

Response to OFMdfM consultation on the removal of the transport exemption from the Disability Discrimination Act 1995

February 2009

1. The Equality Commission for Northern Ireland ('the Commission') is an independent public body established under the Northern Ireland Act 1998. The Commission is responsible for implementing the legislation on age, fair employment and treatment, sex discrimination and equal pay, race relations, sexual orientation and disability. The Commission's remit also includes overseeing the statutory duties on public authorities to promote equality of opportunity and good relations under Section 75 of the Northern Ireland Act 1998, and the disability duties under the Disability Discrimination Act 1995.
2. The Commission welcomes the opportunity to respond to the Office of the First Minister and deputy First Minister's ('OFMdfM') consultation on the removal of the exemption for operators of transport services from Part 3 of the Disability Discrimination Act 1995 ('DDA 1995'). The Commission, when responding to this consultation, draws on the unique experience it has gained in its role in enforcing the DDA 1995 and in implementing the statutory duties under Section 75 of the Northern Ireland Act 1998, across nine equality grounds including disability, and the disability duties on public authorities under the DDA 1995.
3. In general, the Commission welcomes the removal of the exemption for operators of transport services from the DDA 1995. The draft Disability Discrimination (Transport Vehicles) Regulations (Northern Ireland) 2009 ('the draft 2009 Regulations'), extend duties under the DDA 1995 to providers of transport services in relation to the following types of vehicles; buses and coaches; taxis; private hire

vehicles; trains; rental vehicles; guided transport; and breakdown recovery vehicles. The removal of the transport exemption in relation to certain modes of transport is a significant development for disabled people in Northern Ireland. As highlighted by the Disability Rights Task Force ('DRTF') in its final report *From Exclusion to Inclusion*¹, "if disabled people are to access employment, education, leisure and other activities, it is vital that they can reach them. That in turn means that they must have access to transport services and have a choice of services to meet their particular travel needs".

4. The Commission has strongly campaigned for the removal of the transport exemption from the goods, facilities and services provisions of the DDA 1995. The removal of the transport exemption was a key recommendation of the Commission in '*Enabled? Recommendations for change to the Disability Discrimination Act in Northern Ireland*'² ('*Enabled*'). In addition, in order to highlight the major impact that the exclusion of transport services from the DDA 1995 has on the day-to-day lives of disabled people in Northern Ireland, the Commission published case studies on the experiences of disabled people using various modes of transport ("*All Aboard? The experience of disabled people using transport in Northern Ireland: A case study report*" ('*All Aboard*'))³. These case studies also illustrated how disability awareness training, reviewing practices and implementing clear and effective procedures, can greatly improve the level and manner of service which disabled people receive.
5. OFMdfM has sought the views of consultees on whether the detailed definitions of the types of vehicles outlined at Regulation 2 of the draft 2009 Regulations are sufficient to cover the intended services and whether there are other vehicles which should be included.

¹ *From Exclusion to Inclusion, Final report of the Disability Rights Task Force*, Disability Rights Task Force, December 1999

² *Enabled? Recommendations for change to the Disability Discrimination Act in Northern Ireland*, ECNI, June 2003, www.equalityni.org

³ 2003, ECNI, www.equalityni.org

Public service vehicles

6. It is proposed that the DDA 1995 transport duties will apply to all public service vehicles. This covers motor vehicles used in standing or plying for hire or used to carry passengers for hire (such as public buses).
7. However, the Commission is concerned that a large number of vehicles will not be covered by the DDA 1995 transport duties. In particular, the following vehicles will not fall within the proposed definition of a 'public service vehicle':-
 - **Vehicles granted a certificate of exemption issued by the Department of the Environment ('DOE').**
8. Vehicles granted a certificate of exemption include vehicles used by hotels to carry guests and their luggage to and from hotels etc.; ambulances used to carry persons to and from hospitals; vehicles used by funeral undertakers; and small school buses provided by an Education and Library Board to carry children to and from schools.
 - **Vehicles exempted from licensing requirements under Section 10A of the Transport Act (Northern Ireland) 1967.**
9. Motor vehicles can be exempted from the licensing requirements of the Transport Act (Northern Ireland) 1967 if granted a permit. A permit can be granted in relation to small or large buses run by non-profit making organisations which are concerned with education, religion, social welfare, or other activities of benefit to the community.
10. In the Commission's view, permits can be issued in respect of buses (small or large) owned by non-commercial bodies, such as religious organisations, schools, sports clubs and other voluntary groups.
11. In addition, buses funded by the Department of Rural Development ('DRD') under the rural transport fund are also likely to be exempt. The DRD funds 18 rural partnerships in

order to provide transport in rural communities with the aim of reducing social exclusion. Although non-commercial in nature, passengers are charged for the service in order to meet running costs. The Commission understands that three pilot schemes are currently in operation and that there are proposals to extend this scheme to cover “door-to-door” transport services in rural areas.

12. Finally, it appears that large school buses which receive funding from the Department of Education and buses used by health boards, as well as buses used by commercial organisations which carry children to and from nurseries or after school care, will also not be covered by the DDA 1995 transport duties.

- **Motor vehicles used under car-sharing arrangements.**

13. Motor vehicles (which carry eight or less passengers) used under car-sharing arrangements will also be exempt under the draft 2009 Regulations; provided payments made by passengers do not exceed the amount of running costs of the vehicle for the journey. This will include social car schemes which receive Government funding to transport disabled people to hospitals, etc.

Extension of DDA 1995 transport duties

14. Rather than removing the whole transport exemption from the DDA 1995, OFMdfM is proposing to extend the transport duties to only certain specified modes of transport. In general, the Commission recommends that **all** modes of transport should be covered by the DDA 1995 transport duties. Specific exemptions should only be permissible in limited justifiable circumstances.

15. It is not clear why it is proposed to exempt certain modes of transport. For example, although rural community transport services which receive DRD funding are exempt under the licensing requirements (and therefore the proposed transport duties under the DDA 1995), urban “door-to-door” services

funded by the DRD are not exempt and therefore would be covered by the DDA 1995 transport duties.

16. In addition, applying the disability transport duties to certain voluntary organisations will also ensure greater consistency across the scope of the DDA 1995. For example, the Department will be aware that the provision by a voluntary organisation of social, cultural and recreational activities and facilities for physical education and training designed to promote personal or educational development is covered under Part 3 of the DDA 1995 (which deals with the provision of goods, facilities and services). These include non-statutory youth services, such as clubs and activities run by voluntary organisations, Scouts, or church youth clubs, as well as private training courses.
17. Therefore, although a disabled child may have protection against unlawful disability discrimination by voluntary organisations, church youth clubs, etc., who provide educational services under Part 3 of the DDA 1995, a disabled child will not have protection against disability discrimination when accessing a bus run by such voluntary organisations (in circumstances where a permit has been issued to the organisation under the Transport Act (Northern Ireland) 1967).
18. In the Commission's view, there is little justification for restricting protection against unlawful disability discrimination for a disabled child when accessing a bus run by such a voluntary organisation, in circumstances where other services provided by the organisation are covered by Part 3 of the DDA 1995.
19. The extension of the DDA 1995 transport duties to a wider range of transport providers is recommended for a number of reasons. Firstly, it will have a beneficial impact on the day-to-day lives of disabled people (including disabled pupils) in Northern Ireland; giving them the same choices as non-disabled people, and allowing them to travel and live independently. It will help promote the social inclusion of disabled people and is in keeping with Executive's strategic objectives in its *Programme for Government 2008- 2011*, to 'develop strategic recommendations to tackle poverty and

promote social inclusion'⁴ for disabled people and 'work across government to remove barriers to participation and achieve a measurable improvement in the lives of people with disabilities by 2012'.⁵

20. It is of note that results from the recent Northern Ireland survey of people with Activity Limitations and Disabilities show that 18% of the Northern Ireland population of all ages living in private households face limitations in their daily living as a consequence of a disability or long term health condition. In addition, almost 2 out of every 5 households in Northern Ireland include at least one person with a limiting disability.⁶ Members of the wider community will also benefit, particularly older people, who, although not disabled, may have a mobility or sensory impairment.

21. Although there are significant limitations to the transport duties (see paragraphs 24-27 below), the application of the duties to a wider range of transport providers, will, for example, allow disabled people to challenge:-

- unjustifiable discriminatory conduct by transport staff, based on negative stereotypical attitudes and prejudice towards disabled people.

This would include, for example, transport staff, due to the person's disability, unjustifiably refusing to allow the disabled person to board the vehicle, making derogatory comments or displaying a hostile attitude towards the disabled person; refusing to provide a service when travelling on the vehicle; or ejecting the disabled person from the vehicle.

- an unjustifiable failure to make a reasonable adjustment to a practice, policy or procedure which makes it impossible or unreasonably difficult for the disabled person to use the service.

⁴ Ibid PSA 7 Objective 2

⁵ Ditto

⁶ *Northern Ireland Survey of People with Activity Limitations and Disabilities*, NI Statistics and Research Agency, 2006/07. www.csu.nisra.gov.uk, July 2007

A reasonable adjustment could include, for example, amending a policy which does not allow passengers to reserve seats, in order to allow a disabled person with mental ill-health to sit near the front of the bus; as, due to his/her disability, s/he feels anxious if not placed near the front exit.

- an unjustifiable failure to take reasonable steps to provide an auxiliary aid or service which would enable the disabled person to use the service.

A reasonable adjustment could include, for example, a bus driver helping to guide a disabled passenger who has difficulty in getting to and from seats when boarding and alighting (for example, if they are visually impaired).

22. As highlighted in *Enabled*, 'many of the difficulties that disabled people experience are caused as much by the way they are treated by transport staff as by the accessibility of the vehicles'. In addition, as stressed in *All Aboard*, which focuses on the level and manner of service which disabled people receive when using the transport system, rather than physical access, 'disabled people neither understand nor accept the negative attitudes with which they are confronted, the failures in communication, the lack of awareness and training, the inadequacy of procedures'. Extending the transport duties beyond what is proposed in the draft 2009 Regulations, will allow disabled people to challenge and seek redress in relation to these deficiencies across a wider range of transport vehicles.

23. Secondly, in its final report, the DRTF made it clear that "the right not to receive less favourable treatment should be extended to **all** (our emphasis) providers of transport services to the public. No distinction is made within the DRTF recommendation as to what transport modes and services will be included and excluded from the DDA 1995 duties. It also stressed that for disabled people to be able to travel and to travel with confidence, all aspects of the 'transport chain' must be accessible.⁷

⁷ Ibid p74

24. Thirdly, the Commission is of the view that the application of the DDA 1995 transport duties to transport providers which it is proposed to exempt, is unlikely to impose a disproportionate burden on the transport provider in question. It is important to note that if covered by the new duties, transport providers will **not** be under a duty to make a reasonable adjustment to overcome a physical feature by removing it, altering it, avoiding it **or** providing services by alternative methods. The duty to take reasonable steps will be limited to changing practices, policies or procedures or providing an auxiliary aid or service.
25. In addition, the transport provider will only be required to take 'reasonable steps' in relation to changing its policies, practices and procedures and providing auxiliary aids or services. What is reasonable will depend on a number of factors including the type of services being provided, the nature, size and resources of the transport provider, the financial and other costs of the reasonable adjustment, the effect of the disability on the disabled person, and the effectiveness and practicability of the step to be taken.
26. It is therefore, for example, more likely that a transport provider with substantial financial resources will be required to make an adjustment with a significant cost than a transport provider with fewer resources.
27. Lastly, in certain circumstances, a transport provider can justify **both** a failure to make a reasonable adjustment, **and** less favourable treatment of a disabled person; for example, on the grounds of health or safety; the greater cost of providing a tailor-made service; a disabled person being incapable of entering into a contract; that they would otherwise be unable to provide the service to other members of the public; or to enable the transport provider to provide the service to the disabled person or other members of the public.
28. The Commission seeks clarification from OFMdfM as to why certain modes of transport are to remain exempt from the DDA 1995 transport duties. It also seeks clarification as to

whether vehicles used by driving schools will be covered by the duties.

Definitions

29. The Commission seeks clarification in relation to the definition of 'private hire vehicles', as Article 61 of the Road Traffic (NI) Order 1981 appears to refer to the licensing of public service vehicles and not private hire vehicles.

Publicly funded transport

30. As noted above, it is proposed that a substantial number of publicly funded transport services (for example, school and health board buses, as well as buses used in providing rural transport services) will be exempt from the DDA 1995 transport duties. The Commission recommends that all publicly funded small buses should comply with the Disabled Persons' Transport Advisory Committee ('DPTAC') voluntary guidance on accessibility for small buses⁸.
31. The DPTAC specification for small buses is not a statutory requirement but is intended to promote best practice in meeting the needs of disabled people. It provides a minimum standard of accessibility for disabled people and covers features required by all disabled passengers and additional features required for wheelchair users. The guidance makes it clear that wheelchair access is required for vehicles used for local services but is not required for all vehicles; only those which are intended and designed to carry wheelchair users.
32. The Commission notes the DRD's commitment in its Accessible Transport Strategy Action Plan 2007-9, "to regularly review policy, standards and good practice guidance produced in Great Britain, Europe and elsewhere, and to consider whether/how these can be most effectively implemented in Northern Ireland."⁹ If the Commission's recommendation is adopted, it will further the DRD's objective of promoting the use of accessible vehicles on

⁸ *Accessibility specifications for small buses designed to carry nine to twenty two passengers (inclusive)*, November 2007, Disabled Persons' Transport Advisory Committee, www.dptac.gov.uk.

⁹ *Accessible Transport Strategy Action Plan 2007-2009*, DRD, www.drdni.gov.uk

public transport and “alternative” transport services that are supported financially by Government.

33. Finally, it is of note that recent research in Great Britain ('GB') commissioned by the Department for Transport, has recommended that 'the Department of Transport should put in place a process to assess and monitor how public funding for transport has fulfilled the commitment for accessibility'.¹⁰ The review has also recommended that 'all applications for public funds for the provision or development of public transport must require the application of evidence on the current levels of accessibility i.e. what has been done to improve accessibility, and what is planned for the future, and this must be part of the monitoring and audit process'.

Shipping vessels

34. The draft 2009 Regulations do not remove the transport exemption in relation to shipping vessels. The Department will be aware that in GB, DPTAC has issued voluntary guidance for the shipping industry on the design of large passenger ships on meeting the needs of disabled people¹¹.
35. In its consultation response to the GB proposals on the lifting of the transport exemption in Part 3 of the DDA 1995, the GB Government indicated that it would monitor compliance with the DPTAC code on shipping and it would legislate should the voluntary approach prove ineffective. A review of the DPTAC guidance in 2006, noted that although guidance by the International Maritime Organisation (IMO)¹² and DPTAC guidance had to some extent influenced the design of new ships and investment in infrastructure, the voluntary guidance recommendations were not being addressed fully at the detailed level.
36. Overall it reported that ships met between only 57% and 77% of the DPTAC guidance recommendations on the

¹⁰ *Assessment of accessibility standards for disabled people in land-based public transport vehicles*. Research carried out by Human Engineering Limited, and Guide Dogs for the Blind Association, 19 May 2008, www.dft.gov.uk.

¹¹ *The Design of Large Passenger Ships and Passenger Infrastructure: Guidance on Meeting the Needs of Disabled People*, DPTAC, Nov 2000, www.dptac.gov.uk.

¹² *Recommendation on the design and operation of passenger ships to respond to elderly and disabled persons' needs*, Marine Guidance Note MGN 31 (M), IMO, 1996, www.dptac.gov.uk

facilities they provide, and the ports only met between 51% and 80% of the recommendations. In conclusion, it was of the view that the DPTAC recommendations had been only partially effective in ensuring that ships and ports are designed and operated in a way that makes them fully accessible to disabled people. The report recommended that DPTAC advise Government to consider lifting the Part 3 DDA 1995 exemption for large passenger ships and consult the industry.

37. We are aware that there are proposals in relation to an EC Regulation for shipping vessels, similar to the Regulation already implemented in relation to air travel¹³, concerning the rights of disabled persons and persons with reduced mobility when travelling by ship. The Commission supports the early adoption and implementation of an European-wide Regulation on maritime services which will provide increased protection for disabled passengers when accessing ports, embarking and disembarking ships etc,. It recommends that it is given enforcement and conciliation powers under the final Regulation in order to advise and assist disabled complainants who are unlawfully discriminated against due to their disability.

Audio/visual information systems on buses

38. The Commission also recommends that the Public Service Vehicles Accessibility Regulations (PSVAR) are amended to include the provision of audio/visual information. The Department will be aware that the Rail Vehicle Accessibility Regulations contain a requirement that all trains provide audio/visual information; however, a similar requirement is not included in the PSVAR.
39. Buses, through the use of audio/visual displays and announcements, can provide passengers with information on bus stops and nearby key places of interest, as well as final destination information. It is of benefit to individuals with visual or hearing impairments, as well as people with learning disabilities. The Commission notes the commitment by Transport for London to introduce an audio/visual scheme

¹³ European Regulation (EC) No 1107/2006 5 July 2006

on all London buses (approximately 8000) as part of its iBus project.

40. The Commission's recommendation is supported by recent research commissioned by the Department for Transport, which has recommended that the PSVAR be amended to include the provision of audio and visual information on buses.¹⁴

The EC Air Travel Regulation

41. The Commission also recommends that OFMdfM as a matter of urgency, introduce the Civil Aviation (Access to Air Travel for Disabled Persons and Persons with Reduced Mobility) (Northern Ireland) Regulations 2008; which will enable the Commission to provide support and advice to disabled claimants bringing complaints under the EC Air Travel Regulation¹⁵ concerning the rights of disabled persons and persons with reduced mobility when travelling by air.

Taxis

42. We note that the Department for Transport has recently commenced a consultation on improving access by disabled people to taxis. Following an analysis of the responses, it intends to publish its strategy in Spring 2009 with any legislative changes being taken forward at the earliest opportunity. The Commission recommends a similar consultation is undertaken by DRD in the near future.
43. We further note that in GB, the Local Transport Act 2008 has recently applied the duties under Section 36 of Part 5 of the DDA 1995 on drivers of taxis and private hire vehicles who are providing local bus services using wheelchair accessible vehicles. Section 36 confers additional duties on taxi drivers in relation to the carriage of disabled wheelchair users, and a failure to comply with these duties can attract both a criminal conviction and a fine. The Commission recommends the early adoption of similar measures in Northern Ireland.

¹⁴ *Assessment of accessibility standards for disabled people in land-based public transport vehicles.* Research carried out by Human Engineering Limited, and Guide Dogs for the Blind Association, 19 May 2008 www.dft.gov.uk

¹⁵ European Regulation (EC) No 1107/2006

Other changes to the DDA 1995

44. Although welcoming the removal of the transport exemption in relation to certain modes of transport, the changes are long overdue. The Commission is both disappointed and concerned at the length of time taken to introduce these important changes in Northern Ireland. It is of note that these changes, which are due to come into force in mid-2009, will be implemented approximately 10 years after the original recommendation by the DRTF ¹⁶ and approximately two and a half years after similar changes came into effect in GB.
45. It is essential that disabled people in Northern Ireland enjoy similar increased protection against unlawful discrimination within the same time frame as people in GB.
46. The Commission has already raised with the Department the need for significant reform of the DDA 1995 and SENDO 2005 in order to secure greater protection for disabled people in Northern Ireland against unlawful discrimination and harassment. We welcome the Government's commitment in its consultation document to "ensuring that disability discrimination law here should correspond to that provided for in the rest of the UK and also keep pace with it where possible". In furtherance of that commitment and the Executive's commitments in its *Programme for Government 2008-2011*, we recommend that the Government take urgent action to address key deficiencies within the DDA 1995 and SENDO 2005.

¹⁶ As recommended in its final report '*From Exclusion to Inclusion*'.