

Equality Commission

FOR NORTHERN IRELAND

Equality Commission for Northern Ireland Report to the Northern Ireland Assembly:

Public Authorities who failed to comply with the Disability Discrimination Order 2006 requirement to produce and submit a 'Disability Action Plan', to the Commission, by the first required submission date of 30 June 2007.

**Date laid before the Northern Ireland Assembly:
13th January 2009**

Legislation that Requires Instrument to be laid:

The Disability Discrimination (Northern Ireland) Order 2006, Part VA, Public Authorities, 49B - Section 6. (Extracts from legislation enclosed in Appendix 1 of this report).

NIA number: 71/08-09

1. Executive Summary

1.1 Under Section 49A of the Disability Discrimination Act 1995 (the 'DDA 1995'), (as amended by Article 5 of the Disability Discrimination (Northern Ireland) Order 2006), public authorities, when carrying out their functions, must have due regard to the need to:

- promote positive attitudes towards disabled people; and
- encourage participation by disabled people in public life.

Section 49A of the DDA 1995 introduces a 'General duty' which has two elements. The two elements are referred to in the Equality Commission's Guidance¹ on the duties as 'the disability duties'. The disability duties came into effect on 1 January 2007.

1.2 Under section 49B of the DDA 1995, public authorities are also under a duty to submit plans, referred to as 'Disability Action Plans' to the Equality Commission for Northern Ireland (hereafter referred to as the Commission), showing how they propose to fulfill the disability duties in relation to their functions. The provisions of Sections 49A and 49B of the DDA 1995 are outlined in full in Appendix 1 of this report.

1.3 Public authorities subject to the disability duties as at 1 January 2007 were required to submit a disability action plan to the Commission by 30 June 2007, unless exempted by the Commission from producing such a plan.

1.4 Under the Disability Discrimination (Northern Ireland) Order 2006, Part VA, Public Authorities, 49B - Section 6, the Equality Commission has a statutory duty to report public authorities who failed to comply with the legislation to the NI Assembly. The Commission has no discretion in this regard.

¹ A Guide for Public Authorities - Promoting positive attitudes towards disabled people and encouraging the participation of disabled people in public life. (March 2007).

Twenty five public authorities failed to submit a disability action plan to the Commission by 30 June 2007. Of those 25, 13 subsequently submitted a disability action plan and 4 ceased to have functions relating to Northern Ireland.

The Commission as stated previously has no discretion in relation to reporting all 25 authorities to the NI Assembly and all 25 are listed in Appendix 1 of this report. No further action requires to be taken by the Commission in respect of the seventeen public authorities who subsequently submitted a plan or ceased to have functions relating to Northern Ireland.

1.5. The public authorities that still have not submitted a plan on or before 14 October 2008 are listed below:

1. Department for Culture Media And Sport
2. Postal Services Commission (Postcomm)
3. The British Library
4. The Open University
5. Woodvale and Shankill Housing Association
6. The North-South Language Body:
 - (a) Foras Na Gaeilge
 - (b) The Ulster Scots Agency
7. Newtownabbey District Policing Partnership
8. Public Prosecution Service

The Commission will continue to seek submission of appropriate plans from these authorities.

1.6 The Commission would welcome a clear indication of the Assembly's view that compliance by public authorities with this statutory requirement is regarded by it as a serious obligation meriting urgent attention.

1.7 This report is laid before the NI Assembly in discharge of the Commission's statutory remit.

2. Background

2.1 Under the Disability Discrimination Act 1995 (DDA), (as amended by the Disability Discrimination (Northern Ireland) Order 2006) (DDO), from 1 January 2007, public authorities, when carrying out their functions must have due regard to the need to:

- promote positive attitudes towards disabled people; and
- encourage participation by disabled people in public life.

These duties are referred to as the ‘disability duties’.

2.2 The disability duties were introduced in Northern Ireland via the DDO (2006) legislation, to reflect changes to disability legislation in Great Britain (GB) which came into effect on 4 December 2006. The ‘disability duties’ are positive duties on public authorities aimed at addressing attitudinal barriers to disabled people and lack of participation of disabled people in all levels of public life in Northern Ireland.

2.3 Public authorities subject to the disability duties as at 1 January 2007 were required to submit a disability action plan to the Commission by 30 June 2007, unless exempted by the Commission from producing such a plan.

2.4 The Commission assisted public authorities to submit disability action plans in the following ways:

- development and distribution of the Commission’s guidance document: A Guide for Public Authorities - Promoting positive attitudes towards disabled people and encouraging the participation of disabled people in public life (March 2007).
- promoting the Commission’s advice service and responding to all enquiries for telephone, face to face advice or requests to undertake speaking engagements, prior to submission. (Jan – June 2007 and ongoing).
- presenting two advice seminars for the public sector on producing disability action plans (April and May 2007).

2.5 Taking into account exemptions to the production of a disability action plan granted by the Commission and changes in the public sector due to the Review of Public Administration (RPA), the Commission expected to receive 190 disability action plans from public authorities.

Having undertaken an audit of plans received by the end of June 2007, the Commission has established that it received 165 plans by the required deadline. Thus, plans in respect of twenty five public authorities remained outstanding at the due date.

3. Legislative context in relation to failure to submit Disability Action Plans

3.1 The full extract from the Disability Discrimination Order (DDO) 2006, in relation to the disability duties on public authorities is attached as Appendix 2 of this report. However, Section 49B (6) of the DDA 1995 as amended by the DDO states:

‘(6) If a public authority

- (a) fails to submit a plan under subsection (1) before the end of the period of 6 months beginning with the appointed day or, if later, the establishment of the authority,
- (b) fails to submit a plan under subsection (2) before the end of the period of 6 months beginning with the date of the request under that subsection,
- (c) fails to submit a revised plan under subsection (3)(b) before the end of the period of 3 months beginning with the date of the request under that paragraph, or
- (d) submits to the Commission under paragraph (3)(a) or (b) a revised plan which in the opinion of the Commission fails to comply with subsection (4),

the Commission shall lay before the Assembly a report of that failure containing such comments and other material as appear to the Commission to be appropriate to bring to the attention of the Assembly.’

3.2 This report is laid before the NI Assembly in accordance with these statutory responsibilities placed upon the Commission.

4. Reasons provided by public authorities in August 2007 for failure to submit a Disability Action Plan by 30 June 2007

Following the first submission date of 30 June 2007, the Commission wrote in August 2007 to public authorities that had not submitted a disability action plan. This letter asked each authority to clarify whether a plan had been submitted and, if not, to outline reasons for the failure to submit.

Of those organisations that responded and requested further advice, the Commission assisted and advised a number of authorities in subsequently submitting their disability action plans.

A full list of organisations that failed to submit a disability action plan by the 30 June 2007 deadline is attached in Appendix 1. The Appendix presents the information in six tables, collating and categorising the reasons provided by public authorities, in August 2007, regarding failure to submit plans by 30 June 2007. A summary of the categories is outlined in the following table:

Reason given for non submission – Aug 2007	Number of Public Authorities
1. UK wide bodies who thought a Disability Equality Scheme produced to meet GB legislation was sufficient to cover NI legislation.	5
2. Organisations that had Section 75 exemptions to the production of an equality scheme and assumed that this exemption extended to the requirements under the DDO.	1
3. Organisations that had recently ceased to exist or were due to cease to exist	6
4. Organisational Problems	7
5. Other Reasons / No reasons given	6
Total	25

5. Commission Proposals to the NI Assembly

5.1 Section 49 (B) (6) of the DDA 1995 provides that:
'the Commission shall lay before the Assembly a report of that failure containing such comments and other material as appear to the Commission to be appropriate to bring to the attention of the Assembly.'

5.2 Of those public authorities which failed to submit a plan by 30 June 2007 a number subsequently submitted a plan, were granted retrospective exemption or ceased to have functions relating to Northern Ireland. These are listed in the following schedule. No further action is required to be taken by the Commission in their regard.

Name of Public Authority	Status of submission as of 14 October 2008
British Wool Marketing Board	Exemption to produce a plan granted retrospectively by the Commission
Carlingford Lough Commissioners	Exemption to produce a plan granted retrospectively by the Commission
Home Grown Cereals Authority	Un-submitted plan as organisation due to become a private Company
National Biological Standards Board	Un-submitted plan as organisation due to merge with Health Promotion Agency (since submission date merger delayed to April 2009)
Rural Development Council for Northern Ireland	Currently in process of changing to a charitable concern or a community interest company. Will cease to be a public authority.

Independent Assessor For Military Complaints	Ceased to exist short period after submission date of 30 June 2007
Agri Food and Bio Sciences Institute (AFBI)	Submitted plan August 2007
Dungannon and South Tyrone District Policing Partnership	Submitted plan August 2007
Post Watch Northern Ireland	Submitted plan August 2007
The Office of the Certification Officer Northern Ireland	Submitted plan August 2007
The Northern Ireland Legal Services Commission	Submitted plan January 2008
The Northern Authority for Energy Regulation – Now the Northern Ireland Authority for Utility Regulation	Submitted plan 14 October 2008
The Department Of Trade & Industry	Ceased to Exist – 27 June 2007. Functions altered and transferred to BERR (Business Enterprise Regulatory Reform)
Ards District Policing Partnership	Submitted plan April 2008
National Endowment for Science, Technology & the Arts	Functions no longer relate to Northern Ireland
Food from Britain	Functions no longer relate to Northern Ireland
Exports Credits Guarantee Department	Functions no longer relate to Northern Ireland

5.3 Of the remaining eight public authorities who have failed to submit a plan by the 30 June 2007, plans were still outstanding on 14 October 2008. These are listed in the following schedule. The Commission will continue to seek submission of their plan.

Name of Public Authority	Status of submission as of 14 October 2008
Department for Culture Media & Sport	Un-submitted plan. Submitted a GB Disability Equality Scheme.
Postal Services Commission (Postcomm)	Un-submitted plan
The British Library	Un-submitted plan
The Open University	Un-submitted plan
Woodvale and Shankill Housing Association	Un-submitted plan
The North-South Language Body: (a) Foras Na Gaeilge (b) The Ulster Scots Agency	Un-submitted plan
Newtownabbey District Policing Partnership	Un-submitted plan
Public Prosecution Service	Un-submitted plan

5.4 The requirement that the Commission submit to the Assembly a report on the public authorities who had failed to submit a plan by the due date was a measure of the seriousness given in this statutory obligation. It will, it is hoped, be clear to the public authorities concerned, and to all other public authorities and to the public that the law is being taken seriously in this regard. That should, in itself, be an encouragement to future good practice.

The Commission would welcome a clear indication of the Assembly's view that compliance with this statutory obligation, in an area as important as disability, is considered to be a matter that merits serious attention by all public authorities. An equally clear expression of the Assembly's view that those who have failed thus far to comply with their legal obligations should, as a matter of urgency, mend that omission would be equally welcome and would greatly assist the Commission in carrying out its duties.

Report Conclusions

This relatively new legislation must be implemented in order that disabled people are afforded equality of opportunity and be enabled to participate fully in the life of this society.

It is imperative that the Equality Commission for Northern Ireland and the Northern Ireland Assembly are seen to be taking this legislation seriously and view non compliance with the legislation as a serious matter.

The Commission requests that the NI Assembly consider this report and would welcome an indication of the seriousness with which it regards persistent non compliance with the disability duties.

This report is the first of this nature. However it is probable that there will be further reports in relation to public authorities that:

- fail to submit a revised plan (if requested by the Commission) within the period of 3 months beginning with the date of the request , or
- submit to the Commission a revised plan, which in the opinion of the Commission fails to comply with the 'form and content' required under the Commissions guidance.

Appendix 1: Disability Action Plans not submitted by 30 June 2007; Categorised by the public authority's reasons for failure to submit

Table 1: UK WIDE BODIES - thought 'Disability Equality Scheme' (GB) was sufficient

Name of Organisation	Status of Submission (Sept 2008)	Reason for non/ late submission (Aug 2007)
1. British Wool Marketing Board	Exemption Granted	Advised by DEFRA that they did not have to produce a Disability Equality Scheme (GB requirement) and assumed this applied to NI Disability Action Plan. <ul style="list-style-type: none"> • Retrospectively applied for exemption – granted 19.09.07
2. Department for Culture Media And Sport	Un-submitted	Sent a copy of their Disability Equality Scheme to ECNI on 17 th August 2007
3. Postal Services Commission (Postcomm)	Un-submitted	Sent a draft copy of Disability Equality Scheme to DRC.
4. The British Library	Un-submitted	Sent a copy of the 3 year Disability Equality Scheme on 15 th January 2007 to ECNI.
5. The Open University	Un-submitted	Have a Disability Equality Scheme which applies to operations in NI. Following a meeting Aug 2007 with the Commission they agreed to develop a NI plan. Not yet submitted.

Table 2: SECTION 75 EXEMPTION – assumed that this extended to the new duties

Name of Organisation	Status of Submission (Sept 2008)	Reason for non submission (Aug 2007)
6. Carlingford Lough Commissioners	Exemption Granted	Exemption under Section 75 <ul style="list-style-type: none"> • Applied retrospectively for an exemption which was granted 19 September 2007

Table 3: CEASED / DUE TO CEASE TO EXIST

Name of Organisation	Status of Submission (Sept 2008)	Reason for non submission (Aug 2007)
7. Home Grown Cereals Authority	Un -submitted	Due to become a private Company (1 April 2008)
8. National Biological Standards Board	Un -submitted	Due to merge with HPA but since delayed to 2009
9. Rural Development Council for Northern Ireland	Due to cease to exist	Due to become a private company (Oct/Nov 2007).
10. Independent Assessor For Military Complaints	Ceased to exist	Ceased to exist with the end of Operation Banner on 31 July 2007.
11. Department for Trade and Industry	Ceased to exist	Ceased to exist on 27 June 2007
12. Post Watch Northern Ireland	16 August 2007	<ul style="list-style-type: none"> • New staff in post • Only 3 staff work in NI • Due to be amalgamated with UK body (NB Ceased to exist 30 September 2008)

Table 4: ORGANISATIONAL PROBLEMS		
Name of Organisation	Status of Submission (Sept 2008)	Reason for non submission (Aug 2007)
13. Ards District Policing Partnership	18 April 2008	Draft is complete however it has to go through the committee before sending.
14. Agri Food and Bio Sciences Institute (AFBI)	10 August 2007	Due to recent appointment of HR Manager (21 May 2007) there has been some slippage in the timeframe.
15. Dungannon and South Tyrone District Policing Partnership	21 August 2007	Were unable to submit a plan due to the time delay between the departure of the previous DPP Manager and the appointment of a new Manager to the post.
16. Northern Ireland Legal Services Commission	18 December 2007	Due to pressure of work. Indicated that they hope to submit a plan in the near future.
17. Woodvale and Shankill Housing Association	Un -submitted	Have not submitted as they are waiting for someone to help them with a consultation. Will forward a copy when it is complete.
18. The North-South Language Body: (a) Foras Na Gaeilge (b) The Ulster Scots Agency	Un -submitted	Due to timing and co-ordination problems between the two organisations.
19. Northern Ireland Authority For Energy Regulation - <u>Now the NI Authority for Utility Regulation</u>	14 October 2008	Due to pressure of work team delay in amending consultation draft.

Table 5: NO REASON GIVEN or OTHER REASONS		
Name of Organisation	Status of Submission (Sept 2008)	Reason for non submission (Aug 2007)
20. The Office of the Certification Officer Northern Ireland	LRA plan submitted 29 th June 2007 Own plan submitted 16 th August 2007	Other: Tried to submit under Labour Relations Agency Plan (LRA). When advised that they must produce their own plan they submitted a plan.
21. Newtownabbey District Policing Partnership	Un-submitted	No reason provided after several attempts by Commission staff to make contact.
22. Public Prosecution Services	Un-submitted	Other: Colleagues at the Criminal Justice Equality network informed the PPS they were not required to produce a plan.
23. Exports Credits Guarantee Department	Un -submitted	Other: Functions no longer relate to Northern Ireland
24. Food From Britain	Un -submitted	Other: Functions no longer relate to Northern Ireland
25. National Endowment for science Technology and the Arts	Un-submitted	Other: Functions no longer relate to Northern Ireland

Appendix 2 – ‘Duty of Public Authorities’ extract from The Disability Discrimination (NI) Order 2006.

Duty of public authorities

5. In the 1995 Act, after section 49 insert

“PART VA
PUBLIC AUTHORITIES

General duty

49A.(1) Every public authority shall in carrying out its functions have due regard to

- (a) the need to promote positive attitudes towards disabled persons; and
- (b) the need to encourage participation by disabled persons in public life.

(2) Subsection (1) does not apply to

- (a) the functions of the Director of Public Prosecutions for Northern Ireland relating to the prosecution of offences; or
- (b) any act of a description prescribed by regulations.

(3) Subsection (1) is without prejudice to any obligation of a public authority to comply with any other statutory provision (including any other provision of this Act).

(4) The Commission shall

- (a) keep under review the effectiveness of the duty imposed by this section;
- (b) offer advice to public authorities and others in connection with that duty.

(5) Not later than 3 years after the appointed day, the Commission shall prepare and publish a report on the effectiveness of the duty imposed by this section.

(6) In this section

“the appointed day” means the day appointed under Article 1(2) of the Disability Discrimination (Northern Ireland) Order 2006 for the coming into operation of Article 5 of that Order;

“the Commission” means the Equality Commission for Northern Ireland;

“public authority” has the same meaning as in section 75 of the Northern Ireland Act 1998 (c.47).

Plan as to duty under section 49A

49B.(1) A public authority to which this subsection applies shall prepare and submit to the Commission a plan showing how the public authority proposes to fulfil the duty imposed by section 49A in relation to the relevant functions.

(2) Any other public authority shall prepare and submit to the Commission such a plan if requested to do so by the Commission.

(3) A public authority

(a) may at any time revise its plan and submit the revised plan to the Commission;

(b) shall, if requested to do so by the Commission, revise its plan and submit the revised plan to the Commission.

(4) A plan (or revised plan) shall

(a) conform to any guidelines as to form or content which are issued by the Commission with the approval of the Office;

(b) specify a timetable for measures proposed in the plan;

(c) include details of how it will be published.

(5) Subsection (1) applies to any public authority except one which is notified in writing by the Commission that that subsection does not apply to it.

(6) If a public authority

(a) fails to submit a plan under subsection (1) before the end of the period of 6 months beginning with the appointed day or, if later, the establishment of the authority,

(b) fails to submit a plan under subsection (2) before the end of the period of 6 months beginning with the date of the request under

that subsection,

(c) fails to submit a revised plan under subsection (3)(b) before the end of the period of 3 months beginning with the date of the request under that paragraph, or

(d) submits to the Commission under paragraph (3)(a) or (b) a revised plan which in the opinion of the Commission fails to comply with subsection (4), the Commission shall lay before the Assembly a report of that failure containing such comments and other material as appear to the Commission to be appropriate to bring to the attention of the Assembly.

(7) A public authority

(a) shall review its current plan under this section

(i) in the case of an authority in relation to which there is a scheme under Schedule 9 to the Northern Ireland Act 1998, at the same time as the authority reviews its current scheme under paragraph 8(3) of that Schedule;

(ii) in the case of any other authority, at such times as the Commission may request; and

(b) inform the Commission of the outcome of the review.

(8) In this section

“the appointed day”, “the Commission” and “public authority” have the same meanings as in section 49A;

“the relevant functions” means the functions of the public authority or, in the case of a plan submitted in response to a request which specifies particular functions of the public authority, those functions.”.

**Equality Commission for Northern Ireland
January 2009**