



Disabled Persons (Northern Ireland) Act 1989

1989 CHAPTER 10

An Act to make provision equivalent to the Disabled Persons (Services, Consultation and Representation) Act 1986 for Northern Ireland. [25th May 1989]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Appointment of authorised representatives of disabled persons

- (1) In this Act “authorised representative”, in relation to a disabled person, means a person for the time being appointed by or on behalf of that disabled person (in accordance with regulations made under this section) to act as his authorised representative for the purposes of this Act.
- (2) The Department of Health and Social Services for Northern Ireland (in this Act referred to as “the Department”) may by regulations make provision with respect to the appointment of persons to act as the authorised representatives of disabled persons, including provision—
 - (a) for the manner in which the appointment of a person as an authorised representative is to be made; and
 - (b) for any such appointment to be notified to the relevant Board (as defined in the regulations) if made otherwise than by that Board.
- (3) Any such regulations—
 - (a) may provide for the parent of a disabled person under the age of 16 to appoint himself or some other person as the authorised representative of the disabled person (but shall not permit a person under that age himself to appoint a person as his authorised representative);

- (b) may provide for the appointment of a person as the authorised representative of a disabled person who is a child in the care of the Department to be made by a Board in such circumstances as may be specified in the regulations;
 - (c) may, in accordance with subsection (4), provide for the appointment of a person as the authorised representative of a disabled person to be made by, or under arrangements made by, a Board in a case where the disabled person appears to the Board to be unable to appoint a person as his authorised representative by reason of any mental or physical incapacity;
 - (d) may contain such incidental or supplementary provisions as the Department thinks fit.
- (4) Regulations under paragraph (c) of subsection (3) may make provision—
- (a) for requiring a Board, for the purpose of enabling it to determine whether a disabled person is unable to appoint a person as his authorised representative as mentioned in that paragraph, to obtain the opinion of a registered medical practitioner;
 - (b) for authorising a Board, where it determines that a disabled person is so unable, either—
 - (i) itself to appoint a person as the disabled person's authorised representative, or
 - (ii) to make with any voluntary organisation, person or persons approved by the Board for the purpose such arrangements as the Board thinks fit for such an appointment to be made by the organisation, person or persons concerned;
 - (c) for requiring or authorising a Board, before determining the question specified in paragraph (a), or (as the case may be) before making any appointment of an authorised representative, or any arrangements, in pursuance of paragraph (b), to consult any of the following, namely,—
 - (i) a person or persons appointed by the Board for the purpose, or
 - (ii) a person or persons falling within any class or description specified in the regulations;
 - (d) for requiring a Board, in such circumstances as may be specified in the regulations, to review the case of a disabled person whose authorised representative has been appointed in pursuance of paragraph (b) (whether by the Board or under any arrangements made by it) for the purpose of determining whether he is still unable to appoint a person as his authorised representative as mentioned in subsection (3)(c).
- (5) Subsections (2) to (4) shall apply, with any necessary modifications, in relation to the termination of the appointment of a person as an authorised representative as they apply in relation to the making of such an appointment.
- (6) It is hereby declared that any person exercising under Part II of the Mental Health Order—
- (a) the functions of the nearest relative of a disabled person, or
 - (b) the functions of the guardian of a disabled person received into guardianship under that Part,
- may, if appointed as such in accordance with this section, also act as that person's authorised representative.

2 Rights of authorised representatives of disabled persons

- (1) A Board shall permit the authorised representative of a disabled person, if requested by the disabled person—
 - (a) to act as the representative of the disabled person in connection with the provision of any personal social services for him, or
 - (b) to accompany the disabled person (otherwise than as his representative) to any meeting or interview held by or on behalf of the Board in connection with the provision of any such services for him.
- (2) For the purpose of assisting the authorised representative of a disabled person to do any of the things mentioned in subsection (1)(a) and (b) a Board shall, if requested by the disabled person—
 - (a) supply to the authorised representative any information, and
 - (b) make available for his inspection any documents,that the disabled person would be entitled to require the Board to supply to him or (as the case may be) to make available for his inspection.
- (3) In relation to a disabled person whose authorised representative has been appointed by virtue of subsection (3) of section 1, subsections (1) and (2) above shall each have effect as follows—
 - (a) if the appointment was made by virtue of subsection (3)(a) of that section, the words “the parent of” shall be inserted after the words “if requested by”; and
 - (b) if the appointment was made by virtue of subsection (3)(b) or (c) of that section, the words “if requested by the disabled person” shall be omitted.
- (4) A Board shall not be required by virtue of subsection (1) or (2)—
 - (a) to permit an authorised representative to be present at any meeting or interview or part of a meeting or interview, or
 - (b) to supply any information to an authorised representative or to make any documents available for the inspection of an authorised representative,if the Board is satisfied that to do so would be likely to be harmful to the interests of the disabled person by whom or on whose behalf the representative has been appointed; and in determining that matter the Board shall have regard to any wishes expressed by the disabled person.
- (5) Where a disabled person is residing—
 - (a) in hospital but not in special accommodation, or
 - (b) in residential accommodation provided under Articles 4(b) and 15 of the 1972 Order, or
 - (c) in accommodation provided in accordance with arrangements made by the Department under Article 36 of that Order, or
 - (d) in a home registered under Schedule 5 to that Order (homes for persons in need), or
 - (e) in any home, voluntary home or hostel referred to in Part VII of the Children and Young Persons Act (Northern Ireland) 1968 (accommodation for children in care) or in any premises in which he is boarded out under section 114(1)(a) of that Act or is under the control of another person by virtue of section 105(3) or 145(1) of that Act, or
 - (f) in a nursing home registered under Part I of the Nursing Homes and Nursing Agencies Act (Northern Ireland) 1971, or

- (g) at any place specified by a person having the guardianship of the disabled person under Part II of the Mental Health Order, or
 - (h) in accommodation provided by any educational establishment,
- the disabled person's authorised representative may at any reasonable time visit him there and interview him in private.
- (6) The Department may, after consulting such bodies as appear to it to be appropriate, provide by order for any of the preceding provisions of this section to have effect (with such modifications as may be prescribed by the order) in relation to the provision by Boards of such health services as may be specified by the order.
 - (7) The Department of Education for Northern Ireland may, after consulting such bodies as appear to it to be appropriate, provide by order for any of subsections (1) to (5) to have effect (with such modifications as may be prescribed by the order) in relation to the provision by education and library boards of such services as may be specified by the order.
 - (8) The Department of the Environment for Northern Ireland may, after consulting such bodies as appear to it to be appropriate, provide by order for any of subsections (1) to (5) to have effect (with such modifications as may be prescribed by the order) in relation to the provision by the Northern Ireland Housing Executive and district councils of such services as may be specified by the order.
 - (9) An order under subsection (6), (7) or (8) may provide for regulations made under section 1 to have effect for the purposes of the order with such modifications as may be specified, and in that event the reference in subsection (1) of that section to regulations made under that section shall be read as a reference to any such regulations as they have effect in accordance with the order.

3 Assessment by Boards of needs of disabled persons

- (1) Where—
 - (a) on any assessment carried out by a Board in pursuance of any provision of this Act, or
 - (b) on any other occasion,it falls to the Board to decide whether the needs of a disabled person call for the provision of any personal social services for that person, the Board shall afford an opportunity to the disabled person or his authorised representative to make, within such reasonable period as the Board may allow for the purpose, representations to an officer of the Board as to any needs of the disabled person calling for the provision of any such services for him.
- (2) Where—
 - (a) either—
 - (i) representations have been made to a Board under subsection (1), or
 - (ii) the period mentioned in that subsection has expired without any representations being so made, and
 - (b) the Board has reached a decision on the question referred to in that subsection (having taken into account any representations made as mentioned above),

the Board shall, if requested by the disabled person or his authorised representative, supply the person making the request with a written statement complying with subsection (3).

- (3) The written statement referred to in subsection (2) must—
- (a) either specify—
 - (i) any needs of the disabled person which in the opinion of the Board call for the provision of any personal social services, and
 - (ii) in the case of each such need, the personal social services that it proposes to provide to meet that need,or state that, in the opinion of the Board, the disabled person has no needs calling for the provision of any such services; and
 - (b) give an explanation of the Board's decision; and
 - (c) contain particulars of the right of the disabled person or his authorised representative to make representations with respect to the statement under subsection (5).
- (4) Where the Board does not propose to provide any personal social services to meet a particular need identified in any representations under subsection (1), any statement supplied under subsection (2) must state that fact together with the reasons why the Board does not propose to provide any such services.
- (5) If the disabled person or his authorised representative is dissatisfied with any matter included in the statement supplied under subsection (2), that person may, within such reasonable period as the Board may allow for the purpose, make representations to an officer of the Board with respect to that matter.
- (6) Where any such representations have been made to the Board in accordance with subsection (5), the Board shall—
- (a) consider (or, as the case may be, reconsider) whether any, and (if so) what, personal social services should be provided for the disabled person to meet any need identified in the representations; and
 - (b) inform the disabled person or his authorised representative in writing of its decision on that question and its reasons for that decision.
- (7) Where—
- (a) the disabled person or his authorised representative is unable to communicate, or (as the case may be) be communicated with, orally or in writing (or in each of those ways) by reason of any mental or physical incapacity, or
 - (b) both of those persons are in that position (whether by reason of the same incapacity or not),
- the Board shall provide such services as, in its opinion, are necessary to ensure that any such incapacity does not—
- (i) prevent the Board from discharging its functions under this section in relation to the disabled person, or
 - (ii) prevent the making of representations under this section by or on behalf of that person.
- (8) In determining—
- (a) whether it is required to provide any services under subsection (7) to meet any need of the disabled person or his authorised representative, and
 - (b) (if so) what those services should be,

the Board shall have regard to any views expressed by either of those persons as to the necessity for any such services or (as appropriate) to any views so expressed as to the services which should be so provided.

- (9) In this section “representations” means representations made orally or in writing (or both).

4 Services under s. 2 of the 1978 Act: duty to consider needs of disabled persons

A Board shall, when requested to do so by—

- (a) a disabled person,
- (b) his authorised representative, or
- (c) any person who provides care for him in the circumstances mentioned in section 8,

decide whether the needs of the disabled person call for the provision by the Board of any services in accordance with section 2 of the 1978 Act (provision of welfare services).

5 Disabled persons leaving special education

(1) Where—

- (a) an education and library board has made a statement under Article 31 of the Education Order (statement of child’s special educational needs) in respect of a child under the age of 14, and
- (b) the statement is still maintained by the education and library board at whichever is the earlier of the following times, namely—
 - (i) the time when the education and library board institutes the first annual review of the statement following the child’s fourteenth birthday, and
 - (ii) any time falling after that birthday when the education and library board institutes a re-assessment of his educational needs,

the education and library board shall at that time require the appropriate officer to give the education and library board his opinion as to whether the child is or is not a disabled person.

(2) Where—

- (a) an education and library board makes any such statement in respect of a child after he has attained the age of 14, or
- (b) an education and library board maintains any such statement in respect of a child in whose case the appropriate officer has, in pursuance of subsection (1), given his opinion that the child is not a disabled person, but the education and library board has become aware of a significant change in the mental or physical condition of the child giving the board reason to believe that he may now be a disabled person,

the education and library board shall, at the time of making the statement or (as the case may be) of becoming aware of that change, require the appropriate officer to give the education and library board his opinion as to whether the child is or is not a disabled person.

(3) Where, in pursuance of subsection (1) or (2), an opinion has been given that a child is a disabled person and it subsequently appears to the responsible education and library board—

- (a) that the child will cease to receive full-time education at school on a particular date and will not subsequently be receiving full-time education at an institution of further education, or
- (b) that the child will cease to receive full-time education at such an institution on a particular date,

the responsible education and library board shall give to the appropriate officer written notification for the purposes of subsection (5) of the date referred to in paragraph (a) or (b); and any such notification shall be given not later than the relevant date and not earlier than four months before that date.

In this subsection “the relevant date” means the date falling 8 months before the date referred to in paragraph (a) or (b) above.

(4) If at any time it appears to an education and library board—

- (a) that a person has on a particular date ceased to receive full-time education as mentioned in paragraph (a) or (b) of subsection (3) or will cease to do so on a particular date falling less than 8 months after that time, and
- (b) that no notification of that date has been given to the appropriate officer under that subsection with respect to that person, but
- (c) that, had that or any other education and library board (as the responsible education and library board for the time being) been aware of his intentions 8 months or more before that date, the education and library board would have been required to give notification of that date under that subsection with respect to him,

that education and library board shall, as soon as is reasonably practicable, give to the appropriate officer written notification for the purposes of subsection (5) of that date.

(5) When the appropriate officer receives a notification given with respect to any person under subsection (3) or (4), he shall (subject to subsections (6) and (7)) make arrangements for the Health and Social Services Board of which he is an officer to carry out an assessment of the needs of that person with respect to the provision by that Health and Social Services Board of any personal social services for that person, and any such assessment shall be carried out—

- (a) in the case of a notification under subsection (3), not later than the end of the period of 5 months beginning with the date of receipt of the notification, or
- (b) in the case of a notification under subsection (4), before the date specified in the notification, if reasonably practicable, and in any event not later than the end of the period referred to in paragraph (a) above.

(6) If—

- (a) a notification has been given to the appropriate officer with respect to any person under subsection (3) or (4), but
- (b) it subsequently appears to an education and library board that that person will be receiving full-time education (whether at school or at an institution of further education) at a time later than the date specified in the notification,

the education and library board shall give written notification of the relevant facts to that officer as soon as is reasonably practicable; and on receiving any such notification that officer shall cease to be required under subsection (5) to make arrangements for

the assessment of the needs of the person in question (but without prejudice to the operation of that subsection in relation to any further notification given with respect to that person under subsection (3) or (4)).

- (7) Nothing in subsection (5) shall require the appropriate officer to make arrangements for the assessment of the needs of a person—
- (a) if, having attained the age of 16, he has requested that such arrangements should not be made under that subsection, or
 - (b) if, being under that age, his parent has made such a request.
- (8) Regulations under paragraph 6(2) of Schedule 11 to the Education Order (assessments and statements of special educational needs) may, in relation to the transfer of statements made under Article 31 of that Order, make such provision as appears to the Department of Education for Northern Ireland to be necessary or expedient in connection with the provisions of this section.

- (9) In this section—

“the appropriate officer”, in relation to the child or person referred to in the provision of this section in question, means such officer as may be appointed for the purposes of this section by the Health and Social Services Board for the area in which that child or person is for the time being ordinarily resident;

“child” means, subject to Article 33(3) of the Education Order in relation to a child with special educational needs, a person of compulsory school age who is registered as a pupil at a school or an institution of further education; and

“the responsible education and library board”—

- (a) in relation to a child at school, means the education and library board which is responsible for the child for the purposes of the Education Order;
- (b) in relation to a child at an institution of further education, means the education and library board which was responsible for the child immediately before he ceased to receive full-time education at school;

in each case whether any such opinion as is mentioned in subsection (3) was given to that board or not;

and other expressions used in this section and in the Education Order (and not defined in this Act) have the same meaning in this section as in that Order.

6 Review of expected leaving dates from full-time education of disabled persons

- (1) An education and library board shall for the purposes of section 5 keep under review the dates when the following children are expected to cease to receive full-time education at school or (as the case may be) at an institution of further education, namely—
- (a) children for whom that education and library board is responsible for the purposes of the Education Order and in the case of each of whom an opinion has been given in pursuance of subsection (1) or (2) of section 5 that he is a disabled person (whether it was given to that education and library board or not); and
 - (b) children at institutions of further education for whom that education and library board was so responsible immediately before they ceased to receive full-time education at school and in the case of each of whom any such opinion has been given as mentioned in paragraph (a).

- (2) Subsection (9) of section 5 shall have effect for the purposes of this section as it has effect for the purposes of that section.

7 Persons discharged from hospital accommodation

- (1) When a person is to be discharged from hospital accommodation after having received medical treatment for mental disorder as an in-patient for a continuous period of not less than 6 months ending with the date on which he is to be discharged, the responsible Board shall give written notification of that date—

- (a) if it appears to the Board that that person is likely to reside after his discharge in the area of another Board, to that Board, and
- (b) in the case of a person under 19 on that date, to the education and library board in whose area it appears to the Board that that person is likely to reside after his discharge,

as soon as is reasonably practicable after that date is known to the responsible Board.

- (2) Where—

- (a) a person liable to be detained under the Mental Health Order is discharged from hospital accommodation in pursuance of an order for his immediate discharge made by the Mental Health Review Tribunal for Northern Ireland, and
- (b) he is so discharged after having received medical treatment for mental disorder as an in-patient for a continuous period of not less than 6 months ending with the date of his discharge,

the responsible Board shall give written notification of that person's discharge in accordance with paragraphs (a) and (b) of subsection (1) as soon as is reasonably practicable.

- (3) Where a person is to be or is discharged as described in subsection (1) or (2), the responsible Board (subject to subsections (4) to (7)) shall make arrangements for an assessment of the needs of that person with respect to the provision of—

- (a) any health services, or
- (b) any personal social services.

- (4) Where a Board receives a notification under subsection (1) or (2) it shall make the arrangements required by subsection (3) in consultation with the responsible Board.

- (5) Any assessment for which arrangements are required to be made by subsection (3) or (4) shall be carried out—

- (a) where the person is to be discharged as described in subsection (1), not later than the date mentioned in that subsection, or
- (b) where the person is discharged as described in subsection (2), as soon as is reasonably practicable after the date of his discharge.

- (6) A Board shall not be required to make arrangements for an assessment of the needs of a person by virtue of subsection (3) or (4) if that person has requested it not to make any such arrangements.

- (7) Nothing in this section shall apply in relation to a person who is being discharged from any hospital accommodation for the purpose of being transferred to other hospital accommodation in which he will be an in-patient (whether or not he will be receiving medical treatment for mental disorder); but any reference in subsection (1) or (2)

to a person's having received medical treatment for mental disorder as an in-patient for the period mentioned in that subsection is a reference to his having received such treatment for that period whether or not he received the treatment at the same hospital accommodation throughout that period and disregarding any interruption of that period attributable to his being transferred to other hospital accommodation.

(8) In this section—

“medical treatment” has the meaning given by Article 2(2) of the Mental Health Order;

“responsible Board” means the Board which administers the hospital accommodation

8 Duty of Board to take into account abilities of carer

(1) Where—

(a) a disabled person is living at home and receiving a substantial amount of care on a regular basis from another person (who is not a person employed to provide such care by any body in the exercise of its functions under any enactment), and

(b) it falls to a Board to decide whether the disabled person's needs call for the provision of any personal social services for him,

the Board shall, in deciding that question, have regard to the ability of that other person to continue to provide such care on a regular basis.

(2) Where that other person is unable to communicate, or (as the case may be) be communicated with, orally or in writing (or in each of those ways) by reason of any mental or physical incapacity, the Board shall provide such services as, in its opinion, are necessary to ensure that any such incapacity does not prevent the Board from being properly informed as to the ability of that person to continue to provide care as mentioned in subsection (1).

(3) Section 3(8) shall apply for the purposes of subsection (2) above as it applies for the purposes of section 3(7), but as if any reference to the disabled person or his authorised representative were a reference to the person mentioned in subsection (2).

9 Co-option to committees etc. of persons representing interests of disabled persons

Where any enactment provides for the appointment or co-option to any council, committee or body of one or more persons with special knowledge of the needs of disabled persons, such appointment or co-option shall only be made after consultation with such organisation or organisations of disabled people as may be appropriate in each case.

10 Reports

The Department shall annually lay before the Northern Ireland Assembly a report containing the following information, namely—

(a) such information as the Department considers appropriate with respect to the development of health services and personal social services in the community for persons suffering from mental disorder who are not resident in hospitals;

- (b) information with respect to the number of persons receiving treatment for mental disorder as in-patients in hospital accommodation, and analysed by reference to age and length of stay; and
- (c) such other information (if any) as the Department considers appropriate to be included in the report.

11 Interpretation, regulations and orders and repeal

(1) In this Act—

“the 1972 Order” means the Health and Personal Social Services (Northern Ireland) Order 1972;

“the 1978 Act” means the Chronically Sick and Disabled Persons (Northern Ireland) Act 1978;

“authorised representative” has the meaning given by section 1(1);

“Board” (except in section 5) means a Health and Social Services Board;

“the Department” has the meaning given by section 1(2);

“the Education Order” means the Education and Libraries (Northern Ireland) Order 1986;

“disabled person” means a person to whom section 1 of the 1978 Act applies;

“guardian” (except in section 1(6)) means a person appointed by deed or will or by order of a court of competent jurisdiction to be the guardian of a child;

“health services” has the meaning given by Article 2(2) of the 1972 Order;

“hospital” has the meaning given by Article 2(2) of the 1972 Order;

“hospital accommodation” means any hospital or special accommodation vested in the Department;

“the Mental Health Order” means the Mental Health (Northern Ireland) Order 1986;

“mental disorder” has the meaning given by Article 3 of the Mental Health Order;

“modifications” includes additions, omissions and amendments;

“parent” includes a guardian and every person who has the actual custody of a child;

“personal social services” means services provided by a Board under arrangements made by the Department under Article 4(b) or 15 of the 1972 Order or section 2 of the 1978 Act;

“services” includes facilities;

“special accommodation” has the meaning given by Article 110 of the Mental Health Order;

“voluntary organisation” means any association carrying on or proposing to carry on any activities otherwise than for the purpose of gain by the association or by individual members.

(2) The power to make regulations or an order under this Act shall be exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979.

(3) A statutory rule containing regulations or an order under this Act (except an order under section 12(2)) shall be subject to negative resolution within the meaning of

section 41(6) of the Interpretation Act (Northern Ireland) 1954 as if this Act were a Measure of the Northern Ireland Assembly.

- (4) Article 36(3) of the Education and Libraries (Northern Ireland) Order 1986 (education and library boards to notify Boards when certain children or young persons requiring further care, treatment or supervision leave or have left school) is hereby repealed.

12 Short title, commencement and extent

- (1) This Act may be cited as the Disabled Persons (Northern Ireland) Act 1989.
- (2) This Act shall come into force on such day as the Head of the Department may by order appoint, and different days may be appointed for different provisions or different purposes.
- (3) This Act extends to Northern Ireland only.