Directive, by way of The Disability Discrimination Act 1995 (Amendment) Regulations (Northern Ireland) 2004 ('the Amendment Regulations')¹⁴. These include: ending the small employer exemption in the DDA; and ending the exclusion of a number of occupations from the scope of the DDA (including police, prison officers and barristers).

¹³ The Equality (Disability, etc) (NI) Order 2000 extended this role to the Equality Commission

¹⁴ The Disability Discrimination Act 1995 (Amendment) Regulations (Northern Ireland) 2004, were made on 20th February 2004 under section 2(2) of the European Communities Act 1972 and came into

4. The measures which appear in the draft Disability Order in Council would make a wide range of amendments to the DDA in Northern Ireland.

They would introduce significant improvements in a number of areas 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. clarifying who the correct defendant is in the case of a claim of discrimination being made against a police officer;
- d. 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;
- e. 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;

- f. making third party publishers (e.g. newspapers) liable for publishing discriminatory advertisements;
- g. amending the way the DDA applies to group insurance to clarify the responsibilities of those concerned with its provisions;
- h. bringing membership of larger private clubs (i.e. those with 25 or more members) within scope of Part III of the DDA;
- i. extending to those who let or manage rented premises the duty of reasonable adjustment, apart from in respect of physical features;
- j. providing a power to rationalise or end the small dwellings exemption;
- k. introducing into Part III of the DDA a questionnaire procedure which is similar to that in Part II of the Act;
- l. extending the definition of disability to more people with cancer, multiple sclerosis and HIV; and
- m. 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.

Risk assessment

- 5. The measures contained in the draft Disability Order in Council will create new or improved civil rights for around

330,000 disabled people in Northern Ireland.¹⁵ They will also address a number of enhancements to the Disability Discrimination Act, many of which were identified by the Disability Rights Task Force, such as:

- ensuring that transport operators cannot unreasonably discriminate against disabled people;
- extending the DDA duties to those functions of public bodies which are not currently covered because they are not services within the meaning of the DDA;
- bringing within scope of the DDA more people with certain progressive conditions; and
- bringing within scope of the DDA's service provider duties membership of larger private clubs.

6. If the measures in the Order in Council are not implemented, then disabled people will continue to face discrimination and barriers in accessing services and facilities that other members of society take for granted.
7. A Bill to provide similar amendments to the DDA for England, Scotland and Wales is before Parliament.

Options

8. In general the options are:
 - a. do nothing and rely on voluntary compliance;

¹⁵ 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

- b. amend the DDA in Northern Ireland by an Order in Council to take account of those Task Force recommendations supported by NI Government Departments and take some further steps the Departments believe will help improve equality of opportunity for disabled people.

9. The first option would ignore the legitimate expectations of disabled people to enjoy the rights and opportunities which others in society take for granted. It would run counter to the Northern Ireland Executive response to the Task Force produced in 2001. It would result in disabled people in Northern Ireland having different rights and protections to disabled people elsewhere in the UK. Therefore, this assessment is based on the second option.

Quantifiable Costs and Benefits

10. Annex 1 provides details of the potential quantifiable costs and benefits. Annex 2 summarises costs and benefits for the entire draft Order. The following paragraphs briefly outline the main points.

Other benefits and costs

11. There are clear benefits to society in encouraging the removal of barriers to participation in everyday life for many of our citizens. There are also benefits from the promotion and extension of a more diverse workforce.

Employees and Individuals

11. Around 2,200¹⁶ additional people in Northern Ireland with HIV, cancer and MS would be covered by the DDA's employment and access duties. All disabled individuals would benefit from improved access to transport, private clubs, public functions, more effective and efficient dealings with landlords and the introduction of a questionnaire procedure in Part III of the DDA for helping identify issues of discrimination and possibly avoiding costly and difficult court or tribunal cases.

Equity and Fairness

13. The measures contained in the draft Order in Council would impact mainly on transport operators and public bodies. However, many of the duties which will be placed on such organisations are likely to be met by ensuring that staff have good training in disability awareness so that they are prepared to treat members of the public and others (e.g. councillors) as individuals and that mainstreaming practices, which should exist in most public bodies, cover disabled people effectively. Such steps should greatly reduce the risk of discrimination against disabled people, which is often caused by lack of awareness or ignorance rather than malice, and ensure that policies and practices are developed or adapted to take account of disabled people's needs.

¹⁶ The UK wide figure used in the DWP RIA was 73,000. We

14. The measures in respect of premises and private clubs would ensure that disabled people have better access to rented accommodation or clubs without adding any significant burdens overall. The additional duties on transport operators, public bodies, landlords and private clubs will result in major benefits for the 330,000 disabled citizens in Northern Ireland. The Equality Impact Assessment, which accompanies this consultation, addresses issues of equity arising from this draft Order in Council in more detail.

Compliance Costs for Business

15. Widening the definition of disability would bring within scope of the DDA around a further 2,200 people in Northern Ireland i.e. fewer than 1% more people than currently covered. Though significant for those who will gain protection, it is unlikely to result in more than a marginal increase in recruitment or workplace adjustment costs because the newly covered people would not generally require adjustments.
16. In total, the landlord sector may face costs of around £44,000 per annum as a result of extending to it the duty of reasonable adjustment.

estimate that the NI proportion of this is around 2200.

17. There would be some marginal costs for those service providers and clubs who are asked to complete a questionnaire under cases in Part III of the DDA. Of course, private clubs operating commercially and which provide services to the public or sections of the public are already subject to the provisions of Part III of the DDA in respect of that activity. The additional obligation imposed by the draft Order in Council's extension of their responsibilities to their members should be marginal only. Any costs for business need, of course, to be weighed against the benefits of encouraging the increased participation in working and social life of talented people who might otherwise have faced discrimination.

18. The Order will provide a power to bring all transport services within scope of Part III of the DDA. The Department proposes initially to make regulations covering public transport - buses and coaches, rail vehicles, taxis and private hire vehicles - vehicle hire, breakdown and leisure and tourism transport services. This would have the biggest impact on the mobility of disabled people in their day to day activities. Voluntary Codes of Practice are currently in operation in the aviation and shipping industries and we have made clear our intention to bring them within scope if this approach proves ineffectual. Work is currently in hand to monitor compliance and will report during 2005. There will be associated costs for these sectors which are described in detail in Annex 2 of this RIA.

19. It is assumed that any associated costs for Northern Ireland Railways (NIR) arising from the proposed changes to rail vehicle accessibility requirements will be negligible given the existing NIR fleet will be substantially replaced by RVAR compliant rail vehicles by the 'end date' set by the proposed amendments. The proposed replacement policy will make it unlikely that any significant refurbishment of existing non-compliant stock will be required.

Small Firms Impact Test

20. A number of the measures in the draft Order in Council would only affect public bodies and so do not need to be considered here. Extending the definition of disability in the DDA to cover more people with certain progressive conditions and removing the requirement that a person with a mental illness has to show that it is "clinically well recognised" before it counts as an impairment is unlikely to result in any significant increase in recruitment or workplace costs. Similarly, measures on third party publishers and group insurers, some of whom may be small businesses, are expected to have a negligible impact. Possible costs in respect of landlords and private clubs, some of whom may be small businesses, are referred to above. Annex 2 provides more information on transport operators.

Results of Consultations

21. This draft RIA accompanies publication of the draft Disability Discrimination (NI) Order in Council for consultation. As such, the RIA is part of this consultation and is open to comment. The policy underlying the measures in the draft Order in Council were publicly consulted upon in earlier consultations, in particular in the Northern Ireland Executive's response to the DRTF, *Improving Civil Rights for Disabled People*, published in 2001, and the DoE/DRD *Consultation on the Removal of the Disability Discrimination Act Part III Exemption for Providers of Transport Services*, held in 2004. The Department for Transport in London consulted across the UK in November 2003 on the Government's proposals to amend the Rail provisions in Part V of the DDA. DRD and relevant users were fully involved in this consultation.

Enforcement, Sanctions, Monitoring and Review

22. Enforcement and sanctions are, in the main, already laid down in the DDA and the Equality (Disability, etc) (NI) Order 2000. The courts and tribunals continue to be the means for individuals to obtain legal redress. The Equality Commission continues to have enforcement powers and can support individual disabled people with legal complaints. Where new measures are being proposed, or existing measures are being extended, enforcement and sanctions will involve the courts, tribunals and the Commission as appropriate. The

Commission, as part of its overall duty to monitor the DDA in Northern Ireland, will keep the legislative framework under review.

Sustainable Development

23. This RIA considers the economic and social impact of the measures covered in the draft Order and provides a cost and benefit analysis in those areas across all relevant sectors. The draft Order will strengthen the operation of the DDA and bring more disabled people within its scope. As a result of some clauses in the Bill, public bodies, landlords, private clubs and others may need to make reasonable adjustments to their policies, practices and procedures and/or to their physical premises (although in the case of landlords the duties will not extend to physical premises). In some instances, these requirements may have an impact on the environment or natural resources. However, the impact is expected to be minimal, particularly in view of the concept of reasonableness which applies throughout, and is likely to be more than compensated for by the increased protection that will arise for disabled people.

Summary and Recommendations

24. This Regulatory Impact Assessment estimates that the quantifiable compliance costs are as follows:
- (i) extension of the DDA to cover more people with HIV, cancer and MS may result in just over £2,000 recurring costs;
 - (ii) extension of the duty to make reasonable adjustments to landlords will result in £44,000 recurring costs;

(iii) bringing local councillors within scope of Part II of the DDA will result in a one off cost of £6,800, with a cost of £200 per new disabled councillor elected estimated.

(iv) removing the Disability Discrimination Act Part III exemption for providers of transport services will result in a one off cost of approximately £4.068M and recurring costs of £5.106M per annum mainly being used on disability awareness training for staff throughout the public and private transport sector.

25. There will also be unquantifiable costs to the public sector. The Office of the Industrial Tribunals and the Fair Employment Tribunal may have a small increase in costs as a result of extending the scope of the DDA to cover more people with HIV, cancer and MS, as more people may be able to bring cases. As assistance is available for the preparation of cases for tribunal, there may also be some marginal increase in the costs of Legal Aid.
26. In addition, the proposal to extend the DDA to most functions of public bodies, subject to some exemptions, would have an impact on costs. Bringing most functions within scope of the DDA will require public bodies not to discriminate against disabled people across the whole range of their public activities. However, it is impracticable to identify a typical public authority for the purposes of this assessment because of the wide diversity of such authorities, the extent to which disabled people may or may not benefit from different functions of different authorities, and the fact that costs will

depend upon the extent to which authorities may have to make adjustments. Instead, this RIA identifies a number of examples of functions of public authorities that may not already be covered by other parts of the DDA. Most authorities should not have to make many adjustments, as they will have already done so in their role as service providers in a way which will already be assisting people who are affected by public functions. In addition, section 75 of the Northern Ireland Act 1998 places a duty on public authorities to have due regard to the need to promote equality of opportunity between persons with a disability and persons without – this duty will already have had a positive influence on how the functions are exercised.

27. There are significant benefits arising from these proposals. They would ensure greater fairness and participation for disabled people by extending the DDA's coverage which in turn would help to ensure wider social inclusion. They would ensure that disabled people benefit, for example, from greater access to a wider range of services and functions and to membership of larger private clubs. There may be cost implications for the Equality Commission in terms of, for example, producing Codes of Practice and other guidance.

Annex 1: Regulatory Impact of draft Articles

Article 3: District Councils

The draft Order would amend the Disability Discrimination Act so as to make unlawful certain types of decisions or arrangements made by a District Council which discriminates against a disabled councillor.

The draft Order would make it unlawful for a Council to discriminate against a disabled councillor -

- in the opportunities which it affords him/her for receiving training or other benefits, including goods, facilities or services provided to councillor;
- by refusing to afford, or deliberately not affording the councillor such opportunities; or
- by subjecting the Councillor to any other detriment.

However the provisions would not cover the appointment of Councillors for example to serve on committees or other public bodies. It is not thought appropriate that essentially political decisions such as these should be liable to challenge in industrial tribunal proceedings.

Since the Amendment Regulations came into operation from 1 October 2004 “Discrimination” is defined in the same way (broadly

speaking) as it is in Part II of the DDA. This appears to be the most appropriate way of regulating the relationship that a Councillor has with the Council of which he is a member; although there is no intention whatsoever of creating any kind of employment relationship between Councillors and the Council.

This means that a Council would be regarded as discriminating against a disabled councillor where -

- for a reason related to the Councillor's disability, it treats him less favourably than others to whom that reason does not apply – in circumstances in which it cannot show that the treatment is justified; or
- it fails to comply with a duty to make reasonable adjustments for that councillor (as to which, see below).

As is the case with Part II of the DDA, it would not be possible to justify treatment which amounted to direct discrimination.

Moreover, harassment, victimisation, instructions and pressure to discriminate would also be prohibited.

The duty to make reasonable adjustments would require a Council to take reasonable steps to change policies, practices and procedures, or alter physical features of buildings, which placed a disabled Councillor at a substantial disadvantage in comparison with others.

We estimate that the overall costs attributable to these changes might amount to as little as £6,800 over a period of about 5 years.

Much of what District Councils might need to do to ensure accessibility for their disabled Councillors is being done as part of their commitments under each Council's Equality Scheme and as a result of their duties towards their disabled employees and as service providers to the public under the DDA.

The methodology and assumptions for calculating this cost are set out below.

There are 582 District Councillors in Northern Ireland. District Councils in Northern Ireland do not hold official information on Councillors who may have a disability or self-report as having a disability. However, anecdotal evidence, based on telephone conversations with Council clerks, suggests that the actual number of councillors with a disability is considerably lower than the 20% of adults covered by the DDA's definition of disability. In Great Britain the equivalent RIA reported that around 13% of local Councillors are reckoned to meet the definition of a disabled person in the DDA. Anecdotal evidence from Council clerks suggest that a lower percentage of Councillors in NI are disabled, approximately 2%. Applying this percentage, suggests that there are 13 disabled Councillors in Northern Ireland.

The cumulative effect of existing mainstreaming, equal opportunities policies and legislation should lead to the rate of disability in local Councillors reflecting society as a whole as more disabled people come forward as local Councillors in the knowledge that they have the protection of the DDA and particularly the right to reasonable adjustments.

Only costs attributable to new Councillors coming forward can be attributable to these changes; and then only a proportion of such costs to avoid double counting between the various existing policies and legislative requirements. We suggest a figure of “one-third” would reasonably reflect the impact of the new duties beyond existing policies.

On average the cost of a reasonable adjustment for the number of new local Councillors would be about £200 - representing the costs of changes for individuals (changes to infrastructure such as buildings and the installation of aids such as hearing loops etc should have already been, or should be in the process of being made).

Therefore, if we assume that there are currently 13 out of 582 Councillors with a disability, it would take a further 103 people with disabilities to be elected to bring the proportion of disabled Councillors to a level representative of society as a whole. If we then take one third of this additional figure (to avoid double counting as mentioned above) we would have 34 additional Councillors requiring a reasonable adjustment of about £200 providing a suggested additional cost of £6,800.

Article 4: Discrimination by public authorities

Background

At present, the DDA applies to *services* provided by public authorities as it does to any service provider. However, public authorities perform many activities which are not considered to be services. The draft Order will therefore bring the *functions* of public authorities within the scope of the Disability Discrimination Act. The DRTF called for the extension of the DDA to these functions in its 1999 report, and this was consulted on in Northern Ireland in the Executive's response to the DRTF in 2001.

The extension of the DDA in this way would bring new rights for disabled people, and new duties on the public sector not to discriminate against disabled people across the whole range of its public activities. Race legislation (Article 20A of the Race Relations (Northern Ireland) Order 1997 as inserted by the Race Relations Order (Amendment) Regulations (Northern Ireland) 2003) already covers the functions of public authorities in a similar manner.

Many public authorities will not have to make adjustments as they will have already made adjustments due to their role as service providers, their duties under section 75 of the Northern Ireland Act,¹⁷ or simply out of good practice. Where they would have to make adjustments, the nature of the adjustment will vary with the

¹⁷ In Northern Ireland, section 75 of the Northern Ireland Act 1998 requires a public authority to have due regard to the need to promote equality of opportunity between persons with a disability and persons without. This duty may have already had some impact in the way public authorities carry out their functions.

function, the needs of the customer, and with the extent to which their Equality Schemes ensure that equal opportunities considerations are already built into the planning and implementation of policies and practices. There will be some one-off set-up costs and some on-going costs.

Access to functions

Public authorities might incur costs in respect of some functions where previously they had made no provision for the needs of disabled people. The draft Order may provide rights for individual disabled people in such circumstances, and will also require authorities to anticipate the needs of disabled people and meet them if reasonable.

Costs arising from complaints

It is difficult to judge at this stage the extent to which, on existing trends, the extension of the DDA to cover the functions of public authorities might increase the number of complaints. Indeed public authorities are expected to be exemplars when it comes to creating a society based on equality of opportunity, so we expect them to take action to ensure they are compliant with the new duties, and therefore do not face complaints brought against them under the new provisions.

Difficulty in identifying specific functions, adjustments and costs

It would be impossible to identify all functions of all public authorities, or even a typical function of a typical public authority for the purposes of this RIA.

This is because:

- of the wide diversity of public authorities;
- of the wide diversity of functions which they perform; and
- the extent to which disabled people make use of particular functions will vary.

Similarly, it is difficult to identify a typical adjustment, or the associated costs. This is because the extent to which authorities have to make adjustments might depend upon, for example:

- adjustments that they may have already made in order to comply with the employment or service provisions of the DDA; and
- how related a particular function might be to a 'service' which is already being provided – in which case no additional costs should arise as a result of the draft Order.

For the purposes of this Assessment, we have therefore outlined some examples of functions for which costs can be calculated, to illustrate the effect of the draft Order.

Examples of Functions, Adjustments and Costs

Example 1: Issuing a licence

Adjustments to practices, policies, procedures and auxiliary aids

- staff time explaining the procedure perhaps negligible or perhaps to someone with learning difficulties it might take,

- estimated at 1 hour of staff time paid at £12.00 per hour - £12.00;
- providing an explanatory information cassette for a blind person - estimated at £1.50;
 - making the application form available in large print (next to nothing if produced on a computer) – estimated at an additional cost of 30p per form if provided by a printer and produced in relative bulk;
 - giving help in filling in the application form – estimated at 40 minutes of staff time paid £12.00 per hour - £8.00;
 - admitting guide dogs – negligible cost;
 - providing help taking no more than a few minutes of an employee's time – negligible cost; or
 - providing a sign language interpreter – estimated cost from £10 to £20 per hour plus expenses.

Alternative means of making a function available

- processing an application by post that would ordinarily be dealt with in person (if, for example, the premises were inaccessible to wheelchair users, they would not necessarily have to be made accessible if there was a reasonable alternative means of providing the service);
- processing an application by a home visit; or
- arranging to see the applicant in a more accessible part of the building.

Other adjustments, affecting physical features of premises – if reasonable and if there is no reasonable alternative

Physical adjustments to premises might not be necessary, where there is a reasonable way of avoiding the difficulty such as using a different, accessible entrance or where the function could be undertaken by a reasonable alternative means.

It should be noted that the exact scale of the cost would vary considerably with the exact specification of the change.¹⁸ If they are required, they might include:

- nothing: for authorities that have already undertaken action in line with provisions under the Part II employment or Part III service provisions; and for example colour coding when undertaking normal repainting programme
- £54 – Refurbishing a light switch;
- £170-£450 – Enlarging door opening;
- £260-£480 – Supply of portable folding ramp up to 2.59m long;
- £312 – Excellent specification smoke, fire and call alarms;
- £316 – Providing a good specification free standing hand rail (4 meters);
- £355 – Door entry intercom systems (with no CCTV camera);
- £960 – Large portable induction loop;

¹⁸ All of the building examples were taken from the Access Audit Price Guide published by Building Cost Information Service Ltd and these were included in

- £3,960 – Excellent specification, permanent induction loop for use in large halls;
- £5,230 – Door operated by touch key reader;
- £14,300 – Installing a short rise automatic lift.

Example 2: Replying to correspondence

Adjustments to practices, policies, procedures and auxiliary aids

- Provide reply in large print – negligible if produced on computer.
- Provide reply in Braille. estimated at £10 - £20 per document depending on length and complexity (i.e. whether it contains tables etc.).
- Provide reply on cassette – staff time reading reply into cassette and costs of cassette – estimated at £1.50.

Example 3: Conducting consultation exercises

Adjustments to practices, policies, procedures and auxiliary aids

- Publishing consultation document on the Web and accepting replies by email – already common practice.
- Holding a public meeting, including the provision of signers at £10 - £20 per hour plus expenses.

- Making the consultation form available in large print estimated at additional cost of 30p per form if provided by a printer and produced in relative bulk.

Example 4: Publication of reports, and statutory plans produced by an authority

We would expect these costs to already have been largely accounted for in relation to service provision. Public authorities supplying information in an accessible format would not normally be expected to make a distinction between supply in respect of services or functions.

Example 5: Access to buildings and internal physical adjustments

Since the introduction of the new Part III duties in relation to physical features came into operation in October 2004 public authorities have been engaged in an extensive programme to make their buildings accessible and adjust internal features, so as to remove any obstacles to their use by disabled people. We would not expect the proposals in this draft Regulatory Impact Assessment to lead to any additional costs beyond that planned for the progressive upgrading or replacement of the public estate to meet the needs of disabled people.

Article 6: Application of sections 19 to 21 of the 1995 Act to transport vehicles_

The draft Order amends the Disability Discrimination Act to clarify that the current exemption from sections 19 to 21 for transport services extends only to the vehicles themselves, and to create a power to enable that exemption to be lifted for different vehicles at different times.

A consultation document, including a Regulatory Impact Assessment (RIA), on the extension of Part III duties to transport services, was issued for consultation by the Department of the Environment and the Department for Regional Development on 5 August 2004.

The costs and benefits attributable to this provision are summarised at Annex 2.

Articles 7 to 9: Transport Part V

Part V of the DDA contains provisions relating to public transport vehicles; specifically taxis, public service vehicles (“PSVs”), and rail vehicles. The provisions enable regulations to be made in respect of each of these types of vehicles, setting out the specific technical requirements with which regulated vehicles must comply.

As far as rail vehicle accessibility matters are concerned the draft Order will amend sections 46 and 47 of the DDA

- to provide for an end-date for all trains to be accessible;
- to require existing trains going through significant refurbishment to be upgraded to compatibility;
- to provide for certification for compliance;
- to allow exemptions to be granted by letter rather than by order as initially required; and
- to reduce penalties for non-compliance from criminal to indictable offences.

We consider that the overall costs attributable to these changes will be negligible.

Article 10: Discriminatory advertisements

The draft Order in Council would extend duties in the DDA on discriminatory advertisements (inserted by the Amendment Regulations which came into operation on 1 October 2004) to third party publishers. It would provide, unless they can prove they did not know it was discriminatory, that such publishers (e.g. newspapers) would be acting unlawfully if they publish certain discriminatory advertisements and would allow the Equality Commission to bring enforcement action against those publishers. The Order in Council would provide a defence for third party publishers where the publisher relies on a statement made by the person placing the advertisement that it is not unlawful, provided it is reasonable for the publisher to rely on that statement.

We expect any costs arising from this measure to be negligible. However, it would provide a remedy in certain circumstances for disabled people where a third party publisher allows a discriminatory job advertisement to be placed in one of its publications.

Article 11: Group Insurance

The draft Order in Council would clarify existing legislation in the DDA by ensuring that those who provide group insurance schemes, and employers who operate such schemes, are each responsible for their own actions in respect of the provision of group insurance to disabled employees. It would ensure that claims about discrimination against a disabled person in the provision of group insurance by both an employer and a group insurer should be presented to an Industrial Tribunal.

As recommended by the DRTF, this measure addresses an anomaly in the DDA whereby it is currently possible that group insurers might not be held liable for discriminatory treatment by them against a disabled employee in the provision of certain group insurance schemes. It is largely a technical measure and is not expected to result in any additional costs.

Article 12: Private clubs, etc

The draft Order in Council provides for all private member clubs of 25 or more members to be brought within the scope of Part III of the DDA - which covers provision to the public of goods services and facilities and requires service providers not to treat disabled people less favourably than others and to make reasonable adjustments to help eliminate discrimination against disabled people. The measure would apply to disabled people as applicants for membership of clubs, as members of clubs and guests rather than to disabled customers, as they would be covered under Part III already in that respect for any service the club offered to members of the public. Extending the scope of the DDA in this way will bring the Act into line with the Race Relations Act 1976.

It is intended that there should be protection for private householders who allow clubs to meet in their homes and this would be achieved in the way we intend to exercise our Regulation making powers (see below). While it will always be reasonable for a club to ask the householder for permission to make reasonable adjustments there will be no duty or obligation on private householders to agree to such adjustments; for example the installation of grab rails or other permanent physical changes to the premises. In any event, clubs will remain under an obligation to consider alternative means of providing access to disabled members. It is not anticipated that there will be many clubs of this size operating from private households, so it is not thought that this will infringe on the rights of disabled people nor serve to dilute their rights.

This extension of the DDA would give a disabled person who believes that a club has unlawfully discriminated against him the right to bring civil proceedings against the club in a County Court. If successful, the disabled person could receive damages for any financial loss or injury to feelings.

Private club activity can range from small local interest clubs such as local archaeological and history societies to sports clubs (ranging from local cricket, football or GAA clubs but extending to larger golf or tennis clubs run on a commercial basis). There are also social clubs and other organisations such as the Orange Order and Ancient Order of Hibernians which would be covered by this extension to the DDA. There is no central database on how many private clubs there are. However the Northern Ireland Sports Council estimates that there are around 5,000 sports clubs in Northern Ireland. In addition, at 30th June 2003, there were 554 clubs registered to supply alcohol under the Registration of Clubs (NI) Order 1996, while 84 clubs were registered for gaming machines at 30th April 2004 under the Betting, Gaming, Lotteries and Amusements (NI) Order 1985.

In order to be covered by the new provisions the club must operate a genuine policy of membership selection based on personal criteria under its own rules, otherwise the club is probably covered by the existing provisions of Part III of the Act (goods, services and facilities). In each category therefore these numbers almost certainly over-estimate the numbers of clubs which will be covered by these new provisions; the over-estimate could be substantial for sports clubs which are by far the largest category of clubs.

The draft Order in Council includes a regulation making power which would allow the Office of the First Minister and Deputy First Minister to modify the justifications for less favourable treatment should this experience of how the new provisions work show this is necessary. The detail of the reasonable adjustment duties would also be set out in regulations. This is a sensible way forward to extend rights and responsibilities in this sector. Further consultation, and a separate RIA, would be produced at a later date on any duties proposed under the regulation making power in the draft Order. It is likely that, as a result of those regulations, some clubs would incur costs as a result of such things as ramps, widening of doorways and the installation of disabled toilets.

Costs and benefits to clubs: It is difficult to quantify the overall cost of the draft Order in Council since there is no firm data on how many private clubs there are. Private clubs which supply services to the public or a section of the public are already covered by Part III of the DDA. It is unlikely that such clubs will have significant costs arising out of this proposed legislation. Such costs as may be incurred will have already been accounted for in the Regulatory Impact Assessment for the introduction of the new Part III duties in October 2004.

As the concept of reasonableness is central to this policy it means that clubs will never have to make adjustments which are unreasonable. What would be reasonable for clubs to have to do to make their facilities more accessible for disabled people would depend on all the circumstances of the case and would vary according to: the type of facility and activity the club is providing,

the nature of the club and its size and resources; and the effect of the disability on the individual disabled person. Clubs will also have a range of ways of improving access rather than altering a physical feature. A club might be able to make the facility more accessible by providing it by a reasonable alternative means of delivering it. This flexibility coupled with the diverse nature of clubs and disabled people means that it is not possible to say how much the implementation of these duties would cost a typical private club. Examples of possible costs that could arise are:

Costs of providing extra facilities in private clubs: it is unlikely that many clubs would have to build separate facilities for disabled people because they could make alterations to the use of existing facilities e.g. add hand-rails and aids needed for a disabled person. It is assumed that some clubs may already have these facilities.

Administrative costs: allowing disabled people to vote, and attend AGMs in private clubs could result in an increase in administrative costs e.g. increases in mailing costs if the legislation results in more members or members need the detail in an alternative format. It is estimated that these costs would be small and offset by increased subscription income.

There would also be benefits to some of the clubs including, for example, increased subscription income and increased sales in bars, restaurants and shops; and attracting members from a wider social base thus enhancing the experience and knowledge of both disabled members and members who are not disabled. A

concrete example of this would be the benefit to be gained from different perspectives and experience which disabled people could bring to the running of the club and holding office etc.

Costs and benefits to individuals: Under Part III of the DDA, the costs of reasonable adjustments fall on the service provider of goods, services or facilities as a general expense of the business or activity, but only to the extent that the cost is reasonable. We believe this should be the case for private clubs.

Disabled people would be the major beneficiaries of the draft Order in Council. Disabled people would benefit by gaining (with reasonable adjustments) wider access to facilities and advantages enjoyed by the rest of society in a large number of private clubs. The measure will open up and improve access to leisure activities and sporting activities giving disabled people more choice. However, the legislation is likely to have a wider impact. For example, not being able to join a club or use a club's bar, restaurant or shop etc. sends a message that such discriminatory treatment is acceptable, when it is not. It is impossible to quantify these benefits.

Public Sector Costs and benefits: There are likely to be some costs as a result of increasing disabled people's rights, for example handling complaints in the courts and the costs incurred by the Equality Commission in dealing with complaints or enquiries when they come within the scope of the Act and in producing any supporting code of practice. Conversely, marginal savings are

likely if the costs of dealing with complaints and lobbying on this issue are removed.

Article 13: Discrimination in relation to letting of premises

At present, landlords and managing agents have no duty to make reasonable adjustments to accommodate the needs of disabled occupiers of the premises. Some landlords and managing agents are also service providers (service providers are those involved in a business or organisation which provides a service or offers facilities to the public), and hence are already covered in respect of disabled customers, in that capacity, by the provisions of Part III of the DDA.

Under the draft Order, where renting the premises or the use of any associated benefit or facility or enjoyment of them is impossible or unreasonably difficult for a disabled person, landlords and managing agents covered by these provisions may need to change their policies, practices and procedures or provide auxiliary aids or services, where reasonable (but not if that involves making changes to physical features of their premises). For example, they may have to read out letters they send about the rent to a tenant who is blind. They will, however, only have to do what is reasonable. For example, it may not be reasonable for a landlord who lets one or two properties to provide a sign language interpreter. In certain circumstances, they would be able to justify not making adjustments. Adjustments will also not be required in a number of situations. For example, where a landlord lives on the premises and there is not normally residential accommodation on the premises for more than six persons, or the accommodation does not consist of residential accommodation for more than two other households besides that occupied by the landlord and

members of his household. This would mean that such a landlord would not have to make adjustments for a lodger living in his own home.

Cost/benefit to landlords: Landlords and managing agents may have to make adjustments to practices, policies and procedures and provide auxiliary aids and services where reasonable. There is a range of adjustments that might be made. These include, for example, rearranging furniture, providing information on cassette, CD or in Braille or spending additional time explaining a contract to a tenant. Changes such as the latter are unlikely to incur a direct cost.

According to the 2001 census, just over 72,000 households in Northern Ireland moved property in the preceding year, of which 13,615 had a household respondent person with a limiting long-term illness. It is estimated that approximately half of disabled people living in these households did not have an adult relative living in the same household. Applying this proportion, gives an estimate of 6,800.

Approximately 13% of DDA disabled people have learning difficulties, mental illness including depression or problems with sight/hearing which implies that around 880 disabled people might require some reasonable adjustments from landlords or managing agents. Assuming an average cost of a reasonable adjustment of £50 (as it would be very significantly lower than the average

employment adjustment cost for example) then we would expect this measure to cost about £44,000 per year ¹⁹.

In addition there will be some costs in respect of people who rent commercial properties. There were 3,645 new businesses registering for VAT in Northern Ireland in 2001²⁰. In NI, 10.4% of the self-employed are DDA disabled people of whom 9.0% have learning difficulties, mental or problems with sight/hearing. Applying this proportion suggests that 34 disabled people may potentially require reasonable adjustments from landlords when renting commercial premises. Assuming that 75% of new businesses will actually rent commercial premises, this implies that 26 disabled people per year will need adjustments. At an average cost of £50 this implies an annual cost of £1,300.

Public Sector Cost/benefit : There may be associated costs for the renting of houses by the Housing Executive, but since it is likely to be adopting a good practice approach and is already providing reasonable adjustments for its employees and members of the public using its services, those costs are likely to be negligible.

Cost/benefit to disabled individuals: There will be benefits to disabled individuals in that their dealings with landlords and managing agents will be more effective and efficient.

¹⁹ Source LFS Spring 2004

²⁰ Inter Departmental Business Registrar, DETI, May 2003

Article 14: Power to modify or end small dwellings exemption

This would not involve any costs or benefits. However, if legislative change were eventually proposed, using the planned regulatory power, a separate RIA would be produced.

Article 15: Generalisation of section 56 of the DDA in relation to Part III claims

The draft Order would introduce a questionnaire procedure similar to that in Part II (Employment) of the DDA. This would enable a complainant (or potential complainant) to question the respondent (or potential respondent) about possible discrimination in contravention of Part III of the DDA. It would also allow for the questionnaire to be admissible as evidence within prescribed time limits.

The new procedure would be modelled on that already applying to sex, race and fair employment and treatment discrimination and build upon the DDA Part II provisions. A disabled person would be able to serve a questionnaire on a service provider or a club about an alleged act of discrimination or, in the case of public bodies, the carrying out of a function. The service provider, club or public body (the “respondent”) would have eight weeks in which to reply. Where the respondent did not reply, or replied in an evasive or equivocal way, without reasonable excuse, the court hearing a case would be able to draw any inference it considers just and equitable.

The questionnaire may well prevent formal complaints (e.g. against service providers) as it will draw their attention to issues around the provision of their service to disabled people which they are able to address. In these instances, there will be no extra costs as they are already factored into the costs of Part III of the DDA.

Experience with DDA Part II questionnaires, and the current number of cases brought under Part III, suggests that initial use of the questionnaire is unlikely to be widespread although it could increase as the benefits of using the process become clearer.

The questionnaire may well prevent formal complaints against e.g. service providers as it will draw their attention to issues around the provision of their service to disabled people which they are able to address. In these instances, there will be no extra costs as they are already factored into the costs of Part III of the DDA.

We do not anticipate that there will be substantial extra costs over and above those incurred as part of the normal complaint process.

Article 16: Meaning of ‘disability’

The coverage of the DDA would be extended to people who are diagnosed as having asymptomatic HIV, certain cancers and Multiple Sclerosis. These measures are expected to increase the number of people covered by the DDA by about 2,200 [3% pro rata of the GB figure] of whom about 400 [pro rata of GB figure] will have MS (the one condition not specified in the Northern Ireland Executive’s response to the DRTF). This would increase the number of people covered by the DDA by about 0.7%. This would result in a small increase in tribunal costs, but is unlikely to result in any significant increase in recruitment or workplace adjustment costs. The extension of the definition would also apply to service providers, under Part III of the DDA, including transport operators being newly brought within the scope of Part III. We do not consider that extending coverage to people with asymptomatic conditions would result in any significant or quantifiable additional costs for service providers as additional adjustments, i.e. over and above those already required under the DDA. They are unlikely to be needed for them when accessing goods, facilities or services and any increase in costs would be minimal.

The definition of disability is also to be amended to remove the requirement that people with mental illness must show that the illness is “clinically well recognised” before it can count as an impairment. People with a mental illness will still have to show, as they do now, that they have an impairment that has a long term and substantial adverse effect on their ability to carry out normal day to day activities. Therefore it is not expected that this change

will lead to any increase in costs for those who have obligations under the DDA such as employers or service providers.

An amendment is also being made to the powers in Schedule 1 to the Order in Council (provisions supplementing the definitions of disability) to ensure that the definition can be amended using Regulations in the light of future of evidence. As there are no plans at present for such amendments no costs arise from this change. Any use of the Regulations in this way will be accompanied by a Regulatory Impact Assessment.

Cost/benefit to business: We assume that these conditions would not result in the need for adjustments to workplaces or significant recruitment costs. Given that we expect the number of people covered by the DDA's definition of disability to increase by only 0.7% the number of additional tribunal cases can be expected to be negligible.

Cost/benefit to employees: In the Spring 2004 Labour Force survey there were 55,000 people in work who met the current DDA definition of disability. A 0.7% increase would lead to about 400 additional employees who will benefit from DDA coverage. The slight extension of the definition may lead to a very small increase in costs under Part II of the DDA, as employers may be required to make minor adjustments for disabled employees or jobseekers brought within scope. However, these costs are likely to be marginal.

Guidance to tribunals and courts would have to be redrafted to reflect the changes brought about by including those with asymptomatic conditions. If new guidance is effective in resolving issues previously found difficult by the tribunals and courts then efficiency should improve. This would result in time and cost (e.g. legal advice) benefits to individuals and businesses.

Cost/benefit to Public Sector: There would be some costs in production, consultation and dissemination of guidance to tribunals and courts. The Equality Commission, which is an independent body, would also incur costs when revising statutory Codes of Practice and non-statutory guidance.

Guidance

There would need to be new statutory guidance and/or information on all the proposed provisions. If new guidance is effective in helping the courts and tribunals resolve disputes their efficiency should improve. This would result in time and cost benefits to individuals and businesses. There is a cost to the Office of the First Minister and Deputy First Minister and the Equality Commission of producing and disseminating guidance.

Cost/benefit to Public Sector: There would be some costs in production, consultation and dissemination of guidance on the definition of disability to tribunals. The Equality Commission, which is an independent body, will also incur costs when revising other statutory guidance and information booklets.

Annex 2: Summary of Quantifiable Costs and Benefits

Benefits

There are likely to be benefits to business from:

- improved retention of staff due to slight extension of DDA to cover more people with HIV, cancer and MS;
- from widening the pool of people wishing to rent property because communications with landlords and renting are easier;
- easier identification of problems for disabled people in accessing goods, services and premises (and other matters covered by Part III) through use of the questionnaire procedure leading to more ready resolution or sometimes helping them decide not to make a formal complaint;
- the development of effective public sector practices and policies which set the standard for businesses and others.

Many of the duties placed on the providers of transport services by the removal of the exemption from Part III can be met by ensuring that staff receive good training in disability awareness. Such training should greatly reduce the discrimination, which is often caused by lack of awareness or ignorance rather than intention, which disabled travellers sometimes meet.

Disabled people form a very substantial proportion of the total population; a proportion that is likely to increase in the future because of the ageing of the population and the higher incidence

of disability among older people. It has been estimated²¹ that approximately 20 per cent of the adult population²² is covered by the provisions of the DDA.

Benefits will arise from:

- Improved personal mobility for disabled people;
- Access to a wider range of facilities and activities (including employment) enabling disabled people to play a fuller role in the economy and in society; and
- Improved legal rights of access to services. More transport services will become accessible in the fullest sense of the word. Service providers that are already doing much to help disabled travellers will be encouraged to do more.

While it is not possible to quantify these benefits accurately in financial terms, transport service providers could expect to see increasing numbers of disabled people using their services over time.

²¹ “The Disability Discrimination Act: Analysis of Data from an Omnibus Survey;

In-house report 30, Grahame Whitfield, DSS, 1997

²² Grundy, E., Ahlburg, D., Mohamed, A., Breeze, E. and Sloggett, A. (1999) Disability in Great Britain: Results from the 1996/97 Disability Follow-up to the Family Resources Survey, (Department of Social Security, Research Report No. 94)

Costs

Quantifiable Cost	Recurring costs	One-off costs
Extension to cover more people with HIV/cancer/Multiple Sclerosis	£2,000	
Extend duty to make reasonable adjustments to landlords and managers (other than to physical premises).	£44,000	
Bringing local councillors within scope of Part II of the DDA		£6,800
Recurring Transport related costs per annum	£5.106M	£4.068M
TOTAL	£5.152M	£4.075M

Costs related to the removal of the Disability Discrimination Act Part III exemption for providers of transport services.

Costs to service providers: rail services

Item	Non-recurring costs (£M)	Recurring costs (£M) per annum
Training in disability awareness	-	0.011
Full staffing of unstaffed stations	Substantial	2.000

Costs to service providers: buses and coaches

Item	Non-recurring costs (£M)	Recurring costs (£M) per annum
Training in disability awareness (Translink)	-	0.07
Training in disability awareness (private sector)		0.019

Costs to service providers: public and private hire

Item	Non-recurring costs (£)	Recurring costs (£) per annum
Loss of earnings during training	1,478,000	75,000
Charges for training	556,000	28,000
Totals	2,034,000	103,000

Costs to service provider – car hire

Item	Non-recurring costs (£M)	Recurring costs (£M) per annum
Provision of vehicle with adapted controls	-	2.0 – 2.8

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