



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

SUBMISSION ON THE AUTISM BILL

Summary

This is the Commission's response to the Autism Bill, a Private Members Bill introduced to the Assembly by Mr Dominic Bradley MLA. We have based our comments on the UN Convention on the Rights of Persons with Disabilities (CRPD), a treaty ratified by the UK in 2009.

- We agree that the Disability Discrimination Act 1995 (DDA) should be amended to include social and communication impairments within the definition of disability.
- We would prefer to see fuller incorporation of wording from the CRPD to bring the DDA in line with current thinking on disability.
- While the Bill proposes the introduction of an Autism Strategy, we would prefer a national disability action plan to secure full implementation of the CRPD for all disabled people.
- A cross-departmental approach co-ordinated by the Office of the First Minister and deputy First Minister (OFMdfM), and involving all the Northern Ireland Executive Departments, to implement the CRPD should mean that there is no need for an Autism Bill or comparable single issue Bills.

1. The Northern Ireland Human Rights Commission (the Commission) is a statutory body created by the Northern Ireland Act 1998. It has a range of functions including reviewing the adequacy and effectiveness of Northern Ireland law and practice relating to the protection of human rights,¹ and advising on whether a Bill is compatible with human rights.² In all of that work, the Commission bases its

¹ Northern Ireland Act 1998, s.69(1).

² As above, s.69(4).

positions on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR), other treaty obligations in the Council of Europe and United Nations systems, and the non-binding 'soft law' standards developed by the human rights bodies.

2. The Commission welcomes the opportunity to comment on the provisions in the Autism Bill introduced by Mr Dominic Bradley MLA. We base our comments on the United Nations Convention on the Rights of Persons with Disabilities (CRPD) which was ratified by the United Kingdom on 9 June 2009. The Human Rights Commission is designated, along with the Equality Commission for Northern Ireland, the Scottish Human Rights Commission and the Equality and Human Rights Commission, as part of the Independent Mechanism required under CRPD to protect, promote and monitor implementation of the CRPD, but the present submission is made by the NIHRC alone.
3. The Commission supports the intention in clause 1 to amend the Disability Discrimination Act 1995 (DDA), as it applies in Northern Ireland, to include social and communication impairments within the definition of disability. As the state has endorsed the CRPD's use of the social model of disability, the statutory definition should also reflect this position. The DDA as enacted reflected the medical model that is wholly out of step with current thinking on disability. The Commission would prefer to see a fuller incorporation into the DDA of the wording from Article 1 CRPD, the second sentence of which reads:

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.
4. Such a definition clearly encompasses autistic spectrum disorders (ASD). In the interests of parity of access to rights, there is a case for seeking to amend s.1 and Schedule 1 of DDA (pending new equality legislation in Northern Ireland) and relevant provisions in the Equality Act 2010 (which applies in Great Britain) to directly reflect CRPD concepts on a UK-wide basis. However, as the present Bill only addresses the DDA's application in Northern Ireland we are unclear as to why it does not simply seek to amend Schedule 8 (which deals with modifications of the DDA in its application to Northern Ireland). Whether or not the Autism

Bill progresses, the Commission will continue to advocate revision of disability and equality law to bring it fully in line with the CRPD.

5. The Bill goes on to propose that an Autism Strategy, of a specific scope and following a particular methodology, be required by law. The Commission does not view so specific an approach as a requirement of CRPD or any international human rights instrument, and is aware of concerns that legislation seeking to address the needs of one group of persons with disabilities could delay, or divert attention and resources from, the coherent, consistent, comprehensive and proportionate response that is required to ensure equal recognition of and protection for the human rights of all disabled people.
6. However, the Commission is also aware that the needs of persons with autistic spectrum disorders have not been well served to date. It accepts that there is a need for inter-departmental co-ordination to ensure that, for example, health, social services, education and social security provision work together to ensure that needs are assessed and addressed in an effective and timely manner, particularly at key transition points in the lives of persons with autism. A strategic approach such as the Bill envisages would have significant practical benefits, for example in terms of adaptations to public spaces and facilities (with consequential benefits for persons with other disabilities), and recognition of ASD in law would assist decision-making on benefit entitlement. An inter-Departmental strategy would diminish the likelihood of different criteria for access to services being applied across the Trusts, and would raise public awareness and understanding of ASD. It is already apparent that, in the Committee and on the floor, the Bill has raised awareness and understanding among legislators on a cross-party basis, and that achievement will stand whatever the fate of the measure itself.
7. The Commission would prefer to see the introduction by Government of a national disability action plan that would endeavour to realise the full implementation of CRPD for all disabled people. While this could take the form of a UK-wide plan, presumably co-ordinated through the Office for Disability Issues which is designated as the central government 'focal point' for CRPD purposes (Article 33(1) CRPD), in the absence of any state-wide initiative the

Northern Ireland Executive could devise a regional strategy or action plan dealing with all matters that are devolved.

8. The Bill proposes that an interdepartmental autism strategy be entrusted to the Department for Health, Social Services and Public Safety (DHSSPS) as the lead. The Commission is concerned that locating the lead role in DHSSPS risks reinforcing the misconception of autism, and of disability more generally, as a medical issue. It is also well established that the DHSSPS is not at present persuaded of the need for the present Bill, so that, should it be enacted, the Department – while it would be bound to implement what is required of it – might not prove to be the most enthusiastic champion of the expected approach.
9. The Commission notes that the Office of the First Minister and deputy First Minister (OFMdfM) has been designated as the CRPD ‘focal point’ for Northern Ireland. This requires OFMdfM to spearhead a cross-Departmental approach to oversee the implementation of the Convention. Each Department is required to meet the human rights and equality obligations set down by the Convention. These include the full range of civil, political, economic, social and cultural rights, which apply equally to disabled people. Article 31 of CRPD requires the state to collect appropriate information, including statistical and research data, to enable it to formulate and implement policies to give effect to the Convention. Overall, many of the elements included in the Autism Bill are covered by the obligations deriving from CRPD which the state has ratified and is now obliged to deliver.
10. The needs of persons with autism would not be best served by, on the one hand, OFMdfM leading on a comprehensive CRPD-based disability strategy and DHSSPS at the same time leading on a bespoke strategy for autism. The dangers of duplication, conflict, competition for resources and delays in co-ordinating approaches are self-evident. The potential for overlap and conflict is already apparent in relation to autism, where the Education and Health Departments are pursuing separate plans, while other Departments with relevant functions have no plans. The Commission therefore recommends that, should the Autism Bill progress, consideration be given to designating OFMdfM as the lead so that the strategy on ASD can be woven into the anticipated CRPD implementation strategy.

11. The Commission would also make the point that a strategy does not actually require to be set out in legislation, and it may even be that a more efficient, responsive and dynamic approach can be taken without statute. The Welsh Government has adopted and is implementing what autism organisations regard as a highly effective Action Plan for ASD; Scotland recently decided to adopt a cross-departmental ASD strategy; in Denmark, the National Autism Plan is the product of co-operation between approximately 50 Danish experts on autism, an expert committee and an editorial group, and other jurisdictions have strategies or plans that are not based in law. In England, where the Autism Act 2009 mandated production of a strategy, the lead role was given to the Department of Health (whereas CRPD matters are led by the Office for Disability Issues) and guidance on the strategy's implementation is still awaited as of December 2010. It is entirely possible to devise and implement a strategy without setting out its parameters and processes in statute as the Bill seeks to do. Northern Ireland has ready access to expert advice from, for example, the Welsh administration, which we understand has indicated its willingness to share best practice.
12. The Commission underlines that the purpose of CRPD (as noted in Article 1) is to *"promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities"*. The Convention makes repeated reference to the realisation of human rights *"on an equal basis with others"*. This refers to equality between, *and* among, non-disabled and disabled people. In that context, the Commission does not consider that special legislation for the rights and needs of people falling within a particular spectrum of disorders is consistent with the equality principle in CRPD.
13. If the Northern Ireland Executive and each of its Departments implemented the CRPD there would be no necessity for an Autism Bill or comparable single-issue Bills. The effective implementation of the Convention requires revision of the DDA to reflect the social model of disability as endorsed by the CRPD.

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