

The Autism Act (Northern Ireland) 2011



Introduction

This briefing discusses the introduction of the Autism Act (Northern Ireland) 2011 ('the 2011 Act') which was passed on 9 May 2011. It came into operation on 9 August 2011.

The 2011 Act is an equality and rights based piece of legislation. It aims to ensure that people with autism are afforded the same entitlements and opportunities as those with other disabilities.

It also requires the Northern Ireland government departments to work together to achieve a more streamlined approach to the provision of services for people with autism and their carers.

Purpose

The 2011 Act has two main purposes.

1. Amendment of the Disability Discrimination Act 1995 ('DDA 1995')

The 2011 Act amends the definition of a 'disabled person' contained within the DDA 1995¹. The amended definition applies exclusively to Northern Ireland.

The DDA 1995 makes it unlawful to discriminate against disabled people in a number of areas. This includes in the provision of goods, facilities and services and in connection with employment.

The Disability Discrimination (NI) Order 2006 extended the DDA 1995 to cover functions of public authorities in Northern Ireland, including health and social care trusts ('HSC trusts')².

In addition to avoiding discrimination of disabled people, under the DDA 1995, HSC trusts (when carrying out their functions) must also have due regard to the need to promote positive attitudes towards disabled people and the need to encourage participation by disabled people in public life³.

For the purposes of the DDA 1995, a person has a disability if s/he has a physical or mental impairment which has a substantial and long-term adverse effect on her/his ability to carry out normal day-to-day activities⁴.

Prior to the enactment of the 2011 Act, an impairment was taken to affect the ability of a person to carry out normal day to day activities only where one of the following was affected by the impairment in question:

- a) mobility;
- b) manual dexterity;
- c) physical co-ordination;
- d) continence;
- e) ability to lift, carry out or otherwise move everyday objects;
- f) speech, hearing or eyesight;
- g) memory or ability to concentrate, learn or understand; or
- h) perception of the risk of physical danger.

The 2011 Act extends the criteria which must be considered when deciding whether or not a physical or mental impairment is to be taken as affecting the ability of the person concerned to carry out normal day-to-day activi-

ties. This will impact upon whether, in turn, that individual then falls within the definition of a disabled person in the DDA 1995. Specifically, the 2011 Act adds the following activities to the existing list;

- i) taking part in normal social interaction; or
- j) forming social relationships.

So, where an individual is affected by a physical or mental impairment which has a substantial and long-term adverse effect on her/his ability to carry out normal day-to-day activities and where the impairment affects her/his ability to take part in normal social interaction and/or to form social relationships, then s/he should be considered a disabled person under the DDA 1995.

Practical implications

Although the case could be made that an individual affected by autism (or a similar condition) would have already fallen within the definition of a disabled person in the DDA 1995, the 2011 Act is useful in that it clarifies the legal position further in order to ensure that people with social and/or communicative disabilities are afforded the protection of the DDA 1995 against non-discrimination.

In practice, this amendment will require HSC trusts to ensure that all existing policies, practices and procedures employed by the trust, (for example, in the provision of health and social care services or in the employment of staff) continue to be compliant with the requirements of the amended DDA 1995.

It is important that health and social care staff are aware of these changes when making decisions about the provision of services to individuals in order that their duties under the DDA 1995 are observed and unlawful discrimination is avoided.

Example

Donna is an eighteen year old woman who was diagnosed with Asperger's Syndrome three years ago. Her condition affects her ability to

communicate with other people. She shares her bedroom with her younger sister Amber and her home has one family room which is used by her parents to entertain visitors. This has resulted in difficulties for Donna as she finds social interaction with new people difficult. Donna will often become anxious when visitors arrive and she can exhibit challenging behaviour as a result.

In light of Donna's anxiety, her parents applied to the Northern Ireland Housing Executive for a disabled facilities grant. They wish to build an extra ground floor bedroom in the family home for Donna to sleep in and to provide Donna with private space. As part of the process, an occupational therapist from the local HSC trust assessed Donna's need for this adaptation. The OT concluded that, as Donna was able to physically access her existing bedroom, the adaptation requested would not be recommended by the trust. Donna's parents were advised that she did not meet the criteria for a ground floor bedroom adaptation.

Following the enactment of the 2011 Act, this decision could be viewed as discriminatory under the provisions of the amended DDA 1995. The case could be made that the trust has failed to consider the non-physical reasons why Donna may need a ground floor bedroom. Where existing trust criteria allow adaptations to be approved by the trust only in circumstances where the applicant has a physical disability, then it would be important for such criteria to be reviewed to ensure their continued compliance with the DDA 1995.

2. Autism strategy

The Autism Act also requires an autism strategy to be prepared by the Department of Health, Social Services and Public Safety (DHSSPS) by 9 May 2013.

It is intended that each of the relevant Northern Ireland government departments will be tasked with implementing the strategy on a cross-departmental basis.

Prior to implementation, the DHSSPS must consult with the other Northern Ireland government departments in addition to obtaining information from each of the HSC trusts regarding the prevalence of autism in their area.

The 2011 Act prescribes that the autism strategy must deal with the following areas:

- It must set out how the needs of persons with autism are to be addressed throughout their lives. Such needs shall include (but not be limited to) the health care, educational and social needs of people with autism.
- It must set out how the needs of families and carers of individuals with autism are to be addressed.

- It must contain the DHSSPS's proposals for promoting an autism awareness campaign.

In addition, within three years of publication of the autism strategy, the DHSSPS must implement that part of the strategy which falls within its remit.

The Autism Act also gives the DHSSPS powers to make regulations in respect of the autism strategy.

Notes

¹ DDA 1995, Part I, Section 1

² DDA 1995, Part II, Section 21B

³ DDA 1995, Part V, Section 49A

⁴ DDA 1995, Part I, Section 1 (1)

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For any queries arising from this briefing, please contact the community care unit of Law Centre (NI) on the advice line (028 90244401) or (0287126 2433).

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