

EAST AYRSHIRE COUNCIL

POLICY AND RESOURCES COMMITTEE - 30 SEPTEMBER 2004

DELIVERING EQUALITY FOR DISABLED PEOPLE: A CONSULTATION ON THE EXTENSION OF THE DISABILITY DISCRIMINATION ACT

Report by Depute Chief Executive/Director of Corporate Support

1. PURPOSE OF REPORT

- 1.1 To recommend to members the Council's response to the Consultation Document issued by the Department of Work and Pensions on the extension of the Disability Discrimination Act and to outline the policy and operational implications for the Council of the extension of the Act.

2. INTRODUCTION

- 2.1 The Government issued a consultation document on the extension of the Disability Discrimination Act on 26 July 2004 with a closing date for comments of 21 October 2004.

3. BACKGROUND

- 3.1 The Government is committed to delivering comprehensive and enforceable civil rights for disabled people. The Disability Discrimination Bill will put in place the final pieces of the legal framework, including measures to prohibit discrimination in the exercise of public functions, and will introduce a statutory duty to promote equality of opportunity for disabled people.

Extension of the DDA to cover functions of public bodies

- 3.2 At present disabled people are not protected by civil rights legislation when bodies exercise "public functions" – a term that includes, for example, powers of arrest and other activities that may usually only be conducted by public sector bodies.
- 3.3 The Government recognises that the relationship disabled people have with bodies exercising public functions is broadly similar to the relationship disabled people have with service providers and therefore the new provisions are closely modelled on the requirements the DDA places on service providers.
- 3.4 This means that the Bill will make it unlawful to treat a disabled person less favourably in the exercise of a public function and will place an anticipatory duty of reasonable adjustment on public bodies.

- 3.5 The consultation seeks views on the guidance the Disability Rights Commission (DRC) should issue to support the implementation of this change and on the possible use of regulation-making powers to define whether certain adjustments should be considered to be “reasonable” adjustments.

The duty to promote equality

- 3.6 The Bill will also introduce a positive, statutory duty on public authorities to promote equality of opportunity for disabled people. This duty is closely modelled on the duty to promote race equality introduced by the Race Relations (Amendment) Act 2000 and will require public authorities to have due regard to the need to:
- a. eliminate unlawful discrimination against disabled people;
 - b. eliminate unlawful harassment of disabled people; and
 - c. promote equality of opportunity for disabled people.
- 3.7 The Bill will give Executive Ministers the power to use regulations to impose specific duties on public authorities to help them comply with this duty.
- 3.8 The Government intend to require bodies which can have a significant impact on equality for disabled people to produce a Disability Equality Scheme that sets out how the body intends to comply with the duty to promote equality.
- 3.9 Regulations will set out some key requirements of Disability Equality Schemes. The Disability Equality Scheme will need to state how the Council:
- a. has involved disabled people in developing the Disability Equality Scheme;
 - b. will assess the impact of its activities on equality for disabled people;
 - c. will improve outcomes for disabled people;
 - d. will monitor whether outcomes are improving for disabled people; and
 - e. will use the results of its monitoring.
- 3.10 The Government expects bodies to report on progress annually and to revise their Disability Equality Scheme within three years of publishing the Scheme.
- 3.11 The consultation does not seek comments on the principles of the measures referred to above, which have been the subject of previous consultation, but rather seeks views on whether these proposals represent a fair balance between taking action to improve outcomes for disabled people and placing burdens on public authorities. It also seeks views on key topics the DRC guidance should cover to help public authorities implement the duty to promote equality.
- 3.12 The consultation document posed 17 key questions and these are addressed in Section 5 of this report.

Timetable

- 3.13 The Government expects that the new duties will be implemented no earlier than late 2006, to allow sufficient time for the DRC to produce guidance and for public authorities to implement the new duties effectively.

4. IMPLICATIONS FOR THE COUNCIL

- 4.1 The principal implications for the Council of the extension of the Disability Discrimination Act are:-

- a. to ensure that it has in place effective mechanisms by which it can consult with disabled persons and involve them in the decision making processes as they affect them.
- b. to ensure that its Disability Equality Scheme is comprehensive and has been compiled in consultation with disabled people.
- c. to ensure that it has in place effective monitoring arrangements through which it can produce statistics which can contribute meaningfully to effective service delivery and function provision.
- d. to ensure that required actions are taken timeously to allow compliance with the timetable set out in Section 3.1.3 above.

- 4.2 In considering the requirements which will be placed on the Council by the extension of the Act, account must be taken of certain arrangements which are already in place. For example, arrangements exist for consulting representative disabled groups in respect of building control and planning matters; the Department of Education and Social Services provides a range of services to disabled people and the Council through the Community Plan and joint working with partner bodies such as the NHS already utilises a co-ordinated approach to service delivery. This experience in all its forms will inform our response to the requirements set by the extended Act.

5. RESPONSE TO CONSULTATION DOCUMENT

- 5.1 The Council should welcome the proposals outlined in the Consultation Document and comment that they represent a fair balance between taking action to improve outcomes for disabled people and placing burdens on public authorities.

- 5.2 In respect of specific questions posed it is suggested that responses should be submitted as follows.

5.3 Question 1

The advice and guidance to be produced by The disability Rights Commission should focus on those specific areas which will be of most concern to public authorities viz:

The engagement of disabled people in drafting the Disability Equality Scheme;

How to implement effective monitoring arrangements;

Key elements of the Disability Equality Scheme such as the effective use of impact assessment tools and methodologies.

Question 2

There may be circumstances in which a public body was seeking to avoid making a reasonable adjustment by reference to another piece of legislation. Under these circumstances the Government may wish to reserve a right to enact prescriptive legislation to counter this.

Question 3

The Council welcomes the intention that the Government is looking to encourage flexibility in the development of a DES and that public bodies should have the ability to alter proposed actions where it is considered after review that they may not to achieve the desired outcome.

Question 4

There is no comment on the range of bodies the Government intends to require to comply with the specific duties.

Question 5

There is no comment on the guidance that should be offered to smaller bodies in order to assist them to comply with their duty to promote quality.

Question 6

There are no comments on the necessary guidance relating to procurement.

Question 7

The most effective ways for involving disabled people should be identified at local level and should be consistent with the public body's overall approach to consultation and engagement.

Question 8

The Council welcomes the Government's approach that public bodies should be given the lifetime of the DES to develop impact assessment strategies. It also welcomes the intention that specific advice and guidance on this matter will be issued by the Disability Rights Commission.

Question 9

The Government's approach to planning improvement action should take account of existing frameworks such as the community planning process and best value and should not impose additional arrangements.

Question 10

As with the response to question 9, the Government's guidance on how best public bodies should identify and prioritise their actions to promote equality should take account of existing planning frameworks and arrangements.

Question 11

The Government's advice on the sufficiency and proportionality of Disability Equality Schemes should assist public bodies by acknowledging that starting points will vary from body to body and that progress is more important than setting specific but unattainable objectives.

Question 12

The Consultation Document recognises the difficulties which public bodies will face in monitoring the effectiveness of their DES. The Government's proposals reflect a balance between a proportionate requirement and flexibility but the DRC will need to acknowledge that there may be deficiencies in gathering and analysing data in the early stages of monitoring.

Question 13

Advice on best practice in analysing monitoring information to inform performance improvement should focus on implementing effective measures rather than on the scope and content of the monitoring.

Question 14

It is considered appropriate and a proportionate requirement that public bodies should report on monitoring on an annual basis.

Question 15

No comment on the timetable which will allow the duties to commence no earlier than December 2006.

Question 16

Care would require to be taken to ensure that placing a duty on certain Secretaries of State as outlined in the consultation document would not overlay additional burdens on public bodies which do not take account of local factors and actions proposed in a DES. There could be a risk of duplication

and confusion if such a duty were placed on certain Secretaries of State and it is considered that the specific and general duties are adequate to ensure accountability on the part of public bodies covered by the extended Act.

Question 17

As indicated in the response to Question 1, guidance from the DRC should deal with the practical issues facing public bodies as a result of the specific and general duties. These include the content of a DES; arrangements for monitoring; engaging and involving disabled people; effective impact assessment; and, implementing effective action based on analysis of the monitoring information collected.

6. FINANCIAL IMPLICATIONS

- 6.1 There may be financial implications arising from the extension of the Disability Discrimination Act but it is not possible to quantify them at this stage. Where a need for additional resources is identified at a later stage this will be brought before the Committee.

7. LEGAL AND POLICY IMPLICATIONS

- 7.1 There will be legal and policy issues arising from the extension of the Disability Discrimination Act and these will be reported to Committee at future meetings. The Corporate Management Team, at its meeting on 15 September 2004, has endorsed this response.

8. RECOMMENDATIONS

- 8.1 The Committee is asked to:-
- a. endorse for submission to the Department of Work and Pensions the responses detailed in Section 4 above; and
 - b. note that further reports will be submitted regarding the implications for the Council of the extension of the Disability Discrimination Act including the compilation of a Disability Equality Scheme.

Elizabeth Morton
Depute Chief Executive/Director of Corporate Support
14 September 2004

LIST OF BACKGROUND PAPERS

Delivering Equality for Disabled People - A Consultation Document
www.dwp.gov.uk/publications/dwp/2004/equality

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