

DISABILITY DISCRIMINATION ACT 1995

RIGHTS OF ACCESS

GOODS, FACILITIES, SERVICES AND PREMISES

CONSULTATION REPORT

A report on the consultation conducted in 2000 by the Equality Commission for Northern Ireland on proposals for a new Code of Practice and a Practical Guide, and by the Office of the First Minister and Deputy First Minister on proposals for Regulations to implement further rights in Part III of the Disability Discrimination Act 1995 and a Regulatory Impact Assessment.

**This document is available in other formats upon request
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The European Year of People with Disabilities

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1. BACKGROUND

Disability Discrimination Act 1995

- 1.1 The Disability Discrimination Act (DDA) contains provisions which make discrimination against disabled people unlawful. Part III of the DDA relates to the provision of goods, facilities, services and premises.

The DDA's Part III provisions are being implemented in three stages:

- **Since 2 December 1996** there has been a duty on anyone providing a service to the public not to discriminate against disabled people by refusing them service, providing them service on worse terms, or providing them with a lower standard of service
- **Since 1 October 1999** service providers have had to take reasonable steps to:
 - change any practice, policy or procedure which makes it impossible or unreasonably difficult for disabled people to use a service;
 - provide an auxiliary aid or service which would assist disabled people to use a service;
 - overcome physical barriers which make it impossible or unreasonably difficult for disabled people to use a service by providing the service by a reasonable alternative method
- **From 1 October 2004** service providers will have to take reasonable steps to remove, alter or provide a reasonable means of avoiding physical features of a building if the service continues to be impossible or unreasonably difficult for disabled people to access.

Purpose of the consultation exercise

- 1.2 The consultation exercise related to the implementation of the final provisions of Part III of the DDA, which cover “reasonable adjustments” to physical features of premises (the 2004 rights). The consultation on proposals for a new Code of Practice and a “Practical Guide for Smaller Service Providers” was conducted by the Equality Commission. At the same time, the Office of the First Minister and Deputy First Minister (OFMDFM) consulted on proposals for Regulations, which will underpin the new rights, and a Regulatory Impact Assessment (RIA).
- 1.3 The purpose of the exercise was to give disabled people, service providers and others with an interest an opportunity to comment on the proposals.

Consultation exercise

- 1.4 The public consultation entitled “New requirements to make goods, facilities and services more accessible to disabled people from 2004” was launched on 23 May 2000 by Joan Harbison, Chief Commissioner, Equality Commission, and Ken Walker, Equality Directorate, Office of the First Minister and Deputy First Minister. A joint Commission/OFMDFM press release was issued on the launch of the consultation exercise resulting in media coverage in local papers. The original end date for the consultation was 8 August 2000, although all late responses were accepted.
- 1.5 Around 2,000 consultation packs were issued. These went to a range of individuals and organisations including: disabled people, disability organisations, service providers and those representing service providers, trade unions, local authorities and Government departments.
- 1.6 The consultation pack was available in a range of formats on request. In addition to the Belfast launch, a series of regional consultation meetings were held in Dungannon, Londonderry and Newry. These were attended by a range of people including: disabled people, representatives of local disability organisations, local architects and representatives from the building control departments of local authorities. A sign language interpreter was present at each of the meetings.

- 1.7 Separate meetings were held in Armagh, Belfast, Londonderry and Omagh for people with a learning disability.
- 1.8 A total of 65 questionnaire responses were received.
- 1.9 Respondents came from a wide background - a full breakdown is included in the analysis of responses section. 95% replied on behalf of an organisation, 89% of which were service providers.
- 1.10 A further, informal, consultation exercise was conducted by OFMDFM in August/September 2002 with over 80 key stakeholders to give further consideration to the approach to [an exemptions](#) contained in the draft Regulations – details on this consultation exercise are attached at Annex A.

The report

- 1.11 The numerical results set out in this report are based on responses from the 'tick boxes' in the questionnaire included with the consultation pack. Numerical responses are shown in a table as a percentage and with frequency of any given response.
- 1.12 Five respondents chose not to use the questionnaire at all, preferring to send a narrative response to the consultation exercise. Comments or suggestions that were made on some questionnaires and in separate letters have been briefly summarised where appropriate.
- 1.13 All responses were collated by the Equality Commission, and were considered by both OFMDFM and the Commission when refining the proposals.

2. KEY FINDINGS

- 2.1 The majority of respondents supported the recommendation for a new Code of Practice, and the draft proposals for Regulations to implement the further rights in Part III of the DDA.

Code of Practice

- 2.2 The responses to this consultation showed overall agreement to the new Code of Practice. The vast majority of respondents agreed that the Code was clear and easy to understand, and that it provided a clear understanding of the duties currently applying to service providers, and those duties which would apply from 1 October 2004.

Among readers of the Code of Practice:

- 95% of respondents agreed that it was clearly written;
 - 87% of respondents agreed that the terms used in the Code of Practice were easy to understand;
 - 95% of respondents indicated that the Code of Practice provided them with a clear understanding of the current duties applying to service providers;
 - 89% of respondents thought that the Code of Practice provided them with a clear understanding of the duties that will apply to service providers from 2004;
 - 96% of respondents considered the examples helpful in the Code of Practice.
- 2.3 Regarding Chapter 5 concerning reasonable adjustments in practice:
- 92% agreed that the Chapter was clearly written;
 - 87% agreed that the terms used were easy to understand;
 - 97% found the examples in Chapter 5 helpful;

- 98% found Chapter 5 in its entirety helpful;
- 82% felt that there was about the right amount of detail in Chapter 5.

2.4 Positive comments on the Code of Practice related to the clear written style and good use of examples and diagrams. However the length of the Code of Practice caused concern for some respondents, along with a requirement for less legal jargon to be used. Several felt that the term 'reasonableness' within the Code of Practice was open to interpretation and could lead to organisations not complying with the Code.

2.5 In addition suggestions were made to improve the Code of Practice. Some respondents requested specific examples relating to organisations and disabilities. It was felt that some of the examples in the Code should be stronger on good practice and promoting inclusiveness. Many suggested improvements related to the provision of an overall summary and improved formatting of the Code including: colour coding, large print, cross-referencing of sections and indexing.

Practical Guide

2.6 The responses to the consultation showed overall agreement with the Practical Guide.

Among readers of the Practical Guide:

- 92% of respondents agreed that the Practical Guide was clearly written;
- 96% of respondents agreed that the terms used in the Practical Guide were easy to understand;
- 98% of respondents found the Practical Guide helpful;
- 95% of respondents agreed that the diagrams used in the Guide were easy to understand, and 97% considered them helpful;
- 87% of respondents found the section relating to particular service providers helpful;

- 93% found the section on the role of management helpful;
 - 90% found the section relating to publications and organisation helpful.
- 2.7 82% of respondents felt that the Guide as a whole gave the right amount of detail. However, 15% of respondents felt there was insufficient detail in the sections on the role of management and on particular types of service provider.
- 2.8 A number of additional comments and suggestions were made as to how the Practical Guide could be improved. Those suggesting improvements to the Guide wanted more information on how to make toilets accessible and expanded advice relating to opening of doors and door sizes. A number of people suggested ways in which the format of the Practical Guide could be improved.

Regulations

- 2.9 The responses to the consultation exercise showed overall agreement with the four proposals from OFMDFM in respect of the Regulations:
- In relation to Part R of the Building Regulations;
 - Consent to an adjustment;
 - Premises held under a lease or tenancy;
 - Not regulating to limit service providers' costs.
- 2.10 Among readers of the proposals for Regulations:
- 63% of respondents agreed with the Part R proposals;
 - 63% of respondents agreed with the proposals relating to consent to an adjustment;
 - 61% of respondents agreed with proposals in relation to premises held under a lease or tenancy;

- 61% agreed with OFMDFM's conclusion not to regulate to limit service providers costs;
- 19% of respondents felt that OFMDFM needed to regulate in other areas.

2.11 The main reasons given by those who did not agree with the Part R proposals were that they did not go far enough, and that they should cover both new and existing buildings. Others felt that the proposals for Regulations contained loopholes that were open to interpretation, which was also an issue cited by those disagreeing with proposals in relation to premises held under a lease or tenancy.

2.12 Those who disagreed with ~~the~~ OFMDFM's proposals not to regulate to limit service providers' costs felt that this could leave scope for some service providers not to make appropriate adjustments.

Regulatory Impact Assessment

2.13 85% of respondents read the Regulatory Impact Assessment (RIA), with 52% having read most or all of it. Around a quarter of those reading the RIA made additional comments including criticism that the costings provided were inaccurate and misleading.

3. ANALYSIS OF RESPONSES

Respondents

- 3.1 Question 1 asked respondents the capacity in which they were responding to the questionnaire.

	Percentage	Frequency of response
Private sector	14%	9
Public sector	55%	36
Voluntary sector	26%	17
Private individual	5%	3
Other	-	-
Not stated	-	-
Total	100%	65

- 3.2 Question 2 asked those responding as a private individual to identify where their organisation was located or, if they were responding on behalf of an organisation, to indicate where its head office was based.

	Percentage	Frequency of response
Northern Ireland	89%	58
Other	6%	4
Not stated	5%	3
Total	100%	65

3.3 Question 3 asked those responding on behalf of an organisation if they were responding on behalf of any of the following:

	Percentage	Frequency of response
Local Authority	21%	13
Health Authority	10%	6
Organisation representing service providers	5%	3
Organisation representing employers	-	-
Voluntary organisation for/of disabled people	21%	13
Other voluntary organisations	6%	4
Trade Union/Staff association	-	-
Statutory body	8%	5
Government Department/ Agency	21%	13
Other	-	-
None of the above	6%	4
Not stated	2%	1
Total	100%	62

3.4 Question 4 asked those responding on behalf of an organisation if they were a provider of goods, services or facilities to the public.

	Percentage	Frequency of response
Yes	89%	55
No	11%	7
Total	100%	62

3.5 Question 5 asked those responding on behalf of an organisation to identify the sector best describing their organisation's work.

	Percentage	Frequency of response
Electricity, gas or water supply	2%	1
Construction / building design	7%	4
Communications	-	-
Wholesale and retail trade	2%	1
Leisure - hotels, restaurants, pubs	3%	2
Leisure - cinemas, theatres, museums	2%	1
Leisure - other	-	-
Distribution/transport	-	-
Financial / business services	-	-
Legal Services	-	-
Advice / information services	6%	4
Public administration	22%	14
Education	-	-
Health and social work	16%	10
Charity/voluntary work	11%	7
Multi-sector organisation	19%	12
Other	10%	6
Not stated	-	-
Total	100%	62

3.6 Question 6 asked those responding on behalf of an organisation the size of their organisation's workforce in the UK.

Number of employees	Percentage	Frequency of response
1-15	19%	12
16-49	10%	6
50-99	8%	5
100 +	60%	37
Not stated	3%	2
Total	100%	62

3.7 Question 7 asked respondents if they had a disability within the terms of the DDA's definition of disability.

	Percentage	Frequency of response
Yes	14%	9
No	83%	54
Not stated	3%	2
Total	100%	65

Code of Practice

3.8 Question 8 asked respondents how much of the Code of Practice they had read.

	Percentage	Frequency of response
Read all/most of it	66%	43
Read about half	22%	14
Read less than half	6%	4
Read, amount not specified	3%	2
Not read any of it	3%	2
Total	100%	65

3.9 Question 9 asked those reading the Code of Practice how strongly they agreed or disagreed with the statement, "The Code of Practice is clearly written".

	Percentage	Frequency of response
Agree strongly	32%	20
Tend to agree	63%	40
Neither agree nor disagree	3%	2
Tend to disagree	2%	1
Disagree strongly	-	-
Don't know	-	-
Total	100%	63

3.10 Question 10 asked those reading the Code of Practice how strongly they agreed or disagreed with the statement, “The terms used in the Code of Practice are easy to understand”.

	Percentage	Frequency of response
Agree strongly	24%	15
Tend to agree	63%	40
Neither agree nor disagree	11%	7
Tend to disagree	2%	1
Disagree strongly	-	-
Don't know	-	-
Total	100%	63

3.11 Question 11 asked those reading the Code of Practice how strongly they agreed or disagreed with the statement, “The Code of Practice provides you with a clear understanding of the duties that currently apply to service providers”.

	Percentage	Frequency of response
Agree strongly	24%	15
Tend to agree	71%	45
Agree nor disagree	5%	3
Tend to disagree	-	-
Disagree strongly	-	-
Don't know	-	-
Total	100%	63

3.12 Question 12 asked those reading the Code of Practice how strongly they agreed or disagreed with the following statement, “The Code of Practice provides you with a clear understanding of the duties that will apply to service providers from 2004”.

	Percentage	Frequency of response
Agree strongly	24%	15
Tend to agree	65%	41
Agree nor disagree	6%	4
Tend to disagree	5%	3
Disagree strongly	-	-
Don't know	-	-
Total	100%	63

3.13 Question 13 asked those reading the Code of Practice how helpful the examples were in the Code of Practice.

	Percentage	Frequency of response
Very helpful	55%	35
Fairly helpful	41%	26
Not very helpful	2%	1
Did not read any of them	-	-
Not stated	2%	1
Total	100%	63

3.14 Question 14 asked those reading the Code of Practice how much of Chapter 5 of the Code of Practice they had read.

	Percentage	Frequency of response
Read all/most of it	79%	50
Read about half	16%	10
Read, amount not specified	5%	3
Total	100%	63

3.15 Question 15 asked those reading Chapter 5 of the Code of Practice how strongly they agreed or disagreed that Chapter 5 was clearly written.

	Percentage	Frequency of response
Agree strongly	24%	15
Tend to agree	68%	43
Agree nor disagree	6%	4
Tend to disagree	2%	1
Disagree strongly	-	-
Don't know	-	-
Total	100%	63

3.16 Question 16 asked those reading Chapter 5 of the Code of Practice how strongly they agreed or disagreed that the terms used in Chapter 5 were easy to understand.

	Percentage	Frequency of response
Agree strongly	22%	14
Tend to agree	65%	41
Agree nor disagree	10%	6
Tend to disagree	3%	2
Disagree strongly	-	-
Don't know	-	-
Total	100%	63

3.17 Question 17 asked those reading Chapter 5 of the Code of Practice how helpful they found Chapter 5.

	Percentage	Frequency of response
Very helpful	43%	27
Fairly helpful	55%	35
Not very helpful	2%	1
Not at all helpful	-	-
No view either way	-	-
Not stated	-	-
Total	100%	63

3.18 Question 18 asked those reading Chapter 5 of the Code of Practice how helpful they found the examples in Chapter 5.

	Percentage	Frequency of response
Very helpful	59%	37
Fairly helpful	38%	24
Not very helpful	3%	2
Not at all helpful	-	-
No view either way	-	-
Did not read any of them	-	-
Total	100%	63

3.19 Question 19 asked those reading Chapter 5 of the Code of Practice about the amount of detail in Chapter 5.

	Percentage	Frequency of response
Too much detail	9%	6
About the right amount of detail	82%	52
Not enough detail	5%	3
No views either way	2%	1
Not stated	2%	1
Total	100%	63

3.20 Question 20 asked respondents reading the Code of Practice for any comments they had about the revised Code of Practice.

Positive comments mainly related to the helpfulness of the examples and case studies within the guide along with comments that the Code of Practice was easy to understand, informative, well laid out and well written.

There was little consistency in respect of any negative comments made. Some felt there was too much information to read, but conversely a similar number of respondents wanted more examples. Some felt that the wording should be written in a simpler style with less legal jargon.

Several respondents felt that the term 'reasonable' used within the Code of Practice was not easy to define, and which, if left open to interpretation, could result in organisations not complying with the legislation.

3.21 Question 21 asked respondents reading the Code of Practice for suggestions on how the revised Code of Practice could be improved, and asked for further examples they thought would improve the Code.

Respondents provided the following comments as to how the Code could be improved:

- The single largest response was to provide more specific examples referring to either specific industries or specific disabilities;
- Assistance with guidance on how to define 'reasonable adjustment' was sought by several respondents;
- Some respondents felt that there should be greater distinction between service providers' legal obligations and good practice;
- It was felt that it would be useful to outline the consequences of ignoring the advice in the Code of Practice.

A variety of comments were made relating to the need for an index, cross-referencing of sections, layout and design, and the need for a summary. Several respondents felt that the Code would not be accessible to people with learning disabilities and suggested the use of pictures and symbols to improve accessibility.

Practical Guide

3.22 Question 22 asked respondents how much of the Practical Guide they had read.

	Percentage	Frequency of response
Read all/most of it	69%	45
Read about half	14%	9
Read less than half	9%	6
Not read any of it	8%	5
Total	100%	65

3.23 Question 23 asked those reading the Practical Guide how strongly they agreed or disagreed that the Practical Guide was clearly written.

	Percentage	Frequency of response
Agree strongly	32%	19
Tend to agree	60%	36
Neither agree nor disagree	8%	5
Tend to disagree	-	-
Disagree strongly	-	-
Don't know	-	-
Total	100%	60

3.24 Question 24 asked those reading the Practical Guide how strongly they agreed or disagreed that the terms used in the Practical Guide were easy to understand.

	Percentage	Frequency of response
Agree strongly	31%	19
Tend to agree	65%	39
Agree nor disagree	2%	1
Tend to disagree	2%	1
Disagree strongly	-	-
Don't know	-	-
Total	100%	60

3.25 Question 25 asked those reading the Practical Guide how helpful they found the Practical Guide.

	Percentage	Frequency of response
Very helpful	45%	27
Fairly helpful	53%	32
Not very helpful	2%	1
Not at all helpful	-	-
Not stated	-	-
Total	100%	60

3.26 Question 26 asked those reading the Practical Guide whether the diagrams used in the Guide were easy to understand.

	Percentage	Frequency of response
Agree strongly	48%	29
Tend to agree	47%	28
Agree nor disagree	3%	2
Tend to disagree	2%	1
Disagree strongly	-	-
Don't know	-	-
Total	100%	60

3.27 Question 27 asked those reading the Practical Guide how helpful they found the diagrams.

	Percentage	Frequency of response
Very helpful	52%	31
Fairly helpful	45%	27
Not very helpful	3%	2
Not at all helpful	-	-
Not stated	-	-
Total	100%	60

3.28 Question 28 asked those reading the Practical Guide how helpful they found the sections relating to particular types of service providers (e.g. shops, hotels, hairdressing and beauty salons etc).

	Percentage	Frequency of response
Very helpful	28%	17
Fairly helpful	59%	35
Not very helpful	10%	6
Not at all helpful	-	-
Not stated	3%	2
Total	100%	60

3.29 Question 29 asked those reading the Practical Guide how helpful they found the section relating to the role of management.

	Percentage	Frequency of response
Very helpful	30%	18
Fairly helpful	63%	38
Not very helpful	5%	3
Not at all helpful	-	-
Not stated	2%	1
Total	100%	60

3.30 Question 30 asked those reading the Practical Guide how helpful they found the section relating to publications and organisations.

	Percentage	Frequency of response
Very helpful	45%	27
Fairly helpful	45%	27
Not very helpful	6%	4
Not at all helpful	2%	1
Not stated	2%	1
Total	100%	60

3.31 Question 31 asked those reading the Practical Guide about the right amount of detail in particular aspects of the Practical Guide.

	Percentage	Frequency of response
<u>Diagrams</u>		
Too much detail	2%	1
About the right amount of detail	85%	51
Not enough detail	6%	4
No views either way	2%	1
Not stated	5%	3
Total	100%	60

Sections on particular types of service providers

Too much detail	2%	1
About the right amount of detail	72%	43
Not enough detail	15%	9
No views either way	3%	2
Not stated	8%	5
Total	100%	60

Section on the role of management

Too much detail	3%	2
About the right amount of detail	74%	44
Not enough detail	15%	9
No views either way	3%	2
Not stated	5%	3
Total	100%	60

Section on publications and organisations

Too much detail	-	-
About the right amount of detail	75%	45
Not enough detail	12%	7
No views either way	8%	5
Not stated	5%	3
Total	100%	60

The Guide as a whole

Too much detail	3%	2
About the right amount of detail	82%	49
Not enough detail	8%	5
No views either way	2%	1
Not stated	5%	3
Total	100%	60

3.32 Question 32 asked those reading the Practical Guide for any other comments they had about the Guide.

Positive comments focused mainly on ease of use of the Guide. Typical comments were: “useful”, “clear and well written”, “easy to understand”, and “useful diagrams and graphics”.

The main critical comments related to specific illustrations within the Guide. Critical comments were also made with reference to the accessible toilet layout and door widths. Some respondents wanted information on regional contacts that they could go to for advice.

3.33 Question 33 asked those reading the Practical Guide for suggestions on how the Guide could be improved.

The main comments as to how the Guide could be improved were:

- To provide more information on how to make toilets accessible and increased advice relating to opening of doors and door sizes. Some respondents suggested that examples of good practice design for outdoor facilities would be useful. Others requested more information relating to signage and to vertical circulation through buildings i.e. lifts. Several respondents felt that the status of the Guide should be clarified and that a recommendation should be made that advice is sought from a professional practitioner;
- Other comments emphasised staff training in understanding how to assist disabled people;

- The majority of other comments related to the design and layout of the Practical Guide, particularly with a request for more and clearer diagrams, as well as the use of colour in the Guide. Some suggested the production of different versions of the Guide for specific sectors or the provision of model check lists relating to different types of businesses.

Proposals for Regulations

3.34 Question 34 asked respondents how much of the proposals for Regulations document they had read.

	Percentage	Frequency of response
Read all/most of it	62%	40
Read about half	17%	11
Read less than half	9%	6
Read, amount not specified	3%	2
Not read any of it	9%	6
Total	100%	65

3.35 Question 35 asked those reading proposals for Regulations if they agreed or disagreed with ~~the~~ OFMDFM's proposals in relation to Part R of the Building Regulations.

	Percentage	Frequency of response
Agree with proposals	63%	37
Disagree with proposals	10%	6
No strong views either way	25%	15
Not stated	2%	1
Total	100%	59

3.36 Question 36 asked the respondents who disagreed with [the](#) OFMDFM’s proposals in relation to Part R to state their reasons for doing so.

The main reasons for disagreeing were that the proposals were not broad enough and they should cover all buildings, both new and existing, as well as alterations. Some respondents felt that the proposals contained too many loopholes or were open to different interpretation as to what was actually meant. Other respondents felt that the Building Regulations, and their enforcement, needed to be strengthened.

3.37 Question 37 asked those reading the proposals for Regulations if they agreed or disagreed with [the](#) OFMDFM’s proposals relating to Consent to an Adjustment.

	Percentage	Frequency of response
Agree with proposals	63%	37
Disagree with proposals	5%	3
No strong views either way	25%	15
Not stated	7%	4
Total	100%	59

3.38 Question 38 asked the respondents who disagreed with [the](#) OFMDFM’s proposals relating to Consent to an Adjustment to state their reasons for doing so. The main comments were:

- That the concept of 'reasonableness' was too vague and that lessors should have equal responsibility for complying with an adjustment;
- The proposals relating to consent could work in favour of complacent landlords.

3.39 Question 39 asked those reading the proposals for Regulations if they agreed with OFMDFM’s proposals in relation to Premises held under a Lease or Tenancy.

	Percentage	Frequency of response
Agree with proposals	61%	36
Disagree with proposals	3%	2
No strong views either way	29%	17
Not stated	7%	4
Total	100%	59

3.40 Question 40 asked the respondents who disagreed with OFMDFM’s proposals in relation to premises held under a Lease or Tenancy to state their reasons for doing so. The main comment was that the Regulations should be extended to place duties on landlords or lessors of premises.

3.41 Question 41 asked those reading the proposals for Regulations if they agreed with ~~the~~ OFMDFM’s conclusion not to regulate to limit service providers’ costs.

	Percentage	Frequency of response
Agree	61%	36
Disagree	5%	3
No strong views either way	31%	18
Not stated	3%	2
Total	100%	59

3.42 Question 42 asked respondents who disagreed with ~~the~~ OFMDFM’s conclusion not to regulate to limit service providers’ costs, to state their reasons for doing so. The main comments were:

- That grants and funds should be made available for alterations, particularly for small businesses and the voluntary and community sector;
- Some organisations might try to find loopholes in order to evade their obligations.

3.43 Question 43 asked those reading the proposals for Regulations if there were any other areas where they felt there was a need for regulation.

	Percentage	Frequency of response
Yes	19%	11
No	25%	15
No strong feeling either way	47%	28
Not stated	9%	5
Total	100%	59

3.44 Question 44 asked those reading the proposals for Regulations to identify the other areas in which they felt regulation was needed and why. The main areas required to be regulated were:

- Transport;
- Educational premises;
- Domestic dwellings;
- Older buildings.

3.45 Question 45 asked for any further comments respondents wished to make about the proposals for Regulations. Comments included:

- the difficulty in understanding the legal wording used in the Regulations;
- concerns that not all buildings were covered by Part R of the Building Regulations;
- concerns about the meaning of 'reasonable'.

Another reply suggested the creation of a conciliation/arbitration service that could be used to avoid resorting to the courts.

Regulatory Impact Assessment

3.46 Question 46 asked respondents how much of the Regulatory Impact Assessment they had read.

	Percentage	Frequency of response
Read all/most of it	52%	34
Read about half	15%	10
Read less than half	18%	11
Not read any of it	15%	10
Total	100%	65

3.47 Question 47 asked those reading the Regulatory Impact Assessment for any comments they wished to make about the Regulatory Impact Assessment in the light of the revised Code of Practice and draft proposals for Regulations.

Positive comments related to how informative, comprehensive and useful it was.

A number of others commented that the costs were misleading and some respondents felt that the language was legalistic. Other respondents felt that the Regulatory Impact Assessment should encourage the best practice option rather than the least-cost option.

4. THE RESPONSE OF THE OFFICE OF THE FIRST MINISTER AND DEPUTY FIRST MINISTER TO THE CONSULTATION ON THE PROPOSALS FOR REGULATIONS

- 4.1 Having carefully considered all the responses, it was decided to make some changes to the proposals that were published for the consultation. In the main, the Regulations made on 28 February 2003 reflect the consultation proposals.

Exemption for certain physical features

- 4.2 Buildings for which plans were deposited with a district council on or after 28 November 1994 are required by Building Regulations to make reasonable provision for disabled people to have access to and within and to use any building or part of a building to which Part R of those Regulations applies. Broadly, a building will comply with Part R when its physical features (or aspects of physical features) accord with those described in the Technical Booklet R. As proposed, the Regulations provide an exemption from the need to make reasonable adjustments to certain physical features. This will apply only to features of a building that comply with the methods and standards set out in Technical Booklet R. The Regulations make it clear that the relevant Technical Booklet will either be the June 1994 or December 2000 Technical Booklet R.
- 4.3 The proposals did not suggest a time limit on the exemption. This would have meant that even though society's expectations on accessibility increased over time, a service provider would never have had to make alterations to relevant features of the building. The Regulations now provide that the exemption will last for 10 years from the date that the feature was constructed or installed.
- 4.4 Only certain features are addressed in Technical Booklet R and it is not mandatory to follow the provisions contained in Technical Booklet R. It is open, therefore, for a developer to comply with Part R in other ways. For those service providers who had complied with the requirements of Part R by methods and standards other than those set out in Technical Booklet R, the code now explains that where a building complies with Part R any

alternative treatment of features must enable any disabled person to use the building with the same degree of ease as would have been the case had those features (or aspects of those features) accorded with those set out in Technical Booklet R. Therefore a service provider who provides services from such a building is unlikely to have to make alterations or adjustments to those specific features if 10 years or less have passed since their construction or installation.

Consent to an adjustment

- 4.5 The regulatory proposals set out circumstances in which ‘a lessor’ (i.e. a service provider’s landlord) would be taken to have withheld his consent, or to have reasonably or unreasonably withheld his consent, to an application to make an alteration to the premises. In order to provide sufficient time for lessors to respond, the Regulations now provide for a response to be made within 42 days (as opposed to the proposed 21 days). They also now make clear that withholding consent will be reasonable where the lessor does not know (and could not reasonably be expected to know) that the proposed alteration is for the purposes of a reasonable adjustment.
- 4.6 In order to make it sufficiently clear that lessors might need to see plans for the alteration before deciding whether to consent to alterations the Regulations now allow the lessor to request plans which it would be reasonable for him to receive before consenting to a request to make alterations. These must be sought within 21 days of the service provider’s request for consent to make an alteration.
- 4.7 The Regulations also clarify some other matters, for example, that the lessor’s response must be made in writing; and that a response must be made to the service provider within 14 days of receiving the consent of any other person (i.e. someone that the lessor has had to seek consent from before giving his own consent to an alteration).
- 4.8 It was concluded that it is unnecessary to regulate to ensure that it would be reasonable for the lessor to withhold consent to an alteration where he is bound by an agreement that does not allow him to pass on to the service provider any costs incurred in giving his consent.

4.9 It was also concluded that there was no need to provide in regulations for it to be reasonable for a lessor to impose a condition relating to reinstatement when giving consent to an adjustment if it would have been reasonable for him to refuse such consent. This is because under Part III lessors are able to impose any reasonable conditions when giving their consent to alterations, and the reasonableness of those conditions can be challenged in the courts.

Service providers' costs

4.10 The majority of respondents agreed that a limit should not be set on the costs service providers incur in making adjustments. Part III allows flexibility in deciding how to make services accessible and service providers will only ever have to make adjustments that are reasonable in their particular circumstances. There is thus no question of unreasonable costs ever being imposed on them. It was concluded therefore not to regulate to limit service providers' costs.

5. THE RESPONSE OF THE EQUALITY COMMISSION TO THE CONSULTATION ON THE CODE OF PRACTICE AND PRACTICAL GUIDE

- 5.1 The Equality Commission was pleased with the outcome of the consultation process and the quality of the responses have enabled us to refine the Code of Practice and Practical Guide, so that they will hopefully prove to be valuable tools in helping service providers meet their duties, and disabled people exercise their rights, under the DDA in respect of the provision of services.
- 5.2 The consultation responses on the Code and Practical Guide, including those that were sent in separately from the standard questionnaire, were carefully considered by the Commission. The comments fell into the following broad categories:
- Legislative areas apparently falling within Part III of the DDA, but requiring further clarification;
 - Areas currently exempt from Part III of the DDA (and, therefore, the Code of Practice);
 - Specific examples for certain types of service provider or people with particular disabilities;
 - Accessibility of the language, format and style of the Code of Practice and Practical Guide.
- 5.3 Responses were considered in detail by a working group set up by the Commission, which included representatives of OFMDFM, the Construction Service (Department of Finance and Personnel) and Disability Action. The Chair of the working group was also a member of a similar group formed in Great Britain, which enabled us to share issues and learn from their experiences.
- 5.4 The working group took on many of the suggestions and comments made by respondents to the consultation exercise. The vast majority of responses concerned clarification of legislative issues, particularly in relation to the new 2004 duties. As a result of the comments, we made several significant changes to the Code of Practice – these included:

- The addition of a new chapter on Building Regulations and leases
- Further guidance on when it is appropriate to remove, alter or avoid physical features that make it impossible or unreasonably difficult for disabled people to access a building
- Clarification of responsibility for common parts of buildings
- Incorporation of good practice into the Code.

5.5 Not all suggestions could be incorporated into the Code of Practice. Some respondents thought that the Code should be simplified and shortened. However, the Commission felt that it should explain the law as fully as possible. Instead, we went on to publish, in partnership with the Disability Rights Commission in Great Britain, separate guidance on specific areas. This included the Practical Guide for Smaller Businesses, which gives practical advice on complying with the law. The DRC and ourselves have also produced a range of other guidance aimed at different types of service provider. In this way, the Code of Practice can be considered a comprehensive guide to the DDA in respect of service provision, with additional guidance in place to illustrate its principles and concepts in certain practical situations.

5.6 Some suggestions fell outside the remit of the Code of Practice, for example in relation to areas currently exempt from the DDA (transport, education, etc). Other suggestions related to areas that could not be sufficiently clarified by the law (for example on the definition of 'disability') – the Code can only interpret the law as it stands; it cannot change the law itself.

DISABILITY DISCRIMINATION (PROVIDERS OF SERVICES) (ADJUSTMENT OF PREMISES) REGULATIONS (NORTHERN IRELAND) – FURTHER CONSULTATION

In August 2002 OFMDFM sought further views on possible approaches to handling exemptions from the Regulations and wrote out to more than 80 key stakeholders on the matter. Whilst the DDA places duties on service providers to make reasonable adjustments in relation to the physical features of their premises to make their services accessible to disabled persons, the Regulations that implement the duties also set out the circumstances where it is **not** reasonable for a provider of services to make adjustments by removing or altering physical features of buildings. OFMDFM sought views on alternative options for prescribing the circumstances where it would not be reasonable.

The following options were consulted on:

- (i) Option 1 – Keep in line with Great Britain and link exemption to Technical Booklet R as previously proposed.
- (ii) Option 2 – Link exemption to Part R of the Building Regulations. This option would encompass solutions approved by Building Control Officers, other than those set out in Technical Booklet R.
- (iii) Option 3 – Have no exemption.

The results of this consultation exercise were as follows:

Option 1 - Link Exemption to Technical Booklet R	5
Option 2 – Link Exemption to Part R of Building Regulations	12
Option 3 – No Exemption	5
No preference	11
Total responses	33

The nature of the responses was indicative of the very different views held on this issue. However, OFMDFM was anxious to ensure that any solution should offer the best compromise between promoting the civil rights of disabled people and providing a level of certainty for service providers. Therefore, prior to the suspension of the Devolved Administration on 14 October 2002, Ministers agreed to proceed on the basis of Option 1 i.e. to link the exemption to Technical Booklet R. Following suspension, the Minister with responsibility for equality issues endorsed this proposed solution. This solution also ensures parity with Great Britain, thus affording disabled people in Northern Ireland at least the same rights as those in Great Britain.

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