



**A Commissioner for Older People in
Northern Ireland – OFMDFM’s Consultation
on a Draft Bill**

**Disability Action’s Response
January 2010**

Any enquiry concerning this document should be made to

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INTRODUCTION

- 1 Disability Action is a pioneering Northern Ireland charity working with and for people with disabilities. We work with our members to provide information, training, transport awareness programmes and representation for people regardless of their disability; whether that is physical, mental, sensory, hidden or learning disability.
- 2 21% (369,390) of adults and 6% (105,540) of children in Northern Ireland have a disability and the incidence is higher here than in the rest of the United Kingdom. Over one quarter of all families here are affected
- 3 As a campaigning body, we work to bring about positive change to the social, economic and cultural life of people with disabilities and consequently our entire community. In pursuit of our aims we serve 45,000 people each year.
- 4 Our network of services is provided via our Headquarters in Belfast and in three regional offices in Carrickfergus, Derry and Dungannon.
- 5 Disability Action welcomes the opportunity to respond to this draft and to aid our response has put the relevant page/paragraph of the draft in brackets at the end of our comments.

GENERAL COMMENTARY

- 6 Disability Action commends the arrangement put in place to assist disabled and older people who required reasonable adjustments to participate in the consultation meetings.
(Information on website)
- 7 However we are concerned that the general contact details at the end of the information on dates and venues for consultation meetings does not contain a textphone or dedicated SMS number to enable deaf people to contact the Advocate's office in the same way as hearing people.
(Information on website)
- 8 Contact details on the OFMDFM website section on age also excludes a textphone or dedicated SMS number.
(OFMDFM website/equality/age)

- 9 Disability Action is concerned at OFMDFM's lack of awareness of the fact that disabled people as a group face the greatest, exclusion from information and communication technology and consequently indicating a preference for electronically submitted responses immediately discourages some respondents.
(Cover letter)
- 10 Again the contact details for the Legislation Team and Mrs Campbell omit textphone and dedicated SMS numbers. This is a very powerful and consistent message to deaf people.
(Cover letter)

SPECIFIC COMMENTARY

- 11 Disability Action would prefer that the legal and investigatory function be first on the list of powers.
(Page 5, Bullet point 1)
- 12 Memoranda of Understanding **must** be required to enable effective cross-commission/duty bearer working.
(Page 5, Bullet point 2)
- 13 Any older persons panel should reflect the diversity of Northern Irish society and should include disabled people and those from black and minority ethnic communities.
(Page 5, Bullet point 4)
- 14 Disability Action is disappointed in the limited reference to United Nations principles and instruments. Firstly the requirement for the Commissioner to "refer" to the UN Principles for Older Persons is weak and potentially ineffective. This document sadly lacks appropriate reference to the human rights of older people. The word "interests" which is widely used throughout this document should be replaced by "rights".
- 15 One obvious gap is the lack of reference to the changed environment with the ratification of the United Nation Convention on the Rights of Persons with Disability and Article 33 of that Convention. With the changing demographics and increases in the numbers of over 80's disability issues become more and more relevant to the world of older people. The cross cutting relevance

of the age and disability rights debates need to be at least recognized and commented upon.

- 16 Whilst there is currently no Convention on the rights of older people, the same was true for disability only a few years ago. Disability Action believes it would therefore be prudent to deal with the issue of rights in a forthright manner.
(Page 6, Bullet point 3)
- 17 If the principal aim of the Commissioner **excludes** the safeguarding of older people's rights, OFMDFM must ensure that such power lies with the Human Rights Commission which can support older people by way of a human rights based approach and strong inquiry powers.
(Page 6, Bullet point 5)
- 18 If the Commissioner is to "promote the provision of opportunities for and the elimination of discrimination against older people" what is the role, function and powers of the Equality Commission with regard to age and how do such powers support or undermine the Equality Commission's Section 75 powers. Such issues should be clearly resolved before legislation is enacted.
(Page 7, bullet point 4)
- 19 Similarly do the powers to promote positive attitudes and encourage participation, laudable in themselves, conflict with the duties contained in the Disability Discrimination Order?
(Page 7, Bullet point 6)
- 20 Disability Action is disappointed at OFMDFM's failure to discuss these proposals with a broader range of organisations. As stated above, disabled people comprise a large proportion of older people but the Office failed to initiate discussions with the disability sector, for example Disability Action has within its membership, 180 disability organisations many of which may have wanted to participate in such an important debate. In relation to Annex 8, Disability Action would advise that the Law Centre is not a statutory body.
(Page 15, Paragraph 1.8)
- 21 Disability Action chooses not to use the questionnaire and presumes the views contained in this response will receive equal consideration.

(Page 16, Paragraph 1.10)

22 The draft integrated impact assessment does not provide enough information to enable the respondent to comment, but please note these general comments:

- The consultation document on the IIA is on OFMDFM's website which like other central Government websites fails to meet best practice in terms of accessibility for disabled people.
- The offer of alternative formats is made on page 101 of the document rather than prominently on front or back covers.
- The impact summary document presents opinions rather than the arguments which led to the opinions.
- There is no commentary on specific sub-groups e.g. disabled older people, older women, older carers as advised by the Equality Commission in its EQIA Guidance.
- The comment in relation to public expenditure relates only to the private section.
- The data considered does not include any information on specific sub-groups (see bullet point 4 above)

(Page 16, Paragraph 1.11)

23 In relation to the submission of views please see our comments at paragraph 9 above.

(Page 18, Paragraph 1.18)

24 Information on the availability of alternative formats should be placed in a prominent position such as front or back covers.

(Page 19, paragraph 1.20)

25 The issues of older people as carers should be included in the lists on page 21.

(Page 21, Paragraphs 2.1 & 2.2)

26 In relation to the equality and human rights context Disability Action is particularly concerned about how the Commissioner will relate to the other duty bearers and their combined Article 33

functions. These relationships are referred to but there is no attempt in the document to resolve such concerns.

Importantly there is not clear information on what powers this body will have when compared to the others. This leads to a risk that people will just be more confused about which entity to approach on what issue.

(Page 23 & 24, Paragraphs 3.1 – 3.5)

- 27 In addition monitoring and reporting arrangements on the treatment of older people under CERD, DECAW, CAT and UNCRPD is unclear. There is a strong need to ensure that the Commissioner for Older People's role is not seen by other duty bearers as a substitute for their responsibilities to older people particularly in relation to the UK's international responsibilities.

(Page 24, Paragraphs 3.5)

- 28 Disability Action believes that this document should contain a greater focus on Section 75 which is mentioned in paragraph 3.5 but is notably absent throughout this consultation. There is little reference to the duty of the Equality Commission in promoting and overseeing Section 75 in fact in section 9.1 where the Commissioner is expected to work with the ECNI which "is responsible for the promotion of age equality in the field of employment and vocational training..." The paragraph also refers to the PSNI and the RQIA but there is no mention of the statutory duty on **all** public authorities to promote equality of opportunity regardless of age.

- 29 Section 75 duties, which the ECNI is required to monitor are the most fundamental and legally binding way that already exists by which to engage older people in policy development (on housing, transport, health, policing and so on) affecting them. Disability Action would formally record its concern that the effective participatory mechanisms established by section 75 to let older people speak directly to public authorities may be eroded by the establishment of an intermediary body which may be seen to speak for them. The bill and associated regulations should clarify this issue.

(Page 24, Paragraph 3.5)

- 30 Disability Action supports paragraphs 6.5, - 6.7 and 6.9.

(Page 37)

- 31 Disability Action believes the principal aim should be to “safeguard and promote the **rights** and interests of older people to ensure clarity of purpose.
(Page 40, Paragraph 7.1)
- 32 Reference is made to the NICCY model, but it must be remembered and explained that NICCY takes as a core organising principle the UNCRC.
(Page 42, Paragraph 8.2)
- 33 In relation to paragraph 8.3 and 8.4 please see our comments at 18 & 19 above.
(Page 42, Paragraphs 8.3 & 8.4)
- 34 Chapter 9 makes references to potential gaps and overlaps but makes no effort to explore these issues or identify solutions. This in Disability Action’s view is a missed opportunity to safeguard existing provisions while maximizing the potential beneficial effects of the powers of the Commissioner.
- 35 Disability Action advises that a priority for the Commissioner on her/his appointment should be the implementation of section 75 as it applies to older people rather than the use her/his powers to seek to fill a gap created by the lack of implementation of this duty by the public sector.
(Page 45, paragraph 9.3)
- 36 Disability Action supports the proposals on mediation/arbitration as long as older people are clearly permitted to refuse to use such services and that the process is not allowed to develop into a shield against effective complaints mechanisms.
(Pages 49-51, Paragraphs 10.3 – 10.9)
- 37 As well as recognising the role of the Commissioner in being a strong, independent voice for older people, the First and Deputy First Ministers should recognise the power of section 75 of the Northern Ireland Act 1998 to support older people to speak for themselves and directly to duty bearers and policy makers.
(Page 59, Paragraph 11.22)
- 38 Disability Action supports the contents of paragraphs 11.24 & 11.25.
(Pages 60 & 61)

39 Disability Action supports Option 3 in paragraph 11.39.

(Page 65)

CONCLUSION

40 Disability Action has welcomed the opportunity to contribute to this important consultation.