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HEALTH AND SAFETY COMMISSION

DWP Consultative Document: Delivering Equality for Disabled People

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Cleared by Jane Willis on 12 August 2004

Issue

1. To:
 - a) up-date HSC on recent developments in relation to equality of opportunity for disabled people;
 - b) report on possible implications for HSC/E of proposals contained in a DWP Consultative Document (CD) "Delivering equality for disabled people"; and
 - c) agree the proposed approach to providing a draft response to the CD.

Timing

2. The deadline for a response to the CD is 21st October 2004.

Recommendation

3. The Commission is invited to:
 - a) note the possible implications for HSC/E of the proposals in the CD; and
 - b) agree that a response will be submitted to Chair for clearance on behalf of the Commission once internal consultation is completed.

Background

4. HSC/04/77 up-dated Commissioners on the progress of the Draft Disability Discrimination Bill. Amongst other things, the Bill includes proposals:
 - a) to extend the Disability Discrimination Act 1995 (DDA) to cover all the functions of public bodies;
 - b) for a general duty on public bodies to eliminate unlawful discrimination and harassment and promote equality of opportunity for disabled people; and
 - c) for the making of regulations which place specific duties on public bodies and which are designed to help public bodies comply with the above general duty.

This approach is modelled on race equality requirements already brought into force under the Race Relations (Amendment) Act 2000.

5. Since HSC/04/77 was taken at HSC's meeting on 13 July, the Government published (on 15 July) its response to the comments made by the Joint Committee scrutinising the Draft Bill. More recently, the Department for Work and Pensions (DWP) has published a CD which focuses on the particular proposals listed above in order to:

- a) set out the Government's plans in respect of the regulation-making powers affecting the public sector; and
- b) explain the proposed content of the Regulations to inform Parliament during its consideration of the Bill.

6. The main proposal of significance is that the regulations placing specific duties on public bodies will require HSC/E (as such a body) to put in place a Disability Equality Scheme (similar to the existing Race Equality Scheme) by late 2006 – the earliest projected date for the regulations to come into force. More detail of what is proposed in the CD is set out in Annex 1. The CD itself can be accessed on the internet at www.dwp.gov.uk/publications.

Argument

7. The CD calls for responses by 21 October 2004. As it contains proposals of significance for HSC/E, we believe the Commission would want to respond. However, as the HSC meeting on 12 October is not taking any papers (and a draft response cannot therefore be submitted to that meeting), this paper seeks:

- a) For the purposes of this meeting, to draw the Commission's attention to the CD and the main implications it has for HSC/E; and
- b) Approval for us to submit a draft response to the Chair for administrative clearance once we have consulted across HSE.

8. We believe the response should broadly welcome the proposals in the CD. The proposals will help support HSC's aim that health and safety should be a cornerstone of a civilised society and make a contribution to social justice and inclusion. However, the CD asks for responses on a number of issues of detail (see Annex 1) on which we have not yet had time to complete consultation in HSE prior to submission of this paper. We therefore propose submitting a draft response to the Chair for administrative clearance once we have completed internal consultation. This is likely to contain comment on the detail of the proposals in addition to the more general expression of support.

Consultation

9. Contacts in Personnel, Policy Group and FOD who will also be consulted on the draft response.

Presentation

10. Not applicable.

Costs and Benefits

11. Work on the costs and benefits of implementing a Disability Equality Scheme will be carried out at the time we bring forward specific proposals for such a scheme. However, eventual benefits could include better engagement with stakeholders and is in line with HSC's strategy that health and safety should be a cornerstone of a civilised society and make a contribution to social justice and inclusion. Costs are expected to be around the same as those for the existing Race Equality Scheme. These have been estimated at around £200,000 per year, based on a small proportion of the time of staff in HSE who take forward the Scheme as part of divisional, regional or sectoral plans, plus a larger proportion of the time of staff in Personnel and CEPS3 and the cost of research commissioned.

Financial/Resource Implications for HSE

12. See paragraph 11 above.

Environmental Implications

13. None.

Other Implications

14. None.

Action

15. The Commission is invited to:
- a) note the possible implications for HSC/E of the proposals in the CD; and
 - b) agree that a response will be submitted for administrative clearance once internal consultation is completed.

Further Details of Proposals in DWP Consultative Document: Delivering Equality for Disabled People

1. The CD seeks views on proposals for:
 - a) extending the Disability Discrimination Act 1995 (DDA) to public functions;
 - b) specific duties to help public bodies comply with the general duty to promote equality and, in particular:
 - the way the Government expects public bodies to react to this duty;
 - the arrangements for monitoring progress towards equality of opportunity; and
 - the arrangements for implementing the new duties;

Extending the DDA to public functions

2. The DDA already protects disabled people against discrimination from by employers and service providers. However, case law has found that the functions of public authorities do not fall within the definition of service provision. The Bill will therefore make it unlawful to treat a disabled person less favourably in the exercise of a public function and there will be an anticipatory duty on public bodies to make reasonable adjustments to ensure a disabled person is not treated less favourably. However, these requirements will be subject to defences which would, in certain circumstances, allow public bodies to justify less favourable treatment or a failure to make reasonable adjustments. One such defence proposed is “that the treatment, or outcome, is necessary not to endanger the health and safety of any person (which may include that of the disabled person)”.

3. The CD specifically asks for views on what issues and advice the guidance that the Disability Rights Commission (DRC) intends producing should cover. It also asks whether there are any circumstances in which a reasonable adjustment would need to be prescribed in legislation. These issues (particularly the first) have implications for HSC/E in the exercise of its functions (such as enforcement) and there may well be a need to respond in some detail – for example, on the guidance that DRC intends producing in relation to the health and safety justification for less favourable treatment.

Duties to help public bodies comply with the general duty to promote equality

4. The main specific duty on public bodies (including HSC/E) will be to produce and publish a Disability Equality Scheme. This will need to state how bodies:
 - a) have involved disabled people in developing the Scheme;
 - b) will assess the impact of their activities on equality for disabled people;
 - c) will improve outcomes for disabled people;
 - d) will monitor whether the outcomes are improving for disabled people; and
 - e) will use the results of monitoring.
5. Progress on the Scheme will need to be reported annually and the Scheme will need to be revised within 3 years of its initial publication. The CD envisages that regulations

setting these specific duties would come into force soon after the Bill receives Royal Assent. This is likely to be no earlier than late 2006 to allow public bodies between 6 and 12 months to produce their Schemes and allow DRC to produce the necessary guidance to help implementation.

6. The CD seeks views on whether the proposals present a fair balance between taking action to improve outcomes for disabled people and placing burdens on public bodies. It also seeks views on a number of other specific issues including:

- a) how public bodies might involve disabled people in the development of the Scheme;
- b) the proposals relating to impact assessment and monitoring;
- c) the implementation timetable and arrangements for reporting; and
- d) the key topics the DRC guidance should cover to help public bodies implement the duties.

Again, there may well be a need to respond on these specific issues in addition to the more general expression of support for the proposals we believe should be made.

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