

# The Disability Discrimination (Northern Ireland) Order 2006

Consultation on private clubs;  
premises; functions of public  
authorities and the questions  
procedure



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

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## FOREWORD

Quite often people with disabilities face greater barriers than most that frequently prevent them playing a full and active part in our society. We are determined to help disabled people overcome these barriers and to tackle the discrimination that is an everyday experience for too many of them. To do this we have, over the past two years, been taking forward a programme of legislative change which is transforming the rights of disabled people.

Some of the most significant and far-reaching reforms introduced over the last decade came into operation on 1st October 2004. From that date, there is no longer an exemption for small employers from the scope of the Disability Discrimination Act 1995 (DDA) and coverage has been extended to occupations and professions such as the police and prison officers. Also from 1st October service providers, for example, shops and banks, must make reasonable adjustments to physical barriers to ensure disabled people can use their services.

These changes will bring major benefits to disabled people in this country. They will increase employment and career opportunities and open-up access to a wider range of goods and services. Businesses will also reap major rewards by the creation of a more diverse and experienced workforce.

The Disability Discrimination (Northern Ireland) Order 2006 ("the DDO") which became law recently will further strengthen the DDA by extending civil rights in areas like:

- provision of transport services;
- letting of premises;
- responsibilities and duties of public authorities;

- membership of private clubs; and
- rights of disabled district councillors.

The DDO will also widen the definition of disability to provide protection for a broader range of disabled people.

This document seeks views on draft regulations arising from the DDO in respect of premises, private clubs, the functions of public authorities and the proposed extension of the questions procedure.

I want to ensure the new provisions operate properly and coherently, and welcome the views of disabled people, their representatives, businesses, and any other individual or organisation affected who wishes to comment on how regulations should operate. The outcomes of this consultation will also assist the Equality Commission for Northern Ireland in preparing codes and other guidance.

I look forward to hearing your views.

**DAVID HANSON MP**  
**MINISTER OF STATE**

# 1. INTRODUCTION

## Rights for disabled people

1.1 The Disability Discrimination Act 1995 (DDA) gave many long-overdue rights to disabled people. There were, however, significant areas where the law was insufficient, unenforceable or had not even been brought fully into effect. Disabled people and those representing them were disappointed that an opportunity to deliver comprehensive and long-term rights had been missed.

1.2 To address these concerns, the Disability Rights Task Force was set up in December 1997. The Task Force brought together groups from all sectors of society to consider how comprehensive and enforceable rights could be brought about. Their final report, *From Exclusion to Inclusion*, made 156 recommendations with implications for all aspects of disabled people's lives.

1.3 Many of these recommendations included proposals for legislative change and have now been acted upon, for example:

- The Special Educational Needs and Disability (Northern Ireland) Order 2005 increases the rights of children with special educational needs to attend mainstream schools and introduces disability discrimination laws for the whole education system in Northern Ireland for the first time;
- The Disability Discrimination Act 1995 (Amendment) Regulations (Northern Ireland)

2004 which came into operation on 1st October 2004, made significant changes to the DDA including: ending the exemption of small employers from the scope of the DDA; and bringing within its ambit a number of excluded occupations, for example, the police, fire-fighters and prison officers; and

- a number of measures have been introduced to improve the accessibility of public transport vehicles.

## **The Disability Discrimination (Northern Ireland) Order 2006 (“the DDO”)**

1.4 The Disability Discrimination (Northern Ireland) Order 2006 (“the DDO”) delivers the remainder of our response to the legislative recommendations of the Disability Rights Task Force. The main Articles in the DDO:

- extend the DDA to cover the provision of transport vehicles; provide a power to set an “end date” by which time all rail vehicles must be accessible and enable rail vehicle accessibility regulations to be applied to vehicles which are being refurbished;
- extend the DDA to cover all the functions of public bodies;
- introduce a new duty on public bodies to promote positive attitudes towards disabled persons and encourage their participation in public life;

- extend rights under the DDA to an additional 2,200 disabled people by ensuring that people with HIV, MS and cancer are covered from the point at which the condition is diagnosed;
- remove from the DDA's definition of disability the requirement that mental illnesses must be "clinically well-recognised";
- extend the DDA to cover relationships between larger private clubs (i.e., with 25 or more members) and their members;
- extend protection under the DDA to disabled district councillors;
- require landlords to make reasonable adjustments to policies, practices and procedures and to provide auxiliary aids and services to ensure disabled tenants can use and enjoy their property; and
- extend an existing procedure to help disabled people ask questions about alleged discrimination.

## **The purpose of this consultation**

- 1.5 The Order contains a number of regulation-making powers that will allow us to introduce the detailed measures necessary to implement the main provisions in the Order itself.
- 1.6 Views are sought on the following issues:

## **Chapter 2: Private clubs**

The DDO brings private clubs within the scope of the DDA. This chapter seeks views on the draft regulations which place duties to make “reasonable adjustments” on private clubs similar to the existing provisions applying to providers of goods, facilities and services more broadly.

## **Chapter 3: Premises**

The DDO adds to the existing duties on landlords and managers of rented premises so that they must make reasonable adjustments to their policies, practices or procedures, change a term of the letting or provide auxiliary aids and services.

This chapter seeks views on draft regulations to support these duties.

## **Chapter 4: Functions of public authorities**

The DDO ensures that all the activities of the public sector are covered by the DDA by now making it unlawful to treat a disabled person less favourably in the exercise of a public function and places an anticipatory duty of reasonable adjustment on public authorities.

This chapter seeks views on the draft regulations to support these duties.

## **Chapter 5: The questions procedure**

The DDA provides for a procedure through which a person who believes they have been discriminated against in contravention of its employment and occupation provisions can put questions to the alleged discriminator.

This chapter seeks views on a draft Order extending this existing procedure to discrimination in areas covered by Part III of the DDA, such as the provision of goods and services.

- 1.7 The following chapters explain our proposals in more detail and set out specific questions on each area of draft legislation.
- 1.8 The consultation gives you an opportunity to comment on the wording and effect of the draft legislation. We are keen to hear from as many people as possible and would be grateful if you would let us know about your opinions on the draft legislation. 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). Alternatively, you may complete the questionnaire online. A copy of the questionnaire can be accessed at [www.ofmdfmni.gov.uk/disability](http://www.ofmdfmni.gov.uk/disability) Responses should be received no later than **25 September 2006**.

This should allow you to respond on those issues which concern you or on which you have a view. If this document is not in a format that meets your requirements, please contact us at the address below:

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## **2. PRIVATE CLUBS**

**This chapter seeks views about our proposals to implement “reasonable adjustment” duties relating to private clubs. The Department gave a commitment to consult before imposing these duties when it published the draft DDO in January 2005.**

### **Current law**

- 2.1 Private clubs which offer goods, services or facilities to the general public (such as letting out their premises for banqueting or conferences, or renting out a sports pitch to local football or cricket teams) are covered in respect of these services by the existing provisions of the DDA. However, private clubs which do not offer goods or services to the general public are not covered by the current duties on service providers.

### **Effect of the Disability Discrimination (Northern Ireland) Order 2006 (“the DDO”)**

#### **Scope and coverage of the new rights**

- 2.2 Article 13 of the DDO gives disabled people new rights not to be discriminated against by private clubs. The definition of a “private club” used in the DDO is modelled on the definition contained in the Race Relations (Northern Ireland) Order 1997. The inclusion of this Article means that the DDA will now provide seamless protection from disability discrimination across the whole range of goods,

services and facilities that disabled people may use. It will not matter whether this is provided as part of provision to the public at large, for example in shops, video rental outlets, supermarkets, restaurants or cinemas or in the setting of an organisation with a controlled membership such as private social or sports clubs, some professional societies and political parties.

2.3 The DDO defines a private club as:

- “Any association of 25 or more persons, whether incorporated or unincorporated, and whether run for profit or not.”

2.4 The association must also have a constitution. This can be written down but need not be. As long as it has rules (governing things like membership) this will count.

2.5 The club must also run its affairs in a way so that its members do not constitute a section of the general public (in which case the club is likely to be covered by existing legislation). In practice, this means that it operates a policy of membership selection genuinely based on personal criteria. This might include, for example, undergoing a selection procedure where the applicant’s character or other relevant attributes are assessed and the possibility left open that the application could be rejected on these grounds.

## Examples

**A health club is open to the public. Club members pay an annual subscription and are provided with a membership card. Before using the club’s fitness equipment, a member**

**must undergo a fitness test. Although members have to satisfy certain requirements in order to use some of its facilities, undergoing a selection procedure for membership based on personal grounds is not a condition of using the club. This club therefore does not fall within the definition of an “association” as used in the DDO (and is likely to be already covered by the DDA).**

**A club providing dining and social facilities exclusively to its members requires that applicants for membership provide testimonials from three existing members to their good character before a decision can be made about the membership application. This club is unlikely to be covered by the existing law, but is likely to be covered as a private club by the DDO. The new duties described in this consultation document will then apply to it.**

2.6 The responsibility for ensuring that disabled people are not discriminated against will fall to the private club. In the normal course of events, the officers of the club and its ruling body will be the people who are responsible for making sure that the new duties are complied with and who, ultimately, may have to justify their actions to a court.

2.7 The following people will have rights under the new legislation:

Disabled people who are:

- applicants for membership of the private club;
- existing members of the club;
- associates (these are people who because they are members of a private club have the right to come into other clubs);
- guests invited by the club or its members; and
- people eligible to be guests of the club.

2.8 One other group also has rights. These are non-disabled people who support a disabled person who has brought a claim of disability discrimination. If the non-disabled person is “victimised” (i.e. treated less favourably) for giving support to the disabled person, then he or she may have the right to bring an action for disability discrimination against the victimiser.

### **Duties and responsibilities under the new law**

2.9 The DDO makes it unlawful for a private club to discriminate against a disabled person. There are two elements to this:

- a disabled people must not be treated less favourably for a reason relating to their disability compared to a person who is not disabled where there is no justification for doing so; and
- the private club must not fail to make a “reasonable adjustment” without justification, in circumstances where it is under a duty to do so.

2.10 The law also goes on to say in what specific circumstances these principles apply. For example in the case of a member of a club disability discrimination may be unlawful as a result of:

- the way that the club offers access to any benefits, facilities or services, or by the club deliberately refusing to afford them to a member;

- the club depriving a member of their membership or varying the terms of membership to their detriment.

2.11 Similar circumstances will also apply to associates. They include where the club:

- deprives an associate of their rights or varies those rights or subjects the associate to any other detriment.

2.12 Applications for membership and the treatment of guests are covered in similar ways.

### **Proposals on the detail of the new duties**

#### *The general approach*

2.13 The Department believes that the new duties should be consistent with those already placed on providers of goods and services more generally under the existing Part III of the DDA. This is based on the proposition that (a) the relationship between a private club and its members and guests is analogous to the relationship between other providers of goods and services and their customers, and (b) that the same levels of protection for disabled people is appropriate. This approach also has the benefit that organisations that provide some services only to their members and other services to the general public will face the same duties in respect of all their services.

2.14 The existing duties under Part III include the duty to make "reasonable adjustments". The remainder of this chapter considers these duties in more detail

and sets out how we intend to apply them to private clubs.

*The “trigger point” for the duty to make reasonable adjustments*

- 2.15 Under Part III of the DDA, the duty to make reasonable adjustments is currently triggered at the point at which a policy, practice or procedure applied by the service provider, or a physical feature of premises it occupies, makes it **impossible or unreasonably difficult** for a disabled person to make use of the service.
- 2.16 We believe this approach strikes a fair balance between the rights of disabled people and the providers of goods and services and therefore propose that the regulations should set the trigger point when a reasonable adjustment should be made in respect of the services of a private club at the same level.

#### Example

**A private village social club provides its membership application form in very small print on A5 paper. It printed a lot of forms a long time ago and wants to use them up. But the “small print” makes it very difficult for a person with very restricted vision to read the form or complete it. The form may be impossible or unreasonably difficult for them to use. A reasonable adjustment may be required – perhaps by producing the form in larger print.**

*An “anticipatory” duty*

- 2.17 Part III of the DDA provides that the duty to make reasonable adjustments should be “anticipatory”;

this means that a service provider should anticipate the needs of a disabled person in accessing their goods or services before they present themselves. It would be indefensible, for example, for a disabled person who uses a wheelchair wanting to use a restaurant with steps to the door on a particular evening to be told their request for a ramp could only be met the following week.

- 2.18 An anticipatory duty also helps to balance the responsibilities of service providers with the needs of disabled people, by ensuring the provider takes reasonable steps to accommodate all disabled people, rather than spending all their effort and resources on meeting the needs of the first disabled person to present themselves. Anticipating need does not necessarily mean making extensive or expensive provisions in advance, but should involve thinking in advance about what the needs of disabled members might be and deciding how they can be reasonably met.
- 2.19 The Department proposes that private clubs, like other service providers, should be subject to an anticipatory duty.

### Example

**The local bowls club is planning to refurbish its club house. It looks at the range of services and facilities it offers its members, for example, like the changing rooms where it considers shower cubicles with seats to help people to shower in more comfort after a match. This could help some members who have physical disabilities. It looks at its bar and decides to make one part of it lower to assist serving drinks to guests in wheelchairs. Finally it decides to provide improved secure storage for personal**

**bowls equipment so that members can safely store their “woods” in the clubhouse rather than transport these heavy objects to and from their cars each time they come to the clubhouse. Again this helps disabled people with mobility difficulties**

*The range of reasonable adjustments*

2.20 Part III of the DDA sets out three categories for the duty on providers of goods and services to make reasonable adjustments. These are adjustments to:

- policies, practices and procedures;
- the provision of auxiliary aids; and
- the physical features of premises to alter or remove the feature, enable the feature to be avoided, or to provide a reasonable alternative method of making the service available.

2.21 The Department proposes to apply the same provisions to private clubs.

2.22 The purpose of a reasonable adjustment is to make it possible for a disabled person to use and enjoy the same services or facilities used by other club members. However, the clubs need only take steps that are reasonable having regard to all the specific circumstances of the case, including the cost of the adjustment and the resources available to the club to make the adjustment.

**Example – policies, practices and procedures**

**A private social club organises its annual dinner for its membership of 30 people upstairs in a small local hotel. The room is not accessible to two members that have disabilities and who have severe difficulty in climbing**

stairs. There is no lift. The members usually decline to attend, but have complained in the past about the arrangements. The restaurant has ground floor facilities of equal quality at a similar price. However, the organisers of the dinner prefer the privacy of the room upstairs. The club should, however, consider whether a change in this practice would be consistent with a reasonable adjustment to allow access for its disabled members.

#### Example – auxiliary aids

A club with a regular programme of academic lectures and practical presentations for its members considers what can be done to make the programme more accessible for disabled members and others who are likely to attend. For the lectures this could include a range of measures from making copies of the lecturers' notes available in larger print or on audio tape (in advance or after the lectures) or the installation of a hearing loop to sign language interpretation. For the presentations it could additionally include things like brighter and more directed lighting to make sure that display panels were visible and the use of large print on panels to further improve legibility and therefore access to information. This combination of making aids available to ensure the needs of disabled people likely to attend the programme of lectures is likely to be reasonable.

#### Reasonable adjustments in special situations

2.23 There are a number of special situations that affect the duty to make reasonable adjustments. These are described below.

*Physical features – leased or rented premises, other binding obligations (e.g., mortgages)*

- 2.24 Part III of the DDA does not overrule any obligation that a service provider is under to seek permission from landlords or others with an interest in the property before making changes to physical features. However, the Act does require landlords or others with an interest in the property not to refuse such consent unreasonably.
- 2.25 Service providers must also comply with other legislation relating to the need to obtain consent for alterations to listed buildings.
- 2.26 The Department proposes that the same provisions should apply to private clubs.

*Private clubs which meet on domestic premises*

- 2.27 We recognise that homeowners should not be put under any obligation to agree to permanent changes to their homes and home owners will be under no obligation to agree to such changes.
- 2.28 This will not, however, absolve the club from seeking alternative solutions, including, if necessary and reasonable, the provision of temporary changes – such as the provision of a portable induction loop - or a change of venue to secure access for disabled members.

*Guests*

- 2.29 When considering what a reasonable adjustment for guests might be, the club will be able to factor in considerations such as the cost of the adjustment and the frequency of occasions when guests are, or could be, invited.

### *Political associations*

- 2.30 Political associations might, depending on their constitution, be covered by Article 25 of the Race Relations (Northern Ireland) Order 1997 as private clubs. Since Article 13 of the DDO uses the same basic definition of a private club, such associations may also be covered by the DDA in due course.
- 2.31 The relationship between members of a political association and the association itself is likely to be slightly different from that in other private clubs. People generally form associations to further their individual or common interests, but in a political association, the members associate together primarily to serve the interests of the association or its broader constituency.
- 2.32 The Department would welcome views on whether the nature of the relationship between members of a political association and the association itself is one that requires the duties to make reasonable adjustments to be modified.

#### **Examples:**

**A local branch of a political party always holds its AGM in the upstairs room of the local public house because the landlord is a member and offers the room at a preferential rate. This is the meeting at which officers are elected. The atmosphere is smoky and this has a detrimental effect on a member with cystic fibrosis who cannot attend and on a member who is a wheelchair user who finds the venue inaccessible. Both ask for a change to the venue. The association declines for reasons of both tradition and cost.**

**A blind person who uses Braille is elected to his local party's environment committee and asks to have committee papers prepared in Braille. The party declines because of the expense.**

**A member of a political party wants to volunteer to canvass locally in the run up to an election and asks for the cost of taxis to be reimbursed as he has difficulties with mobility. The party argues that limited funds are best spent on printing and distributing leaflets or offers to let him canvass by phone.**

*Justifications for not making reasonable adjustments*

2.33 Under Part III of the DDA, service providers can justify not making a reasonable adjustment if they can show that, in their opinion, their action was justified for one of a limited range of reasons and that it was reasonable for them to hold that opinion. We propose to allow the same justifications for a failure by a private club to make a reasonable adjustment.

2.34 In brief, the justifications are that:

- the less favourable treatment of the disabled person is necessary in order not to endanger the health or safety of the disabled person or any other person.

**Example**

**A golf club considers that it is not safe to allow a blind person onto the greens to play a round of golf at busy times because they were concerned about his ability to hit the golf ball without causing danger to others. This may well be a reasonably held opinion. But the club will need**

to bear in mind that there are also a large number of non-disabled golfers who don't play golf well and may also represent a danger. The club would have to show that their opinion about the potential danger caused by the visually impaired golfer was proportionate bearing in mind their approach to non-disabled players. If they could not, this justification may not be acceptable.

- The disabled person is incapable of entering into an enforceable agreement or giving an informed consent.

#### Example:

A club generally offers its members access to small loans from its own funds at low rates of interest to help at expensive times such as Christmas. The loans have simple conditions, but strict repayment terms to ensure that the club's limited funds are not placed at risk. A member with a severe learning disability applies for a loan. The application is declined, after careful consideration, because the club is of the opinion that the applicant cannot properly understand the strict commitment he is entering into and there is no one else who otherwise manages his affairs because he normally manages well on his own. This may be a reasonably held opinion.

- The treatment of the disabled person is necessary:
  - to be able to afford members, associates or guests, or the disabled person, access to a benefit, facility or service; or
  - because the association would otherwise be unable to afford members, associates or guests of the association, access to a benefit, facility or service.

2.35 These two justifications, which cover the standard or manner in which a service is provided, would give private clubs the scope not to make a reasonable adjustment for a disabled person where to do so would jeopardise the ability of the club to provide its services to other members, associates or guests or to the disabled person themselves.

- The difference between the terms on which membership is offered to the disabled person and those on which it is offered to other persons reflects the greater cost to the association of affording the disabled person access to a benefit, facility or service.
- The difference between the association's treatment of the disabled person and its treatment of other members reflects the greater cost to the association of affording the disabled person access to a benefit, facility or service.
- The difference between the association's treatment of a disabled person who is a guest or could be invited as a guest compared with a non-disabled guest reflects the greater costs to the association of affording the disabled person access to a benefit, facility or service.

2.36 The above three justifications, which are about the cost of services provided to a disabled person, would give private clubs the scope to charge a disabled person more for the services they provide, so long as the services were "bespoke" to the disabled person. They cannot be used in the case of services that are provided to all members etc of the club – in such cases the costs must be shared across all the service users.

### *Regulatory impact*

- 2.37 When it published the DDO, the Department also published a Regulatory Impact Assessment (RIA) which is available on <http://www.ofmdfmni.gov.uk/disability> to illustrate the economic effects of these proposals on private clubs and the wider community. The Department would welcome views, as part of this consultation on the costs and benefits arising from its proposals.
- 2.38 In particular, we would welcome information from private clubs on:
- adjustments that have already proved successful in meeting the needs of disabled members of clubs; reasons for successful outcome; description and costs involved; benefits hoped for and realised; and
  - adjustments that were not successful in meeting the needs of disabled members; reasons why not successful; description and costs of adjustment; benefits hoped for and not realised.



## 3. RENTAL AND MANAGEMENT OF PREMISES

### Summary:

**This chapter seeks views on detailed proposals underpinning the implementation of new duties of reasonable adjustment in relation to rented premises.**

### Current law

- 3.1 Disabled people already have protection against discrimination when they rent or buy property. This is set out in sections 22 to 24 of the DDA.
- 3.2 It is currently unlawful for those who “dispose” of premises to discriminate against a disabled person:
  - in the terms on which they offer to dispose of premises to the disabled person;
  - by refusing to dispose of premises to the disabled person; or
  - in their treatment of the disabled person in relation to any waiting list for the premises.
- 3.3 “Dispose” has a wide meaning and includes, for example, the sale, lease or rental of property. There are special rules for disposals by owner occupiers.
- 3.4 It is also unlawful for those who manage premises to discriminate against a disabled person occupying those premises:

- in the way they permit the disabled person to use any benefits or facilities;
- by refusing or deliberately not permitting the disabled person to use any benefits or facilities;
- or
- by evicting the disabled person or subjecting them to any other detriment.

3.5 Discrimination by anyone whose licence or consent is required for the rental or other disposal of premises to a disabled person is also prohibited.

3.6 Discrimination occurs if, for a disability-related reason, a landlord or manager treats a disabled person less favourably than they treat or would treat others and they cannot show that such treatment is justified.

3.7 Treating a disabled person less favourably can only be justified in certain limited circumstances. These include where the landlord or manager considers that the treatment is necessary to protect someone's health and safety, or that the disabled person is incapable of entering into an enforceable agreement (such as a lease). In either case, it must be reasonable for the landlord or manager to hold that opinion.

3.8 The duties apply to all types of premises, including commercial premises (such as shops) and non-commercial premises (such as dwellings let by private and social landlords). However, certain small dwellings are exempted. Broadly speaking, a small dwelling is one in which the landlord or manager shares living accommodation with those not of his household and either lets out accommodation in the premises to not more than two other households; or 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.

- 3.9 The Equality Commission for Northern Ireland will be issuing a Code of Practice which explains these duties.

### **Effect of the DDO**

- 3.11 The DDO adds to the existing protection for disabled people by requiring a “controller of premises” to make reasonable adjustments for disabled tenants and occupiers. “Controller of premises” means landlords and those who manage rented premises. The new duties are set out in Article 14 of the DDO, which inserts new sections 24A to 24L into the DDA.
- 3.12 As with the existing premises provisions, there are some exemptions. The DDO applies the small dwellings exemption described in paragraph 3.8 to the new duties of reasonable adjustment. Premises which are, or have been, the principal or only home of the person letting them will also be exempted.
- 3.13 Under these new sections, provided certain conditions are met (for example, that a request has been made), a landlord or manager of premises that are to let, or of premises which have been let, must make reasonable adjustments to their practices, policies and procedures, change a term of the letting or provide auxiliary aids and services for a disabled person. These new duties are explained on the following page.

## Practices, policies and procedures

- 3.14 A landlord or manager of rented premises may have to take reasonable steps to change a practice, policy or procedure. The duty arises where the practice, policy or procedure makes it impossible or unreasonably difficult for a disabled tenant or occupier to enjoy the premises or to use an associated benefit or facility; or for a disabled person who wishes to rent the premises to do so.
- 3.15 Provided certain conditions are met, the landlord or manager must take reasonable steps to change the practice, policy or procedure concerned so that it no longer makes enjoyment or use (or becoming a tenant) impossible or unreasonably difficult for the disabled person. For example, a landlord might have to allow a disabled tenant with mobility difficulties to leave their rubbish in another place if they cannot access the designated place.

### Examples

A landlord has a practice of visiting all of his tenants periodically for a quarter of an hour to check on the state of the premises and that the tenant is happy with everything. One of the landlord's tenants, Gordon, has learning difficulties. When the landlord visits Gordon he always arranges a half an hour appointment for this because Gordon needs more time to understand what the landlord is saying and doing.

Diana, who lives in a block of flats, has mobility problems. She finds it very difficult to use the main route to the tenants' garages because she has to go up a flight of steps. There is an alternative route through the flats' communal garden, which allows level access to the garages. Diana normally uses this route. However, the

managing agent has a health and safety policy of closing the gardens in the summer for two hours on Monday mornings while a gardener mows the lawns. The gardener only takes twenty minutes to mow the lawns and uses the rest of the time for general gardening. The gardens are closed when Diana needs to leave for work. She asks if the managing agent will change his policy and shut the gardens for only half an hour while the gardener is actually mowing the lawn. The managing agent discusses this with the gardener and agrees to shut the garden only while he is mowing.

### **Terms of a letting**

- 3.16 Similarly, a landlord or manager of rented premises may have to take reasonable steps to change a term of the letting, if the term makes enjoyment of the premises or use of an associated benefit or facility impossible or unreasonably difficult for a disabled person.

### **Example**

Kerry's mobility problems have increased and she is unable to get to the upper floor of her rented house. She asks her landlord for permission to install a stair lift.

The landlord is not keen on this and wants to enforce the clause in her lease which forbids alterations being made. He is concerned about the costs of removing the stair lift if Kerry leaves. He takes advice from his local landlord association. They advise him that it may be a reasonable adjustment for him to change the clause in the lease to one that allows improvements and, if so, he would not be able to withhold consent unreasonably to the installation of the stair lift. He could, however, make removing it at the end of the tenancy a condition of his consent.

**The landlord allows Kerry to install the stair lift at her own expense and if she agrees to pay for its removal when she moves on.**

### **Auxiliary Aids and Services**

- 3.17 A landlord or manager of rented premises will have to take reasonable steps to provide an auxiliary aid or service if that would enable or facilitate a disabled person's enjoyment of the premises or their use of any associated benefit or facility. Similarly, where premises are to let, reasonable steps must be taken to provide an auxiliary aid or service where that would enable or facilitate a disabled person to take a letting of the premises.
- 3.18 These duties arise where the effect of not providing an auxiliary aid or service would be to make enjoyment of the premises or use of any benefit or facility unreasonably difficult or impossible for a disabled person. A landlord might, for example, have to put correspondence in 20 point font for a visually impaired tenant, or provide a clip-on receiver which vibrates when the door bell rings for a tenant who is hard of hearing.
- 3.19 However, the duty does not arise unless the auxiliary aid or service is needed specifically in connection with the use of the premises concerned. Accordingly, a landlord would not have to provide a wheelchair for a tenant who had difficulty in walking as the tenant would need this for general purposes and not just for moving around the flat.

### **Examples**

**Due to his disability, George has started using a wheelchair. He is now trapped inside his rented ground**

floor flat because he can't get down the two steps at the entrance of the block of flats. His shopping is done by friends and family. To allow him to get down the steps in his wheelchair George needs a portable ramp. He discusses this with his landlord who agrees to buy one. George is now able to do his own shopping again.

Andy rents a furnished flat. His arthritis makes it very difficult for him to get out of the chairs because they are too low. He asks his landlord to change one of the chairs to a higher more suitable one. The landlord agrees and finds a chair that Andy can easily get out of, in another of his flats.

### **Physical features**

3.20 A landlord or manager of rented premises, or of premises which are to let, will not have to take any steps that would involve the removal or alteration of a physical feature (however, if the terms of the letting are modified so as to permit an alteration with the landlord's consent, then the provisions of Article 16 of the DDO would apply). There are powers in the DDO to prescribe by regulation what is to be treated as a physical feature and as an alteration to a physical feature.

### **Justification**

3.21 A landlord or manager may justify a failure to make a reasonable adjustment only where he believes:

- the treatment is necessary not to endanger someone's health and safety; or
- the disabled person is incapable of entering into an enforceable agreement (such as a lease).

In either case, the landlord or manager must show that it is reasonable to hold that opinion. There are regulatory powers enabling changes to be made to these justifications.

### **Enforcement**

- 3.22 A disabled person who believes they have been discriminated against will be able to apply to the county court. As with the existing duties, if discrimination has occurred the court will be able to order payment of compensation.

## **Proposals for regulation**

### **Meaning of terms**

#### *Defining “physical feature”*

- 3.23 As noted in paragraph 3.20, a controller of premises will not be required to alter or remove a physical feature of premises. The term “physical feature” is not defined in sections 24A to 24L, but there is a power to set out in regulations what is and is not to be treated as a physical feature, and to be treated as an alteration.
- 3.24 The term “physical feature” is already used in Parts II (employment), III (goods, facilities and services) and IV (education) of the DDA. In the first two cases, the term has been defined<sup>1</sup>. It has not been defined for Part IV; however, some guidance as to its meaning is set out in the relevant section<sup>2</sup>.

1 Respectively, section 18D(2) and regulation 2 of the Disability Discrimination (Services and Premises) Regulations (Northern Ireland) 1999 (SR 1999 No 202).

2 Section 28C.

- 3.25 There are advantages to defining what is included in the term. For example, the definition in Part II of the DDA reduces the scope for argument about the features of an employer's premises which can trigger the employer's duty of reasonable adjustment.
- 3.26 However, this precedent does not have to be followed. An alternative approach would be simply to rely on the natural everyday meaning of the term physical feature for the new premises duties.
- 3.27 The Department would welcome views on the approach taken in the draft regulations.

Regulations would:

- provide certainty for landlords and tenants;
- be consistent with practice elsewhere in Part III of the DDA (the new duties will be in Part III);
- mean that the scope of the new duty of reasonable adjustment as it applies to physical features could be focused more precisely.

Not having a definition of what is included might:

- result in unintended conflicts with the meaning of terms such as "fixtures and fittings" in common usage in the housing and property sector;
- reduce flexibility at the margins as to what is, or is not, covered by the duty of reasonable adjustment;
- lead to uncertainty as to the meaning of the term physical feature.

- 3.28 In defining what is or is not to be treated as a "physical feature" in the draft regulations, we have considered:

- the need to cover correctly “fixtures and fittings” (i.e. things which are fixed to the fabric of the premises, such as doors and wardrobes screwed to a wall);
- recognition of the fact that in everyday language the term “physical features” may also include things like furniture and furnishings, and if so its scope may be reduced.
- the need to provide clarity for landlords and managers as to their duties and where they may be held liable for failure to comply;
- that the narrower the definition of terms, the broader the scope of the duty of reasonable adjustment (because landlords and managers of rented premises will not have to remove or alter a physical feature of premises) and the need to strike the right balance in framing the duties.

3.29 The Department’s starting point is the existing Part II definition. That definition is:

“physical feature”, in relation to any premises, includes any of the following (whether permanent or temporary)–

- (a) any feature arising from the design or construction of a building on the premises,
- (b) any feature on the premises of any approach to, exit from or access to such a building,
- (c) any fixtures, fittings, furnishings, furniture, equipment or material in or on the premises,

(d) any other physical element or quality of any land comprised in the premises.

3.30 This would produce the right result in most cases. For example, items such as cupboards and signs screwed to a wall are fixtures and would be treated as physical features under this definition with the result that the landlord would not have to alter or remove them.

#### **Tenant's alterations to premises**

3.31 The DDO makes it clear that a controller of premises will never have to take steps which would involve removing or altering a physical feature of premises (except in those circumstances covered by Article 16 of the DDO). There may, however, be a risk that the duty to make reasonable adjustments to a practice, policy or procedure may impact on policies concerning tenants' own alterations to the physical features of the premises.

3.32 We propose to regulate to make clear that a controller of rented premises will not be required, under the new duty of reasonable adjustment, to consent to a tenant making alterations to premises they rent or propose to rent, or to take steps to change a practice, policy or procedure regarding landlords' consent to tenants' improvements. This will avoid duplication of existing rights.

3.33 However, where existing housing legislation does not apply there may be circumstances where a lease expressly prohibits a tenant from making any alterations at all. The new duties address this by

imposing a duty to take reasonable steps to change such a term of the letting, if the prohibition makes use or enjoyment of the premises impossible or unreasonably difficult for a disabled person. The controller might, for example, change the term to one allowing alterations with his consent.

### **Justifying failure to make a reasonable adjustment**

- 3.34 As already explained a controller of premises can justify failing to make a reasonable adjustment only where one of two conditions applies. One of the conditions is that a disabled person is incapable of entering into an enforceable agreement or of giving informed consent.
- 3.35 This justification is common to other parts of the DDA. For example, section 20(4)(b) ensures that a service provider is not liable for discrimination against a disabled person for refusing credit for an expensive computer system if the disabled person does not understand what the transaction involves. However, Regulations (in this example SR 1996 No 557 regulation 8) ensure that the justification cannot be relied upon if the disabled person is acting through certain other people, for example, a person who has power of attorney.
- 3.36 We propose to adopt the same approach and regulate to ensure that a controller of premises (and a person disposing of or managing premises) will not be able to use this justification where a disabled person is acting through another person by virtue of:
- a power of attorney; and
  - functions conferred by or under Part VIII of the Mental Health (Northern Ireland) Order 1986.

## 4. FUNCTIONS OF PUBLIC AUTHORITIES

### Summary

**This chapter seeks views on the use of regulation-making powers to ensure that the law delivers improved rights to disabled people while ensuring that public bodies can continue to deliver this and their other responsibilities effectively.**

### Current law

4.1 The DDA protects disabled people against discrimination by employers, service providers and a number of other bodies. However, public authorities are responsible for some activities which are not covered by the existing provisions of the Act as they constitute *public* functions rather than, for example, service provision. The Department is committed to ensuring that all of the activities carried out by public bodies will be covered by anti-discrimination legislation, because it believes that the public sector should lead the way on equality issues.

### Effect of the DDO

4.2 The DDO extends the DDA so that the exercise of public functions is brought within the scope of the Act. This chapter explains how we expect these provisions to work and seeks views on the draft regulations.

4.3 The broadest interpretation of 'public functions' is that all the activities of a public body are part of

that body's 'functions'. Many of these functions are already covered by discrimination law: for example, in the context of the DDA, Part II of the Act covers the relationship between a public body and its employees. However, some 'public functions' are not caught by existing provisions.

- 4.4 Many of these activities are similar to service provision, but case law has shown that they do not fall within the definition of a 'service' used in discrimination law. Services could be provided by any private person – but public authorities have responsibilities that could not be discharged by a private person. For example, a local authority swimming pool could have been provided by a private person and, therefore, the local authority is providing a service in this case. However, only the police have the authority to arrest a person which means that they are exercising a public function when they arrest and detain someone. The box below gives some further examples of public functions.

### **Planning**

This includes the consideration of applications to build a new home or extend an existing home. The proposed provisions would ensure that disabled people are given the same opportunity as non-disabled people to express their views on planning applications. Relevant authorities would also need to ensure that local plans do not discriminate against disabled people.

### **Police**

Powers of arrest, detention and stop and search are not currently covered.

### **Granting licences**

Granting licences for the following activities would be covered by extending the Act to cover public functions: charitable collections; public entertainment and performances; street trading and taxis.

### **Publication of reports and statutory plans**

The act of publishing documents such as these would be covered.

### **Probation service**

Functions such as the preparation of pre-sentencing reports and the revocation of community sentences would be covered.

### **Prison service**

Prison discipline and prison escort services would now be covered.

## **Extending the Act to cover public authority functions**

4.5 As the list above illustrates, many of the functions carried out by public authorities are similar to the services that they provide. In addition, there are a number of areas of public sector activity where it is not clear whether the activity is a service or a public function. For example, the courts have not yet ruled whether the provision of public footpaths constitutes a service or a function.

4.6 We believe that it is therefore appropriate to ensure that the law prohibiting discrimination in the exercise of public functions should work in the same way as the law prohibiting discrimination in the provision of services. This will assist both public authorities and disabled people as it will mean that the rights of disabled people and the responsibilities of public authorities are broadly the same regardless of whether a particular activity is technically a service or a public function.

4.7 This means that a public body would discriminate against a disabled person if:

- they treated them less favourably in exercising a function for a reason related to their disability; or
- the way the public body carried out a function led to a very much less favourable outcome for a disabled person for a reason related to their disability (which could have been avoided if the function was carried out differently); and
- the public body could not justify that treatment.

### **The duty of reasonable adjustment**

4.8 A reasonable adjustment is a change to the way a body – such as an employer or a service provider – does something in order to treat disabled people more fairly. For example:

- an employer might provide a contract of employment in Braille if a visually impaired person requested it;
- a shop might replace a step with a ramp so that wheelchair users could enter easily; or

- a doctor might offer home visits to patients who found it particularly difficult to come to the surgery to arrange repeat prescriptions.

The nature of a reasonable adjustment depends on the circumstances of the case – providing a Braille leaflet to someone who didn't read Braille would not be a reasonable adjustment because it wouldn't achieve the aim of conveying the important information. When deciding whether to make an adjustment a body such as a service provider would need to consider a number of factors which would include the usefulness of the adjustment to disabled people, the cost of making the adjustment and the impact the adjustment might have on the body's other activities.

- 4.9 The way this duty is structured differs according to the relationship each part of the Act regulates – so, the employment provisions of the Act require employers to make reasonable adjustments when employees would otherwise be subject to 'substantial disadvantage' but does not require them to do so in advance of a disabled person presenting themselves.
- 4.10 This approach would not be successful in a situation where a disabled person was trying to make use of a service, however, a wheelchair user could not be expected to wait while a ramp was built when they visited a supermarket. The Act therefore requires service providers to **anticipate** some of the needs of disabled people – but because this anticipatory duty is more demanding than the reactive duty placed on employers, the trigger for the duty is strengthened from 'substantial disadvantage' so that service providers are only required to make reasonable

adjustments when failing to do so would make it **'impossible or unreasonably difficult' for a disabled person to make use of a service.**

4.11 The DDO replicates this **anticipatory duty** as closely as possible for public functions. However, it is necessary to phrase it slightly differently: while a disabled person clearly 'makes use of' a service such as a swimming pool, a disabled person who is arrested is unlikely to think that they are 'making use of' something provided by the police. The DDO therefore requires public authorities to carry out functions in a way that avoids **outcomes that are very much less favourable** for disabled people as a result of their disability.

4.12 The extent to which any particular adjustment would be 'reasonable' would depend on the individual circumstances of each case, including the resources available to the public authority and the extent to which the adjustment would make a difference to a disabled person. Reasonable adjustments will include:

#### **Adjustments to practices, policies, procedures and the provision of auxiliary aids**

Some of the most effective adjustments involve simple changes of policy or often inexpensive auxiliary aids, including:

- admitting guide dogs;
- providing a report or consultation document in cassette form;
- installing a portable induction loop; or
- providing a sign language interpreter – for example, a local authority planning committee

might arrange interpretation at a public meeting to enable deaf members of the public to participate in the meeting.

### **Making a function available by alternative means**

In some cases a reasonable adjustment may simply require a function to be delivered in a different way – for example, by:

- making a home visit;
- allowing access via a staff entrance;
- making an application form available in large print;
- giving help in filling in an application form;
- providing a reply to correspondence in large print or in Braille, or on an audio cassette;
- publishing consultation documents on the web and accepting replies by e-mail;
- holding a public meeting rather than simply accepting written comments; or
- providing an explanatory information cassette.

### **Adjustment to physical features of premises**

In common with the existing goods and services provisions of the Act, the DDO requires public authorities to make adjustments to premises when physical features would create barriers for disabled people. Such adjustments might include:

- non-slip surfaces on all floors;
- improved lighting;
- changing the height of door handles;
- installing hand-rails;
- installing stair lifts;
- structural alterations such as widening internal and external doors;

- installing automatic doors, ramps, or accessible toilets; or
- fitting permanent induction loops.

4.13 However, most functions of public bodies are exercised from premises from which bodies also deliver services so we do not expect that many additional adjustments to premises will be required.

4.14 In all cases, public authorities would only ever be required to make adjustments that were 'reasonable'. Whether a particular adjustment would be 'reasonable' will depend on the specific circumstances at hand. However, the DDO contains a regulation-making power to allow us to specify when it is or is not reasonable for an authority to take particular action.

### **Justification defences**

4.15 The DDA allows bodies to justify less favourable treatment or in some circumstances, a failure to make a reasonable adjustment in order to ensure that a fair balance is struck between the rights of disabled people and wider concerns. So, for example, an employer would be able to justify refusing to employ someone as a lorry driver if they could not see well enough to be able to drive safely.

4.16 The approach taken in the DDO is to mirror the justification defences in the goods and services provisions as closely as possible so that a public authority would be able to justify less favourable treatment of a disabled person or a failure to make a reasonable adjustment if:

- the authority believes that one of a limited list of conditions is satisfied; and
- it is reasonable in all the circumstances of the case for the authority to believe that.

4.17 The first condition is that an authority believed *‘that the disabled person is incapable of entering into an enforceable agreement, or of giving informed consent, and for that reason the treatment or outcome, is reasonable in the particular case’*.

#### Example

**A local authority offers loans to homeowners at competitive rates of interest to allow homeowners to make improvements to their properties. However, in order to qualify for the loan the applicant must sign a contract undertaking to repay the loan within five years. An application from a person with Alzheimer’s disease is refused, on the basis that that individual cannot understand the commitment to repay the loan within a specified timeframe. This refusal is likely to be justified.**

4.18 The second condition is that an authority believed *‘that the treatment, or outcome, is necessary in order not to endanger the health and safety of any person (which may include that of the disabled person)’*.

#### Example

**The DVLNI refuses to allow people with certain types of disability to have access to heavy goods duty vehicle licences. As this relates to the health and safety of the disabled person, and other road users, this would be**

**justified (note: as this position is a requirement of EU legislation, the DVLNI could not be challenged under this legislation).**

4.19 The third condition is that *'treating the disabled person equally favourably, would in the particular case involve extra costs and, having regard to resources, the extra costs in that particular case would be too great'*.

### Example

**Grants of up to £200 are offered to students to assist with further education costs. A disabled student explains that in order for them to access their preferred college of further education they must move home and request a grant of £22,000. Complying with this request would severely limit the resources the Department would have available with which to assist other students. A refusal of this request is likely to be justified.**

4.20 The fourth condition is designed to protect public bodies from charges of disability discrimination in circumstances where avoiding less favourable treatment of, or making a reasonable adjustment for, a disabled person would have significant detrimental consequences for the rights and freedoms of others that outweighed the effect of the less favourable treatment on the disabled person. For example, this justification might be used to defend the rights of a child not to be placed for adoption or fostering with an unsuitable disabled person. A public authority could use this defence if it believed *'that the treatment, or outcome, is necessary for the protection of the rights and freedoms of other persons'*.

### Example

**A disabled couple who both have terminal cancer and who are unlikely to live beyond one year are refused permission to adopt a child. This is likely to be justified as the welfare of the child is paramount in the adoption process. Adoption by a couple with a terminal illness would have a negative impact on the child's welfare and future security. This decision is likely to be justified.**

4.21 In addition to these four conditions, we recognise that the nature of the functions exercised by public authorities is such that it may be necessary to treat a disabled person less favourably in order to fulfil a legitimate aim of public policy, such as crime prevention. The DDO therefore provides that *'Treatment, or an outcome, is justified under this subsection if the acts of the public authority which give rise to the treatment or outcome are a proportionate means of achieving a legitimate aim'*.

### Example

**A decision not to call a blind person for jury service in a particular case where it is considered vital that the jury can consider a good deal of the evidence.**

4.22 These justification defences have been developed to take account of the wide range of activities that are delivered by public authorities as part of their public functions. A regulation-making power is available to permit us to vary these defences should they prove to strike an inappropriate balance between the rights of disabled people and the fair and effective delivery of public functions. However it is our view that we do not need to exercise this power at this stage.

## **Bodies affected by the new provisions**

4.23 These new provisions will place duties on anyone that exercises functions of a public nature. This will ensure that disabled people are protected, whoever is exercising a particular public function. The DDO does, however, exempt certain bodies and certain acts from the scope of the provisions; we believe this is necessary for constitutional or national security reasons.

4.24 The excluded public authorities are:

- either House of Parliament;
- a person exercising functions in connection with proceedings in Parliament;
- the Northern Ireland Assembly;
- a person exercising functions in connection with proceedings in the Northern Ireland Assembly;
- the Security Service;
- the Secret Intelligence Service;
- the Government Communications Headquarters; and
- units of the armed forces required to assist Government Communications Headquarters.

4.25 The excluded activities are:

- judicial acts;
- acts relating to making various types of legislation; and
- acts relating to decisions to institute criminal proceedings.

4.26 These limited exclusions could be extended by regulation should that be necessary – for example, were the security services to be reorganised, this power would allow for the legislation to be updated. There is, however, no current intention to use this power.



## 5. THE QUESTIONS PROCEDURE

### Summary

**This chapter seeks views on the Department's proposals to extend the existing procedure for asking questions about alleged discrimination.**

### Current law

- 5.1 The DDA provides a procedure by which a person, who believes they have been discriminated against in contravention of employment and occupation provisions, can put questions to the alleged discriminator (called the "respondent"). These provisions are set out in Part II and section 21A of the Act and the procedure itself (known as the "questions procedure") is set out in section 56.
- 5.2 Using the questions procedure can help a person find out more about the reasons for an alleged unlawful act and might enable a dispute to be resolved without the need for legal action. Subject to certain conditions being met, if a person decides to bring a case before an industrial tribunal, the tribunal must admit information gathered through the questions procedure as evidence.
- 5.3 Special forms have been prescribed (in the Disability Discrimination (Questions and Replies) Order (Northern Ireland) 2004 (2004 No.479)) which people can use to ask and to respond to questions. These can be adapted to cater for individual circumstances, but there are benefits from using the prescribed forms (or ones which have a like effect).

5.4 Time limits for the questions procedure and the manner in which the forms must be served (e.g. by post) have also been prescribed in the Order.

5.5 The time limits for submitting a questionnaire are:

Before a complaint has been made to a tribunal:

- within three months of the alleged act of discrimination or harassment; or
- where statutory dispute resolution procedures apply, within six months of the alleged act of discrimination or harassment.

Where a complaint has already been made to a tribunal:

- within 28 days of the date when the complaint was presented; or
- if the questionnaire was served with the leave of a tribunal, within the period specified by that tribunal.

5.6 There is also a time limit for responding to questions. Where the respondent fails, without reasonable excuse, to reply to questions within 8 weeks, then the tribunal will be able to draw any inference that it considers just and equitable. This may include an inference that the respondent has committed an unlawful act. The tribunal will also be able to draw such an inference from a reply that is evasive or equivocal.

## Effect of the DDO

5.7 Article 17 of the DDO restates and extends section 56 of the DDA so that it also applies in the areas of Part III not already covered, such as the provision of goods and services. This means that the questions procedure will also apply where a person (referred to as “the person aggrieved” in the new section 56) wants to ask questions about alleged discrimination:

- in access to goods, facilities and services (sections 19 to 21);
- by public authorities (Article 4: new sections 21B to 21E), with some exceptions, for example, if answering questions would prejudice a decision to institute criminal proceedings;
- by private clubs (Article 13: new sections 21E to 21H);
- by those who sell, rent or manage premises (sections 22 to 24); and
- by those who control rented premises (Article 14: new sections 24A to 24L).

5.8 The Department intends to prescribe appropriate forms for the new areas to be covered. Our proposals for doing so are explained below.

5.9 Cases about the issues covered by the extended questions procedure will be heard in county courts. Issues covered by the existing questions procedure will continue to be heard by industrial tribunals. All questions and replies will be admissible as evidence subject to certain conditions and a court or tribunal will be able to draw any inference that it considers just and equitable if a respondent fails, without reasonable excuse, to reply to questions within eight weeks or replies in an evasive or equivocal way.

5.10 The powers to prescribe various matters by Order are restated in the new section 56. These are:

- the forms a person can use to question the respondent;
- the forms the respondent can use to reply to any questions;
- the period within which questions must be served in order to be admissible in evidence before a tribunal or court; and
- the manner in which a question, and any reply by the respondent, may be duly served.

#### Example

Sunita was not allowed to eat a meal in a local restaurant because the manager objected to her guide dog. When asked to explain his reasons, all he would say was that “dogs are dirty and shouldn’t be allowed where food is served”.

Sunita subsequently sent him a questions form using the standard questions to ask him to explain why she had been refused entry. Because the questions form made clear that his replies could be used as evidence, the manager decided to find out about the DDA by calling the Equality Commission for Northern Ireland. Having done so, he realised that he had discriminated against Sunita and would lose any court case she brought against him.

Accordingly, he replied to her questions explaining that he had not known enough about the DDA, apologised for his behaviour, offered Sunita and her family a free meal and agreed that in future guide dogs would be admitted to the restaurant. She accepted this and did not take legal action.

## **Proposals for the extended questions procedure**

- 5.11 Because they deal with different kinds of circumstances and slightly different provisions in law, the Department believes that using *exactly* the same forms for the existing and the extended questions procedures could be confusing.
- 5.12 Accordingly, we propose to retain the existing questions and replies which were introduced in December 2004 for employment and occupational cases. These will also cover the new duties applying to disabled district councillors (inserted into Part II of the DDA by Article 3 of the DDO (new sections 15A to 15C)) when they come into operation.
- 5.13 The Department will prescribe new forms for the other extensions to the procedure, building on the existing model. We would welcome comments on its proposals for these new forms, which are set out below.

### **Questions and replies**

- 5.14 The Department proposes that the form a person aggrieved may use to ask questions about an alleged act of discrimination or other relevant matter will require them to:

- State their name and address, and that of the person to whom the form is addressed;
- Complete a standard statement to the effect that they consider a service provider; a public authority; a private club; a person disposing of, or managing, premises; or a controller of premises has discriminated against them unlawfully;

- Give a factual description of the alleged unlawful discrimination;
- Explain why they think the treatment they received was unlawful discrimination;
- Contain space for the person aggrieved to ask any other questions they wish; and
- Sign and date the questions.

5.15 The form will also set out standard questions asking the respondent whether:

- They agree that the description is accurate and, if they disagree, inviting them to say why or to give their version of events;
- They accept that the treatment was unlawful and, if not, why not and whether they consider it can be justified.

5.16 The form to be used by the respondent in replying to any questions will require them to:

- State their name and address, and that of the person for whom the reply is intended;
- Complete a standard statement acknowledging receipt of the questions form;
- Complete a standard statement EITHER agreeing that the aggrieved person's description of what happened is accurate OR saying that they disagree and setting out their description of the treatment complained of;
- Complete a standard statement EITHER agreeing OR disagreeing that they discriminated unlawfully contrary to Part III of the DDA;
- Set out their reasons if they disagree, or say why they consider the treatment was justified; and
- Sign and date the form.

5.17 The form will also:

- Contain space for the respondent to reply to any other questions posed by the person aggrieved; and
- Give the respondent the option of completing a standard response to the effect that they have deleted questions (or parts of questions) posed because they are unable or unwilling to answer them and the reason for this.

5.18 We intend to adopt the same requirements as in the existing questions procedure to prescribe the manner for serving questions and replies.

#### **Period for serving questions**

5.19 In the questions procedures, under other anti-discrimination legislation, a person is able to issue a questions form until their right to make an application to a tribunal or court has expired.

5.20 There is a time limit of six months from the act complained of for making an application to a county court about the issues to be covered by the extended questions procedure. However, this time limit is extended by two months where the issue has been referred to the Equality Commission for Northern Ireland.

5.21 Accordingly, we propose that the time limit for serving questions under the extended questions procedure for them to be admissible as evidence should be:

Before an application has been made to a court:

- six months from the act complained of, or
- eight months where the issue has been referred to the Equality Commission for Northern Ireland;

Where an application has already been made to a court:

- Only with the leave of the court and within the period specified by it.

## 6. QUESTIONNAIRE

In this consultation exercise, we are asking you to answer a number of questions and respond on issues. Please reply to as many as possible. The Freepost address to return your reply to is:-

**Karen Hughes**  
**Anti Discrimination Branch**  
**Office of the First Minister and deputy First Minister**  
**Room E3.17**  
**Castle Buildings, Stormont Estate**  
**BELFAST**  
**BT4 3SR**  
**Tel: 028 9052 3149**  
**Fax: 028 9052 3272**

Alternatively, you may complete the questionnaire online. A copy of the questionnaire can be accessed at [www.ofmdfmni.gov.uk/disability](http://www.ofmdfmni.gov.uk/disability)

### **Consultation:-**

You will also find a lot of helpful information on the Equality Commission for Northern Ireland's website [www.equalityni.org](http://www.equalityni.org)

You may also wish to refer to the following:-

- **The Disability Discrimination (Northern Ireland) Order 2006.** It comes with Explanatory Notes and a Regulatory Impact Assessment. In this document, it is referred to as "the DDO." You will find it on the web at <http://www.ofmdfmni.gov.uk/index/disability>.
- **The Disability Discrimination Act 1995**, which is known as the DDA.

- **Regulatory Impact Assessment**, or RIA, which is an assessment of the impact of policy options in terms of the costs, benefits and risks of any proposal.
- **From Exclusion to Inclusion 1999** The final report of the Disability Rights Task Force.

## **7. REGULATORY IMPACT ASSESSMENT/EQUALITY IMPACT ASSESSMENT**

### **General**

1. The Regulatory Impact Assessment (RIA) and the Equality Impact Assessment (EQIA) accompanying the Disability Discrimination (Northern Ireland) Order 2006 ("the DDO") also cover these regulations. The RIA provides a detailed analysis of the possible costs and benefits arising as a result of the new duties that will be imposed on private clubs, landlords, service providers and others. Both the RIA and EQIA can be accessed at:

[www.ofmdfmni.gov.uk/disability](http://www.ofmdfmni.gov.uk/disability)

2. In the main, the proposals in this consultation document do not add to or vary the main duties in the DDO. Instead, they provide some clarification of provisions where the underlying principle was already costed in the DDO RIA. Therefore, it is not expected that there will be any significant variation in the costs outlined in the DDO RIA as a result of the proposals in this consultation.
3. However, we welcome any comments on the impact of the proposals in this document and will ensure they are taken into account in our final proposals.

The Department will publish a summary of responses following the completion of the consultation process. If you would prefer your response to be treated as confidential, please let us know, stating your reasons clearly. Any automatic confidentiality disclaimer generated by your IT system will be taken to apply only to information in your response for which confidentiality has been specifically requested.

If we are asked to disclose responses under freedom of information legislation, we will take any requests for confidentiality into account. However, confidentiality cannot be guaranteed.

We will handle appropriately any personal data you provide in accordance with the Data Protection Act 1998.

For further information about confidentiality of responses, please contact the Information Commissioner's Office or see website at: **[www.informationcommissioner.gov.uk](http://www.informationcommissioner.gov.uk)**



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