

DISABILITY AND TRANSPORT

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OVERVIEW

When originally enacted, the Disability Discrimination Act 1995 applied to all regions of the UK. Although the parent Act extended throughout the UK, the pace of subsequent legislative developments has not been equal. Legislation amending the 1995 Act has been made in respect of GB and Northern Ireland separately, with the result that the 1995 Act, as it applies to Northern Ireland, has been amended some time after equivalent amendments in GB.

Part III of the 1995 Act deals with discrimination in relation to the provision of goods, facilities and services. Section 19(1) of the 1995 Act makes it unlawful for a service provider to discriminate against a disabled person:

- (a) by refusing to provide, or deliberately not providing, a service to a disabled person that is provided to the public
- (b) by failing to make reasonable adjustments, where the effect of that makes it impossible, or unreasonably difficult, for a disabled person to avail of a service
- (c) by not providing the same standard or manner of service to a disabled person that is provided to any other person
- (d) by not providing a service to a disabled person on the same terms as that service is provided to any other person

Section 21 outlines what constitutes reasonable adjustment in respect of section 19(1)(b).

When it was originally enacted, transport vehicles were exempt from the scope of Part III of the Act. Transport infrastructure (bus and rail stations, airports and sea ports, booking facilities) is covered by Part III of the Act, as they are classed as premises. The exemption was included in the 1995 Act because the Government felt that extending the duties in Part III to transport vehicles would not give disabled people substantive rights, as there were so few accessible vehicles in operation.

Part V of the Act contains powers that will enable accessibility regulations to be made in respect of all forms of land-based transport¹, and provides for regulations to be made regarding the technical specifications of taxis, buses, trains and public service vehicles. Because different alterations are required in order to make different forms of transport accessible to disabled people, the development of legislation in this area has been relatively piecemeal. The provisions of Part V are being implemented on an ongoing basis, with the effect that all buses will be accessible from 2017. In GB, consultation has begun on the end date for accessibility in relation to trains. However, a provision in the 1995 Act requires that this must be by 1 January 2020. These end dates apply to both GB and Northern Ireland.

In addition to the issue of different legislative arrangements for GB and Northern Ireland, the legislative provisions themselves are complex, as different provisions apply to different forms of transport.

SUMMARY OF LEGISLATIVE DEVELOPMENTS – GB

The removal of the transport exemption was provided for in section 5 of the Disability Discrimination Act 2005. The 2005 Act replaced the original exclusion in the 1995 Act with a more precise exclusion and also included a regulation-making power to remove all or part of the transport exemption in respect of different vehicles at different times.

The more precise exemption was enacted by including a new section 21ZA into the 1995 Act, which exempted transport services from discriminating against disabled people. Section 21ZA also exempted transport services from the duty to make reasonable adjustments. The regulation-making power in section 21ZA(3) provided that the new section would only come into operation when regulations were made to enable this. The power was used for the first time to enact the Disability Discrimination (Transport Vehicles) Regulations 2005, which came into operation on 4 December 2006.

SUMMARY OF LEGISLATIVE DEVELOPMENTS – NI

The legislative changes that were made in GB to remove the transport exemption have been mirrored in Northern Ireland, although these have been made after the GB amendments. The removal of the transport exemption was provided for in article 7 of the Disability Discrimination (Northern Ireland) Order 2006, which had the same effect as the DDA 2005 and inserted new section 21ZA into the 1995 Act. This provision has been in force since 31 December 2007. However, the regulation-making power has not yet been invoked.

¹ Air and sea travel are not subject to the Disability Discrimination Act 1995, as these are international modes of travel. However, regulations relating to air travel will be in force from 26 July 2008. These are explained below. The Disabled Persons Transport Advisory Committee has established a working group to consider issues relating to ferry travel.

The effect of this anomaly is that, in GB, the transport exemption has been removed in respect of certain vehicles and there has been a duty to make reasonable adjustments incumbent on transport services since 4 December 2006. Disabled transport users in Northern Ireland do not yet have that protection.

During the [debate](#)² on the Disability Discrimination (Private Clubs, etc.) Regulations 2008, junior Minister Gerry Kelly noted the Committee's correspondence in relation to regulations relating to transport vehicles. He explained that the delay in implementation arose because of an overload in implementing other disability legislation. Public transport is a cross-cutting issue, with responsibility for disability issues resting with the Office of the First Minister and deputy First Minister (OFMDFM), and responsibility for taxis and for bus and rail transport resting with the Department of the Environment and the Department for Regional Development respectively. A cross-departmental working group, which will undertake a consultation exercise on the regulations, has yet to be established. Following the outcome of the consultation, a statutory rule will be made by OFMDFM and brought before the Assembly. It is expected that the regulations will largely mirror those already in force in GB and will be introduced during 2008.

SECTION 21ZA: THE AMENDED TRANSPORT EXEMPTION

Section 21ZA³ amended the transport exemption contained in the original Disability Discrimination Act 1995. Transport services were still exempt from the duties and responsibilities contained in Part III of the 1995 Act, but section 21ZA(3) contained a regulation-making power allowing the exemption to be lifted in part or in total for different vehicles at different times. In GB, the power was used for the first time to make the Disability Discrimination (Transport Vehicles) Regulations 2005.

It is important to note that section 21ZA's entry into force is dependent on the regulation-making power in section 21ZA(3) being invoked. In GB, section 5 of the Disability Discrimination Act 2005 came into force on 30 June 2005.⁴ The Disability Discrimination (Transport Vehicles) Regulations 2005, which gave effect to section 21ZA, were made later that year and came into force on 4 December 2006.

In Northern Ireland, section 21ZA was inserted into the 1995 Act via article 7 of the Disability Discrimination (Northern Ireland) Order and came into operation on 31 December 2007. However, as outlined above, equivalent regulations have yet to be made. The effect of this means that disabled people in Northern Ireland have been, and remain, unable to enjoy the same rights and protection in using

² Official Report, Tuesday 12 February 2008.

³ Inserted into GB law through section 5 of the Disability Discrimination Act 2005 and into Northern Ireland via article 7 of the Disability Discrimination (Northern Ireland) Order 2006

⁴ The Disability Discrimination Act 2005 (Commencement No. 1) Order 2005 (SI 2005/1676)

public transport. Importantly, they do not have access to means of redress if and when they are discriminated against when using public transport.

CODE OF PRACTICE

The process for introducing equivalent regulations into Northern Ireland has been detailed above. However, introducing legislation is one issue; promoting and ensuring compliance with legislation is another. To that end, in advance of the GB Regulations coming into force, a statutory Code of Practice was published by the Disability Rights Commission (DRC) to supplement the legislation and explain the changes in the law as it applied to transport vehicles. The GB Regulations were made over 12 months before they came into force in order to allow the DRC to finalise its code and to allow for consultation. The code of practice was published in advance of the 2005 Regulations in order to give transport service providers time to make the necessary adjustments.

The guidance in the Code is designed to help transport service providers to comply with the law. Although the Code of Practice does not impose any duties or obligations (these are solely contained within the relevant legislation), courts are required to consult it if it appears relevant to proceedings taken under the 2005 Act. A similar code of practice will have to accompany any regulations made in relation to Northern Ireland.

DISABILITY DISCRIMINATION (TRANSPORT VEHICLES) REGULATIONS 2005

The 2005 Regulations remove the transport exemption for the following types of vehicles: buses and coaches, trains, taxis and private-hire vehicles; public-service vehicles; rental vehicles; breakdown-recovery vehicles; and guided transport vehicles such as trams or light-rail services.

Since 4 December 2006, therefore, it has been unlawful in GB for operators of the above-mentioned vehicles to:

- refuse to provide, or deliberately not provide, a service to a person because they are disabled
- offer a lower standard of service to a person because they are disabled
- offer a service to a disabled person on different terms (such as levying an additional charge, for example)
- to fail to make reasonable adjustments for a disabled person

Transport service providers are also under a duty to change policies, practices or procedures that make it impossible or unreasonably difficult for a disabled person

to use a service. They are also under a duty to provide auxiliary aids and services to enable a disabled person to use a service.

Providers of breakdown-recovery vehicles are also under a duty to provide a reasonable alternative method to enable a disabled person to avail of a service.

Providers of rental vehicles are under a duty to take steps to change the physical features of rental vehicles that prevent a disabled person from using such vehicles or to provide a reasonable alternative that will enable a disabled person to avail of the service.

FURTHER INFORMATION

It has been recognised for some time that making buildings accessible for people with disabilities, and making reasonable adjustments to enable disabled people to access goods, facilities and services is necessary in order to allow people with disabilities to participate in everyday life. Many disability lobby groups have asserted that, while access to buildings is important and welcome, it is equally important that people with disabilities have easy access to forms of transport to take them where they want to go. A collection of case studies from the Equality Commission for Northern Ireland demonstrated the discrimination and difficulties faced by people with a range of disabilities in using public transport⁵. The experiences of people with visual or hearing impairments, wheelchair users and people with progressive conditions such as motor neurone disease and cerebral palsy highlighted the various barriers faced by people with disabilities, such as discrimination, additional financial burdens and, on occasion, direct victimisation. Examples of good practice often came from individuals' own concern, rather than from any proactive policy to facilitate people with disabilities.

TAXIS

Taxis in Northern Ireland fall into three licensing categories: Belfast public hire, restricted public hire, and private hire. Currently, only Belfast public-hire vehicles are required to be wheelchair accessible. Belfast public-hire taxis account for around 4% of the total taxi fleet operating in Northern Ireland. However, the Taxis (Northern Ireland) Bill 2008⁶ will provide that, if any driver wishes to pick passengers up in the street, without the need for a booking, he or she will be required to apply for one of the new public hire licences. These licences will supersede the current Belfast public hire and restricted public hire categories, and require that a vehicle is wheelchair accessible or compliant with the vehicle specifications listed in the 1995 Act. It is proposed that, no later than 2020, only accessible taxis will be able to stand for hire on taxi ranks or at locations where taxis are allowed to stand within property to which the public have access (that is, transport interchanges, shopping centres etc.)

⁵ Equality Commission for Northern Ireland 'All Aboard? The Experience of Disabled People using Transport in Northern Ireland' (August 2003)

⁶ The Further Consideration Stage of the Bill was concluded on 10 March 2008

Regulations⁷ are currently in force relating to the carriage of assistance dogs are in force for taxis and private-hire vehicles, stipulating that drivers cannot refuse to take passengers with assistance dogs, and cannot levy additional charges for doing so, unless they are medically exempted.

AIR TRANSPORT

Regulations placing duties on air carriers and airports to provide assistance to people with disabilities and people with reduced mobility will come into force by July 2008. The Civil Aviation (Access to Air Travel for Disabled Persons and Persons with Reduced Mobility) Regulations 2007 are UK-wide and incorporate into UK law the provisions of European Regulation 1107/2006, concerning the rights of disabled persons and persons with reduced mobility when travelling by air. As the EC Regulation comes into effect on 26 July 2008, these Regulations are, as yet, only partly in force, but will be fully in force when the EC Regulation comes into effect. The 2007 Regulations will apply to air carriers, their agents, tour operators or managing bodies of airports. It should be noted that the Regulations also apply to persons with reduced mobility as a result of age or other factors, in addition to disability.

In Northern Ireland, the designated complaints body is the Consumer Council. The Regulations also provide for compensation claims, including a provision for injury to feelings, through civil court proceedings, but there is a six-month statute of limitation from the time the infringement occurred. Conciliation services are available in England, Scotland and Wales through the Equality and Human Rights Commission.

The duties in the 2007 Regulations apply from when a relevant passenger arrives at an airport until they board an aircraft, at which point the duties are incumbent on the air carrier. The Regulations make it an offence to refuse to carry to passenger who has a disability or who has reduced mobility, although derogations and special conditions do apply. Furthermore, the 2007 UK Regulations provide a defence for a person to show that all reasonable steps to avoid committing an offence were taken.

The EC Regulation affords a right of assistance. Passengers who wish to avail themselves of this right are required to notify the airport or air carrier at least 48 hours before they wish to travel. The assistance includes help with check-in and moving through the airport to the aircraft. Once on board, assistance dogs must be allowed on board, subject to national restrictions, as well as up to two pieces of mobility equipment; again, this is subject to restrictions, primarily health-and-safety considerations.

⁷ Disability Discrimination (Taxis) (Carrying of Guide Dogs etc.) (Amendment) Regulations (Northern Ireland) 2007

The preamble to the EC Regulation states that, in the interests of social inclusion, there should not be additional charges levied on passengers that receive assistance. However, while air carriers cannot make additional charges in respect of on-board assistance, managing bodies of airports may levy charges on airport users in order to fund the assistance. Article 8(4) clarifies the issue:

“This specific charge shall be reasonable, cost-related transparent and established by the managing body of the airport in cooperation with airport users... It shall be shared among airport users in proportion to the total number of all passengers that each carries to and from that airport.”

POLICY

Compliance with the requirements of the Disability Discrimination Act 1995 form one of the strategic objectives of the Department for Regional Development’s (DRD) Accessible Transport Strategy:

‘that Disability Discrimination Act requirements are met and affordable adjustments are made so that accessibility for people with disabilities is a condition of public money being spent on all new public transport investment.’

Ensuring that all the specifications of all public transport vehicles comply with the provisions of the 1995 Act has been identified as a priority by the Department for Transport in GB and the Department for the Environment and the Department for Regional Development in Northern Ireland.

DEPARTMENT FOR REGIONAL DEVELOPMENT INITIATIVES

The Department has a statutory power to grant funding for transport facilities and services in order to facilitate travel by members of the public who are disabled through section 75A of the Transport Act (Northern Ireland) 1967.

DOOR-2-DOOR TRANSPORT

The Door-2-Door scheme is a partnership initiative between DRD and Chambers Coach Hire that provides an urban transport service for older people and people with disabilities. It has been in operation since 2006, and now covers 27 towns and cities in Northern Ireland. The scheme is due to be extended to Belfast and Derry from 1 April 2008.⁸ The service enables people to visit friends or family, or to visit banks, doctors, town centres or hairdressers. To be eligible, a person must meet one of four criteria: in receipt of the higher rate of Disability Living Allowance, in receipt of the higher rate of Attendance Allowance, be registered blind or be 80 years of age or older. It should be noted that the scheme operates in urban areas only.

⁸ The scheme currently operates in: Antrim, Armagh, Ballymena, Ballymoney, Banbridge, Carrickfergus, Coleraine, Comber, Cookstown, Craigavon, Downpatrick, Dundonald, Dungannon, Dunmurry, Enniskillen, Holywood, Larne, Limavady, Lisburn, Lurgan, Newry, Newtownabbey, Newtownards, Omagh, Portadown and Strabane.

Services run seven days a week from 7.30 am until 11.30 pm. The first trip is free, and service users may be accompanied by up to two essential companions, spouses and dependant children. Subsequent journeys are charged at a flat rate of £1.50 within the local area, known as the operational area. Journeys outwith the operational area are charged at an additional 50p per mile.

ADDENDUM

The flowchart below explains the different legislative routes that have been taken in GB and Northern Ireland to remove the transport exemption. In the absence of regulations to lift the transport exemption in Northern Ireland, disabled transport users in Northern Ireland remain at a significant and practical disadvantage in comparison to their GB counterparts. Indeed, with The Civil Aviation (Access to Air Travel for Disabled Persons and Persons with Reduced Mobility) Regulations 2007 due to come into force on 26 July this year, a situation could arise where disabled travellers in Northern Ireland have more rights when travelling by air than when travelling on land.

