

JOINT NEGOTIATING COUNCIL FOR THE EDUCATION AND LIBRARY BOARDS

30 July 2004


**To: Chief Executives
Council Members
MSO/TUSO**

Joint Negotiating Council Circular No. 103

Policy and Code of Practice on the Employment of People with Disabilities

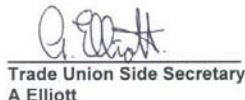
The Joint Secretaries of the Joint Negotiating Council for the Education and Library Boards have agreed the Policy and Code of Practice on the Employment of People with Disabilities

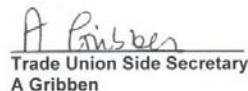
The Policy and Code of Practice, which was developed following the Equality Impact Assessment of the Code of Procedures on Recruitment and Selection, is attached as an appendix to this circular.


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EDUCATION & LIBRARY BOARD

**POLICY AND CODE OF PRACTICE ON
THE EMPLOYMENT OF PEOPLE
WITH DISABILITIES**

This information can be made available, on request, in alternative formats including in large print, on computer disc, by email, in Braille, on audio-cassette and in minority languages to meet the needs of those people who are not fluent in English.

July 2004

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POLICY ON THE EMPLOYMENT OF PEOPLE WITH DISABILITIES

1. INTRODUCTION

The _____ Education and Library Board is committed to ensuring that:

- › the Board's equal opportunities policy is put into effective and visible practice; and
- › every member of staff has the opportunity to develop their potential.

It is the policy of the _____ Education and Library Board to provide employment equality to all irrespective of:

- › gender, marital or family status;
- › sexual orientation;
- › transexuality;
- › gender reassignment;
- › religious belief or political opinion;
- › racial group¹;
- › age;
- › disability;
- › trade union membership or non-membership;
- › criminal record.²

The Board recognises its social, moral and statutory duty to employ people with disabilities and will do all that is practicable to meet this responsibility.

The Disability Discrimination Act 1995 (hereinafter referred to as the 'Act') makes it unlawful to discriminate directly against people with disabilities in relation to recruitment, selection, terms and conditions, training or other benefits, or by subjecting the person with a disability to any other detriment.

The Board will endeavour to comply with the disability legislation in every respect and will follow the guidance in the related Code of Practice for the elimination of discrimination in the field of employment against disabled persons.

The Board will not treat any person with a disability, whether an employee or an applicant for employment, less favourably than a person without a disability, for a reason which relates to their disability, unless such treatment can be justified under the terms of the Act.

If an existing employee becomes disabled the Board will make every effort to provide the fullest support and wherever reasonable and practicable to maintain or facilitate his or her return to a role appropriate to their experience and abilities.

¹ Throughout this document the word 'racial group' is to be understood, in line with the Race Relations (NI) Order 1997, to include colour, race, nationality or ethnic or national origin. Irish Travellers are recognised by the Order as being members of a racial group.

² A person's criminal record will be seen in the context of the post, ability to do the job and the responsibility of employers for child protection, for the care of funds, resources, the public and other employees. Only offences relevant to the post in question will be considered.

2. LEGISLATIVE FRAMEWORK

The Act makes it unlawful for employers to discriminate against current or prospective disabled employees because of a reason relating to their disability. In summary, the main points of the legislation are as follows:

- › it is unlawful to discriminate against disabled persons in recruitment, promotion, working conditions and dismissal;
- › less favourable treatment of a disabled person may only be justified in circumstances specified in the Health and Safety (NI) Order 1978, or in other circumstances which must be material to the case and substantial;
- › employers are under a duty to make reasonable adjustments to the workplace or working conditions which cause disadvantage for a disabled employee;
- › it is unlawful to discriminate against disabled persons generally in the provision of goods, facilities or services. The only exclusions are education and transport vehicles.

Section 75 of the Northern Ireland Act 1998 requires public authorities in carrying out their functions relating to Northern Ireland, to have due regard to the need to promote equality of opportunity:

- › 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.

The duty is designed to ensure that equality considerations are made central to the process of policy development and implementation. The Board has produced an Equality Scheme which is both a statement of its commitment to equality and a plan to measure its performance in mainstreaming equality.

3. DEFINITION OF DISABILITY

Under the Act ‘a disabled person’ is defined as a person with ‘a physical or mental impairment which has a substantial or long-term adverse effect on their ability to carry out normal day-to-day activities’. The main elements of the definition of disability are given in Appendix A.

4. DEFINITION OF DISABILITY DISCRIMINATION

It is unlawful for the Board to discriminate against a disabled person in the field of employment. The Act says ‘discrimination’ occurs where:

- › a disabled person is treated less favourably than someone else for a reason related to the person’s disability which cannot be justified;
- › there is a failure to comply with the duty to make a reasonable adjustment to premises or employment arrangement which cannot be justified (see Appendix B, Duty to Make Reasonable Adjustments); and
- › a person is subject to victimisation.

5. IMPLEMENTATION

The Board expects all its staff to be aware of this Policy and the Code of Practice and to treat all people with disabilities, whether staff, service users or members of the public, fairly, with respect and in accordance with this policy.

All employees have a responsibility to accept their involvement in the practical implementation of this policy, with specific responsibility falling on line managers and supervisors.

Line managers and supervisors have a key role to play in demonstrating the Board's commitment to the practical application of this policy. They have three main areas of responsibility:-

- › ensuring non-discriminatory working practices are operated;
- › identifying the need to make reasonable adjustments;
- › deciding what action should be taken concerning reasonable adjustments.

Line managers and supervisors should liaise with the Board's Equal Opportunities Officer in the implementation of this policy.

The Board will regard breaches of this policy as misconduct which may result in disciplinary action under the Disciplinary Procedure.

6. HEALTH AND SAFETY

The Board is not required to do anything under the Act that would result in a breach of any other statutory obligations including health and safety law.

Experience shows that there is not likely to be a conflict between the Disability Discrimination Act 1995 and the Health and Safety at Work (NI) Order 1978. Indeed it is often the case that where a reasonable adjustment for the employment of a disabled employee is made any health and safety risk can be significantly reduced.

7. MAKING A COMPLAINT

If any member of staff with a disability believes that he or she has been treated in a way that is contrary to this policy, this matter should normally be raised in the first instance with his/her line manager or supervisor with a view to resolving the situation.

The Board's internal procedures do not replace or detract from the right of an employee to pursue a complaint under the Act.

A person with a disability who feels that they have been discriminated against may present a complaint to an Industrial Tribunal within 3 months of the time when the incident complained of occurs.

If the Tribunal finds that discrimination has occurred, it can:

- › impose unlimited financial compensation, including compensation for injuries to feelings;
- › make recommendations for adjustments.

8. POSITIVE ACTION MEASURES

The Act is unique in that it allows employers to treat disabled people more favourably than non-disabled people. The Board has adopted a number of positive action measures to increase the representation of people with disabilities at all levels of the organisation.

Positive Action Measure	Activities	Timeframe
To develop an outreach programme to encourage more people with disabilities to apply for employment opportunities.	<p>Advertise job vacancies on the Boards' websites and develop links to other websites e.g. Disability Action, MENCAP</p> <p>Circulate details of job vacancies to the Disablement Advisory Service</p> <p>Use of welcoming statement in job advertisements</p> <p>Prepare guidance notes for job applicants</p>	<p>Date to be agreed</p> <p>Effective from 1 June 2004</p> <p>Effective from 1 September 2004</p> <p>Effective from 1 September 2004</p>
	<p>Ensure job applicants are aware information is available in alternative formats.</p> <p>Pilot a teleworking scheme</p>	<p>Effective from 1 June 2004</p>
To consider making a reasonable adjustment for persons with a disability during the Recruitment and Selection process	<p>Review application form to collect information on a person's disability and any reasonable adjustment they consider they may require.</p> <p>Ensure reasonable adjustment(s) requested are in place for the interview.</p> <p>Waive or consider alternatives to qualifications/ work related experience where an applicant because of a disability is likely to be at a substantial disadvantage.</p>	<p>Effective from 1 September 2004</p> <p>On-going</p> <p>On-going (Inter-Board Working Group)</p>

Positive Action Measure	Activities	Timeframe
	Introduce, on a pilot basis, that disabled candidates when applying for posts in Board Headquarters and related services, are offered an interview if they meet the essential criteria.	Date to be agreed
To explore how work placement opportunities can be used to facilitate people with disabilities gaining employment.	Pilot and evaluate a work placement programme	Jan – June 2005
To provide equality awareness training for all staff involved in the Recruitment and Selection Process.	Organise a seminar with Disability Action/ MENCAP to address issues of accessibility and reasonable adjustments Develop, implement and evaluate a programme of training.	Jan. – March 2004 March 2004 – April 2004
To ensure that any employee who becomes disabled is given the fullest support, where reasonable, to maintain or return to a role appropriate to their experience and abilities.	Consider job design and/or providing technical equipment and practical aids. Consider transfer to another post. Consider retention on Employment support.	On-going
To collect quantitative data to enable more comprehensive employment monitoring	To pilot and evaluate a system to collect monitoring data from employees/job applicants across all nine equality categories	

9. REGULAR REVIEW

This policy will be regularly reviewed to ensure that the Board's objectives on equality of opportunity are being met. This will include monitoring to measure the effectiveness of the application of this policy.

CODE OF PRACTICE ON THE EMPLOYMENT OF PEOPLE WITH DISABILITIES

INTRODUCTION

The Policy and Code of Practice on the Employment of People with Disabilities is intended to provide practical guidance on the provision of assistance to people with disabilities in employment or seeking employment with the Board in the areas of Recruitment and Selection; Induction; Training, Career Development; Employees who become Disabled; Termination of Employment; Occupational Pension Schemes and Harassment. It also includes an outline of the definitions used (Appendix A), on the duty to make reasonable adjustments and details of where to go for help and information (Appendix B). The Policy and Code of Practice gives general guidance only and should not be treated as a complete and authoritative statement of the law.

RECRUITMENT AND SELECTION

The Disability Discrimination Act 1995 (hereinafter referred to as the 'Act') makes it unlawful for employers to discriminate against a disabled person:

- › in the arrangements for deciding who should get a job;
- › in the terms on which the disabled person is offered employment;
- › by refusing to offer, or deliberately not offering, the disabled person employment.

'Arrangements' covers all aspects of the recruitment and selection process including the job description, personnel specification, application form, shortlisting, interviewing, testing, etc.

The Board's recruitment and selection policy requires:

(a) Preparation of Job Documentation

Job documentation will be available, on request, in alternative formats.

For example:

Large print, in Braille, on audio cassette, by email or on computer disc.

(b) Job Description

This will be a clear, written statement of the purpose, scope, duties and responsibilities of the post.

Under the Act one of the adjustments which employers are expected to consider making entails allocating some of the disabled person's duties to another employee. Therefore minor or subsidiary duties might be allocated to another employee if the disabled person has difficulty in doing them because of the disability. In drawing up or revising job descriptions, try to distinguish between tasks which are considered to be essential for holders of particular jobs to perform and those which are marginal or minor.

(c) Personnel Specification

The content of the personnel specification derives from the duties and tasks contained in the job description. It involves translating the job description into a structured list of personal requirements and competencies.

When drawing up the personnel specification, care is required to ensure that requirements are not included which could discriminate against disabled candidates unless they are an essential requirement for effective performance in the job.

Under the Act an employer is entitled to specify that applicants for a job must have certain qualifications. However, if a disabled person is rejected for the job because he/she lacks a qualification the Board will have to justify that if the reason why the person is rejected (i.e. the lack of qualification) is connected with his/her disability. Justification will involve showing that the qualification is relevant and significant in terms of the particular job and the particular applicant and that there is no reasonable adjustment which would change this.

Blanket exclusions (i.e. exclusions which do not take account of individual circumstances) may lead to discrimination.

For example:

Applicants for a job which involves a limited amount of travelling are required to have a full driving licence. This would clearly exclude many disabled people, particularly those with visual impairments.

Even if a job does require the postholder to travel, a disabled applicant who cannot drive could argue that the criterion requiring a full driving licence is discriminatory, if the job could be carried out using public transport, or if the person has arranged a driver. However, for jobs such as a school bus driver/driver of a mobile library vehicle it would clearly be legitimate to require a full driving licence.

Other examples of discriminatory criteria may include:

- a requirement for a qualification that is not necessary for the performance of the job.
- a requirement to be able to use a particular kind of computer software, when the same results could be achieved with different software, which is better suited to the disabled person. For example, some software is not compatible with text-to-speech packages used by some people with a visual impairment.

(d) Application Forms

The requirements under the Act for employers not to discriminate against candidates with disabilities and to make reasonable adjustments to enable them to compete on equal terms with applicants who do not have a disability have important implications for application forms.

For example:

It may be a reasonable adjustment to allow a candidate with a disability to receive and submit an application in a different format to that prescribed for candidates in general.

Application forms and any accompanying material will be reviewed to ensure that they do not contain questions that would put an applicant with a disability at a disadvantage in comparison with other candidates, unless it is justifiable in relation to the job on offer.

For example:

A question asking applicants whether they have a driving licence could be discriminatory unless the job involves the postholder having to drive (and there is no alternative to driving).

If there is a need for the postholder to be able to travel (but not necessarily to drive) then this requirement should be stated in the information sent to potential applicants. It is therefore unlikely that a person who cannot travel will apply.

Asking questions about disability on application forms is acceptable, providing that they are asked for a **valid reason**, such as their relevance to the job, and in a suitable way. While asking about disability is not compulsory, it has the following advantages:

- it enables the shortlisting panel to consider any reasonable adjustments which may be required at that stage of process;
- it enables the Board to plan ahead for the interview, e.g. ensuring the venue is accessible;
- any specific requirements are raised at the earliest opportunity to enable potential adjustments to be considered and made.

For example:

A deaf candidate requires an interpreter to be available at the interview. Asking about reasonable adjustments in advance gives the Board enough time to make the arrangements

Any question about disability on the application form will be **phrased carefully** to ensure that it does not discriminate by discouraging people with disabilities from filling in the form. This can be achieved by:

- only asking applicants to disclose their disability if it is relevant to their ability to do the job, or if they require any reasonable adjustments to be made to enable them to attend for interview;
- giving applicants the opportunity to state any adjustments which they may need.

(e) **Advertising**

The Act covers both internal and external advertisements. Therefore, if information on a job is being circulated internally care should be taken to ensure that existing employees with disabilities are aware of the information via an appropriate means of communication.

The Board will state in job advertisements that it welcomes applications from disabled people.

Links will be made to the websites of Disability Action, MENCAP and the Department for Employment and Learning's Disablement Advisory Service to increase awareness of job opportunities in the Education and Library Boards.

(f) **Shortlisting Procedure**

Shortlisting should be based on the criteria set out in the personnel specification. The Act does not stop employers from treating people with disabilities more favourably

than other candidates. The Boards are committed to the recruitment of people with disabilities and welcomes applicants with a disability.

The best way to ensure that the shortlisting process is free from discrimination is to:

- › use the person specification to establish the criteria for selection;
- › identify which applicants have demonstrated that they have the skills, aptitudes, qualifications and experience to carry out the duties; and
- › ensure that each candidate is assessed fairly against the *same* criteria.

All staff involved in the selection process should be fully aware of and have the same understanding of:

- › the criteria set out in the personnel specification;
- › the requirements of the job description; and
- › what constitutes a reasonable adjustment.

If the Board knows that an applicant has a disability and is likely to be at a substantial disadvantage the Board should consider whether there is any reasonable adjustment which would bring the disabled person within the field of applicants to be considered even though the applicant would not otherwise be within the field because of that disadvantage. If the panel could only make this judgement with more information it would be discriminatory for them not to put the disabled person on the shortlist for interview if that is how a panel would normally seek additional information about the candidates.

Note:

If a candidate asks for an adjustment to be made because of an impairment, the effects of which are not obvious, nothing in the Act or Regulations would prohibit the employer from asking for evidence that the impairment is one which gives rise to a disability as defined in the Act.

For example:

An applicant says she has a mental illness, the effects of which require her to take time off work on a frequent, but irregular basis. If there is insufficient/ inadequate information, the employer would be entitled to ask for evidence that the woman has a mental illness which was likely to have the effects claimed and that it is clinically well recognised (as required by the Act)

(g) Assessment Arrangements

Selection testing is permitted under the Act as long as it does not unjustifiably disadvantage candidates with a disability and that reasonable adjustments are made to ensure that they are able to compete on equal terms.

For example:

Psychometric Tests may be used as a means of reducing the applicant pool as over 400 applications have been received for a clerical post. This has an adverse affect on an applicant who has dyslexia and finds written tests difficult. Since the tests are not directly linked to ability to perform in the job, the Board may be discriminating against the applicant who has dyslexia.

Where tests are used, reasonable adjustments should be made to ensure that they do not put disabled candidates at a disadvantage.

For example:

In the above example, the Board could decide not to make the candidate who had dyslexia sit the test. If the job applicant meets the essential criteria the procedure could allow him to go straight through to the next stage in the selection process.

Adjustments will depend upon an individual's circumstances, but some examples include:

- ensuring that the **venue** for the test is **accessible**;
- making **test papers** available in **alternative formats** such as in large print, in Braille or on audio-tape or providing a reader;
- enabling disabled people to use **alternative arrangements** for **completing the tests**, e.g. by using a word processor, dictating answers to a scribe, or recording answers on tape;
- providing **additional time** for a person whose disability means that they are slower completing the test, or assessing their performance on the basis of the portion of the test that they are able to complete in the given time;
- accepting a **lower pass score** may be appropriate in some circumstances when the test is not closely related to the job in question.

The Board will **advise** candidates **in advance** that there will be selection testing and give disabled candidates the opportunity to indicate if any adjustments are needed.

(h) Interviews

In establishing interview arrangements, it is important to consider any reasonable adjustments required to accommodate candidates with a disability.

These adjustments do not have to be made as a matter of course. The Board's policy is to ask candidates if they require any adjustments when inviting them to interview. It is good practice to check with the applicant that the reasonable adjustments proposed for the interview are satisfactory. If the disability only comes to light at the interview there will still be a duty to make reasonable adjustments but it will be less extensive than if advance notice was given.

Examples of the adjustments considered reasonable include:

- **re-arranging the time of the interview.** For example, a person with diabetes who controls their disability by eating at regular times may be unable to attend for interview over lunchtime. Likewise, some disabled people may have personal care needs which make it difficult for them to attend interview early in the morning;
- allocating a **longer period of time for the interview**, for example allowing more interview time for a person who has a speech impairment, or for a person who is deaf and requires the services of an interpreter;
- ensuring there is **good lighting so that the faces of the interview panel are clearly seen** to allow a hard of hearing candidate to lip read;

-
- arranging a **sign language interpreter** for a deaf applicant (check whether the candidate uses British Sign Language or Irish Sign Language);
 - allowing the **attendance of a friend or relative for support** or to aid communication or understanding;
 - **holding the interview at an accessible venue**. This includes not only the room where the interview will be held but also other parts of the building such as walkways and toilet facilities. As well as the more obvious issues like ramps and lifts for wheelchair users, the Board may have to make arrangements for a member of staff to meet and guide a blind candidate to the interview room or provide an induction loop to amplify sound for a hearing-aid user;
 - in some instances it may be reasonable to **waive the interview** for certain candidates if their abilities can be assessed in another way.

For example:

An applicant has a learning disability which affects her performance at interview. It is agreed to assess her suitability for a post by giving her the opportunity to perform in the job and be observed.

(i) After the Interviews – Making the Selection

Selection panels should remember that in assessing a candidate with a disability they should **base their assessment on that person’s capabilities after reasonable adjustments have been made**. Suggestions made by the candidate at any stage may assist the Board in implementing their duty to make reasonable adjustments. The Act gives a number of examples of adjustments which employers may have to make.

These include:

- making adjustments to premises;
- allocating some of the disabled person’s duties to another employee;
- altering the person’s working hours;
- providing training;
- acquiring or modifying equipment;
- modifying instructions or reference manuals;
- providing a reader or interpreter;
- providing additional supervision.

The candidate should be fully involved in discussing individualised reasonable adjustments to ensure that effective solutions are found.

Provided account is taken of the effect of reasonable adjustments for any candidate with a disability, the person considered to be the best candidate for the job can be appointed.

It is the Board’s practice to inform unsuccessful candidates that they have not been appointed as soon as possible after a decision has been taken.

Once a job offer has been accepted it is good practice to invite the person with a disability to visit the workplace before starting in their new job to discuss any arrangements and adjustments.

(j) Pre-Employment Medicals

A person with a disability can be asked to attend a pre-employment medical only if this is required of all candidates. The fact that a person has a disability is unlikely in itself to justify singling out that person to have a health check, although such action might be justified in relation to some jobs. If the Board insists on a medical check for a person with a disability and not for others, without justification, this may constitute unlawful discrimination.

For example:

A medical questionnaire shows that an individual has a disabling heart condition and the job concerned involves lifting and carrying. A medical examination restricted to assessing the implication of the heart condition for the particular job may be justified.

Even if the result was that the heart condition (example above) restricted the candidate's ability to lift and carry, the employer must still consider making reasonable adjustments.

Reasonable adjustments that could be considered in this case include:

- › could the employee use a mechanical lifting aid?
- › If the duties relating to lifting and carrying are a minor part of the job could they be allocated to another member of staff?

Medical evidence can only be taken into account if it is relevant to the circumstances of the decision in question.

For example:

If a person who is being interviewed for a short term contract has a progressive condition which is expected to have adverse effects only in the long term, it is unlikely that this will be justified as a reason for rejection.

INDUCTION

A structured induction programme benefits all new employees and can be particularly important for new recruits with a disability. If necessary, an induction programme should be tailored to the individual requirements of a new employee with a disability.

When any new employee starts work in the Board there are obvious steps that are taken, for example:

- › the workplace is ready; and
- › the equipment that they need to do the job is available.

Essentially, the same measures need to be taken with a new disabled employee. Particular attention may need to be paid to the following issues:

- › if an adjustment to the premises has been requested, make sure that it has been completed correctly before the person starts work;
- › be certain to check that all arrangements and adjustments are suitable;

-
- make sure that other employees are aware of the adjustments, particularly if they play a part in ensuring an adjustment is successful. For example if a parking space is reserved for a new disabled employee, all other employees should be asked not to use the space;
 - if it is an adjustment to working practice or duties that has been made, ensure that all staff are aware of this so that the new employee does not have to keep explaining it.

If problems with adjustments arise, a positive approach should be taken. Solutions should be explored in consultation with the new employee. It is important to try to avoid making him or her feel a burden or nuisance.

TRAINING

The Act requires employers to treat disabled employees equally to other members of staff (in the absence of 'justification' for not doing so) in relation to all aspects of employment including assessment and selection for training.

It should never be assumed that an employee with a disability will not want to participate in training, will be unable to participate in training, or will not be able to benefit from training.

Reasonable adjustments should be made to ensure that suitable arrangements are made to facilitate the full participation of the employee with a disability.

In broad terms, arrangements for training should aim to offer employees with disabilities a standard of training that is equal to that offered to their colleagues without a disability.

They should have equal access to:

- opportunity;
- information;
- the venue; and
- learning.

CAREER DEVELOPMENT

Enabling employees to benefit from training courses is one of the principal steps to good career development. It is therefore very important, as indicated above, not to make assumptions about a person's ability to undertake or benefit from training. Always check and talk with the person and discuss if they will require adjustments to participate fully.

Other steps to facilitate development opportunities are also important, for example adjustments to allow full participation in staff and team meetings.

Regular performance reviews provide a chance to discuss whether an individual is able to carry out new tasks associated with career development and/or transfer opportunities.

EMPLOYEES WHO BECOME DISABLED

The majority of people with disabilities become disabled during their working life. The Code of Practice for the Elimination of Discrimination in the Field of Employment against Disabled Persons states that it would be reasonable for an employer to spend at least as much on an adjustment for a person with a disability to work – including any retraining – as might be spent on recruiting and training a replacement.

The Board is committed to ensuring that any employee who becomes disabled is given the fullest support, wherever reasonable and practicable, to maintain or return to a role appropriate to their experience and abilities within the organisation.

Some of the most effective adjustments include:

- changes to duties and/or allocating to another employee minor tasks which can no longer be done by the disabled person;
- transfer to another post;
- providing practical aids and technical equipment;
- consider retention on Employment Support.

TERMINATION OF EMPLOYMENT

Dismissal, including compulsory early retirement, of a disabled person for a reason relating to their disability **must be justified** and the reason for it would have to be one which could not be removed by any reasonable adjustment.

It would be justifiable to terminate the employment of any employee whose disability makes it impossible for him to continue to perform the main functions of his job, if an adjustment such as a move to a vacant post elsewhere in the organisation is not practicable for the employer to have to make.

It would be justifiable to terminate the employment of an employee with a worsening progressive condition if the increasing degree of adjustment necessary to accommodate the effects of the condition, shorter hours of work or falling productivity, say, become unreasonable for the employer to have to make.

OCCUPATIONAL PENSION SCHEMES

It is unlawful under Section 4 of the Act for employers to discriminate against disabled employees in relation to access to Occupational Pension Schemes. The Act also places various constraints on the trustees and managers of Occupational Pension Schemes. Section 17 of the Act inserts a 'non-discrimination rule' into every Occupational Pension Scheme. This rule prohibits the trustees or managers of the Scheme from doing (or deliberately omitting to do) anything to members or non-members of the Scheme that would be unlawful discrimination if done by an employer. The non-discrimination rule relates to the terms on which people become members of the Scheme and the terms on which members of the Scheme are treated.

Less favourable treatment for a reason relating to a disability can be justified only if the reason is material and substantial.

For example:

Trustees of a Pension Scheme would not be justified in excluding a woman because she had a visual impairment. That fact, in itself, would be no reason why she should not receive the same pension benefits as any other employee.

An employer receives medical advice that an individual with multiple sclerosis is likely to retire early on health grounds. The employer obtains actuarial advice that the cost of providing that early retirement benefit would be substantially greater than an employee without multiple sclerosis and so the individual is refused access to the Scheme. This is justified.

The role of reasonable adjustment does **not** apply to the provision of benefits under an Occupational Pension Scheme.

Northern Ireland Local Government Officers Superannuation Scheme (NILGOSC) and the Teachers' Superannuation Scheme have confirmed that there are no implications for their Scheme arising from the Disability Discrimination Act 1995. The cost of providing ill health benefits, redundancy benefits or voluntary early retirement benefits for disabled employees under the Scheme are no greater than for a person without a disability.

HARASSMENT

The Boards recognise that its staff are its most valuable asset and as such have a right to be treated with dignity and respect. The Board is committed to providing a safe and harmonious working environment for its staff through pro-active and sensitive management.

The harassment of a person on the grounds of their disability is unlawful. The harassment of employees with disabilities might be non-verbal (gestures, staring and offensive notes/letters), verbal (language, jokes, comments, ridicule, nicknames, etc) or physical (jostling, mistreating or assaulting). The fact that a particular person with a disability does not say he or she objects does **not** mean that he or she is happy about the behaviour.

The Board will take all reasonable steps to prevent such harassment. The Board has adopted a Policy and Code of Practice on Measures to Combat Harassment (Joint Negotiating Council Circular No. 78).

DEFINITION OF TERMS

Definition of Disability – According to the Act, a person is disabled “if he or she has as a physical or mental impairment which has a substantial and long-term adverse effect on a person’s ability to carry out normal day to day activities”.

Physical impairment – This includes, for example, a weakening of part of the body (eyes, ears, limbs, internal organs etc.) caused through illness, by accident or from birth. Examples would be blindness, deafness, paralysis of a leg or heart disease.

Mental impairment – This includes mental illnesses which are clinically well recognised by a respected body of medical opinion, for example, schizophrenia, manic depression and severe and extended depressive psychoses. It also includes what is commonly known as learning disabilities.

Substantial effect – The legislation intends to exclude trivial matters and considers that an effect will be substantial if it is ‘more than minor’. It should be noted that a person who controls or corrects an impairment by medication or a special aid will still be treated as disabled. The sole exception to this rule is the wearing of spectacles or contact lenses. In this case the effect, while the person is wearing spectacles or contact lenses, should be considered.

Long-term effect – The legislation provides that an impairment has a long term effect if it has lasted at least 12 months, if it is likely to last at least 12 months or for the rest of the person’s life.

Effects which are not long-term would therefore include loss of mobility due to a broken limb which is likely to heal within 12 months and the effects of temporary infections from which a person would be likely to recover within 12 months.

Normal day-to-day activities – Under the terms of the Act, an impairment is taken to effect normal day-to-day activities if it affects one or more of the following:-

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 risk of physical danger.

The term is not intended to include activities which are normal only for a particular person or group of people, such as playing a musical instrument or a sport to a professional standard or performing a skilled or specialised task at work. However, someone who is affected in such a specialised way but is also affected in normal day-to-day activities would be covered by this part of the definition.

Recurring or fluctuating conditions – If an impairment has ceased but is likely to recur and would continue to have a substantial adverse effect on a person’s ability to carry out normal day-to-day activities, for example arthritis, then the impairment will qualify as a disability.

Progressive Conditions – A person who experiences a progressive condition such as cancer, multiple sclerosis, muscular dystrophy and HIV will be covered by the Act from the first time the condition has any effect at all on the person's ability to carry out normal day-to-day activities even if it is not substantial, so long as there is eventually likely to be a substantial adverse effect.

Severe Disfigurements – a person with a severe disfigurement is covered by the Act. They do not need to demonstrate that the impairment has a substantial adverse effect on their ability to carry out normal day-to-day activities. Examples of severe disfigurements include – scars, birthmarks, limb or postural deformations or diseases of the skin.

Genetic Conditions – The Act does not cover people with a gene that causes a disability unless they develop the disability.

For example, people with the gene that causes Huntington's chorea are not covered if they do not have the condition. People are covered as soon as the first effects on normal day-to-day activities appear.

Past Disabilities - The definition covers people who have had a disability in the past. If a person once had a disability which is covered by the Act they are still protected even if they have now recovered. This applies even if they recovered before the Act came into force.

Conditions not covered by the Act

The following conditions specifically do not count as impairments:-

- addiction to or dependency on alcohol, nicotine, or any other substance (unless resulting from the substance being medically prescribed);
- seasonal allergic rhinitis (e.g., hay fever) unless it aggravates the effect of another condition;
- tendency to set fires, or steal, or physically or sexually abuse other persons;
- exhibitionism and voyeurism;
- severe disfigurement consisting of tattoos, non-medical body piercing or attachments to such piercing are not treated as having substantial adverse effects.

DUTY TO MAKE REASONABLE ADJUSTMENTS

In adhering to its responsibilities under the disability legislation, the Board will make reasonable adjustments to structural/physical features and to employment arrangements to ensure that a person with a disability is not substantially disadvantaged compared to a person without a disability.

‘Physical features’ includes:-

- › any feature of the premises from the design of the building or its construction;
- › any approach to, exit from or access to the building;
- › any fixtures, fittings, furnishing, furniture, equipment or materials;
- › any other physical element or quality of land.

This duty applies to ‘arrangements’ for determining to whom employment should be offered and any term, condition or arrangement on which employment, promotion, transfer, training or any other benefit is offered or afforded. The duty also applies to any arrangements for termination of employment.

The Act contains a list of steps which an employer would be expected to take in relation to a disabled person. These include:

- › making adjustments to premises;
- › allocating some of the disabled person’s duties to another person;
- › transferring the disabled person to another existing vacancy;
- › altering the disabled person’s working hours;
- › moving the disabled person to a different work place if practicable;
- › allowing them to be absent during working hours for rehabilitation, assessment or treatment;
- › training;
- › acquiring or modifying equipment;
- › modifying instructions or reference manuals;
- › modifying procedures for testing or assessment;
- › providing a reader or interpreter;
- › providing supervision.

In determining whether it is reasonable to make adjustments to working conditions, the Board will have regard to:

- › the effectiveness of the adjustment in preventing the disadvantage to the employee with a disability;
- › the extent to which it is practicable to make the adjustment;
- › the financial costs which would be incurred by the Board in making the adjustment and the extent to which making it would disrupt any of its planned activities;
- › financial resources available;
- › the availability to the Board of financial or other assistance with respect to making the adjustment.

WHERE TO GO FOR MORE HELP AND INFORMATION

INFORMATION BOOKLETS

There are many publications on aspects of the Disability Discrimination Act available free from the Equality Commission for Northern Ireland. These include:-

- › Employing Disabled People – a Good Practice Guide for Managers and Employers
- › A Guide to ‘Complying’ with the Law in Recruitment and Selection
- › A Guide to Taking ‘Positive Action’ to Recruit and Select Disabled People
- › Balancing Disability Rights and Health and Safety Requirements
- › What Employees and Job Applicants Need to Know.

CODE OF PRACTICE

Codes of Practice provide guidance to employers, service providers and people involved in selling, letting or managing property on the Disability Discrimination Act and must be taken into account by courts and tribunals where relevant. In the context of this policy a useful reference is the *Code of Practice for the Elimination of Discrimination in the Field of Employment Against Disabled Persons or Persons who have had a Disability (1996)*.

OTHER ORGANISATIONS

There are a number of voluntary organisations representing people with disabilities which can offer advice. These include:-

Action MS
 Knockbracken Healthcare Park
 Saintfield Road
 Belfast BT8 8BH
 Tel: 028 9079 0707
 Fax: 028 9040 2010
 Email: info@actionms.co.uk

British Deaf Association (NI)
 Suite 3, Cranmore House
 611B Lisburn Road
 Belfast BT9 7GT
 Tel: 028 9038 7700
 Fax: 028 9038 7707
 Textphone: 028 9038 7706
 Videophone: 028 9068 2677
 Email: northernireland@bda.org.uk

Arthritis Care Northern Ireland
 115 Enkalon Business Park
 25 Randalstown Road
 Antrim BT41 4LT
 Tel: 028 9448 1380
 Fax: 028 9446 9761
 Email: nirelandoffice@arthritiscare.org.uk

British Epilepsy Association
 Knockbracken Healthcare Park
 Saintfield Road
 Belfast BT8 8BH
 Tel: 028 9063 4942
 Fax: 028 9031 5914
 Email: mclarke@elipepsy.org.uk

Carers Northern Ireland
58 Howard Street
Belfast BT1 6PJ
Tel: 028 9043 9843
Fax: 028 9032 9299
Email: helen@carersni.demon.co.uk

Disability Action
Portside Business Park
189 Airport Road West
Belfast BT3 9ED
Tel: 028 9029 7880
Fax: 028 9029 7881
Textphone: 028 9029 7882
Email: hq@disabilityaction.org
Website: www.disabilityaction.org

Dyslexia Assessment & Advice Centre
59 Drum Road
Cookstown
BT80 8QS
Tel: 028 8676 6996

MENCAP Northern Ireland
Segal House
4 Annadale Avenue
Belfast BT7 3JH
Tel: 028 9069 1351
Fax: 028 9064 0121
Email: mencap-ni@dnet.co.uk

Northern Ireland Association for Mental Health
60 University Street
Belfast BT9 6AF
Tel: 028 9032 8474
Fax: 028 9023 4940
Email: a.ferguson@niamh.co.uk

Parents and Professionals and Autism
Kockbracken Healthcare Park
Saintfield Road
Belfast BT8 8BH
Tel: 028 9040 1729
Fax: 028 9040 3467
Email: infor@autismni.org

Disablement Advisory Service (DAS)
Department for Employment and Learning
5th Floor Gloucester House
57 – 63 Chichester Street
Belfast BT1 4RA
Tel: 028 9025 2206
Textphone: 080 9025 2363
Website: www.delni.gov.uk/das

Down's Syndrome Association
Graham House
Knockbracken Healthcare Park
Saintfield Road
Belfast BT 8 8BH
Tel: 028 9070 4606
Fax: 028 9070 4075
Email: downs.syndrome@cinni.org

Employers' Forum on Disability Northern Ireland
Banbridge Enterprise Centre
Scarva Road Industrial Estate
Banbridge BT32 3QD
Tel: 028 40 624526
Fax: 028 40 669665
Textphone: 028 40 624526
Email: info@efdni.org.uk

Muscular Dystrophy Campaign
Forster Green Hospital
110 Saintfield Road
Belfast BT8 6AA
Tel: 028 9079 0708
Fax: 028 90790708
Email: oonaghm@muscular-dystrophy.org

North West Forum of People with Disabilities
58 Strand Road
Derry BT48 7AL
Tel: 028 7130 9191
Fax: 028 7130 9191
Email: northwestforum@utvinternet.com

PHAB Northern Ireland
Mourne Villa
Knockbracken Healthcare Park
Saintfield Road
Belfast BT8 8BH
Tel: 028 9050 4800
Fax: 028 9073 4321
Email: info@phabni.org

Royal National Institute for the Blind (NI)
40 Linenhall Street
Belfast BT2 8BA
Tel: 028 9032 9373
Fax: 028 9027 8119
Email: smalcolm@rnib.org.uk

Sense Northern Ireland
The Manor House
51 Mallusk House
Newtownabbey BT36 4RU
Tel: 028 9083 3430
Fax: 028 9084 4232
Email: senseni@senswest.org.uk

The Guide Dogs for the Blind Association
Lanesborough House
15 Sandown Park South – Knock
Belfast BT6 6HE
Tel: 028 9047 1453
Fax: 028 9065 5097
Email: belfast@gdba.org.uk

Royal National Institute for Deaf People (NI)
Wilton House
5 College Square North
Belfast BT1 6AR
Tel: 028 9023 9619 (Voice/Test)
VideoPhone: 028 9043 8354
Fax: 028 9031 2032
Email: helpline@rnid.org.uk

The Cedar Foundation
Malcolm Sinclair House
31 Ulsterville Avenue
Belfast BT9 7AS
Tel: 028 9066 6188
Fax: 028 9068 2400
Email: info@cedar-foundation.org