



Office of the

**First Minister and
Deputy First Minister**

www.ofmdfmi.gov.uk

The Disability Discrimination
(Transport Vehicles) Regulations
(Northern Ireland) 2009

Regulatory Impact Assessment

December 2009

1. Title of proposal

- 1.1 This Regulatory Impact Assessment considers the impact on business of the introduction of the Disability Discrimination (Transport Vehicles) Regulations (Northern Ireland) 2009.

2. Purpose and intended effect

The objective

- 2.1 Part 3 of the Disability Discrimination Act 1995 (DDA 1995) gives disabled people a right of access to goods, facilities and services. The Act, however, specifically provides that transport services consisting of the provision or use of a vehicle are exempt from these provisions.
- 2.2 The purpose of these Regulations is to lift the exemption from the provisions of Part 3 of the DDA 1995 in relation to specified land-based transport services. The services affected are those using the following types of vehicles: buses; coaches; taxis, private hire vehicles; trains; rental vehicles; guided transport; and breakdown recovery vehicles. Transport providers operating such vehicles will be required to ensure that they do not unreasonably discriminate against disabled people.
- 2.3 The DDA 1995 will make it unlawful for a transport provider to discriminate against a disabled person by:-
- (a) refusing to provide (or deliberately not providing) any service which it offers or provides to members of the public,
 - (b) providing a service of a lower standard or in a worse manner,
 - (c) providing a service on worse terms, or
 - (d) failing to comply with a duty to make reasonable adjustments if that failure has the effect of making it impossible or unreasonably difficult for the disabled person to make use of any such service.

The background

- 2.4 Section 19(5)(b) of the DDA 1995 (as originally enacted) contained a specific exemption for the operators of transport services from the provisions of Part 3 of the DDA 1995. It was decided at the time that simply giving disabled people "rights" in respect of public transport would not deliver the effective and sustainable transport solutions needed. For that reason, Part 5 of the DDA 1995 was introduced to provide for detailed technical requirements to be made for rail vehicles, buses, coaches and taxis. This allowed government to specify dimensions that it knew could meet the needs of disabled people and which could be applied to all relevant transport modes to give disabled people the reassurance of consistency.

- 2.5 In its report to the UK Government entitled "From Exclusion to Inclusion" (published in December 1999), the Disability Rights Task Force (DRTF) recommended that the exemption in section 19(5)(b) of the DDA 1995 should be lifted, at least in part. That recommendation was accepted in the UK Government's response entitled "Towards Inclusion" (published March 2001). The Northern Ireland Executive's response to the DRTF recommendations was entitled "Improving Civil Rights for Disabled People" (published September 2001).
- 2.6 Public transport plays a major role in providing independent mobility for disabled people. Existing regulations introduced under Part 5 of the DDA 1995 require new bus, coach and rail vehicles to be accessible. To have mandatory requirements for accessible vehicles, but not for services provided with them, is an anomaly which could lead to discrimination, reducing the effectiveness of the vehicle design regulations made under Part 5 of the DDA 1995.
- 2.7 The DTRF recommendation was taken forward here by enacting the Disability Discrimination (Northern Ireland) Order 2006. Article 7 of that Order amended the DDA 1995 by inserting a new section 21ZA to replace the former exemption of transport services with a more precise exemption, relating only to transport services consisting of the provision and use of a vehicle. This new provision clarified that the providers of services in respect of transport infrastructure, such as stations and airports, were already subject to the provisions of Part 3 of the DDA 1995.
- 2.8 The new section 21ZA of the DDA 1995 provided OFMDFM with a regulation-making power to enable transport services to be brought within the scope of sections 19 to 21 of that Act. This regulation-making power enables the exemption to be narrowed or removed in whole or in part, in relation to different transport vehicles at different times. These Regulations are the first to be made under this provision.
- 2.9 These Regulations will mean that, where reasonable, transport providers will have to make changes to any "practice, policy or procedure" which makes it impossible or unreasonably difficult for a disabled person to make use of the service. Transport providers will also be required to provide, where reasonable, an auxiliary aid or service which would enable a disabled person to make use of a service available to other members of the public.

Risk Assessment

- 2.10 Since the exemption for transport providers has already been lifted in England, Scotland and Wales, failure to lift the exemption in Northern Ireland would discriminate against the local disabled population. This would be particularly apparent to people undertaking journeys from Northern Ireland to or through Great Britain.

- 2.11 Although some costs will be incurred by transport providers, a proportion of the bus and rail industry in Northern Ireland has voluntarily undertaken improvements to the services that they provide to disabled people. However, without the impetus for improvements which only legal protection can provide, disabled people would continue to be discriminated against by transport service providers who would be exempt from the duties all other providers are already under.

Quantitative data

- 2.12 The Northern Ireland Statistics and Research Agency (NISRA) has published a number of bulletins based on results from the Northern Ireland Survey of Activity Limitation and Disability (NISALD). Information from the July 2007 bulletin suggests that:-
- 18% of the population in Northern Ireland are limited in their daily activities for reasons associated with a disability or long-term condition. Looking only at the adult population, over one-fifth (21%) of adults in Northern Ireland have at least one disability. Amongst children, 6% are affected by a disability;
 - females generally have a higher prevalence of disability than males. Almost one-quarter (23%) of adult females living in Northern Ireland, compared to one-fifth (19%) of adult males;
 - there is a clear increase in disability with age, ranging from a low of 5% amongst young adults aged 16-25 to 60% amongst those aged 75 and above. Amongst the very elderly, aged 85 and above, the prevalence of disability increases to almost 67%.
- 2.13 In August 2007, NISRA produced a paper for the Promoting Social Inclusion Disability Sub Group on Housing, Transport, Information and Access further analysing people with disabilities experiences of using different modes of transport and transport services. The analysis showed that:-
- 13% of disabled people regularly travel in a taxi as a passenger, 1% travel by train, and 8% by bus (Ulsterbus, Metro/Citybus, Easibus);
 - 1% of disabled people use public transport daily, 8% 1-6 times per week, 7% 2-3 times per month, 26% rarely and 57% never.
- 2.14 Those disabled people who use public transport services were asked if they had experienced any difficulties in using it. Just over 16% said they had experienced difficulties when using public transport services in the previous 12 months. Unfortunately the survey did not provide a full breakdown of the reasons but the most common response (71%) was that disabled people had difficulty getting on or off vehicles. Respondents that rarely or never use public transport were asked the reason why. The vast majority (81%) stated that they preferred to use their own or another kind of transport.

3. Options

Option 1: Do not remove the exemption

- 3.1 This option is included for the sake of completeness. To do nothing would be to ignore the legitimate expectations of disabled people. Moreover, the Disability Rights Task Force (DRTF)¹ recommended in its report “From Exclusion to Inclusion” to the UK Government that this exemption should be lifted, at least in part. That recommendation was then accepted in the UK Government’s response, “Towards Inclusion” and in the Northern Ireland Executive’s response “Improving Civil Rights for Disabled People”. Non-removal of the exemption would therefore be contrary to stated policy.

Option 2: Rely on promotion of voluntary compliance by the transport sector with the measures relating to the provision of services in Part 3 of the DDA 1995

- 3.2 This option would build on progress already made by providers in some areas of transport provision. However, it would not promote confidence in the transport system as a whole amongst disabled people, nor would it provide any enforceable rights for disabled people. It is unlikely that promotion of voluntary schemes would result in a consistent approach across all facets of the transport sector.

Option 3: Legislate to remove the exemption for the transport sector

- 3.3 This option would provide a legal framework of enforceable rights for disabled people with regard to the transport sector. It would also ensure a level playing field for all transport providers, and would thus ensure a consistent approach throughout the sector.
- 3.4 The Department proposes that the best course of action to ensure a consistent level in service to disabled people across the full range of transport services is to pursue Option 3 and to remove the current exemption from compliance with the provisions of Part 3 of the DDA 1995. This RIA is based on the pursuit of this Option – the introduction of regulations to bring public transport, vehicle hire and breakdown services within the scope of Part 3 of the DDA 1995.

4. Benefits

- 4.1 The removal of the exemption will impact equally across all elements of the transport sector. Although some companies are already implementing procedures and practices which will become obligatory when the exemption is removed, the requirements will apply equally to

¹ The DRTF was established in 1997 to consider how best to deliver the Government’s manifesto commitment to comprehensive and enforceable civil rights for disabled people.

all operators of transport services who use the types of vehicles specified in the Regulations.

- 4.2 Many of the duties placed on the providers of transport services by the removal of the exemption from Part 3 of the DDA 1995 can be met by ensuring that staff have good training in disability awareness. Such training should greatly reduce the discrimination which disabled travellers sometimes experience which is often caused by a lack of awareness or ignorance rather than intent.
- 4.3 The new duties introduced by these Regulations will improve access to other services, such as healthcare, and to a wider range of facilities and activities enabling disabled people to play a fuller role in the economy and in society and helping to reduce social exclusion.

Business sectors affected

- 4.4 The Regulations will apply to public transport services - buses; coaches; taxis, private hire vehicles; trains; rental vehicles; guided transport; and breakdown recovery vehicles. The new duties placed on the providers of transport services by the removal of the exemption from Part 3 of the DDA 1995 will significantly extend disabled peoples' rights when travelling on these transport services. As a consequence, the benefits of the removal of the exemption will impact on virtually all disabled transport users.

Other impact assessments

- 4.5 An Equality Impact Assessment (EQIA) was prepared as part of the public consultation exercise on the draft Regulations. The EQIA stated that the Regulations should have a positive impact on equality of opportunity for disabled people by building on the DDA 1995 in order to strengthen, widen and deepen its coverage, in particular by:
- (a) making it unlawful to discriminate against a disabled person in refusing to provide, or deliberately not providing, a service which is provided to other members of the public, or in providing a service of a lower standard or on less good terms than those available to other members of the public;
 - (b) requiring, where reasonable, changes to any "practice, policy or procedure" which makes it impossible or unreasonably difficult for a disabled person to make use of the service;
 - (c) requiring, where reasonable, the provision of an auxiliary aid or service which would enable a disabled person to make use of a service available to other members of the public.

- 4.6 The Regulations are not expected to have any adverse impact on any of the section 75 groups. Statistics show there is currently a low incidence of disabled people using public transport and the Regulations have significant potential to increase the use of public transport by disabled people.

5. Costs

Bus and coach operators

- 5.1 Other than outlawing gratuitous discrimination, the inclusion of bus and coach services within Part 3 of the DDA 1995 will have no significant effect on the industry. Regulations under Part 5 of the DDA 1995, covering the construction of buses and coaches, have already been introduced through the Public Service Vehicles Accessibility Regulations (Northern Ireland) 2003 (SR No 37).
- 5.2 The main operator of public service vehicles in Northern Ireland is Translink. Translink has provided disability awareness training to its entire existing staff and it provides similar training to all new staff joining the organisation.

Taxis and private hire vehicles

- 5.3 The costs associated with applying the provisions of Part 3 of the DDA 1995 to the taxi sector are those of providing disability awareness training. In Northern Ireland, there are currently approximately 20,500 licensed taxi drivers and 10,750 licensed public and private hire taxis.
- 5.4 There is currently no requirement for a taxi driver here to receive any particular form of disability training or to be capable of displaying competency in the needs of disabled people, as a condition either for obtaining or renewing his taxi driver's licence. The number of taxi drivers who have undergone disability awareness training is unknown but the uptake of such training is perceived to be minimal. Generally speaking, drivers acquiring such training will have been obliged to do so in order to service home to school transport or social services contracts with statutory bodies or agencies.
- 5.5 Resulting from the on-going Review of the Taxi Regulations, the Department of the Environment (DOE) is considering requiring all new applicants for a taxi driver's licence and also all existing drivers within a specified period, to show certified evidence that they have achieved an accepted level of competency in relation to disability awareness. It is envisaged that training in these areas would be delivered by an outside agency (or agencies) approved by DOE. The cost of such training is most likely to be borne by taxi drivers themselves.

- 5.6 Based on GB assumptions, current or planned charges for disability awareness training could typically be in the range of £30 to £50 per course. However the main cost will be in the loss of earnings over the period of training. Taxi driver earnings vary considerable from area to area. An analysis carried out in 1999 for the UK Government estimated that in larger cities the average gross earnings from full-time taxi work were around £25,000 and elsewhere approximately £17,500. The more comprehensive training programmes take one to two days: if an average of one and a half days is taken then loss of earnings would be about £140 in larger cities and £95 elsewhere (based on 270 working days a year).
- 5.7 There are no figures available for staff turnover in the public and private hire trade. Entry into the trade is relatively low cost in most parts of the UK and turnover depends to a considerable extent on the state of the economy. For the purposes of this assessment, an annual turnover rate in Northern Ireland of 5 per cent has been assumed. Initial (non-recurrent) costs will apply to the training of existing drivers, thereafter there will be recurring costs of training new entrants. Very few taxi drivers have been trained in disability awareness. It is therefore estimated that the initial costs will apply to almost 100 per cent of the trade.
- 5.8 It is further estimated that approximately 25 per cent of the trade operates in the Belfast area with the higher level of gross earnings. It also estimated that future new entrants will reflect this 25:75 split between Belfast and elsewhere in Northern Ireland. Based on the figure of 20,500 licensed drivers, training of existing drivers would be needed for 20,295 (99 per cent of the trade) of whom 5125 will be from the higher earning area (i.e. Belfast). Thus the cost in lost earnings for these drivers will amount to £717,500 (5125 x £140) and for others £1,141,150 (15,170 x £95). The average charges made for the course is £40, amounting in total to £82,000 (20,500 x £40). The recurring costs are those for training new entrants of whom there would be 1025 (5 per cent of 20,500) with an annual earnings loss of £111,460 (assuming a continued 25:75 split in the number of drivers operating in Belfast and elsewhere) and a cost in course charges of £41,000 (1025 x £40).

Cost to service providers: taxis and private hire vehicles

Item	Non-recurring costs	Recurring costs per annum
Loss of earnings during training	£1,858,650	£111,460
Charges for training	£811,800	£41,000
Totals	£2,670,450	£152,460

Vehicle Hire Services

- 5.9 There are around 50 car rental outlets in Northern Ireland ranging from the major multi-national companies to small local businesses. In order to ensure that they are complying with the provisions of the DDA 1995, car rental providers will have to ensure that their staff are trained in dealing with customers with disabilities. They will also have to make available cars fitted with devices designed to allow disabled people to drive them.
- 5.10 Although smaller companies may not reasonably be required to supply a full range of vehicles adapted for disabled drivers and passengers, they should be able to advise customers where to obtain a suitable vehicle. Where a (larger) company has adapted vehicles or can provide them, staff should be able to advise customers of the suitability of their vehicles in relation to the customer's disability, and to advise them about contacting a specialist company when appropriate.
- 5.11 The majority of the devices to assist disabled drivers, like push-pull hand controls and steering wheel spinners, can be fitted and removed quickly without requiring any modifications to be made to the standard car controls. Weekly hire costs for these devices are approximately £130 to £140. Permanent hand controls are more expensive (ranging upwards from around £400 including fitting) and take longer to fit. They also tend to be model specific, whereas the portable controls can be fitted to most automatic cars.
- 5.12 Adaptations to vehicles may also be required for wheelchair users. Those who can transfer (to the car seat), use a manual chair and have a companion able to fold and stow their wheelchair may not require adaptations and will be able to use a standard vehicle. However, if they use a powered wheelchair or have no-one who can stow a manual chair, they will need a stowage system: wheelchair hoist, rooftop stowage or ramps for the rear of the vehicle (estate car or MPV). Wheelchair hoists cost from £500 and fitting involves fixing the hoist to the vehicle by drilling for screwed securement. Roof top hoists are more expensive; from £1,350 fitted to over £2,500. Portable ramps are the cheapest option, costing from £120 and have a long life.
- 5.13 The British Vehicle Rental and Leasing Association (BVRLA) represents about 85 per cent of the total industry in the UK. Analysis of figures provided by BVRLA indicates that there are around 117,500 vehicle rentals in Northern Ireland per annum. Although no figures are available for vehicle rentals to disabled drivers, anecdotal evidence suggests that they make up a small proportion of the total: in Great Britain it is estimated at around 1000 per annum of which about 70 per cent are for automatic cars fitted with portable hand controls. Since Northern Ireland is generally accepted to be around 2.5 per cent of the overall UK total, it can be assumed that there are around 250 rentals to disabled people in Northern Ireland per year.

- 5.14 No figures are available for the number of wheelchair passenger accessible vehicles rented from the industry. Rental of this type of vehicle from specialist companies (the vehicle usually has rear entry by ramp) throughout the UK is in the order of 1200 to 1300 a year. The pro rata figure for Northern Ireland is therefore likely to be around 30-32 rentals per year.
- 5.15 It is estimated that 70 per cent of disabled drivers are able to use portable controls. If the industry provided basic portable hand controls, at no extra cost to the customer, and an average cost of £140 for a week's hire, the cost to the industry would be in the order of £24,500 per annum.
- 5.16 If those companies that have estate cars or MPVs on their fleet provided portable ramps to assist wheelchair users to stow their wheelchair, the costs of this could be estimated, using an average cost of £150 per vehicle, and assuming that each vehicle is hired only once in a year, to be in the region of £11,250.
- 5.17 If staff training is undertaken on a rolling basis of two members of staff per outlet per annum the cost to the industry for training is estimated to be between £12,000 and £15,000 per annum.

Cost to service providers: vehicle hire

Item	Non-recurring costs (£)	Recurring Costs (£ pa)
Provision of portable hand controls		24,500
Staff training		12-15,000
Purchase of ramps	11,250	
Total	11,250	36,500 – 39,500

Breakdown services

- 5.18 From information provided by the principal national breakdown services and from organisations representing independent breakdown and recovery operators, there is already provision made to meet the needs of a disabled driver whose car breaks down.
- 5.19 Those services that directly employ their own patrol staff (such as the AA and RAC) give them training in disability awareness and in handling wheelchair users. Green Flag operates through an independent network of recovery operators, rather than with patrols employed directly. Although these operators do not receive disability awareness training from Green Flag, they have experience of dealing with the needs of car users who are disabled. The organisation is not aware of any case, over the last 30 years, where the recovery operators have

been unable to resolve any problems associated with assisting a disabled person whose vehicle has broken down.

- 5.19 In general, approximately 80 per cent of all breakdowns can be repaired at the roadside, so it is only a minority who need onward mobility. Most disabled people can be accommodated in standard recovery vehicles, but there are occasions when this is not possible, usually where the person concerned cannot transfer from their wheelchair. When this happens, the breakdown services have special procedures in place. These can include getting the police to cordon off the vehicle so that the wheelchair user can be safely assisted out of his vehicle or, with the customer's consent, recovering the vehicle with him still in it – for example when the vehicle has broken down in a dangerous place.
- 5.20 Where onward travel is required this will be arranged, often by using fully accessible taxis or other appropriate vehicles. Although recoveries of this kind are relatively few in number there are extra costs incurred but these are usually covered by the breakdown services even when the additional service is outside the terms of the policy held by the customer.
- 5.21 It is not considered that applying requirements of Part 3 of the DDA 1995 would result in any appreciable increase in the costs of breakdown services as most providers already make satisfactory arrangements for meeting the needs of disabled motorists whether they are the driver or the passenger.

6. Impact on small businesses

- 6.1 The majority of taxi, private hire, vehicle rental and hire services companies are small businesses. Although a substantial number of coach and bus operators could also be classed as small, the industry is dominated by a small number of large companies.
- 6.2 With the exemption of the vehicle hire services sector, the requirements placed by the Regulations are largely likely to concern the provision of appropriate training in disability awareness. The additional costs of this are modest. In the taxi and private hire sector, which has the highest number of small business (often just a single person), the costs of attending a training session, including allowance for lost earnings, would be in the order of £135 -£175 (approximately), estimated to be one per cent of gross annual earnings. The impact on small businesses in other transport sectors is not expected to be any greater than this.
- 6.3 The Regulations will apply to transport service providers of all sizes. The cost to individual service providers will be limited by the fact that the legislation requires them to do only what is reasonable in all the circumstances of the case. Any costs incurred by the service provider

in making reasonable adjustments to policies and procedures (or in the case of the vehicle sector, physical adjustments) will be spread across all customers as part of the service providers' general expenses.

7. Enforcement

- 7.1 Enforcement of these new provisions will be handled within the same framework as for other services under Part 3 of the DDA 1995. A person who believes that a service provider has unlawfully discriminated against them may bring civil proceedings under section 25 of the DDA 1995. These proceedings take place in county court.
- 7.2 The Equality Commission for Northern Ireland (ECNI) has statutory powers to work towards the elimination of discrimination and to promote equality of opportunity in respect of the provision of services to disabled people. In particular, ECNI can support individual disabled people with legal complaints under the DDA 1995.
- 7.3 ECNI's Code of Practice, whilst not imposing statutory obligations, can be used as evidence in legal proceedings under the DDA 1995. The courts must take into account any part of the appropriate Code that appears to them relevant to any question arising in those proceedings.

8. Monitoring and Review

- 8.1 The ECNI, as part of its overall duty to monitor the DDA 1995, will keep the legislative framework under review.

9. Consultation

Within Government

- 9.1 OFMDFM has consulted with the Department of the Environment (DOE) and the Department for Regional Development (DRD) in the making of these Regulations and in the compilation of this Regulatory Impact Assessment. OFMDFM has also brought the proposed Regulations to the attention of those Assembly Committees with a policy interest in them (the OFMDFM, DOE and DRD Committees).

Public Consultation

- 9.2 The proposed Regulations were subject to a public consultation that ran from 8 December 2008 to 13 March 2009. A total of 27 responses were received to the consultation exercise. The majority of these responses were supportive of the Regulations in principle. The main issues of concern focused on the modes of transport not covered by the Regulations and on the length of time taken to progress these Regulations.

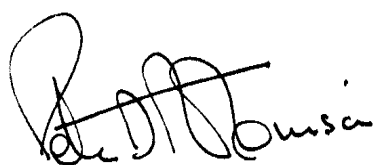
- 9.3 Both the consultation document and a summary of the consultation responses are available on the OFMDFM website:
http://www.ofmdfmi.gov.uk/index/equality/disability/consultation_on_removal_of_transportation_exemption_from_part_3_of_dda_1995.htm

10. Summary and Recommendation

- 10.1 The introduction of the new duties will remove an anomaly which has existed since the exemption for transport services was first written into the DDA 1995. Consultation has indicated that the decision to remove the exemption in respect of specified transport vehicles will be widely welcomed and is supported by both disability organisations and the transport industry.
- 10.2 This Regulatory Impact Assessment indicates that the Regulations will not result in any significant new burdens or costs on the affected sectors. Indeed, many transport service providers already comply with the spirit of the legislation.
- 10.3 The Regulations will provide parity with the duties other service providers are already under by extending disabled peoples' civil rights to transport services. It is recommended that the Regulations are made and laid before the Assembly.

11. Declaration

We have read the Regulatory Impact Assessment and we are satisfied that the benefits justify the costs.



RT HON PETER D ROBINSON MP, MLA
First Minister



MARTIN MCGUINNESS MP, MLA
deputy First Minister

Date: December 2009

Contact Official

David McGowan
Office of the First Minister and deputy First Minister
Equality Rights and Social Need Division
Room E.3.10
Castle Buildings
Stormont
BELFAST
BT4 3SR

Telephone: 02890523456
Fax: 02890523272
E-mail: David.McGowan@ofmdfmi.gov.uk