



Isle of Man
Government

Reiltys Ellan Vannin



Disability Discrimination Act 2006 Guidance and Code of Practice

Public Consultation

Department of Health and Social Care
Rheynn Slaynt as Kiarail y Theay

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1. Foreword by the Minister for Health and Social Care



The Appointed Day Order for the introduction of the remaining parts of the Disability Discrimination Act 2006 was approved by Tynwald in December 2015. This sets out the timetable for the Act's implementation over four phases during the next four years.

An important part of the Act's implementation is an understanding of what is meant by disabled for the purposes of the Act. This definition is provided for in one of the documents we are currently consulting on – Guidance on matters to be taken into account in determining questions relating to the definition of disability – which provides practical advice on the

terms used in the Act to determine if a person is considered disabled.

It is equally important that service providers understand what the introduction of the Act means to them, and we are also consulting on a Code of Practice which provides detailed advice and assistance to service providers to enable them to comply with each phase of the Act as it comes into effect.

Both of these documents are based on the versions currently in use in Northern Ireland, where the Disability Discrimination Act 1995 is still in operation, and which are built on 20 years of actual application of the Act in determining if a disabled person is covered by the Act and adapting services to aid disabled persons in accessing those services.

Thank you for taking the time to review this document and I welcome your comments on the Guidance and Code of Practice for the Disability Discrimination Act 2006.

A handwritten signature in black ink, reading "Howard Quayle". The signature is written in a cursive style with a long horizontal line underneath.

Hon. Howard Quayle MHK
Minister for Health and Social Care

2. About the Consultation

The purpose of this consultation is to invite comments on the “Guidance on matters to be taken into account in determining questions relating to the definition of disability” (the Guidance) and the “Code of Practice on Rights of Access, Goods, Facilities, Services and Premises” (the Code) prepared for the introduction of the Isle of Man Disability Discrimination Act 2006 (the 2006 Act).

It is not a referendum – it is to provide you with information, to seek your views and give all interested parties opportunity to comment.

Paper copies of this consultation document and the Guidance or Code of Practice, if required, can be requested by email on DDA2006.DHSC@gov.im or by telephoning (01624) 695794.

Electronic copies of these documents are also available at:

<http://www.gov.im/consultations.gov>

This document and the Guidance and Code can be produced in other formats on request.

Section 3(4) of the 2006 Act provides that the Department must consult with persons it considers appropriate about the Guidance.

Although section 19(1) of the 2006 Act only requires the Department to consult with the Tynwald Advisory Council for Disabilities about the Code, the Department is also consulting more widely on this document to ensure as many people as possible, service providers in particular, are aware of their duties under the 2006 Act.

To ensure that the process is open and honest, responses can only be accepted if you provide your name with your response. Unless specifically requested otherwise, any responses received may be published either in part or in their entirety. Please mark your response clearly if you wish your response and name to be kept confidential. Confidential responses will be included in any statistical summary of the comments received.

When submitting your views please indicate whether you are responding on behalf of an organisation.

2. About the Consultation (continued)

Who is being consulted

The following persons and organisations will be invited to comment by email or letter -

- Tynwald Members
- Attorney General
- Local Authorities
- Chief Officers of Government Departments
- Isle of Man Chamber of Commerce
- Isle of Man Law Society
- Other voluntary organisations

A press release will also be issued seeking the views of the general public.

Please note this consultation is open to all and you are encouraged to submit your views.

Comments should be submitted in writing by 5.00pm on Friday 4th March 2016, by post to:

DDA 2006 Guidance and Code of Practice Consultation
Department of Health and Social Care
Crookall House
Demesne Road
Douglas
IM1 3QA

or by email to: DDA2006.DHSC@gov.im

Comments or complaints

If you wish to comment on the conduct of this consultation or make a complaint about the way the consultation has been carried out please write to:

Chief Executive's Office
Department of Health and Social Care
Crookall House
Demesne Road
Douglas
IM1 3QA

3. Executive Summary

The 2006 Act makes it unlawful to discriminate against disabled persons in connection with the provision of goods, facilities and services and the disposal or management of premises. It also places a duty on a provider of services to make reasonable adjustments in the way the service is provided if it is impossible or unreasonably difficult for a disabled person to make use of a service.

The 2006 Act is based on the United Kingdom's Disability Discrimination Act 1995. The Disability Discrimination Act 1995 is still in operation in Northern Ireland, but has been replaced by the Equality Act 2010 in England, Scotland and Wales.

An Appointed Day Order, approved by Tynwald in December 2015, introduces most of the remaining provisions of the 2006 Act in four phases over a four year period, as follows.

Phase 1 commenced on 1st January 2016 and allows for the making of Guidance in relation to a disability under section 3, and a Code of Practice under section 19 of the 2006 Act (the documents being consulted on at this time). It also provides other foundations necessary for the implementation of the 2006 Act.

Phase 2 commences on 15th December 2016 and provides that it will be unlawful for a provider of services to discriminate against a disabled person in relation to the provision of goods, facilities and services. Provision within this phase would also make it unlawful for landlords and other persons to discriminate against a disabled person in the disposal or management of premises in certain circumstances.

Phase 3 commences on 1st January 2018 and imposes a duty on the service provider to take such reasonable steps to facilitate changes to practice, policy or procedure where such current practices make it impossible or unreasonably difficult for disabled persons to make use of that service. The requirement for the provider to take such reasonable steps to provide an auxiliary aid or service, where such would allow a disabled person to make use of a service is also introduced under this phase.

Phase 4 is the final phase of the 2006 Act which commences from 1st January 2020 and imposes a duty on service providers, where a physical feature of a building, or the access or approach to premises makes it impossible or unreasonably difficult for disabled persons to make use of its service, to take reasonable steps to –

- (a) remove the feature;
- (b) alter the feature so that it no longer has an effect;
- (c) provide a reasonable means of avoiding it; or
- (d) provide an alternative method of making the service available to disabled persons.

3. Executive Summary (continued)

Only those persons, who are defined as disabled in accordance with the 2006 Act, and the Regulations made under it, are entitled to the protection of the Act.

The definition of what the 2006 Act means by disabled is the subject of the first document, "Guidance on matters to be taken into account in determining questions relating to the definition of disability" which the Department is consulting on at this time. Further information is contained in Part 4 of this consultation document.

Many of the changes to the services affected by the 2006 Act are subject to reasonable adjustments in respect of changes to the service provided, the Code of Practice provides detailed guidance to determine what may be "reasonable" in particular circumstances.

The Code of Practice also provides advice and further guidance to service providers to enable them to comply with duties introduced under the 2006 Act during phase's two to four. Further information on the Code of Practice can be found in Part 5 of this consultation document.

4. Guidance

The 2006 Act

Section 1(1) of the 2006 Act provides that –

- (1) Subject to the provisions of Schedule 1, a person has a disability for the purposes of this Act if they have a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.

Schedule 1 of the 2006 Act provides further information in respect of what is meant by impairments, long-term effects, severe disfigurement, normal day-to-day activities, substantial adverse effects, effect of medical treatment, persons deemed to be disabled and progressive conditions.

This is further supplemented by the document “Guidance on matters to be taken into account in determining questions relating to the definition of disability” (the Guidance) which provides detailed practical guidance and examples.

Guidance on matters to be taken into account in determining questions relating to the definition of disability

Part 1

This part makes an introduction to the Guidance and confirms that the Guidance is primarily for the Courts which will determine cases brought under the 2006 Act although it will be of interest to a range of other persons and organisations as an explanation of how the definition of disability operates.

The definition of who is a disabled person for the purposes of the 2006 Act is a legal definition and it is only the Court which can determine whether a person meets the definition.

In most cases there is unlikely to be any doubt whether a person has or has had a disability, but the Guidance should prove helpful in cases where the matter is not particularly clear.

The definition of disability has a number of elements. Part 2 covers those in turn with guidance and examples where relevant.

Part 1 also confirms that the definition of disability set out in the 2006 Act and described in the Guidance is the only definition relevant to determining whether someone is a disabled person for the purposes of the Act. References to disability or mental or physical impairment in other legislation are not relevant to the 2006 Act.

4. Guidance (continued)

Part 2

This Part is further divided into 4 sections as follows –

Section A: Definition of disability and meaning of “impairment”

This section provides a comprehensive breakdown of the main elements of the definition of disability, the meaning of “impairment”, which persons may be deemed to be disabled and lists exclusions from the definition.

The Act also provides protection for persons who have had a disability in the past, and provides guidance and examples.

Section B: Substantial

This section provides a definition of “substantial”, meaning the effect on day-to-day activities must be more than minor or trivial. It considers in detail what substantial may mean to include the time taken to carry out an activity, the way in which an activity is carried out, the cumulative effects of an impairment, the effects of modified behaviour, the effects of environment, the effects of treatment, examples of progressive conditions and the effects of severe disfigurements.

Section C: Long term

This section defines the meaning of “long-term effects”, what is meant by “likely”, recurring or fluctuating effects, the likelihood of recurrence and assessing whether a past disability was long-term for the purposes of the 2006 Act.

Section D: Normal day-to-day activities

This section defines a list of “capacities” for the purposes of the 2006 Act, which are –

- Mobility;
- Manual dexterity;
- Physical co-ordination;
- Continence;
- Ability to lift, carry or otherwise move everyday objects;
- Speech, hearing or eyesight;
- Memory or ability to concentrate, learn or understand; or
- Perception of the risk of physical danger.

Examples are provided as to what may or may not constitute a substantial adverse effect for each of these capacities.

Section D further provides details on the meaning of normal day-to-day activities, work-related and other specialised activities, indirect effects and children with a disability.

5. Code of Practice

The Code of Practice (the Code) gives practical guidance to assist a provider of services to comply with the 2006 Act by preventing discrimination against disabled persons in accessing services and premises, and encouraging good practice.

The Code contains 10 Chapters, as follows, and an appendix.

Chapter 1 - Introduction

This Chapter provides for the purpose of the Code, which is to give practical guidance to prevent discrimination against disabled persons in accessing services or premises. It also describes how to use the Code, and provides an explanation of examples given in the Code.

Chapter 2 – What does the 2006 Act say about providing services?

This Chapter provides an overview of the provisions of Part II of the 2006 Act which relate to the provision of services. It also outlines what is meant by “discrimination”. In addition it describes the scope of services affected by the 2006 Act (and those which are excluded, such as Heritage transport vehicles) and those persons who have rights under the 2006 Act.

Chapter 3 - The service provider’s duty not to treat a disabled person less favourably

This Chapter addresses the duty of service providers to ensure that disabled persons are not treated less favourably than other persons when using their services. It also explains what is meant by “less favourable treatment”.

Chapter 4 - Making changes for disabled people: the service provider’s duty to make reasonable adjustments

This Chapter is concerned with the duty to make reasonable adjustments for disabled persons. That duty is a cornerstone of the 2006 Act and requires service providers to take positive steps to make their services accessible to disabled persons. This goes beyond simply avoiding treating disabled persons less favourably for a disability-related reason.

Chapter 5 - Reasonable adjustments in practice

This Chapter explains and illustrates how the duty to make reasonable adjustments works in practice, including the duties that will apply from 1st January 2020 in respect of overcoming physical barriers.

5. Code of Practice (continued)

Chapter 6 - How do leases affect reasonable adjustments?

This Chapter addresses the issues of how leases affect the duty to make reasonable adjustments to physical features where they make it impossible or unreasonably difficult for disabled persons to use a service.

Chapter 7 - Can a service provider justify less favourable treatment or failure to make reasonable adjustments?

This Chapter examines the limited circumstances when a service provider can justify less favourable treatment of a disabled person or a failure to make reasonable adjustments. This cannot be used as a reason for a general exclusion of disabled person from accessing a service; it is in the service provider's best interest to ensure its services are fully accessible to all customers.

Chapter 8 - Special rules affecting insurance, guarantees and deposits

This Chapter deals with the special rules affecting the provision of insurance, guarantees and deposits in respect of goods and facilities, which come into effect on 15th December 2016.

Chapter 9 - Selling, letting or managing premises

The 2006 Act makes it unlawful for landlords and other persons to discriminate against disabled people in the disposal or management of premises in certain circumstances. Such persons may also have duties as service providers where they are providing services to the public. Those duties are covered in other chapters in the Code. This Chapter explains how the 2006 Act may apply to landlords and other persons when selling, letting or managing premises. Such persons may include a legal entity, for example, a company.

Chapter 10 - Other provisions under the 2006 Act

This Chapter covers a number of other provisions of the 2006 Act (e.g. victimisation, aiding unlawful acts) which are relevant to understanding the protection the Act affords disabled persons in respect of services and premises. These provisions also assist service providers (and those selling, letting or managing premises) to appreciate the extent of their responsibilities under the legislation.

The **appendix** is included to further aid understanding about who is covered by the 2006 Act and should provide sufficient information on the definition of disability to cover the large majority of cases. The Guidance referenced in part 4 of this consultation document provides a lot more detail on the definition of disabled for the purposes of the 2006 Act.

The information in this booklet can be provided in large print or audio format upon request.

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