



Disability discrimination law in Northern Ireland - a short guide

Equality Commission

FOR NORTHERN IRELAND

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This short guide provides some basic information on disability discrimination law. It does not attempt to describe every detail and should not be taken as an authoritative statement of the law. Further information is available from the Commission's Enquiry line and on our website. Details of some of our other publications and how to contact us are given at the back of this booklet.

The Equality Commission for Northern Ireland

The Equality Commission has responsibility for enforcing the Disability Discrimination Act 1995 (DDA), as amended, in Northern Ireland. It also has a legal duty to work towards the elimination of discrimination against disabled people, to promote the equalisation of opportunities for disabled people, and to keep under review the working of the Disability Discrimination Act 1995 (DDA).

The law

The Disability Discrimination Act (DDA) introduced, over a period of time, new laws and measures aimed at ending the discrimination faced by many disabled people. It gives disabled people rights in:

- employment
- access to goods, facilities and services, including transport
- the management, buying or renting of property
- education.

The DDA only protects people who meet its definition of disability.

What is disability?

The DDA defines disability as “a **physical** or **mental** impairment which has a **substantial** and **long-term adverse effect** on a person’s ability to carry out **normal day-to-day activities**”.

Physical impairment - this includes, for instance, a weakening of part of the body (eyes, ears, limbs, internal organs) caused through illness, by accident or from birth. Examples are blindness, deafness, paralysis of a leg or heart disease.

Mental impairment - this includes mental ill health and what is commonly known as learning disability.

Substantial - put simply, this means that the effect of the physical or mental impairment on ability to carry out normal day-to-day activities is more than minor or trivial. It does not have to be a severe effect.

Long-term adverse effect - the effect has to have lasted, or be likely to last, overall for at least twelve months and the effect must be a detrimental one.

People who are diagnosed with cancer, HIV and multiple sclerosis are 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.

A **normal day-to-day activity** is something which is carried out by most people on a fairly regular and frequent basis, such as washing, eating, catching a bus or turning on a television. It does not mean something as individual as playing a musical instrument to a professional standard or doing everything involved in a particular job.

To meet the definition, a person must be affected in at least one of the respects listed in the DDA:

- mobility;
- manual dexterity;
- physical coordination;
- continence;
- ability to lift, carry or otherwise move everyday objects;
- speech, hearing or eyesight;
- memory or ability to concentrate, learn or understand; or
- perception of risk of physical danger.

People who satisfy the definition of 'disability' are covered by the DDA. This includes people who have had a disability in the past.

What is discrimination?

Employment

Under the DDA, discrimination in employment occurs when:

- a disabled person is **treated less favourably** than someone else on the grounds of his/her disability (direct discrimination)
- a disabled person is **treated less favourably** than someone else and the treatment is for a **reason relating to the person's disability**, and this treatment **cannot be justified** (disability related discrimination)
- there is a **failure to make a reasonable adjustment** for a disabled person

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- **victimisation** occurs
 - a disabled person is subjected to **harassment** for a reason which relates to their disability.

Provision of goods, facilities and services

Those who provide goods, facilities and services to the public, or a section of the public, cannot discriminate against a disabled person.

Under the DDA, discrimination in the provision of goods, facilities and services occurs when:

- a disabled person is **treated less favourably** than someone else and the treatment is for a **reason relating to the person's disability**, and this treatment **cannot be justified**
- there is a **failure to make a reasonable adjustment** for a disabled person.

Education

A separate piece of legislation deals with disability discrimination in education. Under the Special Educational Needs and Disability (NI) Order, discrimination in education occurs when:

- a disabled pupil or student or prospective pupil or student is **treated less favourably** than someone else and the treatment is for a **reason relating to the pupil's or student's disability**; and this treatment **cannot be justified**
- there is a failure to make a **reasonable adjustment** for a disabled pupil or student
- **victimisation** or **harassment** occurs.

Employment provisions

It is unlawful for an employer to discriminate on the grounds of disability. This includes the following areas:

- recruitment and selection
- terms and conditions of service
- arrangements for induction
- sickness policies and procedures
- pensions (subject to exceptions)
- opportunities for promotion, transfer, training, or receipt of other employment benefits; or refusal of such opportunities
- dismissal or any other detriment.

Disabled people also have rights under the DDA in what are known as “other working relationships”. This includes partners in firms, barristers and those on work experience placements for the purposes of vocational training.

Trade organisations such as trade unions and qualifications bodies also have the same duties as employers not to discriminate against disabled people who are members or potential members, or those who hold or are working to achieve a qualification.

The armed forces are currently the only occupation not covered by the employment provisions of the DDA.

Reasonable adjustments by employers

Employers may have to take particular steps to prevent their arrangements or premises from discriminating against people with disabilities – referred to as ‘reasonable adjustments’. Reasonable adjustments are designed to ensure fair access for disabled people or to compensate for the disadvantage they experience as a result of their disability. They include:

- making adjustments to premises
- allocating some of the disabled person’s duties to another person

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- altering the person's working hours
 - allowing absences during working hours for rehabilitation, assessment or treatment
 - acquiring or modifying equipment.

It may be reasonable for an employer to make more than one adjustment.

The Act lists a number of factors which may have a bearing on whether it will be reasonable for the employer to have to make a particular adjustment. These are:

- the effectiveness of the particular adjustment in preventing the disadvantage
- the practicability of the adjustment
- the financial and other costs of the adjustment and the extent of any disruption caused
- the extent of the employer's financial and other resources
- the availability to the employer of financial or other assistance to help make an adjustment.

Failure to make reasonable adjustment can only be justified if the reason for failing to do so is relevant to the circumstance of the particular case, and substantial.

Service providers have to make reasonable adjustments also. For more information on this see the section entitled 'Goods, facilities and services'.

What is harassment?

Harassment is defined as follows:

'A person subjects a disabled person to harassment where, for a reason which relates to the disabled person's disability, he engages in unwanted conduct which has the purpose or effect of:

- violating the disabled person's dignity, or
- creating an intimidating, hostile, degrading, humiliating or offensive environment for him.'

Harassment can include jokes, banter, insults, literature, isolating individuals, being condescending or deprecating about the way they behave or speak, picking on them unnecessarily, or generally creating a hostile or intimidating atmosphere because of the person's disability.

Complaints of harassment may be made against the employer as well as the harasser. In certain circumstances, individual employees can be held personally liable to pay compensation awards. Employers are liable for any harassment committed by their employees in the course of their employment even if they did not know about the harassment or would not have approved of it had they known. Employers can only defend a harassment case successfully if they can show that they took such steps as were reasonably practicable to prevent the employee carrying out the harassment.

For further information on what reasonably practicable steps an employer can take, please contact the Commission.

For further information on good practice recommendations and the duties on employers and trade organisations, see the Disability Code of Practice – Employment and Occupation and the Disability Code of Practice – Trade Organisations and Qualifications Bodies. These and other advisory publications are available on our website - www.equalityni.org - or from our Enquiry line.

Harassment in further and higher education

It is unlawful for responsible bodies to harass students, prospective students (and former students in some circumstances) in further and higher education colleges including universities, teacher training and agricultural colleges.

Goods, facilities and services

Which organisations are covered?

The Act makes it unlawful for those providing goods, facilities or services to the public and those selling, letting or managing premises to

discriminate against disabled people in certain circumstances. It does not matter whether the services provided are free (for example, access to a public park) or paid for (for example, a meal in a restaurant).

Those affected include hotels, shops, pubs, mail order or telephone order businesses, government departments, courts, employment agencies, local council services, law firms, doctors' clinics, churches, transport providers, and amenities such as parks (this is not an exhaustive list).

Educational services are covered under the Special Educational Needs and Disability Order (SENDO). For details see section on Education below.

When does discrimination take place?

It is unlawful for service providers to treat disabled people less favourably for a reason related to their disability. Service providers must not:

- refuse to serve a disabled customer
- offer a disabled customer a lower standard, or worse manner of service
- offer a disabled customer less favourable terms.

Reasonable adjustments by service providers

Service providers who offer services to the public must make reasonable adjustments. In order to make a reasonable adjustment, a service provider may have to:

- change a **practice, policy or procedure** which makes it impossible or unreasonably difficult for disabled people to use their services, for example, amending a “no dogs” policy to allow a disabled person accompanied by a guide dog to enter their premises
- provide an **auxiliary** aid or service if it would make it easier for disabled people to make use of their services, for example, the provision of information in alternative formats such as audio tape, Braille or large print

- provide a reasonable **alternative method** of making services available to disabled people where a **physical feature** makes it impossible or unreasonably difficult for disabled people to make use of them, for example, providing staff assistance to disabled customers who cannot access goods due to their disability when shopping.

Service providers have to make reasonable adjustments to the physical features of their premises to overcome physical barriers to access. A physical feature includes:

- any feature arising from the design or construction of a building on the premises occupied by the service provider
- any feature on those premises or any approach to, exit from or access to such a building
- any fixtures, fittings, furnishings, furniture, equipment or materials on such premises, including steps, kerbs, internal and external doors, toilet and washing facilities, lighting, signs and furniture
- all features are covered whether temporary or permanent. A building means an erection or structure of any kind.

Transport providers

The following types of vehicles are covered by the DDA, subject to some exceptions: buses and coaches, taxis, trains, rental vehicles, and breakdown recovery vehicles.

Transport providers have a duty not to treat a disabled person less favourably than other service users, and to make reasonable adjustments to their services.

Further guidance can be found in the Equality Commission Code of Practice on the Provision and Use of Transport Vehicles and range of sectoral guides.

Can a service provider treat a disabled customer less favourably or not make reasonable adjustments?

A service provider can justify treating a disabled customer less favourably or refusing to make reasonable adjustments:

- where the treatment is necessary in order to avoid endangering the health and safety of any person
- where the disabled person is incapable of entering into a legally enforceable agreement or of giving informed consent
- if they would otherwise be unable to provide the service to the disabled person or other members of the public
- when greater expense is involved in providing a special service for a disabled customer
- when an adjustment would fundamentally alter the nature of a business or service.

The service provider must believe that one or more of the above conditions exist and it must be reasonable to hold that belief.

Is there anything to stop a disabled person being given more favourable treatment?

A service provider may treat a disabled person more favourably than others. For example, a theatre manager can offer people who are hard of hearing front stall seats at rear stall prices; football clubs can reserve pitch-side places for wheelchair users; and historic houses can offer concessionary prices for disabled people.

Selling, letting or managing land or property

It is against the law to treat a disabled person less favourably when they are buying or renting land or property such as a house, a flat or a place to run a business. This covers most people involved in selling, letting or managing land or property, including local councils, housing associations, private landlords and estate agents.

Some landlords, such as those who let out rooms in their own homes to six or fewer people (not including relatives) are not included. The DDA does not apply to owner-occupiers who do not use estate agents or who do not publicly advertise their home “for sale”.

Discrimination when buying or renting land or property takes place when:

- a disabled person is refused the opportunity to buy or rent because of their disability
- worse terms are offered
- waiting lists are manipulated to a disabled person’s disadvantage
- disabled people are prevented or restricted from using benefits and facilities such as shared areas for recreation
- a disabled person is evicted or placed at a disadvantage
- consent is refused to sub-let to a disabled person.

Landlords and managers of both commercial and residential premises will, in certain circumstances, be under a duty to make reasonable adjustments on behalf of their disabled tenants or perspective tenants.

For more information in relation to the above, see the Code of Practice - Rights of Access, Goods, Facilities, Services and Premises.

Education

Disability discrimination in education is covered by the Special Education Needs and Disability (NI) order 2005 (SENDO), as amended. SENDO applies to schools, education and library boards, colleges and universities, including teacher training and agricultural colleges, and general qualifications bodies.

What are the duties under SENDO?

SENDO places duties on bodies responsible for the provision of education and associated services, admissions, expulsions and conferring qualifications:

- not to directly discriminate against a person because of their disability
- not to treat disabled pupils/students, prospective pupils/students and former students less favourably for a reason related to their disability
- to make 'reasonable adjustments' to all policies, procedures and practices to ensure that a disabled pupil/student is not placed at a substantial disadvantage compared to non disabled pupils/students (this duty is both an anticipatory and a reactive duty)
- for colleges and universities, this particular duty also applies to the provision of auxiliary aids and services, and to physical premises.
- to work towards making school life and the education experience more accessible to disabled pupils/students and prospective pupils/students, for example, in terms of premises, the curriculum and information. It is the responsibility of the Department of Education and Education & Library Boards to produce guidance on accessibility to assist schools with this particular duty.

For schools, the provision of auxiliary aids and services for disabled pupils and prospective pupils is facilitated through the Special

Educational Needs process. SENDO does not provide a new or additional means of obtaining the necessary aids and services to make education accessible to disabled pupils/prospective pupils.

Role of the Equality Commission under SENDO

Under the SENDO legislation, the Equality Commission has responsibilities to promote good practice, produce guidance materials, give advice and deal with complaints about disability discrimination in education. Other statutory bodies, for example, the Department of Education, Education and Library Boards and schools, have responsibility for the Special Educational Needs aspects of the law. Further information is available on the Department of Education's website at www.deni.gov.uk or contact the relevant Education and Library Board's¹ SEN department.

For more information about SENDO, see the 'Disability Code of Practice for Schools' and 'Disability Discrimination Code of Practice for Further and Higher Education' and other good practice publications. These are available from the Commission's Enquiry line or on our website – www.equalityni.org

Other provisions

The DDA has provisions concerning discrimination in relation to occupational pension schemes and group insurance schemes for employees, and discrimination by organisations which hire contract workers.

The DDA makes it unlawful for district councils to discriminate against disabled members (ie, councillors) when carrying out their official business. Discrimination by public authorities in carrying out their public functions is also unlawful. The duty to make reasonable adjustments also applies in these two areas.

¹ Please note - at the time of publication, there are plans to establish a single education authority which will replace Education and Library Boards.

Making a complaint

Disabled people who believe that they have been the subject of discrimination, or who consider that a reasonable adjustment has not been made, may make a complaint.

Anyone who believes they may have been the victim of unlawful discrimination should seek advice as soon as possible, as **time limits** apply to legal proceedings.

Time limits in employment cases

Complaints of discrimination in employment under the DDA must normally be made within **three months** of the act complained of. Complaints are dealt with by an Industrial Tribunal.

All employers should have procedures to deal with workplace grievance and disciplinary matters. In most cases, if a person fails to use or complete their employer's grievance procedure in relation to a complaint of discrimination, the tribunal can reduce any award of compensation by up to 50%.

Time limits under SENDO

- Schools

Claims of unlawful discrimination in relation to education in schools must be made by the parent of a disabled child within six months of the act complained of. The claim is made to the Special Educational Needs and Disability Tribunal (SENDIST) for Northern Ireland.

If the complaint is about disability-related discrimination in relation to expulsions from grant-aided schools, the complaint is made to the Education and Library Board Expulsion of Pupils Appeal Tribunal within ten days from the date of the principal's letter to the parents notifying them of their child's expulsion.

- Institutions of further and higher education

Claims of unlawful discrimination in relation to education in institutions of further and higher education must be made within six months of the act complained of. Complaints are dealt with in the County Court.

Time limits under goods, facilities, services and premises

Claims of unlawful discrimination in the provision of goods, facilities and services, and in relation to premises and transport, must be made within six months of the act complained of. Complaints are dealt with in the County Court.

Help and advice for individuals

The Equality Commission can provide free and confidential advice and assistance to people who believe that they have been discriminated against for a reason related to their disability. Assistance by the Commission ranges from giving advice to arranging for legal representation in some cases. The Commission does not decide whether discrimination has in fact occurred; this is for an independent Industrial Tribunal or Court to decide.

For more information on pursuing discrimination complaints, please see the Your rights section of the Commission's website or contact our Enquiry line. All our advisory publications are on our website and can be made available in a range of formats, including larger print, Braille and tape, on request.

Help for employers and service providers

The Equality Commission has produced a range of publications covering disability issues in relation to employment, goods, facilities and services, education and transport. These are available on our website or by contacting our Enquiry line.

We can provide advice and training on anti-discrimination legislation and good equality practice. Our advisory and training services are free.

The Commission also has information and guidance on other areas of discrimination law and equality for which we have responsibility – sex discrimination and equal pay; race; sexual orientation; religious belief and political opinion; age; and the statutory duties on public authorities to promote equality of opportunity and good relations under Section 75 of the Northern Ireland Act and the disability duties under the DDA.

Useful publications (see website for full details)

Disability Code of Practice – Employment and Occupation

Disability Code of Practice – Rights of Access to Goods, facilities, services and premises

Disability Code of Practice – Trade Organisations and Qualifications bodies

Disability Discrimination - Code of Practice for Schools

Disability Discrimination - Code of Practice for Further & Higher Education

SENDO Briefing guides for further and higher education

Short guide to SENDO

DDA – what service providers need to know (website only)

DDA - What employees and job applicants need to know

Definition of Disability

Avoiding disability discrimination in transport – your rights when accessing transport services in N Ireland

Code of Practice on the provision and use of transport vehicles

Avoiding disability discrimination in transport – sector-specific short guides for rail operators, coach operators, taxi operators, vehicle rental operators, and breakdown recovery operators

Draft guide for General Qualifications Bodies (website only)

Other disability-related duties on public authorities

Equality duties under section 75 of the Northern Ireland Act

In addition to not discriminating against disabled people, public authorities in Northern Ireland have to comply with equality and good relations duties under Section 75 of the Northern Ireland Act. Public authorities have to pay 'due regard' to the need to promote equality of opportunity between various groups, including those with and without disabilities.

DDA disability duties

Public authorities have to pay due regard to the need to promote positive attitudes towards disabled people and to encourage the participation of disabled people in public life.

UN Convention on the Rights of Persons with Disabilities

The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) requires the UK government to promote, protect and ensure the rights of disabled people. Areas covered by the Convention include: health, education, employment, access to justice, personal security, independent living and access to information. The Equality Commission and the Northern Ireland Human Rights Commission are jointly responsible for monitoring its implementation in Northern Ireland.

Contacting the Equality Commission

If you need help or advice about disability discrimination or any other aspect of equality law, please contact us. We provide free and confidential information and advice to individuals, employers and service providers. We can also provide training for employers and service providers.

Enquiry line: 028 90 890 890
Reception: 028 90 500 600
Textphone: 028 90 500 589
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Updated April 2011

