



Equality Commission

FOR NORTHERN IRELAND

Strengthening Protection for Disabled People Proposals for Reform - Summary

March 2012

Introduction

The Equality Commission is recommending urgent reform of the disability equality legislation in Northern Ireland.

The Commission believes that the changes, if introduced, will make a tangible difference to disabled people across a range of areas. For example, they will benefit disabled people when applying for jobs, whilst in employment, whilst accessing goods and services, as students in further and higher education, when using public transport or as disabled pupils in schools. Further, the changes will give additional protection against discrimination for those who care for disabled people.

Whilst we recognise the important legislative protection which disabled people already have under the Disability Discrimination Act 1995 and the Special Educational Needs and Disability (Northern Ireland) Order 2005 against unlawful discrimination in a range of areas, it is clear that there still remain significant gaps in protection which need to be addressed.



The changes to the disability law will make a tangible difference to disabled people and their carers.

What changes are required?

In summary, the Equality Commission recommends that:-

- **Strengthening and simplifying legislation**

the disability legislation is harmonised, simplified and strengthened so that there is a uniform set of definitions of discrimination and other provisions across the scope of the legislation.

For example, currently there is weaker protection for disabled pupils in schools under the disability legislation against disability discrimination and harassment, compared to the protection in relation to disabled students in institutions of further and higher education.

There is also weaker protection against discrimination and harassment for disabled people when accessing goods and services, (including public transport) or buying or renting property, than when in employment, or in further and higher education.

- **Improving protection against different types of discrimination**

changes are made to the definition of disability- related discrimination in order to address the impact of the House of Lords' decision in June 2008 in the *Malcolm*¹ case, which significantly restricted the scope of disabled people to claim disability-related discrimination.

There have been a number of cases in Great Britain which have highlighted the difficulties facing disabled people claiming discrimination following the *Malcolm* decision.²



The changes will strengthen protection for disabled people against discrimination and harassment.

¹ *Mayor and Burgesses of the London Borough of Lewisham v Malcolm* [2008]UKHL 43
<http://www.bailii.org/uk/cases/UKHL/2008/43.html>

² See, for example, *Hose Express Thurrock Ltd v Jacomb*, UKEAT/0389/08/DM

In addition, as a result of the *Malcolm* decision, individuals seeking assistance from the Equality Commission have been unable to pursue elements of their disability discrimination cases relating to disability-related discrimination in the courts. This has severely restricted their access to justice.

The difficulties caused by the *Malcolm* decision have now been addressed in Great Britain through the introduction of the Equality Act 2010. In particular, disability-related discrimination has been replaced by provisions prohibiting indirect discrimination and discrimination arising from disability. The Commission is calling for similar changes to be introduced here.

- **Removal of list of capacities**

the legislation is amended so as to **remove the list of capacities** from the definition of disability; thereby making it easier for disabled people to fall within the definition of disability.

- **Protection for carers of disabled people**

there is protection for carers of disabled people, or friends or family members, who are subjected to direct discrimination or harassment because of their association with a disabled person, or because they are wrongly perceived to be disabled.

Such changes are in keeping with the European Court of Justice (ECJ) decision in the case of *Coleman –v- Attridge Law* ³ in 2009. In that case the ECJ ruled that treating an employee less favourably because of their caring responsibilities for a disabled child was unlawful and prohibited under the European Framework Directive.

- **Protection against harassment**

there is increased protection for disabled people from harassment related to their disability when accessing goods and services, or private clubs.

³ UKEAT/0071/09/JOJ, 30 October 2009.

<http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d0f130dedda0d7a97d754ad8a248f2527e423780.e34KaxiLc3eQc40LaxqMbN4NchuLe0?text=&docid=67793&pageIndex=0&doclang=EN&mode=doc&dir=&occ=first&part=1&cid=1104982>

Currently, under the disability legislation in Northern Ireland, there is no free standing protection for disabled people against harassment related to their disability outside employment and the provision of further and higher education.

- **Prohibit pre-employment disability questions**

questions by employers related to disability or health before a job offer is made are **prohibited**, except in specified circumstances. This includes asking such questions as part of the application process or during an interview.

Employers can still, for example, ask disability or health related questions in order to establish whether the person requires reasonable adjustments during the recruitment process; or whether or not the applicant is able to undertake a function that is intrinsic to the job (with reasonable adjustments in place, as required); or in order to monitor diversity in the workplace.

The inclusion of health or disability questions in a job application form or a medical questionnaire can deter disabled people from applying for the job in question.

These changes are aimed at reducing discrimination by some employers against disabled applicants, who reject a disabled person's application once they become aware of the person's disability. They are also designed to ensure that disabled applicants are assessed objectively for their ability to do the job in question.

- **Duty on schools to provide auxiliary aids and services**

there is an additional duty on schools to provide auxiliary aids and services for disabled pupils, where reasonable.

The changes, for example, will benefit disabled pupils who do not have special educational needs, but still require reasonable adjustments (in the form of auxiliary aids or services). This, for example, could include **extra equipment or support** (such as an adapted computer keyboard) for disabled pupils or prospective pupils.

- **Additional protection for disabled tenants**

disabled tenants who live in rented residential accommodation are given additional protection in relation to the making of reasonable adjustments by landlords to common parts (such as an entrance hall in a block of flats).

Currently, landlords are not **required** to make disability-related alterations to the physical features of the common parts of let residential premises, such as stairs and hallways; even if they are reasonable to make and paid for by a disabled tenant.

The recommended changes will mean that landlords will be **required** to follow a specific process if a disabled tenant requests an adjustment to a physical feature in a common part of residential premises; in circumstances where the physical feature puts the disabled tenant at a substantial disadvantage.

Why is reform needed?

- **Address key inequalities**

The changes advocated by the Equality Commission will strengthen protection for disabled people against unlawful discrimination.

The recommended changes will help address the key inequalities facing disabled people in Northern Ireland. In particular, disabled people face a wide range of inequalities in terms of educational attainment, access to employment, prejudicial attitudes, accessing transport and goods and services, and participating in public life⁴.

Prohibiting pre-employment disability-related questions by employers, except in certain limited circumstances, will, for example, help reduce the barriers disabled people face in seeking employment.



The changes will help address key inequalities facing disabled people, and make the law easier to understand.

- **Harmonise and simplify**

In addition, the recommended changes will harmonise and simplify the disability equality legislation.

Currently the legislation is complex, difficult to understand and contains a wide range of inconsistencies. By harmonising and simplifying the law, the changes will make it easier for disabled people to understand their rights under the legislation, as well as helping employers and service providers to understand their obligations in relation to disabled people.

⁴ As highlighted in the Equality Commission's *Statement on Key Inequalities in Northern Ireland*, ECNI, October 2007, available at [http://www.equalityni.org/archive/pdf/Keyinequalities\(F\)1107.pdf](http://www.equalityni.org/archive/pdf/Keyinequalities(F)1107.pdf)

They will also ensure that there are consistent levels of protection for disabled people across the scope of the legislation; for example, when in employment or when accessing services or whilst in education.

- **Keep pace with changes in Great Britain**

Further, the changes will ensure that Northern Ireland equality law keeps pace with legislative changes that have already taken place in Great Britain or are due to be implemented⁵. As a result of the implementation of the Equality Act 2010, the disability equality legislation in Great Britain has been significantly harmonised and strengthened.

In addition, by ensuring greater consistency between disability equality law in Great Britain and Northern Ireland, the changes will make it easier for employers, public bodies and service providers who operate both in Great Britain and Northern Ireland who currently have to grapple with the differences and complexities between the two jurisdictions.

- **In line with UNCRPD obligations and draft EC Directive**

Finally, the Equality Commission considers that the changes are in keeping with the UK Government's international obligations under the UN Convention on the Rights of Persons with Disabilities (UNCRPD)⁶. The Convention is an important overarching framework for human rights for disabled people which contains civil, political, as well as social and economic rights. It sets out the actions that the UK Government must take to ensure that disabled people enjoy these human rights on an equal basis with others.

Finally, the changes will also help ensure that Northern Ireland disability equality legislation complies with the anticipated requirements of the draft European Commission Directive on the provision of goods and services⁷.

⁵ It is important to note that the UK Government is still considering some provisions; for example, the additional duty on schools to provide auxiliary aids and services for disabled pupils, where reasonable, and increased requirements on landlords as regards making reasonable adjustments to common parts for disabled tenants, and there is no specific implementation date as yet.

⁶ For further information on the UN Convention see <http://www.equalityni.org/archive/pdf/UNCRPDOptionalProtocolIPE.pdf>

⁷ Draft Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, July 2008, COM (2008) 0426; available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0426:FIN:EN:PDF>

Summary

In summary, the Equality Commission is calling for a number of key changes to the disability equality law aimed at harmonising and simplifying the disability equality legislation, making it more effective and modernising it in order to extend protection in certain areas.

In addition, the changes will help ensure Northern Ireland equality law keeps pace with changes in legislation which have already taken place in Great Britain or are due to be implemented.

The Equality Commission will continue to take proactive steps in order to raise awareness of its recommendations for reform of the disability equality legislation, and to secure support for the recommended changes.

**Equality Commission for Northern Ireland
March 2012**



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Further information and advice

For further information and advice on equality issues and if you would like to find out more about the Equality Commission and its work, or if you would like to request alternative formats of this publication contact us at:

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and **Solidarity between Generations 2012**

