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Michael Potter

Disability Legislation and Policy

1 Introduction

The Committee for the Office of the First Minister and deputy First Minister discussed disability issues on 18 January 2012. This paper briefly outlines equality legislation in Northern Ireland relating to disability and highlights potential developments in legislation and policy.

2 Background

The Continuous Household Survey 2010/11 indicated that 25% of respondents reported a long term illness which limits their activities¹. In 2004, the Promoting Social Inclusion (PSI) Working Group in Disability was established to identify barriers to employment, education, transport, housing, access to information and lifelong learning for children and adults with disabilities and make recommendations to remove these barriers. The final report in 2009 identified a number of themes, as follows²:

- Choice and Control People with disabilities should have the right to make choices and have control over care and support, choice and control are important elements of leading an independent life and appropriate mechanisms

¹ Northern Ireland Statistics and Research Agency (2011), *Continuous Household Survey: First Release of 2010/11 Figures*, Belfast: NISRA. The 2001 Census records around 20% (Table KS08); results for the 2011 census are not yet available.

² Promoting Social Inclusion Working Group on Disability (2009), *Report of the Promoting Social Inclusion Working Group on Disability*, Belfast: OFMdfM: <http://www.ofmdfmi.gov.uk/disability-promoting-social-inclusion>.

need to be in place for people with disabilities to empower themselves to have more control over services they receive

- Early Years and Family Support More childcare provision is needed for families with children with disabilities, health and social care services need to be provided in an appropriate, responsive way, co-ordination and information are needed to ensure families have early diagnosis, intervention and support and there should be greater opportunities for children with disabilities to take part in play
- Transitions to Adulthood Young people with disabilities should have equal access and outcomes in educational, social and recreational activities as people without disabilities, access to a full range of training opportunities for employment and should have a voice and be empowered to make decisions about their future
- Independent Living People with disabilities should be supported to live independently, transport providers ensure services are fully accessible, arts and sporting venues pro-actively reach out to people with disabilities, encouragement should be given for people with disabilities to undertake lifelong learning opportunities and be able to choose from the same range of such courses as people without disabilities
- Employment and Employability People with disabilities should be given flexible, tailored support to enter employment, be made aware of training and support available, be encouraged to progress within employment and employers should be supported to employ and retain people with disabilities
- Information and Communication All information should be made available in accessible formats, steps taken to make people with a disability aware of services that are available, an environment created for two-way communication to empower people with disabilities to be active citizens and people with disabilities should be encouraged to take part in public life
- Bringing About Change Disability considerations should be mainstreamed into all policy development and service delivery from the early planning stages, strong leadership to embed such considerations are embedded into policy and practice, use of disability equality training to raise awareness, information provided to people with disabilities about rights and protections so rights can be exercised and progress monitored on these recommendations

3 Disability Legislation

The baseline equality legislation relating to specifically to disability is the Disability Discrimination Act 1995 (DDA)³, which prohibits discrimination in employment, access to goods and services and in property and land transactions. The Disability Discrimination Act 1995 (Amendment) Regulations (NI) 2004⁴, implementing the EU Employment Framework Directive, prohibited harassment and ended the exemption of small employers from the provisions and of certain areas of employment. The Equality Act 2010⁵ has superseded the DDA elsewhere in the UK, but the DDA remains the primary disability legislation in Northern Ireland.

The disability legislation has been subject to a range of amendments, as follows:

The Disability Discrimination (Meaning of Disability) Regulations 1996⁶, which exempts certain conditions from the definition of disability

The Special Education Needs and Disability Act 2001⁷, which provides for measures against discrimination in education

The Disability Discrimination (Providers of Services) (Adjustment of Premises) Regulations (Northern Ireland) 2003⁸, which defines reasonable adjustments for access to premises

The Special Educational Needs and Disability (Northern Ireland) Order 2005⁹, which makes further provisions against discrimination in education

The Disability Discrimination (Northern Ireland) Order 2006¹⁰, which introduced provisions against discrimination by local authorities and in public transport

The Special Educational Needs and Disability (Northern Ireland) Order 2005 (Amendment) (Further and Higher Education) Regulations (Northern Ireland) Order 2006¹¹, which extends disability discrimination protection in further and higher education

³ Disability Discrimination Act 1995: <http://www.legislation.gov.uk/ukpga/1995/50/contents>.

⁴ Disability Discrimination Act 1995 (Amendment) Regulations (NI) 2004: <http://www.legislation.gov.uk/nisr/2004/55/contents/made>.

⁵ Equality Act 2010: <http://www.legislation.gov.uk/ukpga/2010/15/contents>.

⁶ The Disability Discrimination (Meaning of Disability) Regulations 1996: <http://www.legislation.gov.uk/nisr/1996/421/contents/made>.

⁷ The Special Educational needs and Disability Act 2001: <http://www.legislation.gov.uk/ukpga/2001/10/contents>.

⁸ The Disability Discrimination (Providers of Services) (Adjustment of Premises) Regulations (Northern Ireland) 2003: <http://www.legislation.gov.uk/nisr/2003/109/contents/made>.

⁹ The Special Educational needs and Disability Northern Ireland) Order 2005: <http://www.legislation.gov.uk/nisi/2005/1117/contents/made>.

¹⁰ The Disability Discrimination (Northern Ireland) Order 2006: http://www.legislation.gov.uk/uksi/2006/312/pdfs/ukxi_20060312_en.pdf.

¹¹ The Special Educational Needs and Disability (Northern Ireland) Order 2005 (Amendment) (Further and Higher Education) Regulations (Northern Ireland) Order 2006: http://www.legislation.gov.uk/nisr/2006/332/pdfs/nisr_20060332_en.pdf.

The Disability Discrimination (Transport Vehicles) Regulations (Northern Ireland) 2009¹², which extends provisions against discrimination to transport

The Autism (Northern Ireland) Act 2011¹³, which seeks to resolve ambiguity regarding the application of the DDA to Autism Spectrum Disorder (ASD)

Public authorities are required to produce disability action plans to the Equality Commission on progress on duties relating to disability under the DDA¹⁴.

Section 75 of the Northern Ireland Act 1998 requires public bodies to have due regard to promote equality between people on the following grounds¹⁵:

- between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
- between men and women generally;
- between persons with a disability and persons without; and
- between persons with dependants and persons without

All public bodies therefore have a statutory duty to have due regard for people with disabilities.

4 European and International Standards

In the European Union, disability is covered by the Framework Employment Directive 2000¹⁶. This prohibits discrimination on the grounds of religion or belief, disability, age or sexual orientation in employment and defines direct and indirect discrimination and harassment.

The international standards relating to disability are enshrined in the newest UN treaty, the UN Convention on the Rights of Persons with Disabilities (UNCPRD)¹⁷, adopted in 2006. The Committee on the Rights of Persons with Disabilities¹⁸ has not yet set a date for the examination of the UK, but the UK Government has written its first report to the Committee¹⁹. This has a separate section on Northern Ireland and references to Northern Ireland are made in each thematic section, summarising the main legislative and policy provisions relating to disability.

¹² The Disability Discrimination (Transport Vehicles) Regulations (Northern Ireland) 2009: <http://www.legislation.gov.uk/nisr/2009/428/contents/made>.

¹³ The Autism (Northern Ireland) Act 2011: http://www.legislation.gov.uk/nia/2011/27/pdfs/nia_20110027_en.pdf.

¹⁴ Disability action plans: <http://www.ofmdfmi.gov.uk/index/equality/disability/draft-disability-action-plans.htm>.

¹⁵ Northern Ireland Act 1998: <http://www.legislation.gov.uk/ukpga/1998/47/contents>.

¹⁶ Council Directive 2000/78/EC: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0078:en:HTML>.

¹⁷ UNCPRD text: <http://www.un.org/disabilities/convention/conventionfull.shtml>.

¹⁸ Website of the Committee: <http://www.ohchr.org/en/hrbodies/crpd/pages/crpdindex.aspx>.

¹⁹ Available on the Office for Disability Issues web pages: <http://odi.dwp.gov.uk/disabled-people-and-legislation/un-convention-on-the-rights-of-disabled-people/have-your-say.php>.

The UNCRPD differs from other UN treaties in that it has been ratified by the EU, which means that it will now be used as a standard in the development of EU legislation relating to people with disabilities. In Northern Ireland, the independent monitoring mechanism for the Convention comprises the Human Rights Commission²⁰ and the Equality Commission²¹.

5 Areas for Legislative Development

A Single Equality Bill²² was considered by the Northern Ireland Executive to harmonise and update the disparate equality legislation in Northern Ireland, but to date has not progressed since a consultation in 2004 and a ministerial statement in 2005²³. Since then, the Equality Act 2010²⁴ has been passed in the rest of the UK, but does not extend to Northern Ireland. The legislation as it stands is not unchallenged, however, and the UK Government has added equality provisions to its online public policy discussion forum²⁵.

A consequence of the passing of the 2010 Act has been that there are now disparities in equality legislation between the rest of the UK and Northern Ireland giving people with disabilities and their carers in Northern Ireland less protection than in Great Britain. In the Republic of Ireland, the Equal Status Acts have also harmonised equality legislation and amended the law in accordance with relevant EU Directives²⁶. For example, in both Great Britain and the Republic of Ireland indirect discrimination relating to disability is now dealt with explicitly in legislation, whereas in Northern Ireland under the DDA it is addressed by the combined effect of the direct discrimination provisions and the duty to make reasonable adjustments²⁷.

The Equality Commission, which has a statutory duty to advise Government on equality, has outlined the following recommendations for amendments to the Disability Discrimination Act 1995 (DDA) and the Special Educational Needs and Disability (Northern Ireland) Order 2005 (SENDO)²⁸:

- Harmonisation and simplification of disability legislation for a uniform set of definitions or discrimination and other provisions

²⁰ UNCRPD web pages of the Human Rights Commission:

http://www.nihrc.org/index.php?option=com_content&task=view&id=99&Itemid=107.

²¹ UNCRPD web pages of the Equality Commission:

http://www.equalityni.org/sections/default.asp?secid=6&cms=Policy_UNCRPD&cmsid=89_733&id=733.

²² The notion of a Single Equality Bill is not unchallenged. See the debate in the Northern Ireland Assembly 22 May 2007:

<http://www.niassembly.gov.uk/record/reports2007/070522.htm>.

²³ Single Equality Bill web pages: <http://www.ofmdfmi.gov.uk/index/equality/single-equality-bill.htm>. Successive Assembly Questions, the most recent answered on 21 December 2011 (AQW5101/11-15), have received the response that no policy decision has been made on the matter.

²⁴ Equality Act 2010: <http://www.legislation.gov.uk/ukpga/2010/15/contents>.

²⁵ The Red Tape Challenge: <http://www.redtapechallenge.cabinetoffice.gov.uk/themehome/equalities-act/>.

²⁶ The Equal Status Act 2000 as amended in 2004 and 2008: <http://www.irishstatutebook.ie/2000/en/act/pub/0008/index.html>.

²⁷ See Equality Commission web pages referring to disability discrimination:

http://www.equalityni.org/sections/default.asp?cms=Your+Rights_Disability+discrimination&cmsid=2_142&id=142&secid=2.

²⁸ Equality Commission (2011), *Disability Equality Law: Proposals for Reform*, Belfast: ECNI, pp.3-4.

- Protection against indirect disability discrimination and discrimination arising from disability
- Removal of the list of capacities in the definition of disability to make it easier for people with disabilities to fall within the definition
- Increased protection from harassment when accessing goods and services or in private clubs
- Prohibition of questions by employers related to disability before a job offer is made, except in specified circumstances
- Additional duty of schools to provide auxiliary aids and services for disabled pupils, where reasonable
- Additional protection for tenants with disabilities in relation to making reasonable adjustments by landlords for common parts of the accommodation

6 Areas for Policy Development

The Equality Commission commissioned research to identify shortfalls in Northern Ireland of the key requirements of the UN Convention on the Rights of Persons with Disabilities (UNCRPD)²⁹. Gaps identified included the following:

- Awareness Raising (Article 8) Intervention on changing stereotypes, prejudices and harmful practices towards people with disabilities is required across all functions of the state, with co-ordination across departments at different levels and a central point for addressing attitudes towards people with disabilities
- Participation in Political and Public Life (Article 29) People with disabilities should be engaged with at the outset of consultation processes in a form that is accessible - on all issues, not just those associated with disability – capacity building should be provided for people with disabilities to engage with policy makers and participate in political processes and it was also suggested that there could be a participation network on the model of that for children and young people funded by OFMdFM to increase effective participation
- Data Collection and Access to Information (Articles 31, 9 and 21) A greater range of data and statistics needs to be collected to monitor and ensure implementation of the UNCRPD and information needs to be more accessible to people with disabilities, including strategies to support access to the internet

²⁹ Colin Harper, Simon McClenaghan, Bronagh Byrne and Hannah Russell (2012), *Disability Programmes and Policies: How Does Northern Ireland Measure Up?* Belfast: Equality Commission for Northern Ireland: http://www.equalityni.org/sections/Default.asp?cms=News%5FNews&cmsid=1_2&id=318&secid=1_1.

The Northern Ireland Executive contributed to the UK Government report to the UN Committee³⁰, which indicated that a Strategy on Disability based on the PSI Working Group Report and the principles of the UNCRPD is imminent³¹, with a purpose to:

- Set out a high level policy framework
- Drive improved performance of services in delivering outcomes for people with disabilities
- Raise awareness and ensure inclusion in the development of policy.

It is intended that the strategy will be updated on an ongoing basis during its ten year lifespan.

The Committee for OFMdfM is to receive a presentation from Departmental officials prior to the consultation process.

³⁰ Northern Ireland Executive (2011), *United Nations Convention on Rights of Persons with Disabilities (UNCRPD): Northern Ireland Executive's Contribution to the UK Government Report to the United Nations Committee*, Belfast: NI Executive.

³¹ The document stated the Strategy would be available for consultation in early 2011 "and will be finalised in May 2011" (p.4).