

Equality Commission

FOR NORTHERN IRELAND

Overview of the key changes brought about by the Disability Discrimination (NI) Order 2006

Disability Discrimination Law

Disability Discrimination Act (DDA) 1995

This booklet summarises the changes to the Disability Discrimination Act (DDA) 1995 brought about by the Disability Discrimination (Northern Ireland) Order (DDO) 2006. The DDO includes a number of changes to disability discrimination law across a range of different fields which implements many of the outstanding Disability Rights Task Force Recommendations (DRTF 1997-1999, government task force set up to review the Disability Discrimination Act 1995). The legislative changes are being introduced at various times from January 2007. Where the dates from which changes come into effect are known, we have included them. However, other dates are not certain at the time of publication (October 2007) and readers should ensure that they check with the Equality Commission or with the Office of the First Minister and Deputy First Minister regarding future implementation dates.

Please note that existing Disability Codes of Practice produced by the Equality Commission will not reflect the DDO 2006 changes. It is therefore important that this briefing note is used when interpreting DDA Codes of Practice and guidance which were published prior to 2007. Further information and advice on current disability law and changes to the law is available from the Equality Commission by contacting our enquiry line at 028 90 890 890 or you can visit our website www.equalityni.org.

Please note that this booklet gives general guidance only and should not be treated as a complete and authoritative statement of the law.

Definition of disability

The DDO 2006 amends the definition of disability so that people with progressive conditions such as cancer, HIV infection or multiple sclerosis (MS) will be deemed to be disabled from the point of diagnosis rather than from the point when the condition has some adverse effect on their ability to carry out normal day-to-day activities.

The DDO also removes the requirement in the DDA that a mental illness must be 'clinically well recognised' before it can count as an impairment for the purposes of the DDA. People with a mental illness will still need to show that their impairment has a long-term and substantial adverse effect on their ability to carry out normal day-to-day activities. The removal of the 'clinically well recognised' requirement brings DDA coverage for people with mental illnesses into line with coverage for other physical impairments.

[These changes came into effect on 31 October 2007](#)

District Councils

The DDO makes it unlawful for a district council to discriminate against its disabled members (ie councillors) when they are carrying out their official business. This new provision gives disabled district councillors similar rights not to be discriminated against for a reason related to their disability, and to have reasonable adjustments made for them, as do other disabled people who are protected by those parts of the DDA relating to employment – even though councillors are not employees of district councils.

[This change is expected to come into effect in December 2007](#)

Discrimination by Public Authorities

The DDO prohibits public authorities from discriminating against disabled people when carrying out all **public functions** other than (in broad terms) those of legislation, prosecution, judicial acts and state security. It therefore covers decisions by Ministers, district councils, police and other governmental organisations. Examples of public functions include assessing a benefit claim, issuing a licence, adoption or carrying out an arrest. Discrimination can in certain circumstances be justified.

There is also a duty to make reasonable adjustments for disabled people in relation to the carrying out of public functions. For example, this will mean the police might need to amend the policy of not carrying any dogs in police cars to allowing assistance dogs with disabled people. Another example would

be providing assistance to a person with mobility and learning disability when they are filling in the application form for a disability facilities grant from the Housing Executive. The duty requires public authorities to anticipate the requirements of disabled people and the adjustments that may be needed.

This extension to public functions brings the DDA in line with changes to the race discrimination legislation. The prohibition does not apply where a public authority is exercising a statutory power and has no discretion as to whether or how to exercise that power, or no discretion as to how to perform its duties.

Please note that public authorities already have duties under Part 3 of the DDA (goods, facilities, services & premises provisions) in relation to services they provide to the public or a section of the public.

[This change is expected to come into effect in December 2007](#)

The Disability Equality Duty

From 1 January 2007 the DDO placed new duties on public authorities to have due regard when carrying out their functions to the need to promote positive attitudes towards disabled people and the need to encourage participation by disabled people in public life. These are referred to as the "disability duties". Public authorities had to submit to the Equality Commission an action plan indicating how they proposed to fulfil the duties. The Commission must keep under review the effectiveness of these duties. The enforcement procedure relating to Section 75 of the Northern Ireland Act does not apply to these new duties. The Equality Commission has produced a "Guide for Public Authorities" which can be downloaded from our website – www.equalityni.org.

Police

The DDO clarifies who the correct defendant is in the case of a claim of discrimination being made against a police officer under Part 3 (goods, facilities, services and premises provisions)

of the DDA (for example where it is alleged that a police officer has discriminated against a disabled person when carrying out a function). It also authorises payment from the police fund of compensation or of costs of settlement in relation to such a claim.

This change is expected to come into effect in December 2007

Discriminatory Advertisements

The DDA already prohibits employers and others covered by the scope of Part 2 of the DDA (employment provisions) from publishing, or causing to be published, a discriminatory advertisement inviting applications for a job, training or other benefit.

The DDO extends the scope of the prohibition to cover third party publishers, such as newspapers, who publish a discriminatory advertisement on behalf of another. There is a defence for third party publishers if they can prove that, in publishing an advertisement, they relied on a statement about the lawfulness of the advertisement made by the person who placed it.

This change is expected to come into effect in December 2007

Group Insurance

The DDO clarifies that people who provide group insurance to an employer's employees are covered by Part 3 (goods, facilities, services and premises provisions) of the DDA. An employer who discriminates under a group insurance scheme is covered under Part 2 (employment provisions) of the DDA.

This change is expected to come into effect in December 2007

Private Clubs

A private members' club is one that selects its members on the basis of genuine personal criteria under the rules of its

constitution. This would include, for example, a golf club or a gentleman's club, to which applicants for membership are required to make a personal application, be sponsored by other members and then go through some kind of selection process, such as voting by existing members. Prior to the DDO (NI) 2006, such clubs were only covered by the DDA where they provided goods, facilities or services to the public. For example, a club which allowed the public to hire its dining facilities has had to make its services accessible to disabled people since 2004.

Under the DDO private clubs with 25 or more members are covered by the DDA in respect of their members, associates, guests and prospective members and guests. It is now unlawful for a club to discriminate in the following ways:

- By treating a disabled person less favourably for a reason relating to their disability compared to a person who is not disabled, unless justified in limited circumstances.
- By failing to make a reasonable adjustment, unless justified in limited circumstances, so that a disabled person can access their facilities.

These duties are equivalent to the duties in the DDA relating to providers of goods and services. The duty to make reasonable adjustments is anticipatory – that is, the club must anticipate the needs of disabled people and change things in advance. Clubs will only ever be required to do what is reasonable and may take into account factors like the resources of the club.

This change is expected to come into effect in 2008

Landlords and Managers of Premises

The DDO extends the reasonable adjustment duty to landlords and managers, in relation to premises (both commercial and residential) that they let to disabled tenants or prospective tenants. The reasonable adjustments that landlords and managers may need to make include:

- altering their policies, practices or procedures

- providing auxiliary aids or services; or
- changing the terms of a letting (but only in respect of premises that have already been let).

For example:

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 tenant has learning difficulties. When the landlord visits this tenant he always arranges a half an hour appointment for this because this person needs more time to understand what the landlord is saying or doing.

A landlord has a tenant who is visually impaired. He ensures that all written correspondence sent to her is in large print.

A landlord waives a term of the letting which prohibits the keeping of pets, in order to allow a blind tenant to keep an assistance dog on the premises.

A landlord or manager will not have to take any steps that would involve the removal or alteration of a physical feature. The DDO sets out further provisions about justification and prescribes things which are, and are not to be treated as physical features and alterations of physical features. The legislation also prescribes what are auxiliary aids and services and provisions about changing a term of letting

[This change is expected to come into effect in December 2007](#)

The DDO also confers power on the Office of the First Minister and Deputy First Minister (OFMDFM), by order, to amend the exemption for small dwellings for the purpose of restricting cases in which the small dwellings exemptions are available, or by removing those exemptions. Broadly speaking, the exemption applies to owner-occupiers either where they share living accommodation with those not of their own household and let out accommodation to not more than two other households, or where there is not normally residential accommodation on the premises for more than six persons

in addition to the landlord or manager and members of his household. Where the exemption applies, the DDA's provisions relating to premises generally do not apply.

Any order to modify or end any of those exemptions will have to be consulted on.

Questionnaire Procedure

The DDO introduces a questionnaire procedure to be used by complainants complaining under Part 3 (goods, facilities, services provisions) of the DDA. This enables a disabled person to serve a questionnaire on a service provider, or a club, about an alleged act of discrimination or, in the case of public bodies, the carrying out of a public function. A disabled person can also serve a questionnaire on those who sell, rent or manage premises and by those who control rented premises. The service provider, or club or public body or premises (the 'respondent') has eight weeks in which to reply.

The DDO also allows for the questionnaire to be admissible as evidence within prescribed time limits. Where the respondent does not reply, or replies in an evasive or equivocal way, without reasonable excuse, the court hearing a case would be able to draw any inference it considers just and equitable.

The questionnaire may well prevent formal complaints as it will draw service providers' attention to issues around the provision of their service to disabled people which they will then have the opportunity to address.

[This change is expected to come into effect in December 2007](#)

Transport

The DDO enables the Department for Regional Development (DARD) to achieve the policy objectives of applying rail vehicle accessibility Regulations (which came into force on 1 January 1999) to all rail vehicles. This means older trains – i.e. trains first brought into use before the 1 January 1999 - will have

to comply with the accessibility Regulations by the end date of 1 January 2020. It will enable the Department to apply the Regulations to older trains when they are refurbished. Exemption orders can be made however.

Prescribed trains will be required to have a rail vehicle accessibility compliance certificate. This will apply to new trains and old trains that have been refurbished. There are non-compliance provisions relating to these certificates.

The DDO clarifies the existing exclusion of transport services making it clear it relates only to transport services consisting of the provision and use of a vehicle. However, there is also power within the DDO for Regulations to lift the exemption for buses, coaches, taxis, trains, rental vehicles and breakdown recovery services. In **GB** the Disability Discrimination (Transport Vehicles) Regulations 2005 have been passed and came into effect on 4 December 2006. Once introduced, the transport provider must not discriminate and is under a duty to make reasonable adjustments. It is anticipated that similar legislation will be consulted on in Northern Ireland in 2008. They do not apply to aircraft or shipping vessels.

The proposed Regulations do not apply to aircraft or shipping vessels. However, the European Union has introduced a regulation for disabled air passengers from the 26 July 2007 called "The Rights of Disabled Persons and Persons with Reduced Mobility when travelling by air." It gives disabled people using air services new protection on all flights within or between European states. For further information contact the Enquiry line for the Equality Commission for Northern Ireland at tel 90 890 890 or visit our website at www.equalityni.org

At the time of publication, the timetable for introducing changes in relation to transport is unclear

Office of First Minister and Deputy First Minister

For information on operative dates of regulations, consultation reports, the Disability Discrimination (NI) Order 2006 and subordinate legislation, you can visit the OFM/DFM website at **www.ofmdfmi.gov.uk**

Equality Commission

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Further Help

For more information about rights and duties under the Disability Discrimination (NI) Order contact:

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Website: www.equalityni.org

For information on operative dates of regulations, consultation reports, the Disability Discrimination (NI) Order 2006 and subordinate legislation, you can visit the OFMDFM - website at:

www.ofmdfmni.org.uk