

From Exclusion to Inclusion

Final Report of the Disability Rights Task Force

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CHAPTER 1 INTRODUCTION

"The most beautiful and enriching trait of human life is diversity - a diversity that can never be used to justify inequality. Repressing diversity will impoverish the human race. We must facilitate and strengthen diversity in order to reach a more equitable world for us all. For equality to exist, we must avoid standards that define what a normal human life should be or the normal way of achieving success and happiness. The only normal quality that can exist among human beings is life itself."
Dr Oscar Arias, President, Costa Rica

1. Attitudes to disabled people have changed significantly during this century. From seeing disabled people as the passive recipients of charity, society has come to recognise the legitimate demands for disabled people to have equal rights. However, traditional preconceptions and long held prejudices still prevail. Barriers that prevent full participation in society confront disabled people every day of their lives. Activities that the rest of society takes for granted are denied to many disabled people. The Disability Discrimination Act 1995 (DDA) marked an important step forward in disabled people's rights. But there are gaps and weaknesses in the Act which mean that disabled people continue to be denied comprehensive and enforceable civil rights. Whilst legislation in itself cannot force a change in attitudes, it can provide certain rights and lay down a framework that will encourage and hasten a change in culture.

2. In December 1997, the Government established the Disability Rights Task Force. A list of Task Force members is in Annex A. Our job was to look at the full range of issues that affect disabled people's lives and to advise the Government on what further action it should take to promote comprehensive and enforceable civil rights for disabled people. We welcome the Government's recognition of the weaknesses in the DDA and its manifesto commitment to comprehensive and enforceable civil rights for disabled people. Our report goes beyond just looking at rights in the narrow sense. We felt it was essential that attitudes towards disabled people were also changed if we were to make real progress. Changing attitudes should not be left to disability organisations or Government alone. It is a task that all in society must share - from teachers educating children about the value of diversity to businesses changing the attitudes of employees and customers. Our formal terms of reference were:

"To consider how best to secure comprehensive, enforceable civil rights for disabled people within the context of our wider society, and to make recommendations on the role and functions of a Disability Rights Commission. To provide the latter by March 1998 and to provide a full report of its recommendations on wider issues no later than July 1999.

The Task Force will take full account of the costs as well as the benefits of any proposals, so far as is quantifiable and practicable, and in particular ensure that its recommendations for a Disability Rights Commission achieve value for money for the taxpayer."

3. The Task Force carried out its work with enthusiasm and commitment, determined to make a difference. The extent of discrimination faced by disabled people has meant that no part of life could be ignored. The scope of our work has been enormous. We have used all the policy, legislative and guidance tools available to us and have endeavoured to produce a coherent set of recommendations. We believe these will provide a platform from which disabled people can obtain their

rights and opportunities to full and equal citizenship and we hope to see their implementation.

Disability Rights Commission

4. Our first task was to develop proposals to establish a Disability Rights Commission (DRC). The lack of an enforcement body, responsible for ensuring compliance with disability rights legislation was, perhaps, one of the greatest flaws in the DDA. We produced an interim report to Government, in April 1998, on the role and functions of a DRC. We were pleased with the speed the Government responded with its White Paper Promoting Disabled People's Rights: Creating a Disability Rights Commission fit for the 21st Century. We were heartened by the extensive consultation on the proposals and delighted that Parliamentary time was found for the Disability Rights Commission Bill. This received Royal Assent in July 1999 and the Commission will be established in April 2000.

5. The establishment of the DRC will provide disabled people with an effective mechanism to enforce their rights. It will also work with employers and service providers to ensure equal treatment for disabled people. Many of the barriers faced by disabled people come from society's misperceptions of their needs. Tackling those misperceptions will be central to the DRC's work. Bert Massie, a member of the Task Force, was announced as the Chair of the DRC on 12 October 1999.

Further Work of the Task Force

6. Having assisted with the foundations of the Disability Rights Commission, we then turned our attention to the full range of issues that affect disabled people's lives: defining disability; education; employment; access to goods, services and premises; travel; the environment and housing; participation in public life; and local government, health and social services. The Government agreed to extend the life of the Task Force until November 1999 to enable us to give full consideration to these matters.

Disabled People in the UK Today

7. There is a common misconception that disabled people are only those with mobility difficulties or sensory impairments, such as deafness or blindness. In reality, people with a very wide range of impairments and chronic or recurring health conditions can be disabled. For example, people with mental health problems, asthma, diabetes or epilepsy might be disabled. The failure to appreciate the diversity of disabled people means that not all of them benefit equally from new policies. It is not possible to state with precision the numbers of disabled people within the DDA definition of disability. It is likely, however, that at least 8.5 million people currently meet the DDA definition. In addition, around 1.5 million people have had a disability in the past and would also be protected by the DDA.

8. Disabled people may share experiences of barriers and discrimination. But individuals will face different problems. Physical barriers, such as steps to the entrance of a shop, or not making information available on tape are clear examples of the problems faced by wheelchair users and blind people. But in many cases, it is society's attitudes towards disabled people that are the real problems, for example, the woman with a speech impairment who is not allowed to finish her contribution to discussions. Individuals' assumptions also become part of organisations' policies and practices, resulting in institutional discrimination which also needs to be addressed. The discrimination faced by disabled people is clear:

- Disabled people are twice as likely as non-disabled people to be unemployed and have no formal qualifications¹.
- of disabled people experience difficulty in going shopping².
- Over 75% of people in Great Britain believe there is prejudice against disabled people, with only 6% believing there is none³.

9. Although legislation can change attitudes over time, on its own it is a blunt tool. The Government and the DRC, working with disability organisations, must focus more directly on changing individuals' attitudes. Different stereotypes are applied to different disabled people: whilst people using wheelchairs may be patronised, those with schizophrenia are likely to be feared or demonised. For instance, it is commonly believed that violence by mentally ill people has risen dramatically since the advent of community care. In fact, the proportion of homicides committed by people with mental health disorders has fallen steadily over the last forty years⁴.

Disabled People's Rights

10. We do not start with a blank sheet of paper. The DDA provides disabled people with significant rights but it is not comprehensive. We have looked at the DDA and recommended ways to fill some of the gaps and remedy weaknesses. We have raised concerns over the way in which the DDA frames some of the rights. But we took the view that it is too early to reach clear conclusions. In areas such as the definition of disability, we have recommended changes to the DDA as well as a review by the DRC.

11. We acknowledged that disabled people generally enjoy the same legal protections and rights as others in society. We also noted that the Human Rights Act, most of which is expected to come into force in October 2000, should provide disabled people with the right to life, the right not to receive degrading treatment and the right to education, without unfair discrimination. We strongly recommended that the DRC should be enabled to use all legislation that supports disabled people's rights, including the Human Rights Act.

Developments in Equal Opportunities in the UK

12. During the life of the Task Force there were significant developments in equal opportunities. The Commission for Racial Equality (CRE) and Equal Opportunities Commission (EOC) proposals for changes to race and sex equality legislation⁵ were published last year. The Better Regulation Task Force's Review of Anti-Discrimination Legislation was issued this year. In July 1999, the Government

¹ Labour Force Survey, Spring 1999

² The DDA: 'Analysis of Data from an Omnibus Survey', Grahame Whitfield, July 1997 (see Annex B)

³ British Social Attitudes Survey 1998

⁴ 'Homicides by People with Mental Illness', Taylor P and Gunn J, 1999
British Journal of Psychiatry 174

⁵ 'Reform of the Race Relations Act 1976', CRE and 'Equality in the 21st Century: A New Sex Equality Law for Britain', EOC (see Annex B)

responded to these three reports and we considered its responses in reaching our recommendations.

13. The publication of the Stephen Lawrence Inquiry report in February 1999 had wide implications across the range of equality issues. The report showed the damaging effects of institutional racism. We welcomed the Government's commitment to extending the Race Relations Act to cover all public services and we have made a number of recommendations to ensure that the public sector promotes equalising opportunities for disabled people. We also considered measures to combat institutional discrimination on the grounds of disability. The DRC should play an important role by promoting best practice policies and, where necessary, through conducting formal investigations. A new duty on the public sector should also encourage proactive measures to end institutional discrimination.

Principles

14. A number of principles have guided our recommendations. We sought to improve the clarity of existing provisions and ensure as much consistency between disability and other anti-discrimination legislation. With employers and service providers beginning to understand their duties under the DDA towards disabled people, it would be counterproductive to recommend no continuity between the current Act and future legislation. However, there is a need for greater clarity in the DDA and consistency in coverage between anti-discrimination legislation.

15. Our recommendations represent a consensus amongst the broad range of interests represented on the Task Force. Achieving comprehensive civil rights for disabled people is a responsibility we all must share.

16. As well as addressing issues of principle, we have concentrated on the most effective and practical means of achieving our aims. Although it provides a framework for encouraging change, legislation on its own will not be effective in changing disabled people's lives. Better guidance, promotion of good practice, changing attitudes and training on disability issues are all practical mechanisms we have recommended to make advances in equalising opportunities for disabled people.

17. Finally, we also recognised that we can learn from the experience of other countries and that achieving comprehensive civil rights is a continuing process. In a number of areas in the report, in particular the definition of disability, we looked at how other countries had approached issues. Our deliberations were also influenced by the fact that it is too early to assess the full impact of the DDA on civil rights for disabled people. The DRC will need to monitor how the rights of disabled people are enhanced by our recommendations and keep any new legislation under review.

Ways of Working

18. We felt that gaining the views of a wide range of disabled people and organisations representing them was very important in informing our work. We established Reference Groups for this purpose and we were particularly grateful to the Visual Impairment and Deafblind; the Deaf and Hard of Hearing; and the People First and Change Reference Groups for their active work. We were also very open in our deliberations with all of our papers available on the Internet.⁶ This allowed a

⁶ www.disability.gov.uk

wider range of people than are traditionally involved in advisory bodies access to the Task Force's work.

Wales, Scotland and Northern Ireland

19. The Task Force included members from Wales, Scotland and Northern Ireland and our recommendations apply to the whole of the United Kingdom. During our considerations, certain powers were devolved to the National Assembly for Wales and the Scottish Parliament and the Northern Ireland Act 1998 was passed. Most of the recommendations we have made that require legislation⁷ will be on matters reserved for the Westminster Parliament in respect of Wales and Scotland. However, where legislative power is not reserved or legislation is not required, for example on the environment, housing, local government and health and social services, the National Assembly for Wales and the Scottish Executive will be responsible for considering and taking forward recommendations. We recognised that Northern Ireland, in particular, has different administrative structures and a separate body of legislation and, in the event of devolution, that consideration and implementation of the recommendations will be a matter for the Northern Ireland Assembly. It is intended that the Equality Commission for Northern Ireland will be responsible for enforcing disability rights in Northern Ireland.

Costs and Benefits

20. Our remit included the need to consider the costs and benefits of recommendations to Government. We have done this but the benefits of a tolerant, inclusive and diverse society cannot be easily expressed in pounds and pence. As well as the financial benefits, disabled people bring a richness and quality to the diversity of our society that must be recognised and celebrated. No society can enjoy full development without proper inclusion of all its members. The contribution of disabled people through their achievements, talents and experience is of immeasurable benefit to us all. In particular, improving the accessibility of transport will allow many disabled people a more active social life as well as access to the labour market. Enhancing the quality of education disabled people receive should lead to increased earnings potential. This will increase the independence of disabled people and help end the neglect of their talents, which will certainly reap financial and social benefits.

21. Where specific detailed recommendations have been made, we have estimated the costs involved. In many cases though, our recommendations set out a broad intention that can only sensibly be costed when Government comes forward with detailed proposals. We were reassured that these detailed proposals would be accompanied by thorough regulatory impact assessments. Costs and benefits are set out in Annex D.

Government Action

22. We considered comprehensive civil rights for disabled people since our interim report on the DRC in April 1998. We were impressed and encouraged over this period by the number of Government Departments that did not wait until the publication of this report to take action on our recommendations. In a number of areas, the Government has accepted our recommendations and announced legislation, started reviews or begun consulting on how they should be implemented. Our deliberations showed the importance of inter-Departmental working and we hope

⁷ Or changes to statutory guidance associated with the legislation

the present mechanisms for this will be enhanced and the momentum on taking forward recommendations is sustained.

Further Information

23. Although every effort has been made to ensure the accuracy of the contents of this report, this cannot be guaranteed. In particular, authoritative interpretations of the law are a matter for the Courts.

24. The Disability Rights Task Force has completed its work. However, if you have comments or require the report in Welsh, on audio tape, in Braille or an easy to read version, further information is contained in Annex B. Details of where many of the publications mentioned in this report can be obtained are also in Annex B.

CHAPTER 2 EXECUTIVE SUMMARY

Introduction

1. Disabled people are one of the most disadvantaged groups in society. The Disability Discrimination Act 1995 (DDA) offers significant rights but its gaps and weaknesses leave disabled people without comprehensive and enforceable civil rights. Our report considers the rights disabled people require to participate fully in society, free from unfair discrimination. But we strongly believe that additional rights are not enough. A sustained communication programme is needed to challenge negative attitudes and ignorance towards disabled people and to ensure that all in society understand why these rights are necessary and what they mean.

2. There is a perception that the needs of disabled people and those of business are in conflict - that additional rights for one must be at the expense of the other. Our work, over the past two years, shows that to be a myth. We represented a wide range of interests: disability organisations, business, trade unions, government and the health service, across the UK. We have proposed recommendations that will benefit both disabled employees and employers, disabled customers and service providers, disabled citizens and others in society. Reaching shared solutions to problems faced by disabled people must be the model for the future.

Recommendations

3. We have drawn from our report the key recommendations and themes. A full list of recommendations is in Annex E. Our recommendations fall within five key categories:

- A) Major extensions to the coverage of the DDA
- B) Public sector leadership in promoting equal opportunities
- C) Refinements to the detail of the DDA
- D) Use of non-legislative measures
- E) Further work

A) Major Extensions to the Coverage of the Disability Discrimination Act

4. The gaps in the DDA are well recognised. The exclusion of education from the DDA is unacceptable. The education that disabled people receive will determine their future opportunities in life and is essential to extending equality of opportunity. We have proposed recommendations to achieve civil rights, in a practical and affordable manner, for disabled people in school, further, higher and local education authority (LEA) secured adult education.

Schools

- A strengthened right for parents of children with statements of special educational needs to a place at a mainstream school, unless they favour a special school and a mainstream school would not meet the needs of the child or the wishes of either the parent or the child.
- A new right for disabled pupils not to be discriminated against unfairly by schools and LEAs and to have reasonable adjustments made to policies, practices and procedures which place them at a substantial disadvantage to others.

- A new duty on schools and LEAs to plan strategically and make progress in increasing accessibility for disabled pupils to school premises and the curriculum.

Further, Higher and LEA-Secured Adult Education

- A separate section on further, higher and LEA-secured adult education should be included in future civil rights legislation to secure comprehensive and enforceable rights for disabled people; similar rights should apply in relation to the Youth Service.
- The legislation should have an associated statutory Code of Practice, explaining the new rights.

5. Accessible transport is fundamental to delivering our aim of comprehensive civil rights. If disabled people are to access employment, education, leisure and other activities, it is vital that they can reach them. The partial exclusion of transport from the DDA provides accessible vehicles, but no duty on transport operators to allow disabled people to actually use them.

- The exemption for transport operators from the first and October 1999 phases of the DDA access to services duties should be removed in civil rights legislation.
- An 'end date' by which all passenger rail vehicles should comply with rail accessibility regulations should be introduced following consultation. Accessibility regulations should be developed to apply to refurbishment of existing rolling stock.

6. The DDA employment provisions need to be improved. The rights of disabled people in employment should not depend on the occupation they have chosen to follow. We also wanted to achieve greater consistency with the coverage provided by sex and race discrimination legislation.

- The employment provisions of civil rights legislation should extend to all employers¹, irrespective of size.
- The exclusion or omission of the police, prison and fire services; the armed forces; partnerships; qualifying bodies and barristers and advocates from the DDA employment provisions should be ended, in civil rights legislation.

B) Public Sector Leadership in Promoting Equal Opportunities

7. Public sector services have a major impact on all in society, especially the most disadvantaged. It is therefore right that the public sector takes a lead in promoting the equalisation of opportunities for disabled people. Public services need to be modern and meet the needs of our diverse society. They will only be achieved if those determining and delivering those services understand the society they serve. The barriers to the involvement of disabled people in public life should also be removed.

The Public Sector

¹ Save for private households

- The public sector should have a duty to promote the equalisation of opportunities for disabled people. There should be further discussion on the details of this duty, recognising the diversity of public sector organisations. The production of action plans should form an element of this duty. The public sector's purchasing power should be used to promote compliance among contractors and suppliers to the public sector.
- The access to services provisions of civil rights legislation should extend to all functions of public authorities, with further consideration of the implications of the duty to make reasonable adjustments in respect of such an extension.
- Local authorities and registered social landlords should introduce performance indicators locally, including waiting times, for the housing adaptation service provided to disabled people.

Public Life

- We endorse the recommendations of the Home Office Working Party on Electoral Procedures on access to the electoral process for disabled people.
- We welcome the initiatives in the Speaking Up for Justice report and emphasise the need for appropriate training in disability issues for those involved in the legal process.
- We welcome the blind magistrates' pilot and the review of those disabled people requiring third party support to serve on juries. We recommend that, subject to the outcome of the reviews and with appropriate safeguards, these current restrictions should be lifted. The need for a specific statutory reference to physical disability as a reason for discharging a juror should be reviewed.

8. Local Government, health and social services provision are crucial to enable many disabled people to live a full and independent life. We wanted to ensure that these services were delivered without discriminating against disabled people.

- As part of 'Best Value', local government should be measured by a specific equality performance indicator in the area of disability.
- We endorse the Government's commitment to ensure that access to health and social services is on the basis of need alone, without discrimination on the basis of disability or other factors, such as age, sex, or race.
- The Department of Health should provide a lead in challenging attitudes towards disabled people in health and social services which lead to discrimination. It should consult with the DRC, disability organisations and the health professions on guidance to ensure decision-making in areas such as access to treatment is consistent, and not influenced by inappropriate judgements on a disabled person's 'quality of life'.
- The Department of Health should ensure that all aspects of its quality improvement agenda mainstream disability rights issues. It should consider adopting national minimum standards to ensure fairness for disabled people in the delivery of health and social services.
- Barriers to joint working in the provision of services and support for disabled people should be tackled. Particular attention should be given to points of transition such as when someone moves from education to employment.

C) Refinements to the Detail of the Disability Discrimination Act

9. The DDA does provide disabled people with significant rights. With employers and service providers beginning to understand their duties under the DDA, it would

be counterproductive to recommend no continuity between the Act and future legislation. We considered the DDA's provisions and have proposed their continuation in the areas below. We have also recommended minor changes to legislation and practice that will significantly improve the civil rights of disabled people.

- The DDA's general approach to the coverage of employment and trade organisations and the employer's duty to make reasonable adjustments should continue.
- Having taken account of their duty to make reasonable adjustments, employers should continue to be able to appoint the best person for the job.
- Part III of the DDA has yet to be tested greatly in the courts. Its provisions on access to goods and services should therefore continue in respect of: the categories of less favourable treatment and types of adjustments; service providers' duties to make reasonable adjustments; and the defences for less favourable treatment.

10. Living in suitable housing is as important to disabled people as everyone else in society.

- A landlord should not be allowed to withhold consent unreasonably from a disabled person seeking to make changes to the physical features of his or her premises, although the landlord should not have to meet the costs. Further consultation should take place on the correct balance between the rights of the landlord and the disabled person.

11. The DDA gives rights only to those meeting its definition of disability². We felt that there was a strong case that the current definition should be extended in two limited areas.

- The DDA definition of disability should be extended to cover both people with HIV from diagnosis and cancer from when it has significant consequences on people's lives.
- The Government should improve and clarify the statutory guidance on the definition of disability.

12. We felt that improvements could be made to the selection process for jobs.

- Disability or disability-related questions before a job is offered should only be permitted in limited circumstances, such as where it is necessary to establish the need for a reasonable adjustment to the interview or selection process or thereafter to do the job and for certain monitoring purposes. Further consideration should be given to other circumstances where such enquiries should be permitted, for instance in the case of the guaranteed interview scheme.

13. The DDA access to goods and services provisions could be made clearer.

- The separate justification available to service providers for not making a reasonable adjustment should be removed and the factors to be taken into account in assessing reasonableness be expanded to reflect valid justifications.

² Or people who have had a disability in the past (save in the case of victimisation).

D) Use of Non-legislative Measures

14. We believe that many changes in the lives of disabled people can be secured without recourse to legislation. There are a range of other levers for change that should be considered first, with legislation only where necessary.

- Voluntary work should be covered by a Code of Good Practice and a power should be taken to bring volunteers into coverage of civil rights legislation if necessary.
- Further progress should be made in ensuring compliance with guidance on access for disabled people to shipping and a new Code of Practice on access for disabled people to air travel should be developed.
- The DRC should work with the Department of Trade and Industry, disability organisations and private sector advocates to promote the benefits of 'design for all' products and encourage manufacturers to supply information accompanying their goods in accessible formats. The Government should explore what, in addition to good practice approaches, could be achieved within the context of the DDA and European legislation to make products more accessible for disabled people, especially as regards the provision of information accompanying manufactured goods in accessible formats.

E) Further Work

15. There are a number of areas in which we had concerns about the provisions in the DDA but felt it was too early to tell whether there would be problems in practice. The DRC and the Equality Commission for Northern Ireland should keep these provisions under review. In other areas, we felt that the provisions could be improved and further work was necessary.

Definitions

- The Government should review and consult on aspects of the DDA definition of disability with a view to ensuring an appropriate and comprehensive coverage of mental health conditions.
- The Government should consider whether to extend coverage to those with severe conditions which are not long-term, as can sometimes be the case with some heart attacks, strokes or depression. The wider implications of this proposal would need to be explored to avoid covering temporary or readily curable conditions, such as broken legs, where the chances of recurrence were not significantly increased by them having happened once.
- The recommendations proposed for improving the DDA definition of disability are not a definitive solution. The DRC and the Equality Commission for Northern Ireland should monitor the definition and review it to see whether further improvements can be made.

Goods and Services

- We recognised there was potential concern, under Part III of the DDA, with: the justifications service providers can use for less favourable treatment; the point at which service providers must consider making reasonable adjustments; and whether the DDA provisions need to go further to ensure services are provided in integrated settings. The DRC and the Equality Commission for Northern Ireland should keep these provisions under review. Any future changes should state rights and duties in a clear form.

16. There are a number of areas outside the DDA, which have a major impact on disabled people's rights, where we also felt further work was necessary.

- The DRC should work with the Disabled Persons Transport Advisory Committee to consider mechanisms for increasing the availability of accessible private hire vehicles, including the carrying of registered assistance dogs.
- Local Transport Plans should be placed on a statutory basis and their effectiveness in meeting disabled people's transport needs and improving the pedestrian environment for disabled people should be reviewed over time.
- The Department of the Environment, Transport and the Regions (DETR) should undertake further research into the current effectiveness and enforcement of Part M of the Buildings Regulations and undertake a broader review of Part M, including determining whether it is interpreted consistently and the scope for applying the Part to existing buildings.
- DETR should commission the preparation of a good practice guide on planning and access as part of its 2000/01 Planning Research Programme. The proposed document should look at good practice in relation to both the development plan policies and the planning and access aspects of different types of environment.

CHAPTER 3: DEFINING DISABILITY

"[The DDA] is without doubt an unusually complex piece of legislation which poses novel questions of interpretation. This ... should not ... be taken as a criticism of the Act or of its drafting ... The whole subject presents unique challenges to legislators and to tribunals and courts, as well as those responsible for the day to day operation of the Act in the workplace. Anyone who thinks there is an easy way of achieving a sensible, workable and fair balance between the different interests of disabled persons, of employers and of able bodied workers, in harmony with the wider public interests ... has probably not given much serious thought to the problem."

Lord Justice Mummery^{3 1}

Introduction

1. The definition of disability was the most difficult issue that we considered. We would certainly agree with the Court of Appeal that defining disability presents real challenges. In particular, the definition must not only be legally workable but understood and accepted by wider society.

2. We considered this issue thoroughly and held a seminar to inform ourselves of definitions that other countries use in their legislation. There was discussion of whether we should retain protection for a defined group of disabled people or focus instead on discrimination on the basis of a person's impairment. We also discussed whether protection should be widened to cover people regarded as being disabled, even though they were not, and people who were friends with or carers of disabled people. A report on the definitions used in other countries' legislation is contained in Annex C. It is important to bear in mind that the definition of disability is only part of the picture - the main body of this report is focused on what civil rights disabled people should have.

3. We agreed that the current definition of disability in the DDA has significant flaws. However, we acknowledged that given the need to consult on our recommendations and the pressures on the Parliamentary timetable, full-scale changes to the definition may not be achieved in the immediate future. In consequence, we have proposed recommendations to amend the DDA definition and associated statutory guidance, which will achieve tangible progress for those disabled people who are currently not protected, or inadequately protected, and in order to remedy clearly established problems. We further acknowledged that the amendments proposed are not a definitive solution. In particular, as case law develops, further issues may emerge. In the light of this, we felt that it would be important for the definition to be monitored and reviewed by the Disability Rights Commission (DRC) and the Equality Commission for Northern Ireland to achieve further improvements, if necessary through further primary legislation. Although the report in Annex C is a start, the models adopted in other countries' legislation merit further comparative study, particularly in relation to their effectiveness in practice.

Key Recommendations

- The DDA definition of disability should be extended to cover both people with HIV from diagnosis and cancer from when it has significant consequences on people's lives.

¹ Clark -v- TDG Ltd (Trading as Novacold), Court of Appeal (Civil Division), 25 March 1999

- The Government should review and consult on aspects of the DDA definition of disability with a view to ensuring an appropriate and comprehensive coverage of mental health conditions.
- The Government should consider whether to extend coverage to those with severe conditions which are not long-term, as can sometimes be the case with some heart attacks, strokes or depression. The wider implications of this proposal would need to be explored to avoid covering temporary or readily curable conditions, such as broken legs, where the chances of recurrence were not significantly increased by them having happened once.
- The Government should improve and clarify the statutory guidance on the definition of disability.
- The recommendations proposed for improving the DDA definition of disability are not a definitive solution. The DRC and the Equality Commission for Northern Ireland should monitor the definition and review it to see whether further improvements can be made.

Current Position

4. The DDA defines a disabled person as someone who "has a physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities". The DDA then goes on to place a duty on employers and providers of goods and services to make reasonable adjustments for disabled people. This reflects a central purpose of the DDA - placing the onus on society to remove barriers faced by disabled people. Reasonable adjustments are considered in the chapters on employment, access to goods and services, education and travel. The DDA definitions are explained fully in the Guidance on Matters to be Taken into Account in Determining Questions Relating to the Definition of Disability² ('the Definitions Guidance').

Disabled People in the United Kingdom

It is not possible to state with precision the numbers³ of disabled people within the DDA definition of disability. It is likely, however, that at least 8.5 million people currently meet the DDA definition. In addition around 1.5 million people have had a disability in the past and would also be protected by the DDA.

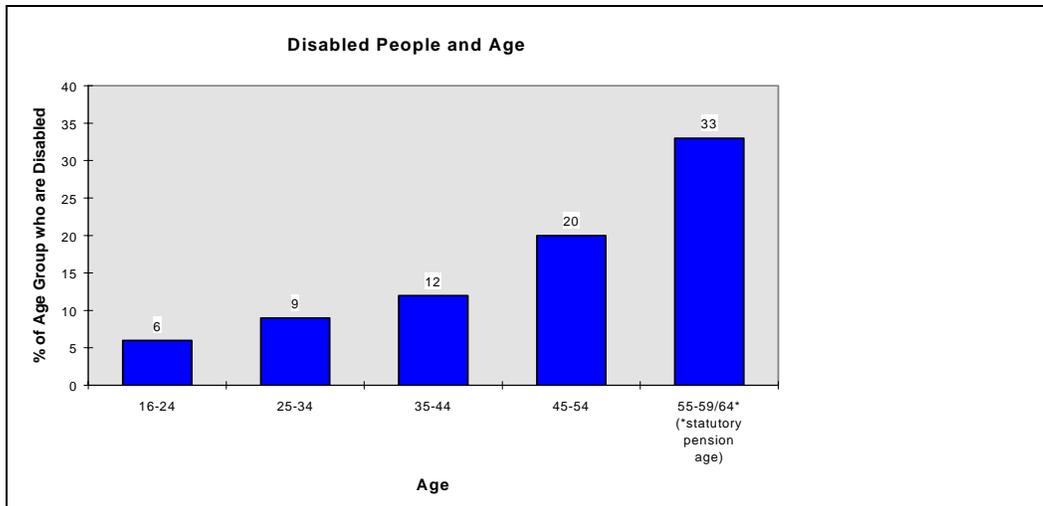
There is a common misconception that disabled people are only those with mobility difficulties or sensory impairments. Disabled people can include those with a wide range of impairments: mental health problems, such as schizophrenia or depression; learning difficulties; diabetes; or severe facial disfigurements, are some examples.

Disability increases with age as the following chart shows how disability increases with age⁴

² see Annex B

³ Figures to the nearest 0.5m from Briefing by Analytical Services, DfEE

⁴ Only shown for people of working age but continues to rise beyond statutory pension age



Recommendation 3.1: The Government, the DRC and the Equality Commission for Northern Ireland should ensure that guidance and other communication on disability matters cover the wide range of disabled people, including all age groups and impairments

Our Approach

5. We were aware that our role was not to specify the words that would be used in any future civil rights legislation to define disability: that is the role of Parliament. We focused on addressing real-life examples of disabled people who are inadequately or unclearly protected, or not protected at all, by the current DDA definition.

Asymptomatic HIV

6. The DDA definition does not cover people with progressive conditions before they have symptoms ('asymptomatic').

Case Study

A woman is HIV positive but has no symptoms. She is experiencing a range of discriminatory treatment. At the local shop she was asked not to select the produce herself. In another shop, she was repeatedly not served. She feels she is getting the cold shoulder at work.

Source: Manchester Solicitors, Members of the Deaf Legal Access Group

7. People with the HIV infection sometimes attract fear and prejudice, which affects their lives from when their HIV status is known about, even if there are no symptoms and though there is no risk of transmission from normal contact. Estimates suggest that there are fewer than 20,000 people with asymptomatic HIV. Their coverage would represent an increase of just 0.2% in the numbers of people protected by the DDA.

8. We further considered whether people with asymptomatic HIV should be covered from the point at which significant treatment is likely or from the point of diagnosis. Given that people in this position, with the current state of medical

knowledge, are likely to require significant treatment at some time in their lives, coverage should be from the point of diagnosis as this provides more certainty about when protection begins.

Recommendation 3.2: HIV infection should be deemed a disability from the point at which it is diagnosed

Cancer

9. The DDA definition does not always cover people with asymptomatic cancer nor those where it is unclear if substantial effects are likely to recur or initial effects likely to worsen (eg. some cancers during or after treatment). People in both these positions - where significant treatment is likely to be required in future or who have had significant treatment - may encounter discriminatory treatment.

10. It seemed clear that some employers may discriminate against people diagnosed with cancer which required significant treatment, even though the condition had no effects at present, or was in remission, but some of these people would have no protection under the DDA definition.

11. We saw little evidence, however, that there was discrimination against those with, say, benign tumours requiring no treatment or some skin cancers which might require minor treatment. We therefore felt that deeming everyone with cancer, irrespective of whether significant treatment was required or not, as disabled would not be publicly acceptable.

Recommendation 3.3: To extend coverage beyond those people with, or who have had, cancer already covered by the DDA definition, people with cancer should also be deemed to be disabled from the point at which it has significant consequences on their lives.

Blind and Partially Sighted People

12. We were advised that all people certified as blind would be covered by the DDA definition, as would all, or almost all, those people who are certified partially sighted. The DDA definition will also cover most people who are blind or partially sighted but not certified as such. Some people with visual impairments may be failing to demonstrate to tribunals the difficulty they continue to experience despite the wearing of spectacles. We considered that it would assist blind people and those certified as partially sighted to be conclusively presumed as meeting the DDA definition. This provision should assist the applicant in discrimination cases, provide certainty to the respondent and allow the Tribunal to move to the substance of the case.

Recommendation 3.4: People who are certified as blind or partially sighted should be conclusively presumed to meet the DDA definition of disability.

Disabled People with Mental Health Problems

13. The DDA definition requires an impairment to affect one or more of a list of particular capacities (see the Definitions Guidance). Just as some people have impairments of mobility, sight or hearing, others - those disabled by mental health problems - have impairments of thinking, feeling or social interaction. These are not specified capacities under the DDA definition. There was also some concern that people with dysphasia (a condition which can affect the generation and content of

speech and its understanding) may also find it difficult to show one of the listed capacities is affected. Although both "speech" and "ability to ... learn or understand" are listed capacities, the effects of dysphasia vary considerably.

Example

A man with severe agoraphobia is terrified to enter any open space. His impairment is not one of mobility, it is a cognitive impairment.

14. It may be that there are appropriate changes to the list of capacities which make it easier for people with some mental health problems, whom we understand are already intended to be covered by the DDA definition, to actually demonstrate that they meet the definition.

15. Another difficulty is that in the DDA definition the term "mental impairment" does not cover mental illnesses if they are not clinically well-recognised. Where a person clearly has a serious mental condition, but there is clinical uncertainty as to the specific diagnosis, the disabled person may face difficulty in proving a clinically well-recognised mental illness due to disagreements between medical practitioners.

16. We appreciated the policy desire behind the inclusion of "clinically well-recognised" - to prevent abuse through people claiming non-existent or unproven conditions - but we received no evidence that removal of the term would bring into coverage any such conditions. We felt that this issue needed further work to consider whether the benefits to those with serious mental conditions, where diagnosis was the subject of disagreement, warranted the risk of bringing into coverage potentially uncertain conditions.

Recommendation 3.5: The list of capacities relating to normal day-to-day activities in the DDA definition should be reviewed and consulted on, with a view to extending it, if necessary, to ensure an appropriate comprehensive coverage of mental health conditions and dysphasia..

Recommendation 3.6: The concept of covering only "clinically well-recognised" mental illnesses in the DDA definition should be reviewed and consulted on to identify the advantages and disadvantages of removing the limitation.

Effects on Exceptional Activities, Particularly at Work

17. The DDA definition requires an impairment to have a substantial effect on normal day-to-day activities. These are activities that are carried out by most people on a fairly regular and frequent basis such as climbing stairs, sitting, understanding written or spoken instructions, or using a keyboard. Even if a disabled person does not happen to do these activities, his or her ability to carry them out may still be affected. However, the DDA definition does not cover those who have an impairment that only has a substantial effect on exceptional activities. In particular, the DDA does not consider any particular form of work, such as performing a highly skilled or physically demanding task, to be a normal day-to-day activity.

Example: Exceptional Activities

People who have to climb 100 rungs of a ladder to operate a tower crane or have the dexterity of a concert pianist.

18. We considered whether the reasons for not including work as a normal day-to-day activity had been clearly explained in statutory guidance and was understood by legal advisers and Employment Tribunals. The reasons were, firstly, that there was no single occupational role that is common for most people; and, secondly, many activities carried out as part of particular occupations, were exceptional and not normal.

19. We therefore felt the exclusion of exceptional activities was acceptable. However, many of the activities carried out in employment are not exceptional and would be quite normal outside the work place. For example, if a person with Repetitive Strain Injury cannot operate a keyboard in the workplace but does not use a keyboard outside work, this does not imply that he is not covered. Operating a keyboard outside the workplace is a normal day-to-day activity for very many people, even if it is not for him. He is likely to be covered by the DDA definition.

Case Study

A woman with tinnitus has found working in a noisy office environment too difficult to sustain but is not exposed to the same level of noise in her non-working life. She is seeking to be given a quiet office but her employer is unwilling to make the adjustment.

Source: RNID

20. We were advised that, in this case, simply because the person avoids noisy environments outside work does not mean she would not be covered by the DDA definition. The office environment (as opposed to some factory environments) is likely to be no louder than many out of work environments, such as a pub, a social gathering or a tube train. Being in these environments would constitute normal day-to-day activities for many people, even if she herself avoided them. She is likely to be covered by the DDA definition. We concluded that this issue required further explanation.

Recommendation 3.7: The statutory guidance to tribunals and courts should be improved and clarified to help ensure that the legislation's intention for what constitutes normal day-to-day activities is met, particularly in relation to work.

Coping Strategies

21. The statutory guidance on the DDA definition suggests that if a person can reasonably be expected to modify his behaviour to prevent or reduce the effects of an impairment to a minor level, then that person may not meet the definition. Disabled people, as with all people, will often avoid activities or situations that lead to difficulties. They may also employ coping strategies that they regard, after many years, as unexceptional.

Case Study

A woman with cataracts worked for a greeting cards company. Her post required photocopying, which generally took her longer to complete since she had to hold the material closer to her eyes than others would. She was dismissed. The individual represented herself in her case under the DDA and significantly underplayed the

impact of her visual impairment. The Employment Tribunal Chair said that she was not disabled for the purposes of the DDA.

Source: Wright v Discount Cards and Stationery Limited

22. We felt that the statutory guidance might be giving the impression that all coping/avoidance strategies that an individual disabled person used and accepted should be considered as being reasonable by the Tribunal. In fact, unreasonable coping strategies should be disregarded, including those that significantly restrict the person's range of activities or ability to undertake them, even if the person accepts that level of restriction. The guidance should, in particular, consider people where substantial effects remain even with spectacles or contact lenses as well as others with visual impairments, who are covered by the DDA definition but may be assumed to be coping.

Recommendation 3.8: The issue of disregarding disabled people's coping/avoidance strategies should be made clearer in statutory guidance to tribunals and courts so that the true effects of a disability are considered. The guidance should also seek to ensure that tribunals and courts probe further, where appropriate, into the issue of effects on normal day-to-day activities and not just accept that the person is coping within reasonable expectations.

Long-term Conditions

23. The DDA definition does cover some conditions that have effects for fewer than 12 months if, for example, the effects are likely to recur. However, people with severe short-term conditions that are not likely to recur are not covered. For example, people who have had a severe heart attack or stroke or severe depression and have fully recovered within 12 months are unlikely to be covered.

Case Study

After a robbery at work, a bank cashier experienced 8 months of severe post traumatic stress syndrome. She was claiming discrimination in lack of access to treatment under the occupational health service scheme. She was not covered by the DDA definition because she recovered within 12 months.

A man who had a heart attack took several weeks off as sick leave to recover. He was sacked on his return to work. The heart attack has no substantial long term effects.

Source: MIND

24. There is an argument for removing an arbitrary limit of 12 months but this could have significant implications. In particular, extending civil rights protection to anyone who has ever had a short-term illness would not meet our remit of civil rights legislation for "disabled people". However, discrimination against people with short-term conditions may occur because of the severity of the condition and an assumption that the chances of the condition affecting the individual again are significantly heightened following the first occurrence. This may be true for people with severe heart attacks and strokes and certain mental conditions such as severe depression. We certainly did not wish to bring into coverage temporary or readily curable conditions or illnesses.

Recommendation 3.9: In order to bring into coverage severe but short-term conditions, such as some heart attacks, strokes or depression, consideration should be given to 'long-term' being removed from the definition with the concept of 'substantial' covering both duration and severity of adverse effects. We recognise that the wider implications of this proposal will need to be explored. In particular, regulations or guidance must make clear that such conditions should not be covered, unless the chance of recurrence is significantly increased by their having occurred once, to avoid including temporary or readily curable conditions, which may nevertheless have a severe short-term effect (such as broken legs generally do).

Genetic Pre-dispositions to Impairments

25. The DDA definition only covers people who actually have an impairment, not people who may one day, due to a genetic pre-disposition, become impaired. We noted the work of the Human Genetics Advisory Commission⁵ (HGAC) on the protection of people with genetic pre-dispositions from discrimination in employment.

26. We were concerned that rapid advances in this field should not leave the Government taking reactive, rather than proactive, action to protect people's civil rights. This was an area that we considered the DRC and the Equality Commission for Northern Ireland should work closely with the Government Department or Agency taking forward monitoring of this issue. They should also consider whether civil rights legislation for disabled people, or specific legislation focused on genetic issues, would be the most appropriate way forward.

Recommendation 3.10: At this time, genetic pre-dispositions to impairments should not be considered a disability under the DDA. The DRC and the Equality Commission for Northern Ireland should work closely with the Government Department or Agency assigned responsibility for following up the HGAC report and keep this issue under review.

Conditions Specifically Excluded from the DDA Definition

27. Certain conditions, by regulation, do not count as impairments for the purposes of the DDA definition and we considered that these exclusions were all currently warranted (see the Definitions Guidance). However, the DRC and the Equality Commission for Northern Ireland should monitor any new evidence that emerges and advise on removing or adding exemptions, should this prove necessary.

Recommendation 3.11: The current DDA position on limited exclusion of particular conditions from being disabilities should continue but the DRC and the Equality Commission for Northern Ireland should keep this under review.

Monitoring Developments

28. Our recommendations are based on the current understanding of the definition of disability. However, as we have seen from experience with the Sex Discrimination and Race Relations Acts, case law can expose areas of the legislation which do not appear to be operating satisfactorily or as originally intended. The National Disability Council and the Department for Education and Employment have

⁵ 'The implications of Genetic Testing for Employment', HGAC (see Annex B)

commissioned research to monitor the results of tribunal and court cases under the DDA. We believe that this monitoring should continue and the DRC and the Equality Commission for Northern Ireland should keep the workings of the DDA under review in line with their duties. In particular, the issue of whether disabled people are facing difficulties in proving they meet the definition of disability should be closely monitored. If difficulties are identified in the operation of the DDA in practice, proposals should be made as appropriate to remedy them.

Recommendation 3.12: The DRC and the Equality Commission for Northern Ireland should monitor the definition of disability and review it to see whether further improvements can be made.

Conclusion

29. All definitions of disability will have strengths and weaknesses. The particular approach taken may be a product of a particular society's approach to issues of equality, their cultural and historical views of disability or their legal and political system, to name just a few factors. The definition of disability in the DDA, however, has particular weaknesses, which we have sought to remedy in the short term. But our recommendations are not a once and for all solution. The definition will need to be reviewed by the DRC and the Equality Commission for Northern Ireland and we hope that they will find our considerations, in particular the review of definitions of disability used internationally, useful.

CHAPTER 4: EDUCATION

"[Education] is vital to the creation of a fully inclusive society, a society in which all members see themselves as valued for the contribution they make. We owe all children - whatever their particular needs and circumstances - the opportunity to develop to their full potential, to contribute economically, and to play a full part as active citizens."

David Blunkett, Secretary of State for Education and Employment¹

Introduction

1. The education of disabled people is an issue that creates much debate. And rightly so. The education that disabled people receive will determine their future opportunities in life. With all the challenges facing disabled people, a high quality education that meets their needs is essential. It will increase their chances of living independent and fulfilling lives; something which the rest of society regards as a right.
2. In the area of education, probably more than any other issue considered by the Task Force, the principle of inclusion underlined our considerations and recommendations. The right to education without unfair discrimination, which meets the needs of the disabled person, alongside his or her non-disabled peers, was our ultimate aim.
3. The research findings² that 61% of under-35 year olds said that they had no contact with disabled people are a reminder of how far there is still to go in achieving acceptance of disabled people as equal members of society. Inclusion of disabled people throughout their school and college life is one of the most powerful levers in banishing stereotypes and negative attitudes towards disabled people amongst the next generation. When disabled and non-disabled people are educated together, this sends powerful messages to the whole community about the potential for a truly integrated and diverse society.
4. The right to inclusion is not sufficient in itself. Disabled people must have the right to pursue their education without unfair discrimination. What value do we place on education when a disabled person has rights against discrimination under the DDA when going to the cinema, but not whilst at school or college? We have recommended a range of new legal rights against unfair discrimination and duties on education institutions to make reasonable adjustments to allow access for disabled people.
5. However, we have been practical in proposing our recommendations. There are real constraints on achieving full inclusion and individual rights to full access to education. In proposing new legislative duties in school education, we recognised the existing extensive provisions in education legislation for children with special educational needs (SEN), built up over the past two decades. In promoting inclusion, there was no desire to curtail parental choice in favour of a special school for their child, taking account of the best interests of the child. In granting new rights, the issue of individual versus collective rights was also thoroughly debated. In some

¹ 'Meeting Special Education Needs: A Programme of Action', DfEE (See Annex B)

² NOP Poll, 1999, commissioned by Leonard Cheshire

instances, more can be achieved for disabled people in the long term by laying duties on education providers to make their facilities systematically accessible than by giving specific rights of access to particular individuals. Finally, the resources available to take forward the ambitious agenda we have set were considered.

6. We recognised that education legislation and practice in England and Wales differs from that in Scotland and Northern Ireland. The recommendations will need to be implemented to take account of the needs, legislative framework and local practice in different parts of the UK.

7.

Key Recommendations

Schools

- A strengthened right for parents of children with statements of special educational needs to a place at a mainstream school, unless they favour a special school and a mainstream school would not meet the needs of the child or the wishes of either the parent or the child.
- A new right for disabled pupils not to be discriminated against unfairly by schools and local education authorities (LEAs) and to have reasonable adjustments made to policies, practices and procedures which place them at a substantial disadvantage to others.
- A new duty on schools and LEAs to plan strategically and make progress in increasing accessibility for disabled pupils to school premises and the curriculum.

Further, Higher and LEA-Secured Adult Education

- A separate section on further, higher and LEA-secured adult education should be included in civil rights legislation to secure comprehensive and enforceable rights for disabled people; similar rights should apply in relation to the Youth Service.
- The legislation should have an associated statutory Code of Practice, explaining the new rights.

School Education

Current Position

7. The provision of education at maintained and independent schools is excluded from the DDA access to services provisions, although non-educational activities at schools, such as an event organised by the Parent-Teacher Association are covered. Part IV of the DDA requires governing bodies of maintained mainstream schools to publish information annually about their admission arrangements for disabled pupils, the school's access arrangements for such pupils and what the school will do to ensure that disabled pupils are not treated less favourably than other pupils.

8. Education legislation³, together with the statutory Code of Practice on the Identification and Assessment of Special Educational Needs ('the SEN Code') sets

³ Education Act 1996, England and Wales only. In Scotland, Education (Scotland) Act 1980, Scottish Office Circular 4/96 and appeals are to the Secretary of State. In Northern Ireland, Part II, Education (NI) Order 1996.

out a five-stage framework for meeting the needs of children with SEN. The first three stages are school-based, with an individual education plan for the child at stage two and the school normally looking for outside support at stage three. Stage four brings together relevant local agencies to determine whether a child with SEN requires a statement. At the final stage, the LEA draws up a statement and arranges, monitors and reviews provision for the child. Where parents disagree with the decision of their LEA about their child's SEN, they have the right to appeal to the independent Special Educational Needs Tribunal (SENT).

Children with Special Educational Needs (England)		
<u>Figures</u>		
% of all school pupils with SEN (Secondary)	21% (Primary)	19%
% of all school pupils with statements	3.0% (248,000 pupils)	
<u>Inclusion</u>		
	Maintained	All Special
	Mainstream	and PRUs ⁴
Placement of all school pupils with statements	59%	39%
	3%	

Government Action on Special Educational Needs

9. We welcomed the DfEE's publication, *Meeting Special Educational Needs: A Programme of Action* ('the SEN Action Programme') and the equivalent publication in Wales, *Shaping the Future for Special Education: An Action Programme for Wales*, which set out practical steps to support and promote advances in this area over the next few years. Key aspects of the Programmes are: an emphasis on a more inclusive education system; support for projects to raise the achievements of children with emotional and behavioural difficulties; and developing the knowledge and skills of all staff working with children with SEN. The commitment to strengthening the school-based stages of the SEN Code so as to reduce over-reliance on statements, over time, was supported. We welcomed the considerable funding in England - £55 million in this financial year - to implement the Programme.

Recommendation 4.1: The Government should continue to implement the SEN Action Programmes in England and Wales.

Inclusion

10. We considered the present legislative position relating to the inclusion of children with SEN in mainstream schools. Children with SEN who do not have statements are covered by the same admission arrangements for mainstream schools as children without SEN. The statutory Codes of Practice on School Admissions in England and Wales make clear that "children with SEN but without

⁴ Pupil Referral Units

statements must be treated as fairly as other applicants. Admission authorities may not refuse to admit a pupil because they consider themselves unable to cater for his or her special educational needs."

11. The position for children with statements of SEN is complex. In summary, they have a legal right to attend the school named in their statement. An LEA proposing to issue a statement must name the school, which can be mainstream or special, preferred by the child's parent, unless the school is unsuitable for the child; or the child's attendance would prevent the efficient education of other children at the school; or would be an inefficient use of resources. Where the parental preference for a particular named school cannot be met, the LEA is obliged to name a mainstream school if the child can receive a suitable education there; and, as before, other children's education is not disrupted and it would not be an inefficient use of resources.

12. We considered that these legal duties could be clearer and welcomed the Government's review of this statutory framework for inclusion. We were committed to the principle of the inclusion of children with SEN in mainstream schools. It brings clear benefits for both children with SEN and their peers and will help build an inclusive and tolerant society. However, we recognised that in some cases parents will want their child to attend a special school. We saw no case for reducing the rights of parents of children with SEN to determine the type of school and education that their child should receive. We also recognised that it would be impractical to expect that all children, irrespective of degree of learning difficulty, can be educated in a mainstream setting. Nevertheless, improving the accessibility of schools and the curriculum should boost the levels of inclusion. Recommendations in these areas are made later.

Recommendation 4.2: In reviewing the statutory framework for inclusion, the Government should strengthen the rights of parents of children with statements of SEN to a mainstream placement, unless they want a special school and a mainstream school would not meet the needs of the child or the wishes of either the parent or child.

13. Inclusion is not only about attendance at a mainstream school. An inclusive curriculum is also essential. There is a wide range of ability amongst children without SEN. The same is true for children with SEN and disabilities. All children deserve to have their achievements and progression recognised and the curriculum should reflect the different levels of attainment likely to be achieved. The National Curriculum applies to both mainstream and special schools.⁵ We welcome its inclusive nature, and that of the Early Learning Goals, in recognising the needs of children with SEN. It is important that all children learn the benefits of a tolerant, inclusive society, with respect for others' rights. The Government's plans for a framework for Citizenship and Personal, Social and Health Education in schools should help to promote respect for others and provide a number of opportunities for raising awareness of disability issues.

Recommendation 4.3: Both the National Curriculum and the Early Learning Goals should continue to reflect the needs of children with SEN. The new opportunities for raising awareness of disability issues in schools within Citizenship and Personal, Social and Health Education should be used to the full.

⁵ Unless disapplied for a child with SEN by his or her statement

Comprehensive Civil Rights for Disabled Children in School Education

14. The DDA access to services provisions specifically exclude certain educational services, leaving disabled children in schools without legal protection from unfair discrimination. This lack of protection is unacceptable. If disabled children deserve protection in accessing all other services, the case for coverage when receiving education is unarguable. We welcomed the Government's recognition that the failure of legislation to afford disabled children protection from unfair discrimination in education needed remedying.

15. We considered simply removing the school education exclusion from the DDA. However, this was not felt to be the best way forward. There are extensive provisions relating to children with SEN in education legislation already and overlaying these with duties in separate legislation (in relation to access to education services provided by schools) would create a complex legal framework in this area. We favoured more clarity, not less. In addition, the language used in the DDA is framed for one-off services, and not for universal services such as education.

16. Whereas the proposals in recommendations 4.1 and 4.2 above relate to children with SEN, the new comprehensive civil rights are for disabled children in schools. Whether a child has special educational needs can be transitory. Some children may have short-term special educational needs which can be addressed by a particular intervention or support service. It was important that we were consistent in determining who should be covered by civil rights legislation on disability and so the new rights proposed below are for disabled children.

17. We were also more concerned that we secured comprehensive, enforceable civil rights for disabled children in school education than the legislative vehicle through which this was achieved. The Government should use appropriate legislation that allowed the lack of civil rights for disabled children in education to be remedied as soon as possible.

18. We considered three new rights for disabled children in relation to school education and all aspects of school life. The first was the right not to be unfairly discriminated against for a reason relating to their disability, including in relation to admissions. It was intended that this right mirror that available under the access to goods and services provisions of the DDA. This should send a clear signal that disabled children in schools have the same rights to education free from discrimination as disabled people have when accessing other services.

19. It was recognised though that there may be circumstances in which different treatment of a disabled child, for a reason relating to his or her disability, can reasonably occur. For instance, some disabled children may need individual differentiation in their access to the National Curriculum, for example in practical work related to design and technology. Other disabled children, for example those with severe behavioural problems, may require a specific learning environment or withdrawal from wider classroom activities for individual programmes to develop communication or other skills.

20. We considered the merits of a specific set of reasons for less favourable treatment as against a more generic reason. We decided that given the relationship between a school and its pupils, stretching over a long period, and the large variety of circumstances in which disabled pupils may have to be treated differently, a

generic defence, similar to that used under Part II of the DDA, would be the most appropriate.

Recommendation 4.4: Providers⁶ of school education should be placed under a statutory duty not to discriminate unfairly against a disabled pupil, for a reason relating to his or her disability, in the provision of education. There should be a defence for acceptable less favourable treatment. The pupil's parents should have a right of redress

Policies, Practices and Procedures

21. The education world tends to have written policies and procedures and acceptable practices covering the range of activities that take place in schools. Government, OfSTED and Estyn in Wales are keen that schools' activities are planned, targets set and progress monitored and evaluated. At the local level, LEAs and schools will have policies on a range of activities, from conducting teacher appraisals to bullying in school. It is important that policies are not discriminatory or applied in a manner that affects disabled pupils unfairly.

Example

A school places a bar on disabled children taking part in school trips without taking reasonable steps to make the trip inclusive.

22. We felt that it would be appropriate for LEAs and schools to be placed under a duty to look at their policies, practices and procedures, checking to see whether any may be discriminatory against disabled people and making reasonable adjustments to them. However, we recognised that it is often impossible to anticipate whether a particular policy will be discriminatory. It may take an individual case to draw attention to the unfair operation of the policy. In this circumstance, the LEA or school should make a reasonable adjustment to stop the policy having the discriminatory effect.

Recommendation 4.5: Providers⁶ of school education should be placed under a statutory duty to review their policies, practices and procedures and make reasonable adjustments to any that discriminate against disabled pupils for a reason relating to their disability.

Recommendation 4.6: Where a policy, practice or procedure places an individual disabled pupil at a substantial disadvantage in comparison with pupils who are not disabled, the provider of school education should be under a statutory duty to make a reasonable adjustment so that it no longer has that effect. The pupil's parents should have a right of redress.

Overcoming Physical Barriers: Adjusting the Provision of Education.

23. Thousands of physically disabled children are educated in mainstream schools everyday. Schools find practical ways to ensure that physical barriers do not hinder the education that disabled children receive. These methods do not always involve costly physical adaptations to buildings but instead common sense solutions

⁶ LEA's, maintained schools, non-maintained special schools, independent schools and pupil referral units

are found to avoid disadvantaging the disabled pupil. For example, when timetables are set at the beginning of an academic year, a secondary school can schedule the classes attended by a particular disabled pupil who uses a wheelchair in ground floor classrooms. Similarly, if a computer room is situated on the first floor, a few computers can be brought to the ground floor for the disabled student and some of his classmates to work on. These measures will not involve schools having to make physical adaptations to their premises.

Recommendation 4.7: Where a physical feature places an individual disabled pupil at a substantial disadvantage in comparison with pupils who are not disabled, the provider of school education should be under a statutory duty to take reasonable steps to provide education using an alternative method, so that the disabled person is no longer at a substantial disadvantage. The pupil's parents should have a right of redress.

What Constitutes Education?

24. The exclusion of education from disability legislation is not only wrong in principle it has created difficulties in the application of Part III of the DDA. It is unclear which activities by schools constitute educational services and which are non-educational and therefore covered by the DDA, for instance in relation to services for disabled parents (who should be covered clearly in future). We supported the Commission for Racial Equality recommendation in relation to the Race Relations Act that the distinction between education and training should be clarified and hoped that in framing new disability legislation, the Government would ensure that as much clarity as possible was achieved on defining what constituted the provision of education. However, we certainly did not wish to withdraw the protection provided by Part III of the DDA to any services that it currently covers which are closely related to education. The 'provision of education' in the new rights proposed should include assessment and examination arrangements. The increasing provision of childcare together with education for under 5's is also problematic. Childcare is already covered by Part III of the DDA and we did not wish to see some providers subject to two different pieces of disability legislation whilst providing complementary activities. We recognised that work needed to be done to determine where the dividing line should be so that providers were left in no doubt to which legislation they were working.

25.

Implementing the New Civil Rights

25. To ensure that the new civil rights recommended are fully understood and providers of school education address the barriers that disabled pupils face, a Code of Practice will be essential. This should explain the new rights, the factors to be taken into account in assessing whether an adjustment or steps to provide education by alternative means are reasonable, and examples of when less favourable treatment of a disabled child may be unavoidable. The Code should also be used to promote our aim of inclusive education. Given the importance of education, and the fact that the new duties proposed do not simply replicate those in the DDA, there are strong grounds for a separate Code of Practice in this area. There should be a public consultation on the draft Code.

Recommendation 4.8: A separate Code of Practice should be produced on school education in relation to the proposed new rights.

Provision of Auxiliary Aids and Services

26. The provision of auxiliary aids and services to enable a disabled person to access school education without being placed at a substantial disadvantage to their non-disabled peers was discussed in depth. The DDA access to services provisions do give disabled people a right to reasonable auxiliary aids and services. Our aim of comprehensive civil rights for disabled people and our desire to maintain the existing rights of children to have their special educational needs identified and met through education legislation conflicted on this issue.

27. The SEN Code sets out guidance for schools and LEAs. At the earlier stages of the five stage framework in the SEN Code, a child may receive specialist equipment or additional teaching or non-teaching support in the classroom. The school can also look to outside support, for example, from educational psychologists or the LEA learning support staff. If parents believe the school cannot provide all the assistance their child needs, they have the right to request a statutory assessment, with the right to appeal to the SEN Tribunal if that request is refused. For children with statements of SEN, the statement gives details of the child's SEN and specifies the special educational provision to be made to meet those needs. Unless the parent makes suitable arrangements, the LEA is required to arrange the special educational provision.

28. The SEN Action Programme will improve these arrangements by publishing new guidance to schools and LEAs. The Government intends to amend secondary legislation to require LEAs to set out their detailed arrangements for what schools might normally provide from their own budgets and the LEA's plans for providing SEN support to schools.

29. A new additional right to undefined auxiliary aids and services for disabled pupils, alongside the current provisions in education legislation for children with SEN, would create major difficulties. Parents of children with statements whose demands for certain auxiliary services had not been met through appeal to the SEN Tribunal could embark on another case, for the same auxiliary service, under any such new rights for disabled pupils. Given the undefined nature of what constitutes an auxiliary aid or service, parents could demand a range of costly assistance for their child, without the proper needs assessment that the SEN Code of Practice requires. Also, it would be unreasonable to expect the provider of education to be legally responsible for all auxiliary aids and services, when many such aids and services relate to a child's health or care needs and may be the responsibility of the National Health Service or Social Services.

30. Many disabled children will receive the protection they need through the SEN legislation. Children with statements of SEN, which would include many disabled children, have an enforceable right to the provision specified in their statement which may include auxiliary aids and services. Children with SEN but without a statement will not have an enforceable right but can expect to receive support from the school, and if necessary from external support services, to meet their needs. Their parents do have the legal right, however, to request a statutory assessment if they consider their child's needs are not being adequately met at the earlier stages of the SEN Code of Practice. If a parent is not satisfied with the outcome of such an assessment, or the request for an assessment is rejected, they can appeal to the SEN tribunal. We fully support comprehensive rights in this area but could not justify creating confusion by the introduction of a new legal duty for those children who are disabled. We welcomed assurances that the SEN Action Programme, if implemented correctly, should address the needs of all children with SEN/disability without requiring new legal rights. However, there will be a need to monitor the impact of the Programme

and review whether it is working satisfactorily. We supported a review of how, once the measures in the SEN Action Programme were implemented, the needs of children with SEN/disabilities were being met in practice, including their access to auxiliary aids and services.

Recommendation 4.9: The rights conferred by education legislation for pupils to have their special educational needs identified and met, and in England and Wales, the right to appeal to the Special Educational Needs Tribunal, should be maintained. There should be a review of the measures in the SEN Action Programme to assess their effectiveness in meeting the needs of children with SEN/disability, including access to auxiliary aids and services.

Physical Adjustments to Premises and Access to the Curriculum

31. We considered the duties to make physical adjustments in the DDA in relation to securing greater accessibility to school education. However, we felt that requiring every school to make reasonable physical adjustments was not the most effective method for increasing accessibility for disabled pupils. We favoured a more strategic arrangement with local education authorities working in partnership with schools to increase accessibility in their area. We felt that local plans, agreed with interested parties, would ensure the most effective use of resources, leading to the greatest improvement in accessibility. This approach of granting collective rights, as opposed to individual ones, would produce the greatest benefits for all disabled children in an area. However, we considered that schools should continue to use their own delegated budgets to make minor physical adjustments to respond to the needs of individual disabled pupils.

32. We were keen not to place excessive new burdens on LEAs and schools in relation to a new duty to plan for increasing physical accessibility and access to the curriculum. There is a number of existing plans which are required, such as Education Development Plans, Asset Management Plans and School Organisation Plans and these may form suitable vehicles for this new duty. It is important that implementation of this new duty is monitored through the mechanisms for approving local plans, the DfEE's schools' access survey in England and through OfSTED and Estyn inspections of LEAs and even schools.

Recommendation 4.10: Providers of school education should be placed under a statutory duty to plan to increase accessibility for disabled children to schools. This duty should cover both adjustments for physical access, including those for children with sensory impairments, and for access to the curriculum.

Rights of Redress

33. We were impressed by the work of the SENT in hearing SEN appeals from parents. We considered that the less formal nature of the process, compared to that of county courts, was to be commended. Allowing cases in relation to the new individual rights in recommendations 4.4, 4.6 and 4.7, to be brought to a reconstituted SENT was favoured. It would reduce the need for parents to pay for formal legal representation. The DRC's duties and powers should also extend to education and education providers. Admissions appeals on grounds of disability discrimination should mirror those for sex and race discrimination.

34. The SEN Action Programme recognises the importance of encouraging active participation wherever possible by children and young people with SEN/disabilities

within assessment and other arrangements made to meet their special needs. It proposes to strengthen guidance in the revised SEN Code of Practice to encourage schools and LEAs to actively seek and take account of the views of children and young people throughout the SEN process. We welcomed the measures in the Programme to clarify the right of children to attend Tribunal hearings and to place the Tribunal under an explicit duty to have regard to the ascertainable views of the child. We understood that further work would be required on the rights of children to bring cases in their own name and the implications of this for education legislation.

Recommendation 4.11: The jurisdiction of the SEN Tribunal should be extended to hear cases brought in relation to the new rights in recommendations 4.4, 4.6 and 4.7

Consultation

35. The new duties we have proposed should help to increase the life choices of disabled children. We hoped that the right to reasonable inclusion and to be educated free from unfair discrimination would be seen as non-contentious as we approach the next century. We welcomed the Government's SEN Action Programme and heavy commitment of resources in this area through the School Access Initiative and the SEN Standards Fund and comparable arrangements in Wales. Although the new rights to unfair discrimination are fundamental, it is important to consult on the way that future legislation is implemented to ensure the rights operate in a non-bureaucratic and effective manner.

Recommendation 4.12: There should be a public consultation, with all those with an interest, on the practical implementation of the new rights proposed.>>

Further, Higher and LEA-Secured Adult Education

Current Position

36. Further, higher and LEA-secured adult education is generally excluded from the DDA access to services provisions, although non-educational activities at further or higher education institutions and places where adult education is provided are covered. Part IV of the DDA requires further and higher education sector institutions⁷, as a condition of receiving public funding, to produce disability statements setting out their facilities for disabled students. LEAs are also required to produce disability statements on their provision of adult education for disabled people.

37. Further and higher education sector institutions (ie. colleges and universities) are funded by the further education funding councils and higher education funding councils respectively⁸. LEA-secured adult education is funded by local authorities.

38. The principal duty on the Further Education Funding Council (FEFC) is to secure sufficient and adequate facilities for further education (in England). For students aged 16-18 studying full time, the duty of sufficiency applies to courses of any kind (eg. A levels, GCSEs, vocational courses). For such students who are part-time, and all who are 19 or over, adequate provision must be made, but only in respect of courses which are designated in schedule 2 to the Further and Higher

⁷ In England and Wales and for Higher Education Institutions in Scotland

⁸ Except in Northern Ireland

Education Act 1992. The FEFC must have regard to the needs of students with learning difficulties when securing adequate and sufficient further education. The FEFC has a specific duty to people with learning difficulties who are over compulsory school age but under 25 and for whom facilities are inadequate in the further education sector. It must fund a placement in a specialist independent institution including, where necessary, boarding accommodation. The FEFC allows sector colleges to claim ring-fenced additional funding for meeting the needs of disabled students. Colleges can claim additional funding for teaching and support staff, assessments, maintenance of equipment, adaptation of learning materials into accessible formats and internal college transport.

39. In the LEA-secured adult education sector, LEAs have a duty for their areas to secure the provision of adequate facilities for further education - primarily this duty extends to courses which are not funded by the FEFC such as leisure type courses that do not lead to formal qualifications. In exercising their duty to secure adequate facilities for adult education, LEAs have a specific duty to have regard to the requirements of persons over compulsory school age who have learning difficulties.

40. In the higher education sector, the funding councils have a specific duty to have regard to the needs of disabled students in carrying out their functions. Disabled Students' Allowances, funded by local education authorities, provide support for many disabled students in higher education for specialist equipment, a non-medical personal assistant and other course related expenses arising from a student's disability.

Comprehensive Civil Rights for Disabled Students in Further, Higher and LEA-secured Adult Education

41. We welcomed the Government's recognition that the omission of civil rights for disabled students in further, higher and LEA-secured adult education is unacceptable. Whereas in school education there is a legislative basis for ensuring that the special educational needs of children are met, there is no such provision here. We were dismayed by examples of apparent discrimination in further and higher education institutions against disabled students.

Case Studies

- In one institution, a deaf student who uses a radio aid was denied access to lectures simply because the lecturer refused to clip on the microphone.
- In another, a student with a mental health problem was being insulted and picked on by tutors and other staff who called him 'mad' and 'schizo'.
- A visually impaired student was turned down for a fine arts course because the tutor assumed he had no sight.

Source: Information Service provided by Skill (the National Bureau for Students with Disabilities)

42. These cases illustrate the problem that exists in some institutions and why rights are needed in practice.

43. The DDA access to services provisions focus on rights in relation to the terms and standard of service. These may be wholly applicable to one-off transactions but we thought that they did not accurately reflect the provision of educational 'services'.

The separate treatment of education from the main access to services provisions in both sex and race equality legislation confirmed our view that there should be specific provisions on further, higher and LEA-secured adult education. The rights should, however, largely mirror those in the DDA: a right not to receive unfair less favourable treatment; where the disabled student would otherwise be substantially disadvantaged compared to his peers, a right to reasonable additional services required to access education; and a right to reasonable adjustments to the arrangements made for education, including the premises. In order to promote a proactive approach we also believed that providers should be placed under a statutory duty to review the arrangements they make for the provision of education, including premises, and produce plans for making reasonable adjustments to any arrangements that discriminate against disabled students.

44. We recognised that further work would be needed to define what constituted reasonable adjustments and reasonable additional services. For instance, it may be reasonable for a further education college to provide additional classes to a disabled student alongside his main course. However, if the disabled student requires an access course that the college does not provide, it may be unreasonable to expect the college to establish one. There is also considerable additional funding available for disabled students in further and higher education to meet their needs. It would be unreasonable for an institution to have to provide additional equipment from its own resources where, say, a Disabled Students' Allowance was available for this purpose. Factors such as the effect of the adjustment on other students, the need to retain the quality and standards of courses and qualifications and the financial resources available to the institutions would also be important. These matters would best be addressed in a separate Code of Practice on further, higher and LEA-secured adult education. We felt that work on the Code of Practice should begin as soon as possible, given the need to consult widely, in advance of any identified date for legislation. This could form the basis for a statutory Code following civil rights legislation.

45. As in school education, we wanted to see an emphasis on inclusion and the benefits to students from exchanging ideas and experiences with one another. New technologies offer wonderful opportunities for increased distance and remote learning for all students. However, disabled students seeking full or part-time courses must not simply be offered distance learning courses instead. Institutions need to address the barriers to accessing full and part time courses, although it may be appropriate for some aspects of the course to be delivered using alternative methods.

Recommendation 4.13: A separate section on further, higher and LEA-secured adult education should be included in civil rights legislation to secure comprehensive and enforceable rights for disabled people.

Recommendation 4.14: The legislation should have an associated statutory Code of Practice, explaining the new rights.

Rights of Redress

46. We considered the rights of redress for disabled students in relation to the proposed new duties. Although ultimately cases should be taken to tribunals or courts, it was felt that this could be avoided in most instances if there were adequate conciliation arrangements. Further education sector institutions are required to have complaint procedures and higher education sector institutions also have, often elaborate, redress mechanisms. There is scope for the relevant sectors to simplify

and develop these further to avoid students having to take drawn-out cases through courts, which could result in them missing a year of education.

Recommendation 4.15: The Department for Education and Employment should consult with interested parties on improved rights of redress for disabled students in relation to complaints of discrimination, although ultimately the new rights proposed should be exercisable through the courts or tribunals.

Non-legislative Measures

47. We noted the initiatives that the further and higher education funding councils were undertaking, and the resources devoted to these, to increase participation in education by disabled students. We particularly welcomed measures to improve the awareness of teaching and other staff of disability issues and believed that the new statutory duties proposed would enhance this area of activity by institutions.

Recommendation 4.16: Non-legislative measures to improve the rights of disabled people to further and higher education should continue to be developed and implemented to underpin civil rights legislation.>>

Other Education Matters

Youth Service

48. The Youth Service, in both the statutory⁹ (local authority) and voluntary¹⁰ sectors, as with other educational provision, is currently exempt from the provisions of the DDA. Given the Youth Service's role in serving the needs of young disadvantaged people, we suspected its provision for disabled people would be in accordance with the DDA. However, we were concerned, in principle, at the exemption because of the Youth Service's central role in preventing social exclusion and enabling young disabled people to engage in a range of community activities. We felt that this exemption should be removed along the lines of our recommendations for other educational provision.

Recommendation 4.17: The new rights recommended in further, higher and LEA-secured adult education should be applied to the Youth Service.

Voluntary Sector Provision of Education and Similar Activities

49. The DDA access to services provisions also exclude education which is funded or arranged by any voluntary organisation. Given our proposals to end the exclusion of education in general, there was no case for leaving voluntary organisations providing education exempt from disability legislation. In addition to the DDA's exclusion of education funded by voluntary organisations, regulations¹¹ also exclude the provision by a voluntary organisation of social, cultural and recreational

⁹ Provided by local authorities under s2 and s508 Education Act 1996.

Although it may be within the education exclusion from the DDA, the exclusion is made certain under Paragraph 9(1)(a) Disability Discrimination (Services and Premises) Regulations 1996.

¹⁰ Excluded from Part III of the DDA under Paragraph 9(1)(b), Disability Discrimination (Services and Premises) Regulations 1996

¹¹ Paragraph 9(1)(b), Disability Discrimination (Services and Premises) Regulations 1996

activities and facilities for physical education and training, where such activities are designed to promote the personal or educational development of persons taking part in them.

50. This broad exemption is unjustified. It covers the activities of many voluntary recreational and social clubs, which in many areas form a focus for the local community. Disabled people should have the same right to participate in their activities, without unfair discrimination, as other members of the community.

Recommendation 4.18: The exclusion from the DDA access to services provisions of voluntary organisations providing education, social, cultural and recreational activities and facilities for physical education and training should be ended.

Conclusion

51. The 1978 Warnock Report¹² laid the ground for a transformation in the education of children with special education needs. Although, we would not claim that the recommendations we have made will lead to a similar transformation two decades later, they offer a real opportunity for increasing the rights of disabled people to a quality education, free from unfair discrimination and segregation. However, Government legislation and new resources on their own will not be effective. As important is a real change in the attitude of all those engaged in all stages of education. The Warnock Report recognised that:

"...those who work with children with special educational needs should regard themselves as having a crucial and developing role in a society now committed, not merely to tending and caring for its handicapped members, as a matter of charity, but to educating them, as a matter of right and to develop their potential to the full."

This statement is as relevant today as it was two decades ago. It is applicable to all stages of education and is a reminder to educators of their duties to all in society who seek equal access to education

¹² Special Educational Needs Report of the Committee of Enquiry into the Education of Handicapped Children and Young People, May 1978 (See Annex B)

CHAPTER 5: EMPLOYMENT

"We examined the ... activities of ... disabled people ... who were out of work and actively looking for it. Findings ... included ... strong attachment to the labour market among unemployed disabled people as well as a positive outlook to finding work: 93% stated that getting a job was very important to them and 98% stated a determination to continue looking for work."¹

Introduction

1. It is a myth that most disabled people are unable or reluctant to work. 11% of all people in employment are disabled. Some will face little or no difficulty in finding positions and succeeding in their chosen fields. Others, with reasonable adjustments to work arrangements or premises, will work at least as effectively as their colleagues. Indeed, evidence² from employers suggests that disabled people take less sick absence and have a lower staff turnover than non-disabled people. It is important that these messages are communicated effectively to employers. Disabled people are individuals, each with different qualities, skills and abilities, and employers must recruit on the basis of individual qualities, not on a stereotypical or prejudiced view of disabled people. Research findings³ show that over 85% of the British public think there is prejudice against disabled people when it comes to getting a job. This illustrates the importance of changing attitudes towards disabled people as well as securing civil rights.

2. We cannot, however, ignore the fact that disabled people are only half as likely as non-disabled people to be in employment. For some, health reasons will make it difficult to take paid employment and we as a society must guarantee as a secure, dignified and independent life as possible. But for many disabled people, past experiences of looking for work or length of time out of the labour market may act as a deterrent to seeking employment. Indeed, the employment rates for disabled people vary tremendously depending on the individual's impairment or the problems perceived by some employers. For example, people with mental illness and people with learning disabilities have particularly low employment rates but there is no group of disabled people with an employment rate as high as for non-disabled people.

3. Most disabled people are able to make very effective use of mainstream employment and training programmes. However, some people who are unemployed find that their disability represents an additional hurdle in their search for work. This is why there are also specialist programmes to help them find, keep and train for work.

4. The Employment Service plans to spend £189m in 1999-2000 on specialist programmes for disabled people. This includes Supported Employment (£155m plus an additional £5m for each of the next 3 years), Access to Work (£22m), Job Introduction Scheme (£1.5m), and Work Preparation (£10m). The total cost over the three years 1999-2000, 2000-01 and 2001-02 is £570m.

¹ 'Disabled People in the Labour Market: Findings from the DfEE Baseline Disability Survey', Hibbert and Meager (see Annex B)

² 'Intergrating Disabled Employees', DfEE (see Annex B)

³ British Social Attitudes Survey 1998. Prejudice against disabled people (employment): 'A lot' 37%; 'A little' 49%; 'Hardly any' 8%; 'None' 3%; 'Don't know' 4%

5. The Government is also piloting a range of initiatives through the New Deal for Disabled People (NDDP) to improve employment opportunities for disabled people on incapacity benefits. The Chancellor set aside £195 million over the lifetime of this Parliament to do this. The NDDP is a joint initiative between the Department for Education and Employment and the Department of Social Security. The Personal Adviser Service, offering a client-centred and work-focused service is being piloted in 12 areas. This covers nearly a quarter of a million people on incapacity benefits. There are 22 Innovative Schemes, exploring how best to help people on these benefits move into or stay in work.

Case Study: New Deal for Disabled People

A client with a spinal disc degenerative condition, who had been on Incapacity Benefit for three years, is now in employment. Through the guidance, support and encouragement of his Personal Adviser he found a job as a part-time security officer. The Personal Adviser's discretionary fund was used to help cover the costs of clothing and equipment for his job. His employer has taken into account the back problems of the client and adjusted his working pattern accordingly.

6. We were generally content with the DDA approach to the coverage of employment. There have been 5841 cases taken⁴ under the DDA employment provisions of which 1484 have been settled or withdrawn before reaching the tribunal, 94 where the applicant won the case and 390 where the applicant was unsuccessful. The remaining cases are awaiting hearing or settlement.

Case Study

A loss prevention manager for a company involved in the oil-exploration business worked part-time while receiving chemotherapy for his throat cancer and eventually was able to return to work full-time. About six months after his return he was dismissed for poor performance. However, an employment tribunal decided that the true reason for dismissal was prejudice against him owing to his disability. He was awarded nearly £80,000 as compensation for disability discrimination by his employer.

Source: *McLauchlan v Stolt Comex Seaway Ltd*

7. However there are gaps in the DDA employment provisions. We have made recommendations to ensure coverage of all employers and of excluded occupations. We have also sought consistency with the Sex Discrimination Act (SDA) and Race Relations Act (RRA) where appropriate. Improvements to the statutory Employment Code of Practice have been suggested together with recommendations on new good practice guidance to cover volunteers. We have also recognised the need to encourage employers to take proactive measures to equalise opportunities for disabled people in their workforce. We considered that the public sector had a key role to play here, both in its own employment practices and by using its purchasing power, where appropriate, to prompt equality.

Key Recommendations

⁴ Up to the end of October 1999

- The DDA's general approach to the coverage of employment and trade organisations and the employer's duty to make reasonable adjustments should continue.
- Having taken account of their duty to make reasonable adjustments, employers should continue to be able to appoint the best person for the job.
- The employment provisions of civil rights legislation should extend to all employers⁵, irrespective of size.
- The exclusion or omission of the police, prison and fire services; the armed forces; partnerships; qualifying bodies and barristers and advocates from the DDA employment provisions should be ended, in civil rights legislation.
- The public sector should have a duty to promote the equalisation of opportunities for disabled people in employment. The private sector should be encouraged to adopt a proactive approach in this area.
- Voluntary work should be covered by a Code of Good Practice and a power should be taken to bring volunteers into coverage of civil rights legislation if necessary.
- Disability or disability-related questions before a job is offered should only be permitted in limited circumstances, such as where it is necessary to establish the need for a reasonable adjustment to the interview or selection process or thereafter to do the job and for certain monitoring purposes. Further consideration should be given to other circumstances when such enquiries should be permitted, for instance in the case of the guaranteed interview scheme.

Discrimination

8. There are two main strands to defining discrimination in employment in the DDA. In the first, an employer discriminates against a disabled person if, for a reason relating to the disabled person's disability, he treats him less favourably than others to whom that reason does not apply; and the employer cannot show that the treatment is justified. An employer can justify the less favourable treatment if the reason for it is both material to the circumstances of the particular case and substantial.

9. Recent Court rulings⁶ will, in practice, result in far more emphasis being placed on employers justifying their less favourable treatment of disabled employees or job applicants, rather than arguing that less favourable treatment never took place. We found no evidence that the justification test was not sufficiently objective or sufficiently demanding to balance the interests of disabled employees and employers. Tribunals are considering: the reason for the treatment; whether it was substantial and material; and whether, on the evidence, it was sufficient.

10. We rejected using an approach similar to that in the Americans with Disabilities Act of Genuine Occupational Requirements (GORs) - the essential requirements of a particular post - to provide employers with a defence for less favourable treatment. Given the wide scope of work activities and employee benefits, it was felt impracticable to require employers to specify GORs for every post in their organisation, for every training and development opportunity and for every benefit offered. Such an approach would limit employers' ability to be flexible in assigning duties and generate unacceptable bureaucratic burdens.

⁵ Save for private households (see recommendation 5.9)

⁶ Clark v TDG Ltd (trading as Novacold)

11. We considered though that the justification test for less favourable treatment should be monitored and we noted that regulation making powers in the DDA would enable the Government to make regulations as to the circumstances in which treatment is to be taken to be justified or not justified.

Recommendation 5.1: The DDA's approach to employer defences for less favourable treatment should continue at present. It should be monitored and, if there is evidence that the justification test is not operating fairly, then the Government should consider the issue and consult on appropriate proposals to remedy any problems.

12. The second strand to defining discrimination in employment concerns failure to make reasonable adjustments. An employer discriminates against a disabled person if he fails to make reasonable adjustment and he cannot show that his failure to comply with that duty is justified.

13. The Code of Practice for the Elimination of Discrimination in the Field of Employment Against Disabled Persons or Persons who have had a Disability ('the Employment Code of Practice') gives examples of when a failure to make a reasonable adjustment may be justified. We felt in all of these examples, the employer could argue that the adjustment was not reasonable, in all the circumstances, without needing to rely on a separate justification. Allowing employers to argue at Tribunals: firstly, that an adjustment was not reasonable; and then, if that argument fails, that they were justified in not making a reasonable adjustment, is unacceptable. Employers should focus on what adjustments were needed and whether they were reasonable. They should not be given the opportunity to construct justifications after a failure to make a reasonable adjustment.

Recommendation 5.2: The DDA employment provisions' justification for failure to make a reasonable adjustment should be removed. The Employment Code of Practice should be revised to include examples of when it may be reasonable not to make an adjustment and the factors to be taken into account in assessing reasonableness should be expanded to reflect valid justifications.

Best person for the job

14. One of the purposes of anti-discrimination legislation is to ensure that assumptions and stereotypes do not prejudice the selection of candidates. The DDA definitions of discrimination allow employers to recruit the best person for the job, once they have made any reasonable adjustments. This must be the correct approach. In most cases, disabled people want barriers that disadvantage them from competing fairly for positions removed and reasonable account taken of their need for different working arrangements, not to get posts in preference to better qualified candidates. We welcomed the increasing understanding amongst employers of the benefits that a diverse workforce can bring.

Recommendation 5.3: The DDA's approach to allowing employers to appoint the best person for a job, once they have made any reasonable adjustment, should continue in civil rights legislation.

Coverage of Employment

15. We noted the broad approach taken to the coverage of employment and trade organisations in the DDA and how this matched the provisions of the SDA and RRA. The Employment Code of Practice sets out the employment provisions of the DDA in

more detail. We were content with the approach taken. The SDA and RRA also make explicit reference to employment agencies but we thought that the DDA approach to coverage of these was adequate. The DDA covers employment agencies as: employers of staff themselves; employers' agents; a supplier of disabled contract workers; and a service provider to disabled members of the public seeking employment advice or registration. The exclusion of small firms and certain occupations are covered in recommendations 5.8 and 5.15 to 5.18.

Recommendation 5.4: The DDA's approach to the coverage of employment, trade organisations and employment agencies should continue in civil rights legislation.

Reasonable Adjustments

16. The DDA sets out factors to consider when assessing whether an adjustment is reasonable for an employer to have to make. It also lists examples of steps which employers may have to take in making reasonable adjustments. Two examples are: allocating some of a disabled employee's duties to another person; and providing a reader or interpreter. We agreed that providing a complete list of steps for employers, rather than examples, would create inflexibility and could prevent disabled employees receiving adjustments tailored to their individual circumstances and those of their employer. However, there may be uncertainty as to whether two particular steps are reasonable and we have recommended that they should be listed as additional examples.

Recommendation 5.5: The DDA's approach to an employer's duty to make reasonable adjustments and factors to be considered in assessing reasonableness should continue in civil rights legislation.

Recommendation 5.6: The DDA's approach to listing examples of steps to consider in making reasonable adjustments should continue with the addition of two more examples: training for other persons in disability issues or in the use of equipment; and providing external support or access to external support.

Employers' Knowledge of Disability and Confidentiality

17. An employer does not have to make adjustments if he does not know, or could not reasonably be expected to know, that an individual has a disability. This provides a sensible safeguard for employers without removing the need to act fairly towards disabled employees where it is clear that adjustments may be required. However, lack of knowledge of the law cannot be used as an excuse.

18. Where an agent of the employer knows of the disability, the employer is also taken to know. Where the individual may have given information in confidence to the occupational health adviser, it appears that the Society of Occupational Medicine guidance⁷ on the DDA is adequate to offer protection to the health adviser and employer. The guidance suggests that the health adviser should inform the employer about fitness for work and reasonable adjustments for the individual but should not disclose the medical information given in confidence.

⁷ 'The DDA: A Guidance for Occupational Physicians', Society of Occupational Medicine (see Annex B)

Recommendation 5.7: The DDA's approach to an employer's knowledge of disability and confidentiality of medical information should continue.

Comprehensive Civil Rights for Disabled People in Work

19. The DDA employment provisions are not comprehensive. They do not confer on disabled people the same range of rights conferred by the SDA and RRA.

Employment-related Organisations Not Covered

Small Employers

20. Employers with fewer than 15 employees are excluded from the DDA employment provisions. The Disability Rights Commission Act 1999 provides that the Secretary of State must consult the DRC before making a proposal to lower the small employer threshold of 15. An anomaly with the threshold is that it can only be lowered to 2 employees. So lowering the threshold will not cover employers with just one employee or businesses seeking to recruit their first employee.

21. We noted that the Government lowered the threshold from 20 to 15 employees from 1 December 1998, bringing 45,000 employers and around 70,000 disabled employees into coverage of the DDA. We felt there was some merit in the view that small employers needed to be brought along and persuaded of any further lowering of the threshold. However, we concluded that this was not a sufficient reason to deny around 310,000 disabled employees civil rights in relation to employment. A staged reduction of the threshold was seen as a second best option to moving the threshold to 2 (the lowest allowed) in one step.

Recommendation 5.8: All disabled employees should have civil rights in relation to employment, irrespective of the size of the business. The threshold should be lowered from 15 to two employees

Recommendation 5.9: Future civil rights legislation should allow coverage of both businesses with one employee and businesses seeking to recruit their first employee

Private Households

22. A consequence of recommendation 5.8 is that private households which employ staff, including self-employed people undertaking personal work, will be brought into coverage. The RRA specifically exempts employment in private households in recognition of an individual's and a family's right to privacy. There is also the practical concern of ensuring that private households understand the law and what constitutes a reasonable adjustment to their home.

Recommendation 5.10: Employment in private households should be exempt from future civil rights legislation

Associated Employers

23. In calculating the number of employees a company has, the DDA is silent on the treatment of associated employers. The SDA states that two employers are associated if one is a company of which the other has control. Employers should not establish associated companies with the aim of keeping each below the 15 employee

threshold and hence avoiding coverage by disability legislation. This recommendation will only be needed if a small employer threshold is maintained.

Recommendation 5.11: In calculating the number of employees, the SDA approach to associated companies should be adopted.

Partnerships

24. In partnerships, the partners themselves are not classed as employees and therefore not covered by the DDA employment provisions. The SDA and RRA specifically cover discrimination in employment against partners, with the RRA excluding small partnerships with fewer than 6 partners. Given the personal relationship between partners in small partnerships, each being liable for the others' debts, we considered whether we needed special arrangements for coverage of these by civil rights legislation. 95% of partnerships have fewer than 6 partners. We agreed that there was no case for excluding small partnerships from protection from less favourable treatment but the question of where the duty to make reasonable adjustments should fall would need further consideration since current partnership agreements are unlikely to specify this. Where disabled partners are limited in their ability to participate fully in the partnership special provisions may also be required, as in New Zealand legislation.

Recommendation 5.12: Business partners should be covered in civil rights legislation on employment, but with small partnerships not initially having a duty to make reasonable adjustments. Further consideration should be given as to how the reasonable adjustment duty should operate.

Qualifying Bodies

25. There are no specific provisions in the DDA for qualifying bodies (ie. bodies which confer authorisation or qualifications required to undertake particular professions, vocations, occupations or trades). We agreed that, like the SDA and RRA, qualifying bodies should be included in civil rights legislation on employment. While such bodies should be under a duty to make reasonable adjustments, we would not wish to see a situation where adjustments could be sought which changed the fundamental nature of the qualification. Careful consideration would need to be given as to how this might be addressed, for instance, by relying on reasonableness, proving guidance in the legislation and specifically excluding some adjustments.

Recommendation 5.13: Qualifying bodies should be covered in civil rights legislation on employment with careful consideration being given as to what adjustments they might be expected to make (for example, they should not be expected to make adjustments that altered requirements essential to the qualification).

Workers Not Covered

Statutory Office Holders

26. There is a number of offices set up under statute, for instance commissioners of statutory commissions, some members of the judiciary and police officers. Even though many are difficult to distinguish from employees in the way they are recruited, appointed and their duties, they are not classed as employees. The DDA does provide some limited protection for statutory office holders appointed by a Government Minister or Department, but only in relation to appointment and with

remedy only by way of judicial review. In any case there are some office holders not appointed in this way.

27. We noted the recommendations of the Equal Opportunities Commission (EOC) and the Commission for Racial Equality (CRE) to cover statutory office holders fully under the SDA and RRA employment provisions, and that the Government is considering this. We were conscious that assigning responsibility for reasonable adjustments for office holders would create difficulties. Many office holders have a high degree of autonomy over their working arrangements and some would be statutorily independent of the person who appointed them.

Recommendation 5.14: Statutory office holders⁸ should be covered by civil rights legislation on employment with further consideration as to where responsibility for reasonable adjustments should rest.

Occupations not at Present Covered by the Employment Provisions

28. Police officers are not covered by the DDA employment provisions and prison officers, firefighters, the armed forces and some specialist police forces are specifically excluded.

Police and Prison Officers and Firefighters

29. We welcomed the Home Office's agreement with the Task Force that the exclusion of police and prison officers and firefighters from the employment provisions of disability legislation should be ended over time, and also the similar agreement of the Ministry of Defence (MOD) on the MOD Fire Service and MOD Police. This would not lead to the recruitment of disabled people who are unable to meet, with reasonable adjustments, the particularly physically demanding requirements of these posts. It would, however, ensure protection from disability discrimination on spurious grounds. We understood the desire of the Home Office and MOD to ensure that the services have sufficient training of personnel on the implication of coverage and robust procedures in place to ensure compliance with the legislation in this area. This should minimise instances of discrimination.

Recommendation 5.15: The employment provisions of civil rights legislation should cover police and prison officers and firefighters.

Armed Forces

30. The Ministry of Defence wishes to ensure that the Armed Forces remain operationally effective. It pointed out that all service personnel, not just those in front-line roles, can be called on to fight even if only in self-defence. For example, clerks, cooks or stewards have to undertake guarding duties in peacetime and have to be able to fight to defend themselves or their unit during conflicts. The MOD argues that disability, or a history of disability, is not compatible with the need for a combat effective fighting force, able to undertake military operations anywhere in the world at any time.

31. We recognised the special nature of the Armed Forces and that they make significant efforts to retain individuals who become medically unfit. However, given the wide range of businesses covered by the DDA, we saw no case for a major

⁸ See recommendations 5.15 in relation to police officers

public sector employer to be excluded simply because they have particular needs. Disabled people in the Armed Forces should not be denied rights against unfair discrimination in employment.

32. We did not wish to see the Armed Forces having to accept as combat effective people who are not. We understood that adequate safeguards must be provided to ensure that operational effectiveness can be maintained. Of course, disabled people themselves would act in a common sense way and not apply for occupations they clearly could not do. In any event, under the DDA, employers are not required to act unreasonably. If someone simply cannot do a job, after any reasonable adjustment necessary to help them, then an employer can justify not employing, or dismissing, them.

Recommendation 5.16: The employment provisions of civil rights legislation should cover the Armed Forces whilst recognising the need for adequate safeguards to maintain operational effectiveness.

Barristers and Advocates

33. Barristers and advocates are not employees and are therefore not covered by the DDA employment provisions. We noted that the SDA and RRA specifically cover discrimination by a barrister or barrister's clerk when offering a pupillage or tenancy in chambers (or in any terms afforded to a pupil or tenant). We considered that barristers and advocates should be covered, with a duty of reasonable adjustment placed on the chambers. We noted that cases under the SDA and RRA in relation to barristers and advocates are taken to county and sheriff courts. In discussion with representatives of the Bar Council we felt that this position was anomalous and disability discrimination cases should, like all other employment cases, be taken to employment tribunals. We welcomed the Bar Council's positive endorsement of these proposals.

Recommendation 5.17: The employment provisions of civil rights legislation should cover barristers and advocates with enforcement through Employment Tribunals.

Politicians: Councillors, Assembly Members and Members of Parliament

34. Local councillors, Assembly Members and Members of Parliament are not employees and therefore they are not covered by the DDA employment provisions. Although they have no employer and a high degree of autonomy over their positions, we were concerned about the absence of a duty to provide, particularly local councillors, with reasonable adjustments to enable them to carry out their role effectively. With Assembly Members and Members of Parliament, we felt that the internal procedures of the Assemblies or Parliaments should be used to secure reasonable adjustments.

Recommendation 5.18: Local councils should be placed under a duty not to discriminate against disabled councillors, including a duty to make reasonable adjustment.

Territorial Coverage

35. The RRA and SDA employment provisions have a wider geographical coverage than the DDA. Certain types of employment are specifically covered by the RRA which are not covered by the DDA, for example employment on a ship, aircraft or hovercraft in certain circumstances. Although the number of disabled people

affected by the limited territorial coverage of the DDA is small, for consistency we recommended matching the coverage of the RRA. Implementation of the EU Posted Workers Directive will involve extending the employment provisions of all three Acts to EC nationals posted to work here for a limited period. As a matter of policy, the Foreign Office complies with UK law in other countries where this is possible.

Recommendation 5.19: The territorial coverage of civil rights legislation on employment should match that of the RRA.

Former Employees

36. The Court of Appeal has held that a woman summarily dismissed was not protected by the RRA employment provisions for her internal appeal hearing because she was, at that stage, a former employee. However, the European Court of Justice has held in sex discrimination cases that a former employee is protected from victimisation if her employer provides an unjustified negative reference on the basis that she has previously brought a claim under the SDA. The DDA should protect ex-employees in a similar manner.

Recommendation 5.20: The DDA's approach to former employees should follow whatever changes are made to the SDA.

Volunteers

37. Most volunteers are not employees and are therefore not covered by the DDA employment provisions. The Government is encouraging volunteering and it has a particular relevance to many disabled people as a means of active participation in society and as a route into employment.

Case Study: Volunteer Scheme

The Greater Manchester Coalition of Disabled People (GMCDP) aims to promote the independence of disabled people and their integration into society. It recruits only disabled people as paid staff or volunteers. There are currently 10 active volunteers.

38. We noted that the EOC and CRE recommended that volunteers are covered by anti-discrimination legislation and that the Government is considering this. We felt that it would be desirable to extend protection into this area eventually. However, we were aware of the diversity of organisations that engage volunteers, from small local community groups with few resources to large national charities. Volunteers also undertake a wide range of activities from one-off charity collections for a few hours to regular part-time work. We recognised that organisations may have concerns about being held legally responsible for discrimination by one volunteer towards a disabled volunteer, especially given the lack of control over who is engaged as a volunteer and to some extent what they do and the absence of available sanctions. Similarly organisations may feel that the burden of having to understand the law in this area and make reasonable adjustments, for a volunteer working just a few hours, is too onerous.

39. We therefore favoured a good practice approach initially (ie. promoting good practice in employing volunteers by issuing guidance on it). We also wanted to involve organisations that engage volunteers in considering how a legislative duty in this area would operate in practice.

Recommendation 5.21: In principle, voluntary workers should be covered by civil rights legislation. However, in recognition of the diversity of voluntary workers and organisations that engage them, a good practice approach should be adopted. Organisations engaging volunteers should be consulted on the preparation of guidance and a power taken in civil rights legislation to bring volunteers into coverage through regulations.

Trustees

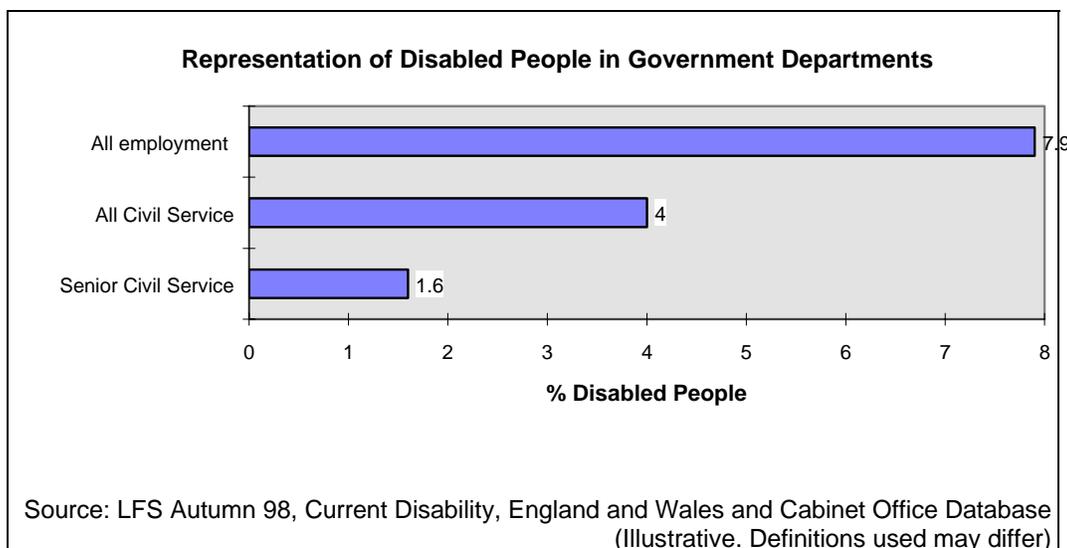
40. We considered the position of trustees of voluntary organisations and charities and concluded that, given their position as unpaid volunteers, they should be covered by recommendation 5.21. There is also a range of other types of trustees, such as those with responsibilities for a person's private affairs. We felt that the choice of trustees in these circumstances was a private and personal matter for individuals and it would be inappropriate to bring them into coverage of civil rights legislation.

Recommendation 5.22: Trustees of voluntary organisations and charities should be included in the good practice approach to volunteers in recommendation 5.21.

Promotion of Equality of Opportunity for Disabled People in Employment

41. Anti-discrimination legislation is a powerful weapon in creating a climate where discrimination, whether on the grounds of disability, sex or race, is seen as unacceptable. It empowers traditionally disadvantaged groups to assert their rights to equal treatment and signals that society will not tolerate unfair discrimination. However, the experience of two decades of sex and race discrimination legislation has shown that a duty not to discriminate unfairly is insufficient to eliminate inequality.

42. The gross under-representation of women and ethnic minorities in many areas of employment signifies the continuing problem. Of particular concern must be the failure to achieve equality in employment in the public sector. We thought that a proactive approach to the employment of disabled people would help move responsibility from individuals having to challenge policies and practices in order to achieve change. We considered a range of options, all of which might have a place in promoting equality of opportunity in employment. These included: adoption of equal opportunities plans; voluntary workforce monitoring; the setting of targets; and using purchasing power to promote compliance with legislation among contractors and suppliers.



43. Public sector services have a major impact on the lives of everyone in society. Whether it is the education children receive, the medical treatment for an elderly person, the way the police deal with a crime victim, or the care that social services provide, all in society have the right to expect a high quality service, responsive to their needs. Public services will only meet the needs of our diverse society if those determining and delivering the services understand the society they serve.

44. The Modernising Government White Paper says that the public service must be a part of, and not apart from, the society it serves. We fully endorsed this and welcomed the targets Government had set for reducing the under-representation of disabled people in the senior civil service. It is important that the Government continues to be proactive in seeking suitable disabled people for appointment to all public bodies, not just those dealing with disability issues.

45. We agreed with the Better Regulation Task Force (BRTF) recommendation that the public sector should promote equal opportunities. In employment, this could take the form of targets, as for the senior civil service. But we did not want to be prescriptive given the wide range of public sector bodies from small rural primary schools with two teachers to the Employment Service with over 30,000 employees. In addition, initiatives such as workforce monitoring that are applicable to sex and race equality issues may not be for disability issues due to the need to safeguard confidentiality, especially in small organisations. We thought that there should be further public debate on the best mechanism for improving the recruitment, promotion and retention of disabled people in the public sector.

Case Study: 'User Employment Programme' run by South West London and St. George's Mental Health Services NHS Trust.

This programme provides support to people with mental health problems to help them gain and maintain employment in existing clinical and non-clinical posts within the Trust. In the first four years of its operation, 39 people with long-term mental health problems - schizophrenia, manic depression, severe depression - have been successfully supported in employment. With this support, their sickness absences (3.9%) have been lower than those of the Trust's direct care work force in general

(5.8%). As well as the clinical and social benefits that have resulted from employment, the programme makes good economic sense. The amount saved in benefits no longer paid, and gained in taxes, as a result of employment exceed the cost of providing support by some £1900 per person per year.

In addition, the Trust has adopted a Charter to decrease employment discrimination against people who have experienced mental health problems throughout the Trust. This has ensured that some 15% of those recruited by the Trust have personal experience of mental health difficulties.

The project has provided much needed employment opportunities for people who have experienced mental health problems, and has enhanced the quality of the service provided. Users of the Trust's services can now benefit from the wealth of experience and expertise of living with mental health problems that those with personal experience bring.

46. We considered that the Government should use its purchasing power to promote compliance with equality legislation, among contractors and suppliers, particularly with regard to employment. We also agreed with the BRTF that implementation of such a policy should avoid small and medium sized enterprises from being denied access to public sector contracts because the requirements were too burdensome or bureaucratic.

Recommendation 5.23: The public sector should have a duty to promote the equalisation of opportunities for disabled people in employment. There should be further discussion on the details of this duty, recognising the diversity of public sector organisations. The public sector's purchasing power should be used to promote compliance among contractors and suppliers to the public sector.

47. The BRTF report noted that "our analysis clearly suggests that imposing additional statutory burdens on business would be counterproductive at this stage. There is a lack of awareness and understanding of current regimes even as they stand and businesses are already struggling to cope with a range of new workforce regulations. However, we are convinced that action needs to be taken to reduce discrimination among private sector employers."

48. We agreed with this analysis and thought that private sector employers need to be encouraged to adopt a proactive approach to employment equality for disabled people. The DRC and the Equality Commission for Northern Ireland have a key role to play in both ensuring increased compliance with disability legislation and in developing best practice in this area for employers. The BRTF's recommendation that private sector employers should promote compliance throughout their supply chains was also endorsed.

Recommendation 5.24: The private sector should be encouraged to adopt a proactive approach to the equalisation of employment opportunities for disabled people. The DRC and the Equality Commission for Northern Ireland should play the central role in developing best practice in this area.

Local Government

49. Local government should be covered by recommendation 5.23 on the public sector. However, there is a specific issue of local government employment of

disabled people. Registered⁹ disabled people were exempted from the requirement on local government to appoint solely on merit. With the end of the registration system, the DDA removed this exception which may have led to some positive action employment practice for disabled people being withdrawn by local authorities. There are no restrictions on private sector employers having positive action schemes for disabled people.

Recommendation 5.25: The scope of local government legislation should be broadened, as necessary, to allow more positive action schemes for disabled people by local authority employers.

Enforcement

50. The DDA employment provisions are enforced by individuals in a similar way to those under the SDA and RRA. We considered the EOC and CRE recommendations for changes to the enforcement procedures and the Government response to these.

Re-instatement and Re-engagement

51. In unfair dismissal cases, employment tribunals can order re-instatement or re-engagement, whereas in discrimination cases they can only recommend this. Such recommendations are rarely made but allowing the tribunal to make an order may slightly increase the chances of disabled people returning to employment rather than only receiving compensation.

Recommendation 5.26: Employment tribunals should be able to order re-instatement or re-engagement in cases brought under the DDA and future civil rights legislation.

Questions Procedure and Time Limits

52. The questions procedure is explained in detail in the DDA Employment Provisions: The Questions Procedure. It can assist a person in formulating and presenting a case effectively to a tribunal. We supported the EOC recommendations that the procedure becomes a more formal part of the tribunal process; inferences should¹⁰ be drawn from an employer's failure to complete the questionnaire; and time limits are set. We noted the CRE recommendation that the time limit for lodging complaints to tribunals should be extended from three to six months. However, rather than propose a similar extension, we thought that tribunals, in considering whether to exercise their discretion¹¹ to extend the three month limit, should take account of the particular problems disabled people may face in asserting their rights.

Recommendation 5.27: The time limit for issuing a questionnaire once a complaint has been made to a tribunal should be extended to 4 weeks. Respondents should be required to reply to a questionnaire within 8 weeks of its date of issue. Where they do not, the tribunal should be required to draw an

⁹ Under Disabled Persons (Employment) Act 1944 (repealed)

¹⁰ Employment Tribunals already have the power, but not the duty, to draw inferences

¹¹ Employment Tribunals can extend the three month limit where they consider it just and equitable to do so

inference that the respondents are refusing to reply, or any other inference which the tribunal believes to be appropriate.

Membership of Tribunals

53. For cases under the RRA employment provisions, employment tribunals try to ensure wherever possible that the panel considering the case includes at least one person with race relations expertise. Given the specialised nature of the issues and the complexity of the law involved, a similar policy should apply to disability discrimination cases in employment.

Recommendation 5.28: Policy and practice in employment tribunals should ensure that, wherever possible, cases of disability discrimination should be heard by a panel including at least one person with disability expertise.

Future Conduct of the Respondent

54. At the moment, a tribunal could make a "recommendation" about the future conduct of a respondent in order to try to address discriminatory practices and procedures which might affect an employer's workforce rather than just an individual complainant. However, this is not a statutory power to recommend¹². There is no redress if the employer fails to comply so it is more like a suggestion by the tribunal. Tribunals should have a statutory power and the DRC should have a role in enforcing such recommendations.

Recommendation 5.29: Employment tribunals should have a power to make recommendations regarding the future conduct of the respondent and a mechanism for the DRC to enforce this should be developed.

Other Issues

Harassment

55. The DDA already covers harassment in employment and we felt that no specific statutory reference to it was needed. However, there was clearly merit in strengthening the current references to harassment in the Employment Code of Practice. Harassment of disabled people in wider society is also an issue that we considered. We felt that the Protection from Harassment Act 1997 provided victims of harassment with adequate legal remedies.

Recommendation 5.30: The DDA's approach to protection from harassment in employment should continue. Any revised Employment Code of Practice should include stronger references to this issue with clear examples.

Disability Leave

56. We similarly considered the case for specific reference to 'disability leave' in legislation. This is intended to be a period of special leave to enable someone who becomes disabled in the course of their working life to undertake action, such as rehabilitation, treatment or retraining, so that they can continue working for their employer. We concluded that the examples of adjustments in the DDA - altering an

¹² Compared with the tribunal's power under s8 of the DDA to recommend action relating to the effects on the complainant

employee's working hours and allowing the employee to be absent during working hours for rehabilitation, assessment or treatment - were adequate to cover the concept of disability leave. We also felt that a period of leave that one employer may find reasonable could be completely unreasonable and impractical for another. We welcomed the Government's aim to improve retention and rehabilitation for disabled employees.

Recommendation 5.31: The examples of adjustments in the DDA are adequate to meet the purposes of 'disability leave'. There should, however, be more emphasis on this issue in guidance, informed by the Government's work on improving retention and rehabilitation.

Employer Inquiries about Applicants' Disability and Medical Examinations

57. We were concerned about employers rejecting job applicants who disclosed their disability at the application stage and before they had the chance to demonstrate their suitability for jobs at the interview stage. The DDA allows inquiries and medical examinations of applicants before a job is offered but this might be discriminatory if not applied equally to all applicants. Following a job offer, the DDA allows medical examinations and inquiries in relation to a particular job, if these can be justified.

58. We rejected making all inquiries about disability before a job was offered unlawful. It would be unfair to the applicant who may require a reasonable adjustment at the application or interview stage and unfair to the employer who may find that, once a job is offered, there are no reasonable adjustments that can be made to enable the disabled applicant to do the job. We therefore decided on the following improvement to the present position.

Recommendation 5.32: Disability or disability-related enquiries before a job is offered should be permitted only in limited circumstances:

- **when inviting someone for interview or to take a selection test, employers could ask if someone had a disability that may require reasonable adjustments to the selection process; and**
- **when interviewing, employers would be allowed to ask job related questions, including if someone had a disability which might mean a reasonable adjustment would be required.**

Further consideration should be given to other circumstances where such enquiries should be permitted, for instance, for monitoring purposes, with rules on confidentiality of information obtained, and in the particular case of the guaranteed interview scheme.

59. This recommendation would still leave job applicants who required reasonable adjustments to the application form in the position of having to disclose their disability. However, there was no easy solution to this and the recommendation does allow a disabled applicant the choice of deciding whether to disclose their disability.

60. We considered that it was reasonable for employers to make job offers conditional on passing a medical or other test, if this was justified. It may be clear at interview that a disabled person will require reasonable adjustments and, if justified, the employer should be able to request a medical test or ask about job-related needs, even if he does not require this of every person offered a job.

Recommendation 5.33: Except for the circumstances in recommendation 5.32, disability or disability related inquiries should only take place, where justified, when a job offer, conditional on passing a medical or other test, has been made.

Occupational Pensions

61. DDA regulations allow that, in certain circumstances, disabled people's access to certain occupational pension scheme benefits can be denied or restricted; and, disabled people can be required to pay full contributions whether or not they have access to the full rate of benefits. Our consideration of this issue was helped by independent research commissioned on our behalf.¹³

62. We agreed that there should be equal access to membership of occupational pension schemes for all disabled people when they start employment. However, we recognised that where disabled people chose to join a scheme late, there might be concerns about 'adverse selection' (ie. knowingly joining a scheme because of a high chance of benefiting from it early). We therefore agreed that restricted access should continue to be permitted for 'late joiners' (or re-joiners), though this should be more strictly limited.

Recommendation 5.34: Occupational pension schemes should be required to offer equal access to scheme membership for disabled people when starting their employment. Restricted access to certain benefits should be permitted for disabled people choosing to join a scheme later in their employment or re-joining a scheme, but only if: restricted access to benefits is strictly limited to a specific pre-existing impairment or condition; such restrictions can be justified, eg. based on relevant and reliable information such as up-to-date actuarial or statistical data; and schemes regularly review any restrictions or impose time limits on them.

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Recommendation 5.35: Occupational pension schemes should have to make 'reasonable adjustments' to their documentation and information.

Recommendation 5.36: Coverage of insured benefits provided by an occupational pension scheme by section 17 of the DDA should be clarified in future guidance to prevent confusion with the provision of group insurance under section 18 of the DDA.

Recommendation 5.37: In principle, in line with arrangements for Equal Pay cases, complaints of disability discrimination against trustees and managers of occupational pension schemes should be heard by employment tribunals.

¹³ 'Occupational Pensions and Disabled People', Institute of Employment Studies (see Annex B)

Group Insurance

63. The DDA protects disabled people where an employer has entered into an arrangement with a provider of group insurance services to provide such insurance for employees. Regulations which define group insurance help ensure that insurance organisations are not made liable for the discriminatory acts of employers, for example where such acts were committed by the employer as an agent of the insurer. We were aware that these regulations were seen by some groups as rather limited because, as there is no power in the DDA to make regulations allocating liability between an employer and an insurance company, the regulations have been drafted so as to ensure that insurance companies are only responsible for their own acts of discrimination.

Recommendation 5.38: Changes should be made to legislation to ensure that an insurer offering group insurance will only be liable for his own acts of discrimination and not those performed by an employer as his agent. (The employer's responsibilities would remain the same.)

Leases, Building Regulations and Statutory Consent

64. There are some circumstances where making a reasonable adjustment to an employer's premises might be less than straightforward. These are: where the building has been built in accordance with Part M of the building regulations (or Scottish or Northern Ireland equivalents); where it is occupied under a lease; or where statutory consent might be needed. The DDA includes provisions covering each of these circumstances and we agreed that these should continue. Where the premises are occupied under a lease the DDA provides that a landlord should not withhold consent for adjustments unreasonably. We agreed that this should be widened to cover not only adjustments for actual employees but also access improvements which an employer might choose to make generally.

Recommendation 5.39: The DDA's approach to leases, building regulations and requirement for statutory consent for employers making reasonable adjustments to premises should continue. Access improvements which an employer chooses to make should not be unreasonably refused by a landlord.

Health and Safety

65. Employers have important legal responsibilities to assess the risks to the health and safety of their workforce, including to disabled employees, and to put into place measures to protect them. We recognised that some employers have concerns about the health and safety implications of employing disabled people. While the number of occasions where health and safety problems represent an insuperable obstacle to employing a disabled person is very small, instances have been reported where health and safety issues have been cited as a reason for, say, not employing a disabled person. This could be because of an employer's unwarranted fears or lack of knowledge of particular disabilities.

Recommendation 5.40: We recognise that some employers have concerns about the health and safety implications of employing disabled people. We recommend that examples which illustrate these concerns should be investigated and that consideration should be given as to how the concerns might best be addressed (without risking employers becoming more concerned as a result).

Duty to Anticipate Reasonable Adjustments

66. We recognised that the SDA and RRA approach to indirect discrimination could provide a route to effecting changes for groups of people, whereas the employment provisions of the DDA focus solely on the individual. However, we agreed that the approach of those Acts to indirect discrimination was not appropriate for disability discrimination but wished to see exploratory work taken forward on the issue of employers anticipating reasonable adjustments. Though an anticipatory duty might not be straightforward - or even possible - to develop, ways should be explored of moving the point at which adjustments are initiated away from employers' contact with individual employees and job applicants. This work should include the promotion of good practice in this area.

Recommendation 5.41: Work is taken forward to explore ways of employers having to anticipate the need for adjustments rather than awaiting contact with individual employees and job applicants before considering and making adjustments.

Instructions to Discriminate and Pressure to Discriminate

67. Both the SDA and RRA make it unlawful for:

- someone who has authority over, or influence with, another person to instruct that person to do an act of unlawful discrimination, or to procure or attempt to procure the doing of such an act by that person; and
- someone to bring pressure to bear on another person to do an act of unlawful discrimination.

Recommendation 5.42: For consistency with the SDA and RRA, the provisions relating to instructions to discriminate and pressure to discriminate should be included in civil rights legislation.

Conclusion

68. The DDA employment provisions provide disabled people with significant rights in relation to employment. We have recommended retaining most of the provisions and suggested improvements in some areas. However the gaps in the DDA, with some employers and occupations not covered, cannot be justified and we have recommended, where appropriate, that they be ended. These will ensure that the provisions are comprehensive and remedy one of the major weaknesses in the Act.

CHAPTER 6 ACCESS TO GOODS, SERVICES AND PREMISES

"Each one of our customers is an individual with diverse and particular requirements. We recognise this and our Board of Directors is fully committed to the principles of equality and diversity. This long term commitment helps inform our business strategy: meeting each of our customers' requirements simply makes good business sense."
Dino Adriano, Group Chief Executive, J Sainsbury Plc

Introduction

1. The use of services such as shops, cinemas, restaurants and libraries is something most people enjoy without a second thought. Many disabled people cannot take access to such services for granted. If we are to achieve an inclusive society where the contribution of disabled people is allowed to flourish and is valued, and where everyone can enjoy the facilities and services on offer - independently and more conveniently - we must strive for comprehensive rights of access.

2. Moreover, society and the economy as a whole will also benefit from comprehensive rights for disabled people. There are estimated to be around 8.5 million disabled people in the UK. This represents a potentially huge pool of customers. Thus, if services are more accessible to a wider range of disabled people, businesses are likely to generate considerable extra revenue. The 1993 Touche Ross report *Profiting from Opportunities - A New Market for Tourism* identified the potential scale of this. It suggested that the potential new market for disabled tourists across Europe, if facilities were made accessible, was worth around £17 billion. As well as increased sales from disabled customers and their families, businesses with accessible services are likely to have a better public image which should improve business opportunities.

3. Part III of the DDA contains some important rights for disabled people in terms of access to goods, facilities, services and premises. However, we believe that these provisions could be improved in a number of ways.

Key Recommendations

- Part III of the DDA has yet to be tested greatly in the courts. Its provisions on access to goods and services should therefore continue in respect of the categories of: less favourable treatment and types of adjustments; service providers' duties to make reasonable adjustments; and the defences for less favourable treatment.
- We recognised there was potential concern, under Part III of the DDA, with: the justifications service providers can use for less favourable treatment; the point at which service providers must consider making reasonable adjustments; and whether the DDA provisions need to go further to ensure services are provided in integrated settings. The DRC and Equality Commission for Northern Ireland should keep these provisions under review. Any future changes should state rights and duties in a clear form. The separate justification available to service providers for not making a reasonable adjustment should be removed and the factors to be taken into account in assessing reasonableness should be expanded to reflect valid justifications.
- The access to services provisions of civil rights legislation should extend to all functions of public authorities, with further consideration of the implications of the duty to make reasonable adjustments in respect of such an extension. There

should be a duty on the public sector to promote the equalisation of opportunities for disabled people, with further discussion of the most effective mechanisms for achieving this.

- The DRC should work with the Department of Trade and Industry, disability organisations and private sector advocates to promote the benefits of 'design for all' products and encourage manufacturers to supply information accompanying their goods in accessible formats. The Government should explore what, in addition to good practice approaches, could be achieved within the context of the DDA and European legislation to make products more accessible for disabled people, especially as regards the provision of information accompanying manufactured goods in accessible formats.
- A landlord should not be allowed to withhold consent unreasonably from a disabled person seeking to make changes to the physical features of his or her premises, although the landlord should not have to meet the costs. Further consultation should take place on the correct balance between the rights of the landlord and the disabled person.

Current Position

4. The DDA provisions on access to goods, facilities and services (Part III of the DDA), apply to all those providing services to the public (with some exceptions, such as, certain educational services and the use of any means of transport). The Part III provisions are set out in detail in the Code of Practice on Rights of Access to Goods, Facilities, Services and Premises ('the Code of Practice'), but the key duties can be summarised as follows. A service provider discriminates against a disabled person if he treats him less favourably than he treats others and cannot show this treatment is justified. It is unlawful for a service provider to discriminate against a disabled person in: refusing to serve him or her; providing the service to a lower standard; or offering the service on worse terms. A service provider also discriminates against a disabled person if he fails to comply with the duty to make a reasonable adjustment for a disabled person and cannot show the failure was justified. A service provider should take reasonable steps to:

- change a practice, policy or procedure which makes it impossible or unreasonably difficult for disabled people to use a service (eg. a restaurant would have to waive a "no dogs" policy for blind customers accompanied by their guide dogs);
- provide an auxiliary aid or service which would enable disabled people to use a service (eg. a bank may have to provide an induction loop for customers with a hearing impairment); and
- overcome physical barriers which make it impossible or unreasonably difficult for disabled people to use a service by removing or altering them (eg. replacing steps with a ramp); providing a reasonable means of avoiding them (eg. using an alternative entrance); or by providing the service by a reasonable alternative method (eg. visiting disabled customers at home).

5. We considered this range of categories of adjustment and areas in which discrimination is unlawful and were confident that they covered the unacceptable infringements of disabled people's civil rights in accessing services.

Recommendation 6.1: In defining discrimination in access to goods and services, the DDA categories of less favourable treatment and adjustments should continue.

6. The Part III provisions use the concept of what it is 'reasonable' for a service provider to do to make his service accessible. 'Reasonable' is not defined in the legislation. However, a number of factors which may be taken into account when considering what is reasonable are identified in the Code of Practice. Although there are ways other than 'reasonable' to express what service providers must do (eg. a service provider should make adjustments unless to do so would cause 'undue hardship'), we preferred the concept of 'reasonable'. It provides service providers with continuity from their current duties, it is flexible and is a term commonly used in legislation and understood by the courts.

7. We were content with the factors¹ to consider when assessing reasonableness but thought they should be set out in legislation rather than in a Code of Practice. The difference may not appear significant in practice but it would add clarity to legislation. Also, we consider that courts will place more importance on factors set out in legislation.

Recommendation 6.2: The DDA's approach to a service provider's duty to make reasonable adjustments and the factors to be considered in assessing reasonableness should continue in civil rights legislation. However, the factors contained in the Code of Practice should be placed in legislation.>>

Overcoming Physical Barriers to Access: Accessibility Standards

8. Under Part III, service providers have to take reasonable steps to make adjustments to the physical fabric of their premises to overcome the barriers a disabled person may face. These duties will come into force in 2004 ('the 2004 duties'). The DDA does not set specific standards to be achieved in making these adjustments. We considered using a standards-based approach in future legislation (ie. if premises meet set technical standards, the service provider is regarded as meeting his duties). This approach has advantages. Standards would provide more certainty for service providers and disabled people alike. Service providers would be clearer about what was expected of them in terms of building access which would help them to plan changes. Also, disabled people would know what to expect in terms of access. Against this, imposing standards would introduce rigidity. The approach in the DDA is flexible (based on 'reasonableness' and the circumstances of each case), allowing service providers to tailor solutions to disabled people's needs. Some standards could become out of date, whereas the concept of 'reasonableness' evolves over time and responds to changes in technology and society.

9. We concluded that the best approach for both disabled people and service providers lay somewhere between the extremes of prescriptive standards and total uncertainty as to what was a 'reasonable' adjustment. We noted that under the DDA employment provisions there are elements of a standards-based approach whilst still retaining reasonable adjustments to meet the needs of individual disabled people.

A Standards Based Approach in the DDA Employment Provisions

A building or extension to a building may have been constructed in accordance with Part M of the building regulations (or the Scottish parallel, Part T of the Technical Standards) which is concerned with access and facilities for disabled people.

¹ See paragraph 4.11, Code of Practice

Regulations provide in these circumstances that the employer does not have to alter any physical characteristic of the building or extension which still substantially complies with the building regulations in force at the time the building works were carried out.

Where the building regulations in force at the time of a building's construction required that a door should be a particular width, the employer would not have to alter the width of the door later. However, he might have to alter other aspects of the door (eg. the type of handle).

Source: The Employment Code of Practice

10. We felt that there were clear advantages in giving service providers a level of certainty that the physical adjustments they were making would meet their duties under the DDA. We understand that the National Disability Council is considering whether the Code of Practice for the 2004 duties might include elements of a standards-based approach. Such an access standard could be based on the work of the British Standards Institution (see Chapter 8). The DRC should consider its role in assisting service providers, who may be making large investments in meeting access standards, to ensure that they are compliant.

Recommendation 6.3: Consideration should be given to the Code of Practice on the 2004 duties including access standards, which would give a level of certainty to service providers on meeting their legal obligations

The Duty to Make Reasonable Adjustments

11. The Code of Practice² sets out service providers' duty to make reasonable adjustments in more detail. We considered the key elements of the duty to be that: it is a duty to disabled people at large; it has an anticipatory element; it is a continuing and evolving duty; and it is dependent for its enforcement on individual disabled people making claims against service providers.

12. We agreed that these principles should continue in civil rights legislation for disabled people accessing services to the public. We considered that the anticipatory and evolving nature of the duty is essential to ensure that barriers to access are removed. However, we were concerned with the unclear and complex drafting of Part III of the DDA, for instance the duty on service providers to consider making adjustments in advance of disabled customers attempting to use their service could be clearer.

Recommendation 6.4: The key principles in the DDA duty to make reasonable adjustments should continue in civil rights legislation: it is a duty to disabled people at large; it is an anticipatory duty; it is continuous and evolving over time; and it is enforceable when an individual has been discriminated against. In future civil rights legislation, these rights and duties should be expressed in clearer terms

When a Reasonable Adjustment has to be Made: the Trigger

13. Under DDA Part III, a service provider has a duty to make reasonable adjustments, say, to a physical feature, when it can be seen that the feature would

² See paragraph 4.4 to 4.9, Code of Practice

make it "impossible or unreasonably difficult" for disabled people to make use of the service. "Impossible or unreasonably difficult" is the 'trigger point' for the duty. We considered whether the trigger is set at a fair level, especially since it differs from the "substantial disadvantage" trigger in the DDA employment provisions. However, as there is no case law to help interpret the level, we considered the trigger point in general terms.

14. We rejected having a very low trigger, ie. service providers having to make adjustments whenever a disabled person finds any difficulty in accessing the service. Such a trigger would mean services providers having to make adjustments in more circumstances and for more people. This would be a waste, as resources earmarked for adjustments for those with the most severe difficulties would be diverted to those who faced minor problems. We considered a high trigger, for example service providers having to make adjustments only for disabled people facing extreme difficulty in accessing their service. Such a trigger would focus resources on those facing the most difficulties. However, it would also mean that service providers would not have a duty to make adjustments for the large number of disabled people who have anything less than great difficulty. We favoured a central trigger that still focused resources on meeting the needs of disabled people who faced real difficulties in accessing services whilst ensuring that services generally became increasingly accessible. We considered that there may be an advantage in having consistency between the triggers in Part II and Part III of the DDA. For that reason, depending on the development of case law, the test of "substantial disadvantage" should be considered as a possible central trigger in any future review.

Recommendation 6.5: The trigger for the duty on service providers to make reasonable adjustments has not been tested in the courts. The courts' interpretation of the level of the trigger should be monitored by the DRC and the Equality Commission for Northern Ireland and, if it is interpreted as high, it should be lowered to a more central level

15. The next three recommendations cover a complex area of the DDA access to services provisions: the defences available to service providers for treating disabled people less favourably and failing to make a reasonable adjustment. We have considered whether they are fair to both disabled people and service providers and sought to simplify them.

Service Providers' Defences

16. A service provider can justify less favourable treatment of a disabled person or failure to make reasonable adjustments. The justification must fall within one of five specific categories³, which include that the treatment is necessary to protect health and safety or the disabled person is incapable of giving informed consent.

17. The DDA employment provisions use a broad justification rather than specific ones. We felt that, given the short term and standard pattern of most service relationships, allowing service providers a wide variety of reasons for less favourable treatment would be undesirable. We were generally content with the specific justifications in DDA Part III, but thought that, in some cases, they could be explained more clearly to service providers. However, cases might arise where a service provider may have a legitimate reason for treating a disabled person less favourably but that reason is not listed. Conversely there may be circumstances in which the

³ For details of the five categories, see Paragraphs 6.10 to 6.26, Code of Practice

defences appear to operate unfairly towards disabled people. The DRC should, therefore, monitor case law to see if the justifications give service providers sufficient defences and, if not, Government should use regulation-making powers to amend the list.

Recommendation 6.6: The limited, specific justifications for less favourable treatment in the DDA access to services provisions should continue. There should be better guidance to service providers on the appropriate use of the 'health and safety' and 'greater expense' justifications. The DRC and the Equality Commission for Northern Ireland should monitor that the justifications are operating fairly for both disabled people and service providers and, if not, the Government should use regulation making powers to amend the list

18. In recommendation 5.2, we concluded that employers should not have a separate justification for failing to make a reasonable adjustment. We believe the same for service providers, ie. the only defence a service provider could have for not making an adjustment would be that it was not reasonable to do so. In other words, possible justifications on, for example, grounds of health and safety should be considered as part of the general question of whether or not it is reasonable to have to make the adjustment. Further consideration should be given to the circumstances in which the lack of informed consent (another of the specific justifications) makes it reasonable not to make an adjustment.

Recommendation 6.7: Justifications for failure to make reasonable adjustments should be removed and the factors to be taken into account in assessing reasonableness should be expanded to reflect valid justifications

The Justification Test

19. We were concerned with the wording of the DDA Part III test as to when a service provider would be justified in treating a disabled person less favourably. In summary, taking the health and safety justification, a service provider can justify treating a disabled person less favourably if, in his opinion, the treatment is necessary for safety reasons and it is reasonable, in all the circumstances, for him to hold that opinion. We considered whether this test was too subjective and placed too much emphasis on the service provider's opinion. We felt that legislation should not endorse stereotypes and prejudice. We concluded that there needed to be a defence for service providers acting 'in good faith' and therefore their opinion should be considered, but not given undue weight. The test should be only as subjective as necessary to achieve these aims. However, given the lack of case law, it would be premature to recommend changes at this stage.

Recommendation 6.8: As the test for service providers seeking to justify less favourable treatment has not been tested greatly in the courts, the DRC and the Equality Commission for Northern Ireland should keep case law under review and make recommendations if there is evidence that the test is not operating fairly for disabled people or service providers. Any recommendations should balance the interests of service providers and disabled people and protect service providers acting in good faith but without giving undue weight to their opinion.

Inclusive Services

20. Service providers have a significant role to play in ending the marginalisation of disabled people in society. For example, the increase in services that are accessible through the Internet and over the telephone has obvious benefits for disabled people with mobility or sensory difficulties. However, unless disabled people have the choice of accessing services in the same environment as non-disabled people, we shall never achieve a truly inclusive society. Whether it is a disabled person sharing a meal with work colleagues in a restaurant, or helping a friend choose clothes, or taking their children to an amusement park, the need for integrated services is clear. Disabled people should not have to be segregated from their family and friends in accessing services.

21. Under Part III of the DDA, when a service provider considers, for example, taking steps to overcome a physical barrier to accessing their service, they can look, at the same time, at ways to avoid, remove or alter the barrier or provide the service by alternative means, ie. there is no hierarchy of approach. We believe this freedom for service providers is warranted to enable resources to be used to best effect in improving access. A more prescriptive approach could result in fewer disabled people being able to access the service. However, it is right that the benefits of integrated services for customers and service providers alike should be promoted. We considered that an important mechanism for such promotion could be the forthcoming Code of Practice on the 2004 duties. Whether such a non-legislative approach to promoting inclusive services is effective will need to be monitored following the introduction of the new duties.

Recommendation 6.9: Achieving the most integrated approach to the provision of services as is reasonably possible should be society's aim. We welcome the Government's request to the National Disability Council to promote the benefits of inclusive services in its preparation of the Code of practice on the 2004 duties. The DRC should review the effectiveness of this good practice approach and consider whether legislation is necessary.

Coverage of Services

22. The exclusion of education and transport from DDA Part III are considered in Chapters 4 and 7. Some other services are also not covered by the DDA. We considered the future coverage of private clubs, services to shareholders and all functions of public authorities.

Private Clubs

23. Services not available to the public, such as those provided by private clubs to their members, are not covered by Part III. However, where a club does provide services to the public then the DDA applies to those services. The Race Relations Act (RRA) does cover both the private and public functions of some private clubs. We considered that there were no good reasons for not covering membership of clubs and the services they offered to members in civil rights legislation. However, we recognised that people should have a right to privacy and to associate with whomever they choose. We would not want to cover private social arrangements and there should be a suitable exemption for these.

Recommendation 6.10: Private clubs should be covered by civil rights legislation but the definition of a club should not extend to private social arrangements.

Services to Shareholders

24. We were concerned that companies should not discriminate against their disabled shareholders by, for example, unreasonably failing to provide information in accessible formats, or by holding meetings at inaccessible venues. We noted that the Department of Trade and Industry is conducting a fundamental review of Company Law and felt that this issue should be considered as part of that wider review of services to shareholders.

Recommendation 6.11: The Company Law Review should consider whether there is, as part of its review, scope for introducing measures that improve communications between companies and disabled shareholders.

Recommendation 6.12: In principle, civil rights legislation should extend to all functions of public authorities but the Government needs to give careful thought to what the implications of a duty to make reasonable adjustments would mean in practice.

Functions of Public Authorities

25. There are some 'service' functions carried out by public authorities that may not be covered by DDA Part III, for example, services which can only be carried out by public authorities and which are not similar in kind to the services which can be performed by private persons (such as the carrying out of law enforcement functions). We welcomed the Home Office's agreement, in response to the Stephen Lawrence Inquiry report and the Commission for Racial Equality (CRE) review, to extend the RRA to cover all the activities of public authorities. We believed that a similar extension to disability legislation to cover the functions of public authorities is required to ensure that disabled people are not treated in a discriminatory manner. The implications of extending the duty to make reasonable adjustments to these functions need to be considered further.

Promotion of Equality of Opportunity for Disabled People in the Provision of Services

26. In Chapter 5 we considered the duty of the public sector to promote the equalisation of opportunity for disabled people in employment. A similar duty on the public sector in relation to service provision is also required.

27. There is one feature of such a duty towards disabled people that differs from parallel recommendations in the Equal Opportunities Commission (EOC) and CRE reviews. As explained above, the key elements of a service provider's duty to make adjustments are that it is anticipatory and is owed to disabled people at large. In order to help this duty to be met meaningfully in the public sector, plans need to be produced regarding the action that the public sector will take. These action plans will demonstrate the public sector's commitment to making their services accessible and allow monitoring and bench-marking between different organisations. Innovative access solutions and best practice can be spread between public sector organisations through publication of the plans. In addition, the public sector should assist businesses in meeting their obligations, not raise unnecessary administrative and financial barriers. For similar reasons as in Chapter 5, we considered that the private sector should be encouraged to produce action plans rather than introduce a new legislative duty to cover them.

Recommendation 6.13: The public sector should be under a duty to promote the equalisation of opportunities for disabled people in the provision of services. Any duties on the public sector in civil rights legislation on disability should parallel those in sex and race legislation. The production of action plans should form an element of the public sector duty and should be encouraged in the private sector. There should be further public discussion on the most effective mechanisms for achieving equalisation of opportunities for disabled people, recognising the diversity of public sector organisations.

Voluntary Sector

28. We decided that there was no case for treating the voluntary sector differently to the private sector even though the expectations on them to promote equality for disabled people may be higher. However, the DRC should consider raising awareness amongst this sector of their duties under disability legislation and best practice.

Recommendation 6.14: Voluntary sector service providers should continue to be treated in the same way as those in the private sector. The DRC and the Equality Commission for Northern Ireland should raise awareness amongst voluntary sector service providers of their duties under disability legislation.

Manufacturing

29. The manufacture or design of products is not covered by DDA Part III as it does not involve the provision of services direct to the public. Thus, manufacturers are not required to make changes to their products, packaging or instructions. However, if they do provide services direct to the public, they may have duties under Part III like any other service provider. We considered what action could be taken to improve the supply of manufactured goods which were designed to be usable by all people, including disabled people ('design for all') and to increase the number of goods accompanied by information in accessible formats (eg. instruction manuals for electrical appliances).

30. We recognised that it could be difficult to impose unilateral legal obligations on UK manufacturers to design their products to be accessible. UK manufacturers operating within the Single European Market might be placed at a competitive disadvantage and the UK would still have to accept goods not meeting accessibility standards from other EU states. Similar considerations would also apply to the provision of information accompanying manufactured products in accessible formats. There are thus strong arguments for saying that effective action can only be taken at European level. However, we considered that there were also arguments the other way, especially on health and safety grounds, for instance where operating instructions for electrical equipment were inaccessible to persons with sensory or learning disabilities. We concluded that a proactive approach to promoting the benefits of 'design for all' products and accessible information accompanying manufactured products should be adopted by the DRC, together with an analysis by Government of the scope for pressing for effective action at a European level, as well as for the use of the DDA within the single market rules. An example of initiatives that could be taken by the DRC is to develop a 'kitemark' to acknowledge best practice amongst manufacturers in this area.

Case Study: The Big Button Telephone

The Big Button telephone was designed by BT following lobbying by age and disability groups. The phone, which met the 'Design for All' principle, has many features which benefit disabled customers such as large buttons and large numbers, amplification and flashing light ringing indicator. These features were coupled with a 'funky' design that appeals to a wider audience. The phone has been a commercial success with sales and rentals nearing 50,000 this year.

Source: OfTEL/BT

Recommendation 6.15: Disability organisations and private sector advocates of 'design for all' look for opportunities to make use of the Department of Trade and Industry's close contact with the manufacturing sector in communicating the benefits of design for all.

Recommendation 6.16: The DRC, working with the Department of Trade and Industry, retailers and manufacturers, should promote best practice in relation to the provision of information in accessible formats accompanying manufactured goods.

Recommendation 6.17: The Government should gather a comprehensive picture of what is happening at a European level on accessibility standards for products and accompanying information and should examine the opportunities for using European legislation and the DDA in this area, especially as regards the provision of information accompanying manufactured goods in accessible formats.

31. However, for the principle of 'design for all' and accessible information to become firmly embedded amongst the design community, it needs to be included in design courses. We welcomed the Design Council's research project to provide designers, and those commissioning design, with information to design products which enhance independence at home and improve access to work for disabled people. The Government's Millennium Products project, which celebrates British excellence in design and innovation, has already identified 47 world class products addressing disability issues. We welcomed the establishment of a database 'Sharing Information' which will spread good practice in innovation and design, in particular its role in strengthening the teaching on design and technology in the National Curriculum.

Recommendation 6.18: The Department of Trade and Industry (DTI) should assist disability organisations in making contact with those in the design community with a strong interest in this area, such as the Royal College of Art, the Design Council and Central Saint Martins College of Art and Design. DTI should facilitate contacts between disability organisations and the Design Council to discuss possible joint avenues for promotion and celebration of Millennium Products.

Other Issues

Insurance

32. There are special rules in the DDA affecting the provision of insurance. Less favourable treatment in the provision of insurance is justified if it is based on actuarial or other statistical data on which it is reasonable to rely. These regulations recognise

the particular nature of insurance whereby insurers need to be able to distinguish between individuals on the basis of the risks against which they seek to insure⁴. We were reassured that, in a case of disability discrimination, the onus would be on the insurer to defend less favourable treatment by producing and justifying actuarial data that was used.

33. We held a seminar on genetics and insurance to assist our consideration of these issues. We were concerned by insurers' assumptions about genetic pre-dispositions to conditions and the use of information from genetic tests. We noted that in response to the Human Genetic Advisory Commission report⁵ on genetic testing in the insurance industry, the Government had established an independent committee to evaluate the reliability of genetic tests. We welcomed the insurance industry's agreement to voluntarily abide by the Genetic and Insurance Committee's decisions on the use of tests. However, we believed that given the advances in genetic testing, the DRC should take an active interest in this area to safeguard the interests of people with genetic pre-dispositions to conditions who are likely to become disabled.

Recommendation 6.19: Insurance services should continue to have special provisions in civil rights legislation. These provisions should be in secondary legislation to allow them to be amended in response to changing circumstances. The DRC and the Equality Commission for Northern Ireland should monitor the special treatment of insurance and work with the Human Genetics Commission and the Genetic and Insurance Committee in this area to safeguard the interests of people with genetic pre-dispositions to conditions who are likely to become disabled.

Copyright

34. Those seeking permission from copyright owners to convert documents into alternative formats, such as Braille or large print, can often experience delays or a lack of response. The European Union is considering a Directive on the harmonisation of copyright and related rights in the information society that would allow exceptions to the need to obtain permission from copyright owners for conversions of text into accessible formats. The Department of Trade and Industry will lead on implementing the final EU Directive through UK law and will consult disability organisations in order to assess the possible range of exceptions. A balance must be struck between the needs of disabled people and the rights of copyright owners to exploit the commercial market for their work in alternative formats, such as large print books. We agreed that this issue was best addressed in copyright legislation.

Recommendation 6.20: We welcome the readiness, in principle, of the Department of Trade and Industry to include in future copyright legislation an exception for visually impaired people. In implementing the final EU Directive through UK law, disability organisations and organisations for copyright owners should be consulted to ensure the right balance between their interests.

Leased Premises

⁴ See Code of Practice paragraphs 7.2 to 7.8 for further details

⁵ Implications of Genetics Testing for Insurance, HGAC (see Annex B)

35. In Chapter 5 we considered the position of employers in leased premises making adjustments and agreed the current provisions under the DDA should continue. We also agreed that landlords should not unreasonably withholding consent to employers seeking to make their leased premises accessible for disabled employees and more generally. We believed that similar provisions should apply to service providers, including in relation to the landlord requiring re-instatement of any alterations made.⁶

Recommendation 6.21: The DDA's approach to re-instatement of alterations made to leased premises should continue. Landlords should not unreasonably withhold consent to service providers seeking to make their leased premises more accessible to disabled people.

Interpretation of Part III of the DDA

36. In preparing the Code of Practice a number of technical issues were raised on the interpretation of Part III of the DDA, for instance what would count as the provision of a service and the identity of a service provider in particular circumstances. The National Disability Council passed these issues to the Chair of the Task Force.⁷ We considered that some of the issues would require the judgement of the Courts to clarify and, in others, the Sex Discrimination Act (SDA) and RRA take similar approaches to the DDA without apparent difficulty. However, it is important that legislation is as clear as possible for disabled people and service providers.

Recommendation 6.22: The DRC, in carrying out its duty to keep disability legislation and case law under review, should make recommendations to Government if the operation of the provisions identified by the National Disability Council cause difficulties.

Enforcement

37. Part III of the DDA is enforced through county and sheriff courts. There was some suggestion that the provisions should instead be enforced through employment tribunals because they had more expertise in disability and other anti-discrimination issues than county courts that would rarely hear such cases. We noted, however, that the Government has rejected similar suggestions on cases under the SDA but we felt this issue merited further consideration.

Sale, Letting and Management of Premises

Current Position

38. Part III of the DDA also contains provisions affecting the sale and letting of premises. Like the goods and services provisions, a person discriminates in relation to premises if he treats a disabled person less favourably and cannot show that the treatment is justified. Discrimination is unlawful in the disposal of premises, the

⁶ See paragraphs 48-50, DRTF Paper 13/99, for further details.
Available at: www.disability.gov.uk

⁷ 'Issues Raised in the Consultation on the 1999 Code of Practice',
Brian Doyle (see Annex B)

management of premises and by withholding consent to dispose of premises. There is an exemption for private sale or lettings and for small dwellings. The Code of Practice provides more details about these provisions.

Private Disposal of Premises

39. The DDA premises provisions do not apply to owner-occupiers selling or letting their premises privately. We felt there were no grounds for interfering in such private transactions.

Recommendation 6.23: The DDA exemption for the private disposal of premises should continue in civil rights legislation.

Small Dwellings

40. In common with the SDA and the RRA, the DDA provisions do not apply to certain small dwellings, and the EOC and CRE reviews made no recommendations for changes to these. The definition of small dwellings includes premises where the owner and his family reside and share accommodation on the premises with people not part of his household and let out accommodation to no more than two other households. The definition also includes premises where the owner and his family reside and share accommodation with people not part of their household and where there is accommodation for up to six other people. We felt the limit of six people could be unnecessarily high to protect the privacy of landlords and their families and should be kept under review.

Recommendation 6.24: The small dwellings exemption should continue in civil rights legislation with a reserve power to lower the limit of "six persons" as necessary.

Reasonable Adjustments

41. Unlike the DDA Part III provisions on goods and services, there is no legal duty to make reasonable adjustments in relation to premises which are sold, let or managed. We felt that this omission should be remedied and this is considered below.

Policies, Practices and Procedures

42. There is no reason why those covered by the DDA premises provisions should not have to make reasonable adjustments to their policies, practices or procedures. An example could be a managing agent that refuses to allow animals in rented accommodation. He may have to adjust that policy to allow a blind tenant to keep his or her guide dog.

Recommendation 6.25: In civil rights legislation, those covered by the DDA premises provisions should be under a duty to make reasonable adjustments to their policies, practices and procedures, in the same way as service providers.

Auxiliary Aids and Services in the Selling or Letting Process

43. Although the DDA premises provisions do not require reasonable adjustments in the selling or letting process, we were advised that the DDA access to service provisions would apply. For example, estate and managing agents will be under a duty to take reasonable steps to provide auxiliary aids and services for disabled people if they offer premises to the public. Thus, an estate agent should assist a visually impaired prospective buyer by reading out sales particulars or take longer when showing a prospective tenant with mobility difficulties around premises.

44. We were concerned that the duty to provide auxiliary aids and services should not end once the premises had been leased and, for example, the managing agent is no longer providing services to the public. Communications between the two parties should still be subject to a duty to provide auxiliary aids and services. As an example, a managing agent renting premises to a blind tenant should telephone the tenant and not rely on written letters. We did not envisage a continuing obligation once premises had been sold outright.

Recommendation 6.26: In civil rights legislation, those disposing of premises to the public should continue to be covered by the duty under the DDA access to service provisions to provide auxiliary aids and services in the selling and letting of premises. This duty should extend to any communications between those disposing of premises and the lessee once the premises had been let.

45. We considered a duty to take reasonable steps to provide auxiliary aids and services in relation to the premises itself, eg. portable induction loops and the installation of specially adapted toilet seats. Given the statutory duties on local authorities in this area we considered this issue in Chapter 8, making recommendations on raising the standard of services provided by local authorities.

Overcoming Physical Barriers to Premises

46. We felt that it would be unreasonable to expect those disposing of premises to have to make and meet the cost of physical adjustments for disabled people. However, living in suitable housing is fundamental to people's enjoyment of life. We felt that disabled people should not have to rely on the goodwill of those disposing of premises to make reasonable physical adjustments necessary for them to live comfortably. We believe, therefore, that landlords and managing agents etc. should not be allowed to withhold consent unreasonably for a disabled tenant to make physical adaptations to premises.

47. It is important that further work is done to determine what would and would not be reasonable in these circumstances and what rights the owner of the premises has to expect the premises to be returned to the state in which they were let. Requiring full reinstatement of the premises by the tenant on his departure would make this new right meaningless in many cases because of the costs involved. However, there is clearly a fear that adaptations for disabled people will make the premises less attractive for future lessees and purchasers and this fear needs to be addressed.

Recommendation 6.27: There should be no duty on those disposing of premises to make adjustments to the physical features of the premises. However, in civil rights legislation, they should not be allowed to withhold consent unreasonably for a disabled person making changes to the physical features of the premises. There should be a wide consultation on the factors in determining when it would be reasonable and unreasonable for a landlord to

withhold consent, with the aim of achieving the right balance between the rights of the owner of the premises and the disabled person.

Recommendation 6.28: The Government should do more to raise awareness amongst owners of premises of the benefits of physical adaptations that increase accessibility for disabled people.

Information about the Accessibility of Premises

48. In looking to buy or rent premises, disabled people need information about the accessibility of the properties they are viewing. There is little point viewing premises that are clearly unsuitable. We considered whether a statutory duty should be placed on all those involved in the disposal of premises to provide information on the accessibility of premises. We felt that such a blanket duty would be bureaucratic. It would be difficult to provide information that was useful to more than a narrow group of disabled people. We preferred a voluntary approach.

Case Study: Cardiff Accessible Housing Register (CAHR)

The CAHR is a joint initiative between the Voluntary Action Cardiff Housing Access Project and a number of estate agents in Cardiff. The aim is to offer disabled people greater choice in the private housing sector. Estate agents linked to the scheme must inspect each property and identify its barrier free elements. To do this they must use the CAHR property inspection sheet which covers a number of points such as parking facilities; front, rear and internal access; and door and corridor width. Based on the results of the inspection, each property is placed in one of four categories which give an indication of its accessibility: negotiable; 'visitable'; liveable; and universal. The category and property details are then highlighted in the property file.

Recommendation 6.29: The Government should work with the housing sector to promote the inclusion of access information in sales and letting materials.

Conclusion

49. Reviewing the DDA access to goods, services and premises provisions was a difficult task given the lack of case law. The subject is technical and the law complex. Our main recommendations therefore flag up issues where we feel further work may be necessary in future. However, we have made some positive recommendations that will make progress in enhancing disabled people's rights, in particular in the area of access to premises

50.

CHAPTER 7 TRAVEL

"We all live in a highly mobile society ... The quality of life of many people is dependent on their individual mobility ... It would be no exaggeration to state that it is a basic requirement for people living independently in society to be able to travel independently to avail of the opportunity that society offers."

Independent Travel Research Project, University of Ulster

Introduction

1. Accessible public transport, within the framework of an integrated transport policy, is fundamentally important to delivering our aim of comprehensive civil rights. If disabled people are to access employment, education, leisure and other activities it is vital that they can reach them. That in turn means they must have access to transport services and have the choice of services to meet their particular travel needs.

2. We acknowledged the work which the Disabled Persons Transport Advisory Committee (DPTAC), as statutory advisers to Government, has done over the last decade or so, in encouraging the transport industries to recognise the transport needs of disabled people. The improvements which have been made, particularly in relation to buses for ambulant disabled people, have had a significant impact on the ability of disabled people to use public transport and to be able to continue to use it. More recent developments with low floor bus technology have gone a stage further in opening up bus travel to wheelchair users. Those developments demonstrated that improving access for disabled people, including wheelchair users, makes vehicles much easier to use for all members of the public: people with pushchairs, for example, have benefited enormously from the introduction of low floor buses.

3. For disabled people to be able to travel, and to travel with confidence, all aspects of the 'transport chain' must be accessible. The benefits of new vehicles and systems will be minimised, or lost altogether, if disabled people find that they cannot move easily and safely between transport modes. Disabled people also need accessible information on transport if they are to benefit from new vehicles and systems. The current legislation will ensure that certain of the links are fully accessible buses, coaches, trains and taxis. But we considered that there is a number of omissions, and areas where further refinement of the legislation would be necessary to achieve the fully accessible transport system to which the Government is committed.

Case Study: Transport in Rural Cornwall

The need for accessible transport services in rural areas is acute. Although low floor buses have operated in urban areas for some time, there is little experience of operating them in rural areas.

In April 1997, Truronian introduced low floor buses on a rural bus route in Cornwall which had previously been served by one year old single deck buses. Improvements to a number of rural bus stops specifically for low floor buses along the route were carried out by Cornwall County Council. The Department of the Environment, Transport and the Regions (DETR) commissioned a study to assess the results of this initiative, looking at passenger levels, public opinion and the costs of using these vehicles.

In the first year of operation passenger levels rose by almost 15%. Public opinion surveys showed improvement over the already high satisfaction levels which existed along the route. Drivers reported increases in the number of disabled people using the service, with passengers travelling with pushchairs showing the greatest increase. And in the categories of operating costs considered, including fuel and maintenance, the bus operator saw falls.

Source: DETR

4. This experience demonstrates what can be achieved when bus operators and local authorities work together.

Key Recommendations

- The exemption for transport operators from the first and October 1999 phases of the DDA access to services duties should be removed in civil rights legislation.
- An 'end date' by which all passenger rail vehicles should comply with rail accessibility regulations should be introduced following consultation. Accessibility regulations should be developed to apply to refurbishment of existing rolling stock.
- The DRC should work with the Disabled Persons Transport Advisory Committee to consider mechanisms for increasing the availability of accessible private hire vehicles, including the carrying of registered assistance dogs.
- Local Transport Plans should be placed on a statutory basis and their effectiveness in meeting disabled people's transport needs and improving the pedestrian environment for disabled people should be reviewed over time.
- Further progress should be made in ensuring compliance with guidance on access for disabled people to shipping and a new Code of Practice on access for disabled people to air travel should be developed.

Current Position

5. The DDA access to services provisions specifically exclude any services consisting of the use of any means of transport but do cover ancillary services such as services to the public at rail stations and airports. Part V of the DDA allows for accessibility regulations to be made for buses and coaches, taxis and rail vehicles, to ensure that disabled people, including wheelchair users, can use those vehicles in safety and in reasonable comfort. It also allows for particular duties to be placed on taxi drivers to carry disabled passengers who use wheelchairs and disabled people with a guide or hearing dog.

6. The Government has introduced accessibility regulations for all new rail vehicles entering service from January 1999. For buses and coaches used on local and scheduled services, the Government is proposing that new large single deck buses entering service from 2000 and double deck buses entering service from 2001 meet accessibility regulations. In addition, 'end dates' (dates by which all vehicles, not just new ones, must meet the regulations) of 2015 and 2017, respectively, will apply to these buses. For smaller buses and coaches a later implementation date for wheelchair access of 2005 is proposed with end dates of 2015 and 2020, respectively. These dates have been chosen to prevent the early scrapping of vehicles and withdrawal of services. For taxis, proposals are still being finalised, but initially it was suggested that accessibility regulations would apply to new vehicles from 2002 with an end date for compliance of 2012.

Rail Vehicles

7. Unlike for buses and coaches, and for taxis, the DDA does not provide for 'end dates' for all rail vehicles to comply with accessibility regulations. We believe the introduction of end dates would accelerate the accessibility of rail vehicles for disabled people by preventing old rolling stock being used beyond its economic life. However, we would not want to cause the premature scrapping of vehicles and end dates should be set in consultation with the sector.

8. Given the economic life of rail vehicles, many undergo at least one major refurbishment. This appears to be an opportunity to improve accessibility that should not be missed. For instance, during a refurbishment, the colours used in carriages can be contrasted to assist visually impaired people. We recognised the need for consultation with the industry on what constitutes a refurbishment and the accessibility regulations that should apply.

Recommendation 7.1: An 'end date' by which all passenger rail vehicles should comply with rail accessibility regulations should be introduced following consultation. Accessibility regulations should be introduced to apply to refurbishment of existing rolling stock. Those requirements should be set after full consultation, which will also need to consider the definition of 'refurbishment' to which the regulations apply. In both cases, we acknowledge that full account will need to be taken of the costs and benefits of the proposals.

Comprehensive Civil Rights for Disabled People in Accessing Transport

9. The exclusion of transport services from the less favourable treatment provisions of the DDA is unacceptable. Disabled people should not lose their civil rights against less favourable treatment just because they board a bus or plane.

10. We considered whether to apply all the DDA access to services provisions to transport services. We agreed that the right not to receive less favourable treatment should be extended to all providers of transport services to the public. We also thought that the rights introduced in October 1999 - to reasonable adjustments to policies, practices and procedures and the provision of auxiliary aids and services - should also be extended to transport operators. We believed that there were clear advantages in these duties being accompanied by a specific Code of Practice for transport operators rather than using the DDA Part III Code of Practice. However, in considering the DDA rights to physical adjustments, we recognised the advantages of using regulations¹ to ensure that transport vehicles met agreed technical standards. This would mean that transport vehicles met set standards rather than transport operators having to make ad-hoc and different adjustments to vehicles depending on their understanding of what a 'reasonable' adjustment was.

Recommendation 7.2: The exemption for transport operators from the first and October 1999 phases of the DDA access to services duties should be removed in civil rights legislation.

Private Hire Vehicles

11. Private hire vehicles (PHVs) are commonly known as mini-cabs. The distinction between taxis and PHVs is that only taxis have the right to ply for hire on

¹ Made under Part V of the DDA

the street, and be available for immediate hire through the driver. PHVs have to be booked through an operator. The DDA does not provide for accessibility regulations to be made for such vehicles. Recommendation 7.2 will give rights to disabled people in relation to less favourable treatment and provision of auxiliary aids and services when using a PHV. We considered whether we should confer rights to reasonable physical adjustments to the vehicles or extend accessibility regulations to cover these vehicles.

12. Although we favoured increasing the number and availability of accessible PHVs we felt that both the options of accessibility regulations or requiring physical adjustments had serious disadvantages that could lead to a reduction in the service available. It is unlikely that the diverse PHVs sector would be able to meet accessibility regulations without significant numbers withdrawing their services. Requiring undefined physical adjustments to PHVs would create uncertainty for the sector - it is not clear what reasonable physical adjustments to saloon cars would benefit significant numbers of disabled people.

13. In addition, the Guide Dogs for the Blind Association and the Royal National Institute for the Blind report² into guide dog access to taxis and minicabs highlighted problems with PHVs carrying guide dogs. Disabled people, in booking a PHV, can arrange for one that will carry an assistance dog and the law of contract will govern any agreement. Moreover, the new rights proposed in recommendation 7.2 will protect disabled people from discrimination in the booking and provision of the service. Licensing authorities also can impose licensing conditions to require the carrying of assistance dogs. However, the report showed that there remains difficulty for some disabled people in finding PHVs that will carry their assistance dog. The carrying of guide and hearing dogs by taxis is considered in recommendation 7.4.

14. DPTAC is considering how to increase the availability of accessible PHVs and we believe that as part of that work it should also look at the carriage of registered assistance dogs.

15. The DDA has provisions³ to make sure that disabled people have access to suitable vehicles at major transport interchanges such as railway stations and airports. Where a transport interchange enters into a contract with a car hire firm rather than allowing access to licensed taxis which are accessible, the DDA allows access requirements to be placed on the vehicles operating under the contract. In fact, most stations and airports allow access by taxis so disabled people should have access to suitable vehicles. The DDA provisions are a useful safeguard but will only have to be used sparingly.

Recommendation 7.3: The DRC should consider with the Disabled Persons Transport Advisory Committee mechanisms for increasing the availability of accessible private hire vehicles, including the carrying of registered assistance dogs. The DDA provisions on requiring accessible vehicles at transport interchanges should be retained in civil rights legislation.

Taxis Carrying Guide and Hearing Dogs

² "Guide Dog Access: A Report into Guide Dog Access to Taxis and Minicabs". RNIB and GDBA

³ section 33, DDA

16. The DDA has provisions⁴ to require taxis to carry guide and hearing dogs. These have yet to be brought into force. We understand that DETR will be consulting on draft regulations early in 2000.

Recommendation 7.4: The DDA provisions on taxis carrying guide and hearing dogs should be brought into force as soon as possible.

Car Hire and Breakdown Recovery Services

17. The DDA access to services provisions apply to access to the car hire shop or garages but not to the cars themselves. We considered applying the provisions in full to car hire and breakdown recovery services. We thought that it would be reasonable for large car hire companies to have available some vehicles with, say, automatic transmission and common adaptations, such as pull/push accelerator and brake hand controls. Breakdown and recovery services should also consider, in looking at their policies, making accessible vehicles available. We believed that the sector should be consulted on new duties and a specific Code of Practice to transport operators could explain these duties.

Recommendation 7.5: The DDA access to service provisions should apply to car hire and breakdown recovery services in civil rights legislation.

Orange Badge Scheme

18. There is much concern, both among disabled people and enforcement authorities, that the Orange Badge Scheme, which provides parking concessions for severely disabled people, is open to abuse. As a consequence, disabled badge holders face difficulty in parking. DPTAC published a report⁵ to Ministers in DETR outlining its views on the future of the Orange Badge Scheme and recommended that to retain its effectiveness and credibility the Scheme should be the subject of a review. DETR, in considering that report, sought additional information from local authorities about the administration of the Scheme and in particular how local authorities handle applications made under the discretionary criteria.

19. We shared DPTAC's concerns about the future of the Scheme and welcomed the Government's review to ensure that the Scheme remains effective for the many disabled people who rely on the concessions it provides for their mobility. The review should consider the position of the four central London Boroughs which continue to be exempt from the Scheme, thus causing orange badge holders difficulty when parking in central London.

Recommendation 7.6: We welcome DETR's review of the Orange Badge Scheme with a view to ensuring its continuation as a vital and effective mechanism for enabling disabled motorists to enjoy maximum mobility.

Pedestrian and Highway Issues

20. There is a number of issues of concern with pavements, pedestrianised areas and cycle lanes for disabled people. For visually impaired pedestrians, shared facilities between pedestrians and cyclists, unguarded works on the highway,

⁴ section 37, DDA

⁵ 'Review of the Orange Badge Scheme', DPTAC (see Annex B)

vehicles parked on pavements and hazards caused by other obstacles on pavements were of particular concern. For people with mobility difficulties and wheelchair users, pedestrianised areas with parking at some distance and the provision of dropped kerbs were issues.

21. DETR has issued guidance to local and highway authorities on a number of these issues and is undertaking revisions to that guidance in a number of areas. In addition, legislation⁶ requires highway authorities to have regard to the needs of disabled people when considering whether to provide dropped kerbs between roads and pavements.

22. The Government already provides national guidance to ensure consistency in the provision for disabled people, for example, guidance on the use of tactile paving surfaces. Local authorities need to produce local solutions that meet the interests of disabled people and other users of highways. We agreed that the introduction of requirements to produce Local Transport Plans (LTPs), setting out local integrated transport strategies, could be an important mechanism for better meeting the needs of disabled people in this area. Authorities will be required to produce their first full LTPs by the middle of 2000.

Recommendation 7.7: Local Transport Plans should be placed on a statutory basis and their effectiveness in meeting disabled people's transport needs and improving the pedestrian environment for disabled people should be reviewed over time.

Aviation

23. The DDA does not cover aviation, although the service provided at airports is covered by the DDA access to services provisions. Despite improvements, the difficulties still encountered make air travel an impossibility for many disabled people. We appreciated the international nature of regulations governing aviation and the desirability of proceeding on the basis of international agreement. However, we believed that there was scope for improved guidance to remedy problems that disabled people face when using air transport, such as the appropriate lifting of disabled people using wheelchairs.

Recommendation 7.8: We welcome DETR having established a group, drawn from the aviation industry and the Disabled Persons Transport Advisory Committee, to develop a Code of Practice on access for disabled people to air travel, for public consultation. We recommend that a reserve power should be taken to give the Code statutory backing, if agreement and compliance cannot be achieved on a voluntary basis.

Shipping

24. The DDA does not cover shipping, although the service provided at passenger terminals is covered by the DDA access to services provisions. As with aviation, there is an international dimension to shipping that governs consideration of new duties in this area. We welcomed the guidance that the International Maritime Organisation and the DPTAC have produced on improving the accessibility of passenger services for disabled people. However, we believed that more could be done to ensure better compliance with the guidance.

⁶ s. 175A Highways Act 1980 (inserted by s.1(1) Disabled Persons Act 1986)

Recommendation 7.9: DETR should consult on the remit of a formal review, including any need for legislative provisions, for accelerating progress in compliance with the International Maritime Organisation and the Disabled Persons Transport Advisory Committee guidance on access for disabled people in the shipping industry. The review should be conducted to an agreed timetable and produce recommendations to Government.

Conclusion

25. Our recommendations recognise the pivotal role which transport plays in delivering the Government's manifesto commitment to comprehensive and enforceable civil rights for disabled people. We have acknowledged the progress which has been made, and which will continue to be made as the remaining provisions of the Disability Discrimination Act are introduced. We considered, however, that in a number of significant areas, the current provisions, if they exist, make inadequate provision for disabled people.

26. In our view, the recommendations set out in this chapter will address the shortcomings in those provisions, and deliver to disabled people fully accessible and integrated transport opportunities.

CHAPTER 8 THE ENVIRONMENT AND HOUSING

"Adaptations to housing are a matter of equal opportunities in the most basic aspects of human life. In a well adapted house, a disabled person can move about, cook, or go into the garden, turn on lights, have a shower or bath or put a child to bed - when and how they want to, with minimum help from other people. Without adaptations, these people may be condemned to isolation, frustration and humiliation."

Joseph Rowntree Foundation 1996¹

Introduction

1. The barriers to the full participation of disabled people in society are nowhere more clear than in the built environment. The step, heavy door and entry phone at the entrance to a building; the lack of colour contrasting on busy thoroughfares; and the high positioning of lift buttons and door handles all conspire to exclude disabled people. With a little thought for the needs of disabled people, the environment could just as easily be designed to be accessible. There is much debate about the costs of adaptations for disabled people and not enough about the failure to consider accessibility when new buildings are designed, when a building is extended or when a major refurbishment takes place. If buildings were made accessible at these stages, there would be less need to consider costly and uneconomic adaptations a few years later. We have made recommendations to improve the standards of accessibility whenever major building work is undertaken. This appears to be the most sensible and cost effective time to effect most change.

2. We also considered the provision of accessible housing. Forecasts predict a rapidly ageing UK population. It is important that houses are designed so that elderly and disabled people can remain in their homes for life. This is desirable in itself but also makes sense economically. The need for costly public support to adapt homes or for elderly and disabled people to have to move to care homes at public expense will be reduced.

3. The countryside is a national treasure, which all citizens should have the opportunity to enjoy. For many disabled people though this pleasure is denied because of barriers on paths and trails which prevent access to wheelchair users and those with mobility difficulties. As the report of the Countryside Access Group² showed, it is often the presence of man-made stiles and barriers which hinder access, not the natural environment. We support the attempts of the Countryside Agency to improve the situation.

4. We also considered the planning permission regime and have suggested ways in which it can better meet the needs of disabled people.

Key Recommendations

- The Department of the Environment, Transport and the Regions (DETR) should undertake further research into the current effectiveness and enforcement of Part M of the Buildings Regulations, and undertake a broader review of Part M,

¹ 'Managing Adaptations' by Frances Heywood, Joseph Rowntree Foundation 1996

² 'Disabled Access to the Countryside and the Disability Discrimination Act', Countryside Access Group (see Annex B)

including determining whether it is interpreted consistently and the scope for applying the Part to existing buildings. The review should preferably be carried out in conjunction with reviews of Part R (Northern Ireland) of the Building Regulations and Part T (Scotland) of the Technical Standards.

- DETR should commission the preparation of a good practice guide on planning and access as part of its 2000/01 Planning Research Programme. The proposed document should look at good practice in relation to both the development plan policies and the planning and access aspects of different types of environment.
- Local authorities and registered social landlords should introduce performance indicators locally, including waiting times, for the housing adaptation service provided to disabled people.
- DETR should place statutory duties on local highway authorities, as outlined in its consultation paper *Improving Rights of Way in England and Wales*, to improve access to the countryside for disabled people through the rights of way network.

Built Environment

5. Part M³ of the building regulations requires that reasonable provision should be made for disabled people to gain access to buildings and make use of them. Part M requirements generally apply to new buildings and extensions that include a ground storey. From October 1999, they were extended to also apply to new dwellings. This extension should help disabled people to visit friends and relatives more easily and for people to remain living in their own homes for longer as they become less mobile.

6. We considered whether the requirements of Part M could form disability access standards. We concluded that as they stood they would not serve this purpose and should be reviewed. For instance, they were limited in only meeting the needs of disabled people with mobility difficulties, wheelchair users and those with some sensory impairments. They also did not apply to alterations to existing buildings, change of use of a building or to extensions⁴ to existing buildings. We noted that the British Standards Institution (BSI) is revising its Code of Practice for Access for the Disabled to Buildings. We felt that this work provided an opportunity for developing appropriate access standards that would meet the needs of disabled people. The standards could inform the work of the DRC in developing the Code of Practice on the final rights under Part III of the DDA, coming into force in 2004. We would urge the BSI to progress work on its Code so that it can be considered by the DRC.

7. One area of concern was over the consistency of interpretation of what is required under Part M and also its enforcement. Some disability organisations certainly felt that there was room for improvement and we believed that the Department for the Environment, Transport and the Regions (DETR) should undertake research into the current effectiveness and enforcement of Part M. This research should take place as soon as possible and certainly in advance of a broader review of Part M. It is important that the current system is seen as being credible and properly enforced.

³ Part T of the Technical Standards in Scotland, Part R of the Building Regulations in Northern Ireland

⁴ Except those extensions containing a ground storey

Recommendation 8.1: We welcome DETR's agreement to consult on the remit of a review of Part M of the Building Regulations before the end of 2000. The consultation should consider the extent to which guidance should be clarified to ensure consistency of interpretation and how this will be handled in the review. Any consultation should involve disability interests as well as commercial bodies such as property service managers. Consideration should also be given to the mechanisms by which disabled people are consulted.

The review, which should start before the middle of 2001, should preferably be carried out in conjunction with reviews of Part R (Northern Ireland) of the Building Regulations and Part T (Scotland) of the Technical Standards.

We also welcome DETR's agreement to undertake further research into the current effectiveness and enforcement of Part M in advance of the broader review.

Extension of Part M to Existing Buildings

8. Although the DDA requires employers, and will require service providers, to make physical adjustments to enable access for disabled people, there is still merit in having basic standards that buildings meet when they are extended. Part M currently only applies to extensions to existing buildings where they contain a ground storey.

Recommendation 8.2: The scope for extension of Part M to apply to existing buildings should be included in the review of Part M.

Advisory Groups

9. We were impressed by the way that DETR's Disabled Persons Transport Advisory Committee brought together the views of disabled people and industry in advising Government on proposals to improve access to transport for disabled people. We considered that a similar advisory committee on building and planning issues would assist the DETR in better meeting the needs of disabled people.

Recommendation 8.3: In light of our recommendations, DETR should establish an advisory group, similar to the Disabled Persons Transport Advisory Committee, on improving access to the built environment for disabled people, drawing its membership from the building and planning worlds and disability organisations.

Planning

10. The purpose of the planning system is to govern the development and use of land in the public interest. Planning permission is needed to undertake development and a planning application normally has to be submitted to the local planning authority. Individual planning applications are decided in line with a planning authority's development plan unless material considerations suggest otherwise. The development plans should take account of relevant access issues for disabled people.

11. Although we were generally content with the legal provisions governing the planning system, we were concerned that there was inconsistent coverage of access issues across authorities' development plans. There is clearly scope for ensuring that authorities address this issue more consistently. We were also concerned that

developers were not always fully aware as to how they should tackle this issue. We therefore felt that new guidance should be issued on planning and access for disabled people. Some of the issues the guidance should address are:

- drawing local planning authorities' and developers' attention to the role of the planning system in relation to disability access, with good practice examples;
- explaining the link between the planning system, legislation on disability access and standards under the building regulations; and
- emphasising the benefits of consulting with local access groups and the recognition of the diversity of disabled people, including disabled children, and their differing access needs.

12. The guidance should cover the range of difficulties experienced by disabled people in the environment, including the links between planning and local transport plans and the pedestrian environment. Emphasis should also be given to the need for training planning officers in disability access issues to assist in the successful implementation of the guidance on the ground.

Recommendation 8.4: DETR should commission the preparation of a good practice guide on planning and access as part of its 2000/01 Planning Research Programme. The proposed document should look at good practice in relation to both the development plan policies and the planning and access aspects of different types of environment. The views of disability organisations and the Planning Officers' Society should be sought.

13. In addition to new guidance, there would be merit in making sure that Policy Planning Guidance Notes and planning circulars make adequate reference to disability access.

Recommendation 8.5: DETR should, where necessary, add or strengthen references to disability access in relevant Policy Planning Guidance Notes and planning circulars as these come up for revision.

14. Section 76 of the Town and Country Planning Act 1990 requires planning authorities to draw developers' attention to the requirements of the Chronically Sick and Disabled Persons Act 1970 when planning permission is granted for certain types of public buildings. The 1970 Act says that such buildings should be provided with means of access, parking and sanitary facilities for people with disabilities. We felt that this provision should be updated to refer, in addition, to duties under the Disability Discrimination Act and associated Codes of Practice, especially the proposed Code of Practice on the final rights under Part III of the DDA. This statutory provision would help underpin the guidance to be prepared in recommendation 8.4. The Government should also look again at whether alerting developers to the disability access legislation when granting planning permission is too late. It would be more effective to alert developers earlier in the planning process.

Recommendation 8.6: The Government should consider the future role of section 76 of the Town and Country Planning Act 1990, which requires planning authorities to alert developers to disability access requirements, when a suitable legislative opportunity arises. Developers should be alerted to disability access legislation at the earliest possible opportunity in the planning process.

Heritage

15. There are separate, but parallel, planning controls relating to listed buildings. Internal and external work to a listed building, of which there are around half a million, generally requires listed building consent. We wanted to preserve the character of listed buildings open to the public but felt more could be done to improve access for many disabled people. As many people as possible should be able to enjoy our national buildings. We felt English Heritage (EH) and its equivalents in Wales, Scotland and Northern Ireland could be more active in ensuring access issues are addressed and we welcomed EH's agreement to revise its general guidance and also its instructions to staff on access. Local authorities should be made aware of English Heritage's approach in their area and not use heritage considerations inappropriately to justify their own failure to act on access issues.

Recommendation 8.7: English Heritage, in discussion with disability organisations, should update its guidance note Easy Access to Historic Properties, by Summer 2000. This should then be given a wide circulation to emphasise the need for all those involved to adopt a positive approach to access issues.

Recommendation 8.8: English Heritage should prepare a new set of desk instructions for its staff on access issues by Summer 2000.

Housing

16. In looking at housing we first considered the strategic plans of housing authorities and how they took account of the needs of disabled people within their areas. With a rising demand for accessible housing likely over the next 10 years it was important that authorities made provision for the housing needs of disabled people in their plans and that there is no discrimination or prejudice in allocations.

Recommendation 8.9: Housing Authorities should ensure that the needs of disabled households are covered in the housing strategy produced for addressing housing need in their area. They should take account of links with the planning process to ensure that accessible housing is placed in areas where, for example, there is good access to public transport and local services such as shops.

17. Individuals sometimes have to wait too long for adaptations to be made to their homes. We recognised delays are partly due to the high demand on local authority resources, and partly to the lack of co-ordination between the different local authority agencies. Efforts to clear waiting lists of people who need housing adaptation should be maximised. We felt that current moves under the Government's You and Your Services initiative to improve the service to disabled people would need to be kept under review. Performance indicators under 'Best Value' are needed to bring services up to the same level across the country and to set a standard for waiting times.

Recommendation 8.10: Local authorities and Registered Social Landlords should introduce performance indicators locally under 'Best Value' to show the quality of the adaptation service they provide to disabled people.

18. There should be records of those dwellings that are potentially suitable for disabled people held by both Councils and estate agents to help disabled people find suitable homes. The Cardiff Accessible Housing Register (see Chapter 6) is an

example of where voluntary agencies and estate agents have worked together to give disabled people the information they need to find a home.

Recommendation 8.11: Councils and estate agents should be encouraged to keep up-to-date records of all known dwellings that are potentially suitable for disabled people, in order to compile cross sector databases to match needs.

19. The new duty of 'Best Value' on local authorities (commencing from April 2000) provides a mechanism, through a requirement to consult, to ensure that recipients of local services, such as home adaptation, have their views taken into account and a say in how services are delivered. The consultation mechanisms must themselves be accessible to disabled people and local authority staff should ensure that all groups of disabled people can make effective contributions.

Recommendation 8.12: In discharging their statutory obligations under 'Best Value', local authorities should consult the beneficiaries of adaptations and take account of their views.

Access to the Countryside

20. The 130,000 miles⁵ of public rights of way are an important channel that allow the nation to explore and enjoy the countryside. Free to use, the rights of way network should also be as accessible as possible to disabled people. We were concerned about the barriers across paths and trails that make up the rights of way network and that hinder access for disabled people with mobility difficulties and wheelchair users. The needs of visually impaired and blind people on rights of way that have shared⁶ use were also considered.

21. We welcomed the DETR Consultation Paper Improving Rights of Way in England and Wales which contained proposals to improve access to the right of way network for disabled people. The first proposal was for a statutory duty on local highway authorities, acting in accordance with guidance issued by the Countryside Agency and the Countryside Council for Wales, to promote the principle of easing passage for disabled people at places where rights of way cross obstacles such as fences, walls, watercourses or roads. The Highways Agency should be under a similar statutory duty in respect of trunk roads which are crossed by rights of way. Exceptions may be necessary to allow for land management requirements such as stockproofing. The second proposal was for highway authorities to be placed under a statutory duty to publish reports, say every two years, on action taken to improve the accessibility of their rights of way network to disabled people.

Recommendation 8.13: DETR should implement the two legislative proposals in its Improving Rights of Way in England and Wales Consultation Paper for improving access to the rights of way network for disabled people. The Countryside Agency and the Countryside Council for Wales should fully involve disability organisations in drafting guidance on how the principle of easing passage should be interpreted for each category⁶ of rights of way.

⁵ England and Wales

⁶ Footpaths; byways open to all traffic; and roads used as public paths

CHAPTER 9 PARTICIPATION IN PUBLIC LIFE

"In the UK [the right to vote in secret at elections] is seen as fundamental to the electoral system, ensuring that people can vote for the candidate of their choice independently and free from possibility of external influence. For the UK's 1.7 million blind and partially sighted people a secret vote is, however, in most cases, a right denied."

"A Right Denied", RNIB¹

Introduction

1. The right to free elections and a fair trial are cornerstones of our democracy. These rights are guaranteed under the European Convention on Human Rights. Restrictions on these rights - for any group in society - should concern us all. We examined access to both the democratic and the legal process for disabled people and were generally content with the protections for their civil rights.

2. We welcomed the findings of the Home Office Working Party on Electoral Procedures suggesting changes to electoral practice to contribute to democratic renewal in the United Kingdom. Many of our recommendations endorse its conclusions and propose ways to implement them for the benefit of disabled people.

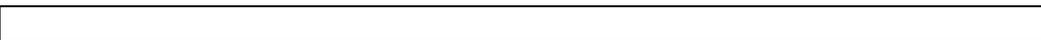
3. On the legal process, we similarly welcomed the initiatives in the Government's Speaking Up For Justice report to assist vulnerable and disabled witnesses and those by the Home Office and Lord Chancellor's Department on a blind magistrates' pilot and a review of those eligible to serve on juries. We also looked at the need for training in disability issues for those involved in the legal process.

Key Recommendations

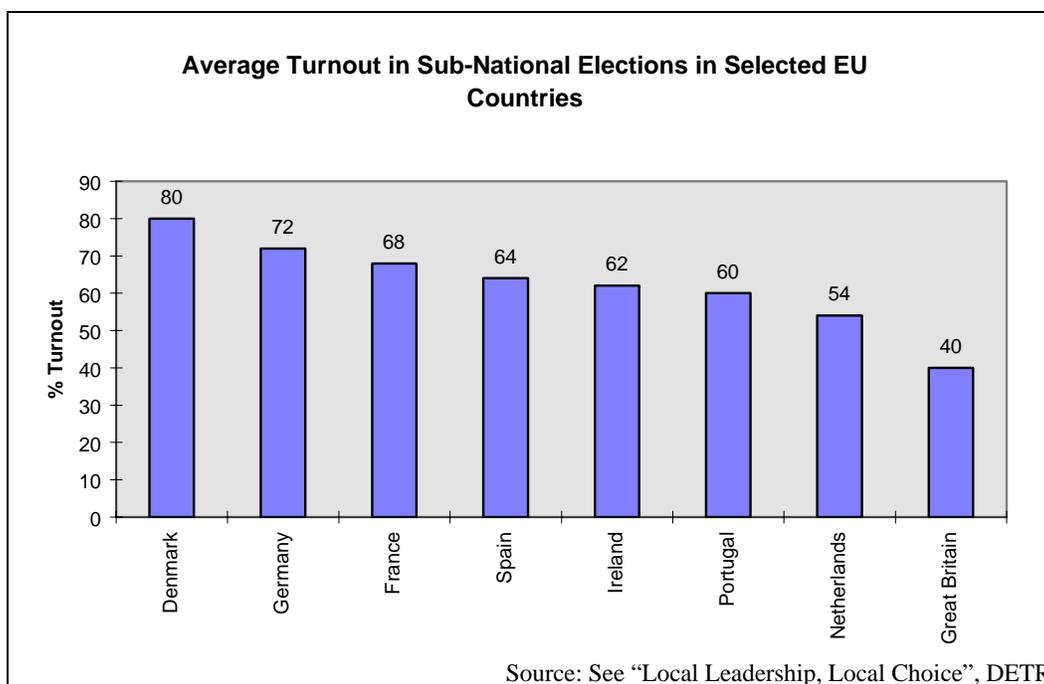
- We endorse the recommendations of the Home Office Working Party on Electoral Procedures on access to the electoral process for disabled people.
- We welcome the initiatives in the Speaking Up for Justice report and emphasise the need for appropriate training in disability issues for those involved in the legal process.
- We welcome the blind magistrates' pilot and the review of those disabled people requiring third party support to serve on juries. We recommend that, subject to the outcome of the reviews and with appropriate safeguards, these current restrictions should be lifted. The need for a specific statutory reference to physical disability as a reason for discharging a juror should be reviewed.

Access to the Electoral Process

4. There has been a steady decline, over a long period, in the levels of participation in elections. A comparison with other European Union (EU) countries which do not have compulsory voting shows a marked difference in participation rates.



¹ 'A Right Denied: Access to Voting for Blind and Partially Sighted People', RNIB (see Annex B)



5. It is important that measures to create a more open and responsive electoral system recognise the needs of disabled voters. We therefore welcomed the work in this area of the Home Office Working Party on Electoral Procedures ('the Howarth Working Party'), chaired by George Howarth MP, former Home Office Minister.

Current Position

6. Electoral services and facilities are likely to be covered by the DDA access to services provisions. So those involved in the election process, from the council through to the polling station clerk, will be required not to discriminate against disabled people and make reasonable adjustments where disabled people have unreasonable difficulties in accessing any part of the electoral process. However, as for all service providers, if those involved in electoral services and facilities are required to do something by a specific law, such as electoral law, this cannot be overridden by the DDA requirements.

7. Electoral law contains detailed provisions on the conduct of the electoral process. Local authorities are required², so far as is reasonable and practicable, to designate only places which are accessible to disabled electors as polling places. However, as the Scope report Polls Apart 2: Disabled People and the 1997 General Election ('the Scope report') shows, there is a great deal of progress that needs to be made before equal access is achieved.

Key Findings from "Polls Apart 2: Disabled People and the 1997 General Election", Scope

- Only 6% of Polling Stations surveyed were fully accessible.

² S18 Representation of the People Act 1993

- Over 80% of Polling Stations surveyed had two or more access problems.

Electoral Law

8. We considered the merits of using electoral law or civil rights law to secure the rights recommended below and concluded that electoral law would offer more certainty and specific duties than civil rights legislation.

Recommendation 9.1: Given that electoral procedure is prescribed in specific electoral statutes, further civil rights for disabled people in this area should be secured through changes in electoral law.

Electoral Registration

9. We welcomed the recommendations of the Howarth Working Party on improving the current levels of registration. The proposal for 'rolling' or continuous registration to replace the present annual register meets the recommendation in the Scope report and should benefit disabled people.

10. A person must be registered in order to vote but the current provisions preventing certain residences from being used make it very difficult for otherwise eligible people to register. In particular, patients detained³ at a hospital or voluntary patients at such hospitals are currently prevented from using the hospital address for registration purposes. This restriction can effectively disenfranchise these patients for many might not have alternative residences. If a voluntary patient does have an alternative residence, he must complete a patient's declaration before he can register. This introduces an additional eligibility test that does not apply to people with mental health problems living in the community. We agree with the Howarth Working Party that this additional test is unnecessary.

Recommendation 9.2: We endorse the Howarth Working Party's recommendations that the restriction on using a mental health hospital as a residence for electoral registration purposes should be removed and that the patient's declaration should be abolished.

Entitlement to Vote

Physical Access

11. The ability to vote in person, on the same day and in the same way as the rest of society, is a fundamental right. Disabled people should not be forced to use postal votes, days before the end of an election campaign, if they want to vote on election day.

12. We noted the difficult position of electoral administrators in balancing the need to find an accessible polling station for disabled voters with finding a location that is reasonable for all voters. The introduction of national minimum access standards in choosing and setting up a polling station are to be welcomed. However, given the findings in the Scope report, the effectiveness of the standards in improving accessibility will need to be monitored. The revision to the Home Office's grant

³ Patients detained as a result of criminal activity are not included in our recommendation

arrangements to local authorities, to remove the bar to paying for permanent physical access improvement, as recommended in the Scope report, was also welcomed.

Recommendation 9.3: Electoral administrators should continue to be covered by the access to service provisions of civil rights legislation. The introduction of national minimum access standards is welcomed and the effectiveness of these in improving access to polling stations should be monitored.

Alternative Voting Methods

13. We welcomed the Howarth Working Party's recommendations that election rules should be changed to allow ballot paper templates and polling aids to be provided in polling stations. This should be of particular benefit to voters with sensory impairments.

14. We were interested in how the Working Party's recommendations for making voting easier for the whole of society would help disabled voters. Pilot schemes allowing:

- a mobile polling station to take a ballot box to groups of voters;
- an election to be held on the basis of postal voting only;
- electors to vote at any polling station; and
- voting over the telephone or the Internet

are to be welcomed as long as they apply to disabled voters in the same way as other electors.

Recommendation 9.4: We support proposals for pilot schemes for alternative voting methods and recommend that disability organisations are consulted on their development of the schemes.

Companion Assisted Voting

15. Electoral legislation allows a blind voter to be assisted to vote by a companion from the same constituency.

Case Study

On polling day we took our severely disabled daughter, Jane, to vote. We were not allowed to help her. Apparently the 'rules' apply only to blind people. She was denied the help of her parents to interpret her wishes and make her mark. Jane is 18 and registered as an elector. She has a mind of her own, was looking forward to casting her vote and knew whom she wished to be elected. The person in charge was obviously uneasy and phoned a supervisor for guidance. We were not able to explain that, in full view if required, we would go through the system with Jane and make her mark if necessary.

Source: : Scope "Polls Apart 2" Report

Recommendation 9.5: We endorse the Howarth Working Party's recommendation that the provisions for blind voters to be assisted to cast their vote by a companion should be extended to all electors who would not otherwise be able to cast a vote. Further consideration should be given to allowing a companion from outside the constituency to assist.

Publicity and Guidance

16. We commend the Government's efforts to re-engage electors in the democratic process. It is important that any publicity campaigns to encourage higher levels of registration, explain new voting arrangements and increase turnout, consider the needs of disabled voters. Generic information on registration and voting arrangements should be made available in accessible formats, including for people with learning difficulties. Many disabled people may have been put off registering and voting because of past experiences; local information should include the assistance available in registering and at polling stations.

Recommendation 9.6: In publicising registration and existing and new voting arrangements, the Home Office and local electoral authorities should consider the needs of disabled people for information in accessible formats and advice on accessibility of polling stations.

17. The Home Office is to issue new, consolidated guidance to electoral administrators on all aspects of access for disabled people to electoral services.

Recommendation 9.7: We welcome the consolidation and revision of advice to electoral administrators on all aspects of disabled people's access to electoral service. In order that it meets good practice and addresses the needs of all disabled people, disability organisations should be consulted in its preparation.

Political Parties

18. Recommendation 6.10 on coverage of private clubs should include political parties within civil rights legislation. This should assist disabled members of political parties in putting themselves forward as candidates and participating fully in their party's activities. Although recommendations to political parties are outside our remit, we were concerned with the following case.

Case Study

I have been very hurt and upset by some of the councillors, not thinking about what they are saying. I have come across one councillor who knocked on the door and asked for my parents. And I was saying no, they are not in, but I am here, I can vote, I can tell you ... Before I opened my mouth she was halfway down the path and I heard her say "We don't talk to people like her, she doesn't know what she is talking about." I can honestly say those were her words. I would like to see disability awareness training for politicians. I want to remind them that just because we have a speech impediment we still have views that are useful.

Source: Scope "Polls Apart 2" Report

19. It would be in the interests of political parties to ensure those canvassing are aware of disability issues and that election literature is made available in accessible formats.

Access to the Law

20. The right to equal access to the law is a sign of a civilised nation. However, too often the needs of disabled people for accessible information and assistance in order to gain equal access have been ignored. The continuation of discriminatory laws and practices in the legal system, based on out dated notions of disability, is unacceptable.

Access to Courts

21. We welcomed the positive attitude of the Court Service to meeting their obligations under the DDA access to service provisions. They are conducting an accessibility audit, designed by RADAR, of all courts. The findings will feed into their ongoing building works programme. For civil and family and tribunal hearings the court will book and pay for interpreters for deaf parties. They are also providing information leaflets in alternative formats and have set up a free phone-line on the facilities available for disabled people. However, it is important that staff receive disability awareness training so that these initiatives remain effective.

Case Study

A man with a hearing impairment who was to appear as a claimant in a small claims court was advised in advance that there was an induction loop in the court. He nonetheless found it very difficult to follow the proceedings. He lost the case. On appeal, he found the case easy to understand. He then became aware that the induction loop in the first court was not in working order. It was too late to take any action.

Source: RNID

Recommendation 9.8: The Court Service, local authorities and magistrates' courts committees continue to be covered by access to service provisions in civil rights legislation.

Assisting Witnesses

22. The Speaking Up for Justice report together with the Youth Justice and Criminal Evidence Act 1999 contain important new measures for assisting crime victims and witnesses who may face difficulties in giving evidence, or whose evidence is not taken seriously on account of their learning difficulty or speech impairment, with the result that they are denied access to justice. These measures apply from the police investigation stage through to the trial and beyond. They will help in improving both access to justice for disabled witnesses and their treatment by the legal system.

23. We believed that the particular needs of deaf people who communicate by British Sign Language (BSL) should be considered, in particular the need for BSL users to be supported by suitable qualified interpreters, when implementing the measures and also more generally in the legal system.

Recommendation 9.9: We welcome the measures in the Speaking Up for Justice report and Youth Justice and Criminal Evidence Act 1999 to assist vulnerable witnesses, many of whom will be disabled people.

Blind Magistrates' Pilot

24. The Lord Chancellor has lifted the bar on blind people serving as magistrates to conduct a pilot study. There are nine blind magistrates taking part in the pilot and the Lord Chancellor's Department (LCD) will evaluate the pilot next year.

Recommendation 9.10: We welcome the blind magistrates' pilot and recommend, subject to the Lord Chancellor's Department's review of the pilot, that the bar on blind people serving as magistrates should be lifted permanently.

Jury Service

25. Although jury service is a duty rather than a right, disabled people should not be discriminated against in fulfilling this civil obligation. Legislation provides that disabled people should serve as jurors unless the judge is of the opinion that a person with physical disabilities cannot serve effectively. The intention behind this provision was to state more clearly that there is a presumption in favour of disabled people serving as jurors. However, in the absence of guidance to judges, some may discharge a blind juror on the grounds that he or she cannot assess the physical demeanour of witnesses and defendants and so cannot assess their credibility. In addition, mentally disordered people are ineligible to serve as jurors. This includes anyone who suffers from, or has suffered from, mental illness and regularly attends for treatment by a medical practitioner.

Case Study

In a research study, two versions of an interview with Sir Robin Day were screened on television, published in a newspaper and played on the radio. One version was truthful and the other contained a series of lies. The proportion of people successful at detecting the lies across the different formats were: Television: 52%; Newspaper: 64% and Radio: 73%.

The researcher concluded that the best cues for lie detection are in the voice and not in visual information.

Source: RNIB, from 'In Touch' BBC Radio 4, 7 November 1995

26. Although safeguarding a defendant's right to a fair trial must be the overriding priority, the specific statutory reference to physical disability as being a reason for discharging a juror does appear to be discriminatory, as does deeming ineligible anyone who has suffered from mental illness and has regular treatment from a medical practitioner.

Recommendation 9.11: There are many reasons why a juror may not be able to carry out his duties effectively; the need for a specific statutory reference to physical disabilities should be reviewed.

Recommendation 9.12: The definition of those mentally disordered people ineligible to serve as jurors should be considered further in consultation with the DRC.

27. Case law prevents anyone who is not a juror from taking part in a jury's deliberations. This prevents disabled people who require third party support, such as a palantypist or a personal assistant, from serving as jurors. We appreciated the

Home Office starting a review of this issue in advance of the publication of this report. We recognised that there may be some resistance from the legal profession to removing this bar and certainly would not want to bring into question the fairness of trials. However, we believed that it would be possible both to safeguard the confidentiality of a jury's deliberation and to eliminate any influence the presence of a thirteenth person in the jury room might have on other jurors.

Recommendation 9.13: We welcome the Home Office's review of the bar on the presence of third party support in a jury room, in relation to disabled jurors requiring communication support or care assistance. We recommend that, subject to the outcome of the review, the bar is lifted. We recognise that safeguards may need to be put into place to accompany such a change.

Guidance and Training for Judges

28. Given the importance of judges' opinions in decisions as to the support disabled witnesses require, and their role in managing the conduct of cases involving disabled parties, jurors and witnesses, it is essential that they receive guidance and training on disability issues.

Recommendation 9.14: We welcome the work of the Judicial Studies Board's Equal Treatment Advisory Committee in preparing guidance for the judiciary on disability issues. The Judicial Studies Board also needs to consider appropriate disability awareness training for judges to ensure that disabled people are not disadvantaged in the legal system.

Community Legal Service

29. The Access to Justice Act 1999 provides for the setting up of a Community Legal Service (CLS) to assist people in gaining access to the legal system. We believe that the CLS should work with the DRC to ensure that its services to disabled people are accessible.

Recommendation 9.15: In future, the Community Legal Service (CLS) should work with the DRC to ensure that the CLS's services are accessible for disabled people.

Conclusion

30. We have examined two major areas of our democratic tradition: free elections and fair trials. We welcomed the modernisation of electoral laws to respond to the needs of a changing society, including a recognition that more could be done to facilitate disabled people's participation in elections. We have also made recommendations to review out-dated laws and practices which prevent disabled people from serving as jurors.

CHAPTER 10 LOCAL GOVERNMENT, HEALTH AND SOCIAL SERVICES

"We learn, when we respect the dignity of the people, that they cannot be denied the elementary right to participate fully in the solutions to their own problems. Self respect arises only out of people who play an active role in solving their own crisis and who are not helpless, passive, puppet-like recipients of private or public services. To give people help, while denying them a significant part in the action, contributes nothing to the development of the individual. In the deepest sense, it is not giving but taking - taking their dignity. Denial of the opportunity for participation is the denial of human dignity and democracy. It will not work."

Saul D Alinsky¹

Introduction

1. Local Government and the National Health Service provide many of the essential services that disabled people need to live a full and independent life. Whilst in many cases these services meet the needs of individual disabled people, we recognised that the provision of services was not consistent across the country and that standards varied. We also recognised the need to help those in the health and social services understand that care or treatment should not be given in a vacuum and should be integrated with the other services needed by a disabled person.

2. We acknowledged that the Government is committed to ensuring that all health and social care service provision is free of discrimination on grounds of disability. In addition, because of the range of services provided, local government, health and social care providers have a key role in modelling good practice in serving, and employing, disabled people. They are in a prime position to inform and support disabled people themselves in knowing their rights, achieving maximum independence and social inclusion and seeking new opportunities, for example in employment. They can ensure that every care plan made with a disabled person includes specific goals in terms of achieving improved social inclusion and opportunities to contribute to society.

3. We recognised that arrangements for the provision of services were different in England, Wales, Scotland and Northern Ireland (NI). The recommendations would need to be implemented to take account of the needs, legislative framework and local practice in different parts of the country. Responsibility for health and social services is devolved and rests with the different administrations for different parts of the UK. Accordingly, our recommendations in this chapter should be read as addressed to each of the four administrations - although, for brevity, most of them refer to the Department of Health (which is responsible for health and social services in England) alone. References to the DRC should be read as referring to, in NI, the Equality Commission for Northern Ireland.

Key Recommendations

Local Government

- As part of 'Best Value', local government should be measured by a specific equality performance indicator in the area of disability.

Health and Social Services

¹ See Annex B

- We endorse the Government's commitment to ensure that access to health and social services is on the basis of need alone, without discrimination on the basis of disability or other factors, such as age, sex, or race.
- The Department of Health should provide a lead in challenging attitudes towards disabled people in health and social services which lead to discrimination. It should consult with the DRC, disability organisations and the health professions on guidance to ensure decision-making in areas such as access to treatment is consistent, and not influenced by inappropriate judgements on a disabled person's 'quality of life'.
- The Department of Health should ensure that all aspects of its quality improvement agenda mainstream² disability rights issues. It should consider adopting national minimum standards to ensure fairness for disabled people in the delivery of health and social services.

Holistic Approach to the Provision of Equipment and Services

- Barriers to joint working in the provision of services and support for disabled people should be tackled. Particular attention should be given to points of transition such as when someone moves from education to employment.

Local Government

4. Local authorities are a key provider of services for disabled people. These services are often multi-agency and governed by a range of different legislation from Community Care to duties in the statutory provision of education. We acknowledged that the Government's modernising agenda should benefit disabled people. We decided that any measures put in place under this agenda should be backed up by specific criteria to benchmark local authorities. This would ensure that services to disabled people were improved to reach at least the same minimum level across different local authorities.

Best Value

5. Best Value is about addressing and meeting the needs of diverse communities, and this requires an awareness of diversity and equality of opportunity. Under the new statutory duty of Best Value (which commences from April 2000) local authorities will be required to consult local people, review all services periodically, measure performance against set standards and publish an annual performance plan setting out achievements and future targets. These requirements will be backed up by a rigorous, independent audit and inspection regime.

The London Borough of Sutton - Best Value Framework

Sutton is seeking to include equalities issues, including disability access issues, in the mainstream of performance reviews of its services and activities.

Each review will have to show that reviewers have evaluated current provision to show if it meets the requirements of the DDA and of disabled people. They will also have to show how they have consulted disabled people. Proposals from reviews will be evaluated against the contribution they make towards improving equality of access to services.

² To take account of the needs of certain groups as an integral part of a policy or programme, rather than to consider their needs separately

Recommendation 10.1: As part of 'Best Value', local government should be measured by a specific equality performance indicator in the area of disability.

Beacon Councils

6. The Beacon Council Scheme Prospectus makes proposals for Beacon Councils to act as a test bed for new legislative freedoms, as well as to promote best practice. The Government proposes that the new freedoms and flexibilities granted under the second phase of the Beacon Council scheme will be set in the context of new legislation to promote the social, economic and environmental well-being of local communities.

Recommendation 10.2: There should be performance measures and statutory guidance for Beacon Council status on disability issues.

Recommendation 10.3: A Beacon Council should be set up to focus on the equality agenda as a champion for best practice in the area of disability.

Involving Disabled People

7. It is essential that disabled people are involved in decisions on local services that affect their lives. The Local Government Association's initiative 'Democracy Network' aims to stimulate innovation and promote good practice in improving the participation of people in local government.

Recommendation 10.4: Local Government should facilitate the involvement of disabled people in local democracy to improve their participation in the decisions that affect their lives and the provision of services.

Health and Social Services

"Social Services are for all of us. At any one time up to one and a half million people rely on their help. All of us are likely at some point in our lives to need to turn to social services for support, whether on our own behalf or for a family member."

Modernising Social Services White Paper

8. Health and social services can be crucial in providing the support to enable a disabled person to lead an independent and fulfilling life. But many disabled people feel that decisions made by health and social services have in some cases failed to take account of their wishes and needs. We recognised that the Government wants to ensure that discrimination on the grounds of disability is removed from health and social services.

9. Under health and social services legislation, entitlement to services is based largely on the assessment of need. But in practice there is a great variation in the delivery of services across the UK because eligibility criteria are set locally. We recognised that it would be unrealistic to expect a complete uniformity in service delivery across the country because resources are finite and the needs of populations differ in different regions. However, it is unreasonable that access to services should depend on where a disabled person lives.

Recommendation 10.5: We endorse the Government's commitment to ensure that access to health and social services is on the basis of need alone, without discrimination on the basis of disability or other factors, such as age, sex, or race.

Taking forward existing legislation and initiatives

10. We were pleased to see the steps that the Department of Health had initiated to ensure that the DDA was fully implemented in health and social services. But it is important to ensure that the implementation reaches into all sectors, including services provided for people with mental health problems.

Recommendation 10.6: The Department of Health and the DRC should work together to decide what further action might be needed to implement the DDA, and to monitor its implementation in both the NHS and Social Services, taking account of initiatives already under way in both services.

11. We also felt that it was important to highlight particular areas where health and social services could improve the quality of life and social inclusion of disabled people, for example: living in the community; dignity and prevention of abuse; freedom of movement and consistency of service provision; the involvement of disabled people in planning and commissioning; and complaints and inspection procedures. Any good practice or lessons learnt should be spread throughout the services for disabled people.

Recommendation 10.7: The DRC and the Department of Health should work together in areas such as: living in the community; dignity and prevention of abuse; freedom of movement and consistency of service provision; the involvement of disabled people in planning and commissioning services; and complaints and inspection procedures.

Awareness and Training

12. It is essential that appropriate staff training and the right policies and procedures are in place if services to disabled people are to be delivered without discrimination. A rolling programme of guidance should be monitored by the DRC, which should report regularly on whether the health and social services are fulfilling their role as an exemplar and active supporter of disabled people's rights. All monitoring will need to be broken down by type of impairment.

13. There also needs to be a shift away from viewing disabled people as passive recipients of care. Disabled people should be assisted to participate, in an inclusive way, in society. For example, the Centre for Mental Health Services Development is piloting a care planning process which includes opportunities for work as a central plank for each individual. In Nottingham, mental health services have worked with local colleges in a project called 'Community Connections' to enable over 100 people per year with significant mental health problems to engage in mainstream educational courses.

**Recommendation 10.8: The Department of Health should, in consultation with the DRC, pursue a rolling programme of guidance and other communication with health and social services staff to ensure that all staff are fully aware of their obligations to:
serve all disabled users on a non-discriminatory basis;**

- take a proactive role in informing and supporting disabled service users to pursue their rights and opportunities - for example, mental health staff should take active steps to provide the support that may be necessary to enable clients to pursue employment opportunities; and
- employ disabled people on a non-discriminatory basis.

Making Decisions

Case Study

A company director with spinal muscular atrophy, who is also a qualified solicitor, was admitted to hospital with a chest infection. To her horror she found a doctor had placed a 'Do Not Resuscitate' notice on her medical notes because it was considered that her quality of life did not warrant such intervention.

14. We recognised that doctors should make decisions based on their clinical judgement. But these decisions should be made within the context of society's desire for equal treatment for disabled people. Health professionals should establish with the Disability Rights Commission and the Department of Health a framework for ensuring that disabled people are treated on an equal basis to others in society. The Government, in collaboration with disability organisations and the DRC, will also need to take a lead in challenging discriminatory attitudes where they exist in both health and social services.

Case Study: People with Schizophrenia

People with schizophrenia have standardised mortality ratios two and a half times the national average: put simply, they are more likely to die younger. One reason for this is that they often receive late, or inadequate, physical investigations. The complaints of psychiatric service users are all too readily put down to their anxiety, or delusions, or other psychiatric symptoms.

Source: Department of Health, 1994/Sayce and Measey, Psychiatric Bulletin, 1999

15. We were aware of the particular concerns about some patients who might be refused treatment on grounds that were not based on clinical need alone, for instance views on their 'quality of life' following treatment. We recognised that these decisions were difficult and recommended that guidance should be drawn up to help health professionals when faced with these types of decisions.

Recommendation 10.9: The Department of Health should provide a lead in challenging attitudes towards disabled people in health and social services which lead to discrimination. It should consult with the DRC, disability organisations and the health professions on guidance to ensure decision making in key areas such as access to treatment and continuation of treatment is consistent, and not influenced by inappropriate judgements on 'quality of life'.

Recommendation 10.10: GPs should not discriminate on grounds of disability when accepting or declining patients to be taken onto their lists, or in deciding the removal of patients from those lists.

Recommendation 10.11: The General Medical Council should be asked to add to its guidance 'Duties of the Doctor' a commitment that doctors should not allow their views of disability to prejudice the treatment given or arranged.

Advocacy

16. Advocacy and support are important for some disabled people to ensure that they get proper service or treatment from both the health and social services. Implementing the existing legislation³ on "authorised representatives" could strengthen access for those people who would benefit from this type of representation. This would need to be monitored after implementation to ensure that it had the desired effect and, if not, the legislation reviewed.

Recommendation 10.12: The Department of Health should look at improving the arrangements for advocacy support, including whether sections 1 to 3 of the Disabled Persons (Service, Consultation and Representation) Act 1986 should be implemented.

Children and Parents

17. Disabled children should have the same rights to: freedom of expression; access to education and health care; play, leisure and cultural activities; and, most importantly, to a family life as other children in the community. However, many disabled children and their families, and disabled parents, experience discrimination and barriers in accessing services. Health and local authority services have a vital role in supporting disabled children and their families. The key to proper family support services is good assessment. We recognised the Government's commitment to ensuring that disabled children and their families have the necessary support in order to live as inclusively as possible within their local communities. The past decade has seen a wide range of initiatives, which have included disabled children within policies and procedures designed to improve the life-chances of all children within the United Kingdom. These have included a new focus on earlier identification and intervention, with the Sure Start programme and Early Years Development and Childcare Partnerships ensuring that disabled children are included within planning arrangements for young children. Early Excellence Centres have in many instances 'modelled' an inclusive approach for disabled children and their parents within local communities.

18. When considering decisions on receiving children into care and on fostering and adoption, the welfare of the child must come first. However, there should be no discriminatory assumptions about the ability of disabled people to raise children. Each case should be assessed on its merits. Providing support for disabled people in their parenting role should produce outcomes beneficial to both parents and children.

Case Study: Health Action Zone

In Lambeth, the Health Action Zone has developed a multi-agency project to provide support for parents with learning difficulties. The aim is, through early intervention and support, to have an impact on: the numbers of children needing to be received into care or placed on the child protection register; the children's educational attainment; and the parents' satisfaction with the service.

Human Rights Act

Case Study

An adult man and woman who lived in a residential care home were prevented by staff from becoming engaged to marry and denied the privacy to form a close and loving relationship. The staff refused to take them to a jeweller's shop to buy a ring and used various methods to keep the couple apart. After three years, the couple persuaded some friends outside of the home to help them leave for a day; they married in a registry office in 1997. They are now in a supported living flat, employing personal assistants.

Source: National Centre for Independent Living

19. Article 12 of the European Convention on Human Rights provides for the right to marry and found a family. We felt that the Human Rights Act would be important for disabled people in relation to this right because disabled women expecting children can still face negative attitudes and disabled people living in residential accommodation may face barriers to establishing relationships. The Disability Rights Commission Act provides regulation making powers that could be used to allow the DRC to assist individuals seeking to take cases under the Human Rights Act. We felt that these powers should be used to allow the Disability Rights Commission to act in this area. We welcomed the fact that a Parliamentary Committee would be looking at human rights issues, including the possibility of establishing a Human Rights Commission.

Recommendation 10.13: The Government should maintain its commitment to consider allowing the DRC to assist individuals under the Human Rights Act.

People with Mental Health Problems

20. Services for people with mental health problems are subject to the law in a way unlike others with impairments or conditions. The law can restrict their rights to undertake what most people see as the basic rights of a citizen. The principle of non-discrimination should underlie mental health law. The Government has recently published a Green Paper Reform of the Mental Health Act 1983 and we have recommended that it works with the DRC to ensure the principle of non-discrimination is put into practice.

Recommendation 10.14: For people compulsorily detained under mental health legislation, the principle of 'reciprocity' should apply: it is not reasonable to detain someone under compulsion for treatment, and not to offer them good quality health and social care.

Recommendation 10.15: The DRC should consider commenting on the regular reports of the Mental Health Act Commission (MHAC), or whatever body may replace it, to ensure that mental health law is applied in ways that safeguard people with mental health problems from discrimination. The DRC should work with the Mental Health Act Commission to ensure the MHAC's staff are adequately trained in disability discrimination matters. This will enable the MHAC to inform disabled people of their rights under the DDA and how to secure them.

Quality Improvement

21. It is important that assessed individual need remains the basis of service delivery. Without going as far as recommending an enforceable right to the services a disabled person needs, we considered that much could be achieved through tying needs to best practice guidelines. We welcomed the Fair Access to Care Initiative, which seeks to make people's access to social care services more dependent on their needs and circumstances, and less dependent on where they live or whom they approach for help. We also welcomed moves to achieve more consistency in the provision of services but felt that they fell short of delivering equality of access. National minimum standards would ensure a basic level of fairness while retaining a degree of flexibility to take account of local conditions. Such standards should emphasise the importance of providing services for disabled people in an integrated setting. This would help ensure the social inclusion of disabled people.

Recommendation 10.16: The Department of Health should ensure that all aspects of its quality improvement agenda, such as National Service Frameworks, the work of the National Institute for Clinical Excellence and Commission for Health Improvement and information materials for users, mainstream disability rights issues. The Department of Health should consider adopting national minimum standards, with an emphasis on services being provided in an integrated setting where possible, to ensure fairness for disabled people in the delivery of health and social services.

Holistic Approach to the Provision of Equipment and Services

Case Study: The Quality Protects Programme

The 'Quality Protects' programme requires all local authorities to provide management action plans (with specific national objectives for disabled children) to improve the quality of life of all children in the locality and in particular to safeguard those children who are vulnerable. The increasing integration of strategic planning between social services, education and health (together with an emphasis throughout all initiatives on listening to the views of children and parents or carers) has important implications for disabled children and the creation of inclusive services.

22. Some disabled people are in receipt of services and equipment from a wide range of agencies, such as local government, voluntary organisations and other authorities. We felt that these services needed better co-ordination.

23. Currently, at a local level, agencies work in partnership to co-ordinate services for disabled people, for example in the area of education where health and social services and schools already work closely around the needs of disabled children. But the provision of equipment, for example, can be an area where there are disputes over budgetary responsibility and a lack of responsiveness to the needs of service users. We acknowledged the recognition, both by the Government and disabled people, that better co-ordination in working practices should improve outcomes for disabled people. It was also recognised that partnerships extend to the voluntary sector who are also a major provider of services and equipment.

Recommendation 10.17: Barriers to joint working in the provision of services and support should be tackled. Particular attention should be paid to points of transition such as when someone moves from education to employment. Improving working practices and providing good practice guidance on joint working should be taken forward, building on the current interfaces between

services that already exist. The first stage should be to identify the barriers - both legislative and budgetary - prior to reviewing the scope for change in this area.

24. There have been cases of disabled people having to return equipment that they still require to a public sector provider simply because they have moved from one stage of education to the next. This could lead to serviceable equipment being placed in store, delays for the disabled person in continuing with their education and further costs for another provider in purchasing new equipment. There is a strong case for focusing on the needs of the user, instead of the providers, when determining the provision of equipment.

Example

A young man was provided with £2000 worth of equipment by his school to access his studies. He left the school to go to college, but the school could not transfer the equipment to the college. The college could not afford to purchase new equipment so he is unable to continue with his education.

Recommendation 10.18: Where a person could helpfully retain equipment for use when passing from one provider to another, for example, equipment provided by a school being retained by the disabled person for use at a college or university, barriers to this should be tackled. Barriers to equipment being transported between authorities and different parts of the country should also be removed. This would be of potential benefit to both the providers of services and the individual.

Conclusion

25. For many disabled people, local government services and the National Health Service are essential to facilitating their participation in society. It is important therefore that disabled people receive equality of treatment in accessing these services, based on their needs, not service providers' assumptions. Services also need to be co-ordinated and provided in an integrated setting. Where agencies are providing support to help an individual transfer from one service to another this transition should be planned. Equipment and support should transfer, where possible, to ensure continuity for the disabled person.

Annex A

Disability Rights Task Force Members

Chair:

Margaret Hodge MP
Minister for Disabled People

Stephen Alambritis
Federation of Small Businesses

Bob Benson
Disability Scotland

Jane Campbell
National Centre for Independent Living

Elizabeth Clarke
former Business Research Officer, Institute of Directors

Caroline Gooding
Trade Union Disability Alliance

David Grayson
National Disability Council

Rachel Hurst
Rights Now

David Jenkins
Wales Trade Union Council

Su Jenkins
Member, Confederation of British Industry

Brian Lamb
SCOPE

Colin Low
Royal National Institute of the Blind

Joe Mann
National League for the Blind and Disabled

Bert Massie
The Royal Association for Disability and Rehabilitation

Brian Pomeroy
Deloitte and Touche Consulting Group

Philippa Russell
Council for Disabled Children

Liz Sayce former Policy Director, Mind (National Association for Mental Health)

Susan Scott-Parker
Employers' Forum on Disability

Ranjit Sondhi former Deputy Chairman, Commission for Racial Equality

James Strachan
The Royal National Institute for Deaf People

Richard Taylor
Lifespan Healthcare NHS Trust

Roy Taylor
Community Services, Kingston-upon-Thames Local Authority

Keith Welton
Mid Yorkshire Chamber of Commerce and Industry Ltd

Monica Wilson
Disability Action (Northern Ireland)

Richard Wood
British Council of Organisations of Disabled People

Note: Elizabeth Clarke replaced Tracey-Jane Malthouse, formerly of the Institute of Directors. Roy Taylor replaced Denise Platt, formerly of the Local Government Association

Annex B

Further Information

Additional Copies and Alternative Formats

1. Additional copies of this report, versions in Welsh and audio tape, Braille and Easy to Read versions, can be obtained, free of charge, from:
DDA Helpline Freepost MID02164 Stratford-upon-Avon CV37 9BR
Telephone: 0345 622 633 Textphone: 0345 622 644 Fax: 0345 622 611 E-mail:
dda.help@stra.sitel.co.uk
2. This report is also available on the Government's Disability Website at:
www.disability.gov.uk

Comments

3. If you have comments on this report they should be sent to:
The Campaign Support Team Public Enquiry Unit
Department for Education and Employment
Area 2B, Castle View House
Runcorn Cheshire WA7 2GJ
E-mail: disability.rights@dfee.gov.uk

Publications

4. Many of the publications listed below are available from the following addresses:

The Stationery Office (TSO) Publication Centre
PO Box 276 London SW8 5DT
Telephone Orders and Enquiries: 0870 600 5522 Fax Orders: 0870 600 5533
Website: www.tsonline.gov.uk

DfEE Publications
PO Box 5050 Sherwood Park Annesley Nottingham NG15 0DJ
Telephone: 0845 60 222 60 Fax: 0845 60 333 60 Minicom: 0845 60 555 60
E-mail: dfee@prologistics.co.uk

The DDA Helpline details in paragraph 1 above
The Government's Disability Website www.disability.gov.uk

5. Where publications are available elsewhere, addresses are given.

Introduction (Chapter 1)

Promoting Disabled People's Rights: Creating a Disability Rights Commission fit for the 21st Century, DfEE
Priced Publication, available from TSO and, free of charge, from the Government's Disability Website

The Disability Discrimination Act: Analysis Data From an Omnibus Survey, DSS
In House Report 30 by Grahame Whitfield, July 1997
Available from Keith Watson, Social Research Branch, Department of Social Security, 4th Floor, Adelphi, 1-11 John Adam Street, London WC2N 6HT
E-mail: keith@asdlondon.dss-asd.gov.uk

Reform of the Race Relations Act 1976, CRE

Available, free of charge, from the Commission for Racial Equality, Elliot House, 10-12 Allington Street, London, SW1E 5EH Telephone 0171 828 7022. Fax 0171 630 7605. E-mail: info@cre.gov.uk Website: www.cre.gov.uk

Equality in the 21st Century: A New Sex Equality Law for Britain, EOC

Available, free of charge, from the Equal Opportunities Commission's website at: www.eoc.org.uk Customer Contact Point, Equal Opportunities Commission, Overseas House, Quay Street, Manchester, M3 3HN Telephone 0161 833 9244. Fax 0161 835 1657. E-mail: info@eoc.org.uk

Review of Anti-Discrimination Legislation, BRTF

Available from the Better Regulation Task Force, Room 65/3, Horseguards Road, London, SW1P 3AL Telephone 0171 270 6601. Website: www.cabinet-office.gov.uk/regulation/index/task.htm

The Stephen Lawrence Inquiry: Report of an Inquiry by Sir William MacPherson of Cluny, Cm 4262-I, Feb 1999

Priced publication, ISBN 010-142622-4, available from TSO

Defining Disability (Chapter 3)

Guidance on Matters to be Taken into Account in Determining Questions Relating to the Definition of Disability, DfEE/DSS, ('Definitions Guidance')

Priced publication, ISBN 011-270955-9, available from TSO Available, free of charge, and in summary form from: www.disability.gov.uk/dda/dle/guidance.html Available in alternative formats and summary form, free of charge, from the DDA Helpline

The Implications of Genetic Testing for Employment, HGAC

Available from the Human Genetics Advisory Commission, Office of Science and Technology, Room G/12, Petty France, London, SW1H 9ST

Education (Chapter 4)

Meeting Special Educational Needs: A Programme of Action, DfEE ('SEN Action Programme')

Available from DfEE Publications and the DfEE website: www.dfee.gov.uk/senap/index.htm

Shaping the Future of Special Education: An Action Programme for Wales, Welsh Office

Available from the Pupils Support Division, National Assembly for Wales, Cathays Park, Cardiff CF1 3NQ. Telephone 01222 826081

Code of Practice on the Identification and Assessment of Special Educational Needs, DfEE

Available from DfEE Publications and the DfEE website: www.dfee.gov.uk/sen/standard.htm

Code of Practice on School Admissions, DfEE

Available from DfEE Publications and the DfEE website: www.dfee.gov.uk/sacode/index.htm

Special Educational Needs: Report of the Committee of Enquiry into the Education of Handicapped Children and Young People, Cmnd 7212, May 1978

Priced publication, ISBN 010-172120-X, available from TSO

Employment (Chapter 5)

Code of Practice for the Elimination of Discrimination in the Field of Employment Against Disabled Person or Persons who have had a Disability ('the Employment Code of Practice')

Priced publication, ISBN 011-270954-0, available from TSO Available, free of charge, and in summary form from: <http://www.disability.gov.uk/dda/dle/cop-elim.html>
Available in alternative formats and summary form from the DDA Helpline

Disabled People in the Labour Market, Findings from the DfEE Baseline Disability Survey, Labour Market Trends, by Nigel Meager and Angelika Hibbett, September 1999

Further information is available from Angelika Hibbett, DfEE, Room 113, Caxton House, Tothill Street, London, SW1H 9NAE-mail: angelika.hibbett@dfee.gov.uk

Integrating Disabled Employees, Andrew Watson, Glyn Owen, Jill Aubrey and Brian Ellis, DfEE

Available from DfEE Publications

The Disability Discrimination Act 1995: A Guidance for Occupational Physicians, The Society of Occupational Medicine

Available from The Society of Occupational Medicine, 6 St Andrews Place, Regents Park, London

Modernising Government White Paper, Cabinet Office, March 1999

Priced publication, Cm 4310, ISBN 010-143102-3, available from TSO Available, free of charge, at: www.cabinet-office.gov.uk/moderngov/index.htm

DDA Employment Provisions: Questions Procedure, DfEE

Available, free of charge, and in alternative formats from the DDA Helpline Also available from: www.disability.gov.uk/dda/dle/dl56.html

Occupational Pensions and Disabled People, Nigel Meager, Peter Bates, Peter McGeer and NiiDjan Tackey, Institute of Employment Studies

Available from DfEE Publications

Access to Goods, Services and Premises (Chapter 6)

Code of Practice on Rights of Access to Goods, Facilities, Services and Premises

Priced publication, ISBN 011-271055-7, available from TSO Available, free of charge, at: www.disability.gov.uk/dda/dle/cop-accs.html Available, free of charge, in alternative formats from the DDA Helpline

Implications of Genetic Testing for Insurance, HGAC

Available from Human Genetics Advisory Commission, Office of Science and Technology, Room G/12, Petty France, London, SW1H 9ST

Issues Raised in the Consultation on the 1999 Code of Practice, Brian Doyle

Available at: www.disability-council.gov.uk/code.htm

Travel (Chapter 7)

Guide Dog Access: A Report Into Guide Dog Access to Taxis and Mini Cabs, The Guide Dogs of the Blind Association and RNIB, October 1999

Available from the Guide Dogs for the Blind Association, Hillfields, Burghfield Common, Reading, RG7 3YG. Telephone 0118 983 5555. Fax 0118 983 5433

Review of the Orange Badge Scheme, Disabled Persons Transport Advisory Committee (DPTAC)

Available, free of charge, from the Disabled Persons Transport Advisory Committee (DPTAC), Secretariat, Department of the Environment, Transport and the Regions, Zone 1/11, Great Minster House, 76

Marsham Street, London, SW1P 4DR Telephone 0171 890 4916. Fax 0171 890 6102. Minicom 0171 890 3277 E-mail: dptac@detr.gov.uk Website: www.mobility-unit.detr.gov.uk/dptac.htm

The Environment and Housing (Chapter 8)

Disabled Access to the Countryside and the Disability Discrimination Act, Countryside Access Group

Available from The Countryside Access Group, Ashwellthorpe, Norwich NR16 1EX. Telephone 01508 489 449. Fax 01508 488 173

Code of Practice for Access for the Disabled to Buildings, British Standards Institution BS5810: 1979,

Available from the British Standards Institution, 389 Chiswick High Road, London, W4 4AL.

Improving Rights of Way in England and Wales, Consultation Paper, DETR, July 1999

Available from DETR, PO Box No 236, Wetherby, West Yorkshire, LS23 7NB. Telephone 0870 1226 236. Fax 0870 1226 237 Website: www.detr.gov.uk

Participation in Public Life (Chapter 9)

Polls Apart 2: Disabled People and the 1997 General Election, SCOPE

Available from SCOPE, 6 Market Road, Islington, London, N7 9PW Telephone 0800 626 216

Speaking up for Justice, Report of the Interdepartmental Working Group on the Treatment of Vulnerable or Intimidated Witnesses in the Criminal Justice System

Available from Home Office Publications Enquiries, Public Enquiry Section, Room 856, 50 Queen Anne's Gate, London, SW1H 9AT Telephone 0171 273 3072. Fax 0171 273 2191 Website: www.homeoffice.gov.uk

Final Report Of The Working Party On Electoral Procedures ('The Howarth Working Party'), Home Office

Available from Home Office Publications Enquiries (address above) or at: www.homeoffice.gov.uk/ccpd/eleclink.htm

A Right Denied: Access to Voting for Blind and Partially Sighted People, Campaign Report 8, RNIB

Available from RNIB, Customer Services, PO Box 173, Peterborough, PE2 6WS Telephone 0345 023 153. Fax 01733 371 555 Minicom 0345 585 691. E-mail: CServices@rnib.org.uk

Local Government, Health and Social Services (Chapter 10)

Rules for Radicals, Saul D Alinsky, Random House, 1971

Open to the Public? Reasonable Adjustments to Local Government Services, National Disability Council and the Improvement and Development Agency
Available from The Equalities Issues Section, Employers' Organisation for Local Government, Layden House, London, EC1M 5LG
Telephone 0171 296 6756. Fax 0171 296 6739

Reform of the Mental Health Act 1983 Green Paper, Department of Health
Priced Publication, available from TSO

Modernising Social Services: Promoting Independence, Improving Protection, Raising Standards White Paper, Department of Health
Priced Publication, Cmnd 4169, ISBN 010-141692-X, available from TSO

Costs and Benefits (Annex D)

Access to Goods, Services and Facilities - Regulatory Impact Assessment, DfEE
Available from DfEE Publications and from the Government's Disability website

Legislation

Acts of Parliament and Statutory Instruments are available as priced publications from TSO. More recent Acts and Statutory Instruments are also available at:
www.legislation.hmso.gov.uk

Annex C

Defining Disability Rights: Comparative Perspectives

Presentation to the Disability Rights Task Force by Professor Brian Doyle, Dean of Law, The Liverpool Law School, The University of Liverpool on 13 October 1999
Introduction

1. In approaching the problem of how to define disability rights, two issues tend to dominate:
 - a. how to define "disability"; and
 - b. what kinds of discrimination are to be prohibited and how is "discrimination" to be defined?

International comparisons

2. Considerable assistance can be gleaned in attempting to answer these questions by considering a number of international comparisons or comparative perspectives. The most useful comparative sources are those drawn from the experience of other common law countries. These include:

US federal laws
Rehabilitation Act 1973
Americans with Disabilities Act 1990
US state "fair employment" legislation

Australian federal disability discrimination legislation: Disability Discrimination Act 1992
Australian state anti-discrimination or equal opportunity statutes

Canadian federal Human Rights Act
Canadian provincial "human rights" codes

New Zealand Human Rights Act 1993

Ireland:

- Employment Equality Act 1998
- Equal Status Bill 1999

Disability: General Issues

3. Any attempt to ensure civil rights for disabled people will have to address a number of issues that arise in the context of identifying the class of persons who are to be the subject of those rights. Those questions include:

- how is "disability" to be defined (if at all)?
- is it to be based upon "impairment"?
- is reference to be made to effect on "activities"?
- is a present or actual disability only covered?
- would a record or history of disability suffice?
- is a perceived or imputed disability to be protected?
- what of future disability or genetic disposition to disability?
- what disabilities, if any, are to be explicitly included or excluded?

4. A variety of approaches to these questions can be detected. For example, under Canada's federal Human Rights Act, the term "disability" is not defined, except to state that it includes previous or existing mental or physical disability. In practice, this lack of definition does not appear from the case law so far to be problematic. In contrast, the definition of "disability" in Canadian provincial legislation is more expansive. Alberta province defines the concept as:

"any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes epilepsy, paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, and physical reliance on a guide dog, wheelchair or other remedial appliance or device."

5. In Australia, the Commonwealth (or federal) Disability Discrimination Act 1992 defines disability as follows:

- "(a) total or partial loss of the person's bodily or mental functions; or
- (b) total or partial loss of a part of the body; or
- (c) the presence in the body of organisms causing disease or illness; or
- (d) the presence in the body of organisms capable of causing disease or illness; or
- (e) the malfunction, malformation or disfigurement of a part of the person's body; or
- (f) a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction; or
- (g) a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgement or that results in disturbed behaviour."

6. A different approach is detectable in Australian state legislation. In New South Wales, by way of illustration, the law is based upon the concept of physical and intellectual impairment. In this case "physical impairment" means "any defect or disturbance in the normal structure and functioning of the person's body whether arising from a condition subsisting at birth or from illness or injury", while "intellectual impairment" means "any defect or disturbance in the normal structure and functioning of the person's brain, whether arising from a condition subsisting at birth or from illness or injury."

7. New Zealand's Human Rights Act approaches disability by categorisation, so that the concept includes:

- physical disability or impairment
- physical illness
- psychiatric illness
- intellectual or psychological disability or impairment
- any other loss or abnormality of psychological, physiological, or anatomical structure of function
- reliance on a guide dog, wheelchair or other remedial means
- the presence in the body of organisms capable of causing illness.

8. Perhaps the best known definition of "disability" is that used in the United States. The Americans with Disabilities Act 1990 encompasses:

- a. a physical or mental impairment that substantially limits one or more of the major life activities of such individual; or
- b. a record of such impairment; or
- c. being regarded as having such an impairment"

and this is further expanded upon by regulations made by the relevant Government departments. Here "physical impairment" means:

"any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive; genitourinary, hemic and lymphatic; skin; and endocrine."

In turn, "mental impairment" is defined as:

"any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities."

Discrimination: General Issues

9. As with the definition of disability itself, the determination of what is meant by "discrimination" in the disability rights context can be problematic. The following general issues can be noted:

- direct discrimination (less favourable treatment)
- indirect discrimination (adverse impact)
- failure to make reasonable adjustments
- victimisation
- harassment
- characteristics discrimination
- discrimination by association

10. Direct discrimination is a universal feature of disability rights laws, but is not uniformly defined. In New South Wales, for example:

"A person discriminates against a [disabled person] on the ground of his [disability] if, on the ground of his [disability] he treats him less favourably than in the same circumstances, or in circumstances which are not materially different, he treats or would treat a person who is not a [disabled] person."

This appears very similar to the way in which direct discrimination is defined in the UK's sex and race discrimination legislation, but noticeably different (in subtle ways) from how it is defined in the UK's DDA 1995.

11. Defining what is meant by direct discrimination brings a number of problems. Often a law does not define "discrimination" at all. Where it does, it is necessary to consider how the causal connection between the discriminatory treatment and the ground of discrimination (in the present case, "disability") is to be articulated (e.g. "reason-related to"). Should disability be the principle reason or substantial ground for the discriminatory? Is the discriminator's motive or intention relevant? What degree of less favourable treatment must be shown? Is it necessary to nominate a comparator and is the law based upon a like with like comparison?

12. Indirect discrimination is not dealt with explicitly in the UK's DDA 1995 (where it is intended to fall within the combined effect of direct discrimination and the duty to

make reasonable adjustments). Other states do include a prohibition on indirect discrimination (sometimes because there is otherwise no explicit duty to take positive action or because disability is being dealt with as one of a number of discriminatory grounds in an omnibus statute).

13. In Ontario, for example, indirect discrimination is defined as occurring where "a requirement, qualification or factor exists that is not discrimination on a prohibited ground but that results in the exclusion, restriction or preference of a group of persons who are identified by a prohibited ground of discrimination and of whom the person is a member."

14. In some states, the concept of "reasonable adjustment" (or "accommodation") is merely inherent in the concept of indirect discrimination. In others, the duty is a separate and explicit one, breach of which gives rise to a special cause of action. Reasonable adjustment can be seen as a positive duty in the relevant legislation in the UK, US and (to a lesser extent) Ireland. In contrast, the duty is somewhat weaker in Canada, Australia and New Zealand. So, by way of illustration, New Zealand's Human Rights Act contains the following provision:

"Nothing in ... this Act shall prevent different treatment based on disability where the position is such that the person could perform the duties of the position satisfactorily only with the aid of special services or facilities and it is not reasonable to expect the employer to provide those services or facilities."

15. How a duty to make reasonable adjustments is to be framed in disability rights legislation, and whether it is a duty which fully works, requires consideration of the following issues:

- does the law clearly distinguish between direct and indirect discrimination?
- are reasonable adjustments required as a statutory duty?
- is an (unjustified?) failure of that duty treated as discrimination?

16. Against this background, it is interesting to examine how all of these tensions and issues have been addressed in Ireland, the latest country to enact disability rights laws (in this case, in the context of omnibus equality legislation).

Irish Republic

17. An interesting and useful comparative perspective can be obtained from the study of Ireland's recent equality legislation which embraces disability rights. Following the influential Report of the Commission on the Status of People with Disabilities (A Strategy for Equality) two Bills were promoted (Employment Equality Bill 1996 and Equal Status Bill 1997). However, both Bills were declared unconstitutional by the Irish Supreme Court (not least on the grounds that the duty to make reasonable adjustments for disabled people offended the guarantee of property rights - of the person having to make the adjustment - in the Irish Constitution). Consequently, two further measures were introduced, taking due account of the Supreme Court's decision: Employment Equality Act 1998 and Equal Status Bill 1999.

18. Ireland borrows heavily from international comparisons (and the UK DDA 1995). The Employment Equality Act 1998 addresses discrimination in the employment field, while the Equal Status Bill 1999 establishes disability rights in respect of:

- disposal of goods & provision of services
- disposal of premises
- provision of accommodation
- educational establishments
- clubs
- passenger vehicles & stations accessibility

19. The 1998 Act established the Equality Authority (EA) and the office of Director of Equality Investigations (DEI) and the 1999 Bill extends the duties and functions of the EA and DEI. The DEI undertakes the investigation of claims under the legislation and, where well-founded, may order redress (which might involve compensation up to IR£5,000 or an order requiring specific course of action). Redress orders are enforceable via the Circuit Court, with an appeal to Circuit Court and then High Court. These two pieces of legislation have yet to be tested in the courts.

20. The Irish legislation is omnibus legislation (that is, it applies to a number of prohibited grounds of discrimination). A "discriminatory ground" may be one which:

- exists at present; or
- previously existed but no longer exists; or
- may exist in the future; or
- is imputed to the person concerned.

Disability is a "discriminatory ground" and discrimination on the "disability ground" compares the treatment of a disabled person with a non-disabled person, or a disabled person with a person with different disability.

21. Under the Irish statutes, "disability" means:

- "a. the total or partial absence of a person's bodily or mental functions, including the absence of a part of a person's body, or
- b. the presence in the body of organisms causing, or likely to cause, chronic disease or illness, or
- c. the malfunction, malformation or disfigurement of a part of a person's body, or
- d. a condition or malfunction which results in a person learning differently from a person without the condition or malfunction, or
- e. a condition, disease or illness which affects a person's thought processes, perception of reality, emotions or judgement or which results in disturbed behaviour."

22. Discrimination is defined in a number of ways in the Irish legislation. First, there is direct discrimination. This occurs where, on a discriminatory ground, a person is treated less favourably than another person is treated (or has been or would be treated). However, where a person has a disability that, in the circumstances, could cause harm to the person or others, treating the person differently to the extent reasonably necessary to prevent such harm does not constitute discrimination.

Secondly, the law prohibits discrimination by association. Here discrimination occurs where a person who is associated with another person is treated, by virtue of that association, less favourably than a person who is not so associated is treated (or has been or would be treated) and similar treatment of that other person on a discriminatory ground would constitute discrimination.

Thirdly, indirect discrimination is included. This form of discrimination occurs where a person:

- "a. is in a category of persons who share a common characteristic by reason of which discrimination may occur in respect of those persons, and
- b. is obliged to comply with a condition but is unable to do so, and
- c. substantially more people outside the category than within it are able to comply with the condition, and
- d. the obligation to comply with the condition cannot be justified as being reasonable in all the circumstances".

Fourthly, as in the UK, Ireland addresses the need for reasonable adjustments (known as reasonable accommodation in the Irish statutes). In this case, discrimination includes a refusal or failure to do all that is reasonable (but not exceeding nominal cost) to accommodate the needs of a person with a disability by providing special treatment or facilities, if without such special treatment or facilities it would be impossible or unduly difficult for the person to avail himself or herself of the service. The condition in italics clearly reflects the legislature's concern to proof the equality legislation against unconstitutionality in the light of the earlier Supreme Court challenge.

Annex D

Costs and Benefits

Introduction

1. The Task Force's terms of reference asked us to take full account of the costs and benefits of our recommendations, as far as is quantifiable and practicable. This annex sets out the costs and benefits of our recommendations. As the terms of reference recognised, it is not always possible, or practical, to quantify costs and benefits in the area of civil rights. The benefits of a diverse and inclusive society, where disabled people can live free from discrimination, are difficult to express in financial terms. We have also not provided specific costings where recommendations:

- a. set out broad policy intentions and leave the Government to bring forward more detailed proposals. Costs and benefits can only sensibly be assessed at that stage and we are reassured that any detailed proposals from Government will include a regulatory impact assessment;
- b. require reviews or the production of guidance by Government Departments. We believe that these reviews can be taken forward within existing Departmental resources, as long as sufficient priority is attached to them. We would urge the Departments concerned to allocate staff resources to these areas to enable work to be taken forward speedily;
- c. ask the DRC to undertake further work. The Commission will need to determine, within its allocated resources, the priority that it gives to such work and the time-scale to which it is pursued. However, much of the work will be within its existing duties, such as monitoring the DDA, and should not lead to additional pressures on its resources; and
- d. are likely to involve only minimal costs.

Recommendations meeting any of these criteria are generally not referred to in this annex, although in some cases we have explained why we consider the costs involved to be small.

Defining Disability (Chapter 3)

2. Recommendations 3.2 and 3.3 propose that the definition of disability is extended to cover both people with HIV from diagnosis and cancer from when it has significant consequences on people's lives. Recommendation 3.4, which proposes that people who are certified as blind or partially sighted should be deemed to meet the definition of disability, might extend the coverage of the DDA to additional people. We estimated that these recommendations would extend coverage to around 30,000 additional people. Given that there are around 10 million people in the UK already protected by the DDA, the costs of these recommendations would be negligible.

3. The benefits of our recommendations should be greater clarity and understanding of the definition of disability offering both disabled people and employers and service providers more certainty about their position under the law. This should lead to increased compliance with the DDA.

Education (Chapter 4)

Schools

4. The new rights against discrimination in school education (recommendations 4.4 to 4.7) are comparable to those under Part III of the DDA and we based costs on the published Regulatory Impact Assessment¹ (RIA) for that Part. Recommendation 4.4, like the comparable duty under the DDA, would not result in additional costs. Recommendations 4.5 and 4.6 would require schools and LEAs to review their practices but we believed that they regularly undertake such activity and this should not result in additional costs, especially since the number of schools and LEAs with discriminatory policies requiring changes is likely to be low. Recommendation 4.7 requires education to be provided by reasonable alternative means. The RIA estimated the cost of this duty at a maximum of £12m per annum for the whole of the public sector.² To estimate the proportion of the public sector cost accounted for by school education, we have used employment rate as a proxy. One-fifth of the public sector is employed in school education and so we estimated the cost of the recommendation as £2.4m per annum and £0.5 million to the private school sector (calculated in the same way but using private sector figures).

5. Recommendation 4.10 proposes a new duty to plan for increased accessibility in schools over time. This would lead to a minor increase in planning costs, although we expect the Government to build on existing planning processes to minimise additional burdens. The costs of improving accessibility would depend on Government funding of LEAs and schools for this purpose. We noted that currently £100m is earmarked for the SEN Action Programme over 3 years. This gives capital support for projects to make mainstream schools accessible to disabled pupils. We hoped that the Government would sustain this level of funding and as schools became more accessible over time, the funding required for accessibility improvements should fall.

6. These recommendations have significant benefits. Educating disabled and non-disabled children together should lead to a greater understanding of disabled people's needs and lessen stereotypes. We hoped this would increase disabled people's opportunities to participate in the labour market and society more generally.

7. Recommendation 4.11 would involve an extension to the remit of the SEN Tribunal. Depending on the number of cases brought, additional costs could be in the region of £2m per annum.

Further, Higher and LEA-secured Adult Education

8. Recommendations 4.13 and 4.14 propose similar duties in further, higher and LEA-secured adult education to those applying to other service providers under Part III of the DDA. The RIA estimated the maximum cost to the public sector of these duties of £18m per annum and non-recurring costs of nearly £100m, which could be phased in over time. To estimate the proportion of the public sector cost accounted for by further, higher and LEA secured adult education, we used employment rate as a proxy. One-tenth of the public sector is employed in these education sectors and so we estimated the cost of the recommendations as nearly £2m per annum and £10m non-recurrent. Given that further and higher education sector institutions are relatively large compared to average service providers and we wanted stronger

¹ 'DDA Access to Goods, Services and Facilities - Regulatory Impact Assessment', DfEE (see Annex B)

² Excluding certain educational activities and transport

duties on inclusion, these costs are likely to be an under estimate. We welcomed the work of the relevant funding councils in assessing more accurately the likely costs.

9. The cost of recommendation 4.15 would depend on the complaint and redress mechanisms established. We would expect these to be cost effective, building on any relevant existing procedures. Recommendation 4.17 would lead to additional costs but we believed that these would be minimal since much of the Youth Service is already be accessible to young disabled people. For recommendation 4.18, we believed that the Government should produce a regulatory impact assessment, in consultation with voluntary organisations, to assess the additional costs.

10. Increased opportunities for disabled people to pursue further and higher education would yield benefits for both disabled people and wider society. Higher levels of qualifications and skills generally should lead to higher earning potential and we thought that this applied as much to disabled people as to others in the labour market.

Employment (Chapter 5)

11. The Disability Discrimination Act 1995: The Employment Provisions and Small Employers - A Review contained a revised compliance cost appraisal of the DDA employment provisions. It estimated that the compliance cost to all employers covered by the DDA is around £10m per annum. The costs of our recommendations to extend coverage to excluded organisations and occupations should be seen in the light of that overall cost.

Employment Related Organisations not Covered by the DDA Employment Provisions

12. Recommendation 5.8 proposes extending coverage of the DDA employment provisions to employers with 2-14 employees. We estimated this would cost around £2m per annum. Recommendation 5.9 seeks to extend coverage to businesses with one employee and those recruiting their first employee. This would bring into coverage around 2.5 million businesses but we were not able to assess the costs of this proposal. Extending coverage would generate benefits by assisting some disabled people to gain or retain employment, especially in localities or sectors where there are few large employers.

13. Recommendation 5.13 on qualifying bodies is likely to involve minimal costs since in most cases only changes to policies will be required. The proposal should lead to increased numbers of disabled people gaining accreditation or qualifications to pursue chosen careers, enhancing their chances of employment and promotion.

Workers not covered by the DDA Employment Provisions

14. Recommendation 5.14 proposes extending full coverage of the employment provisions to statutory office holders. This should have minimal cost implications since organisations appointing office holders, such as Government Departments, already adhere to the DDA.

15. Nearly 80% of disabled employees are already covered by the DDA employment provisions at a cost of around £10m per annum. The costs of extending coverage to the small number of disabled employees in (and potential recruits to) the police, fire and prison services and the armed forces would be minimal.

16. The recommendations to cover barristers, advocates and local councillors (recommendations 5.17 and 5.18) would involve minimal additional costs because the numbers involved are so small.

17. Recommendations 5.21 and 5.22 would not involve compulsory additional costs but we expect organisations with volunteers to assess the benefits of adjustments against any costs. We anticipated that in many cases, the benefits of having a disabled volunteer working effectively would exceed the cost of any reasonable adjustment.

18. Recommendation 5.23 would involve additional costs for the public sector but we acknowledged that there needed to be further work on the precise elements of the new duty. This work should include a cost and benefit analysis.

19. Recommendations 5.32 and 5.33 would involve some employers having to alter their application forms, which would involve administrative costs. However, we thought this would end the collection of unnecessary medical health information from job applicants, yielding saving for employers. Recommendations 5.34 - 5.38 should not alter current practice significantly as the majority of occupational pension schemes already offer equal access. The benefit would be that equal access would become a right. Recommendation 5.34 should not involve additional cost but would clarify the legislation. Recommendation 5.39 should not lead to additional costs, indeed disabled employees and landlords should benefit from voluntary access improvements by employers.

Access to Goods, Services and Premises (Chapter 6)

20. Recommendations 6.3 and 6.4 should involve no additional costs to service providers and offer benefits of certainty as to whether they are meeting their legal duties. Clear standards would assist in creating shared expectations between disabled people and service providers of the requirements of the DDA, avoiding costly litigation.

21. Recommendation 6.10 would involve additional costs to those private clubs it would cover but it was not possible to assess the number of clubs affected. Both recommendations 6.12 and 6.13 would involve additional costs to the public sector. However, the Government would need to work up details of new duties and it is only at that stage that it would be possible to estimate the costs and benefits of the proposals. In general terms though, disabled people and their families should benefit from services that are designed with more consideration of their needs. The costs and benefits of recommendation 6.20 would depend on the final form of the copyright exception. The public consultation on this issue would allow the costs and benefits for copyright owners and visually impaired people to be explored.

Sale, Letting and Management of Premises

22. Recommendation 6.27 would not involve additional costs to landlords, indeed they would have adjustments to their property that could increase the number of people to whom it could be subsequently leased or sold.

Travel (Chapter 7)

23. For recommendations 7.1 - 7.5, 7.8 and 7.9, the nature of transport services and the diversity of operations meant that a detailed economic assessment was not feasible at the level the recommendations are framed. We recognised, however, that there might be significant costs associated with these recommendations and that in

considering them the Government would have to carry out detailed economic analysis.

24. There would be significant benefits from making transport more accessible for disabled people. The increased mobility would allow disabled people to participate more fully in the labour market, considering a wider range of employment opportunities. The Touche Ross report *Profiting from Opportunities: A New Market for Tourism* showed that there is a significant untapped market of international disabled tourists and their friends and families across Europe, with a potential spend of £17 billion. Accessible transport services could attract such visitors to this country in preference to their domestic and other international destinations. Studies have also shown that accessible transport could boost usage, repaying the investment in new vehicles.

Environment and Housing (Chapter 8)

25. Recommendations 8.9 - 8.12 would build on existing provisions and we considered the additional costs would be small although this would depend on the extent to which individual authorities already take the action we have recommended. The costs and benefits of recommendation 8.13 are assessed in DETR's *Improving Rights of Way in England and Wales Consultation Paper*. In summary, there would be costs for highway authorities and land managers.

Participation in Public Life (Chapter 9)

26. Recommendations 9.3 - 9.5 on improving access to the electoral system would build on measures proposed by the Howarth Working Party. Since these measures should apply more widely than to disabled people, it would not be appropriate to assign the cost of these proposals to the recommendations we have made. In terms of measures specifically for disabled people, such as the provision of polling aids, the costs could be around a few hundred thousand pounds at a first general election but significantly less at future general elections and in other years.

27. We expected that the costs of recommendation 9.13, which proposes training for judges, could be accommodated within budgets allocated for this purpose. The marginal cost of including training on disability issues, especially as part of the wider training the judiciary would need in implementing the measures in the *Speaking Up for Justice* report, would be modest.

28. The benefits of our recommendations would be substantial. They would increase the number of potential jurors, allow disabled witnesses to testify who might have previously been excluded and ensure that disabled claimants have full access to the law.

Local Government, Health and Social Services (Chapter 10)

29. Many recommendations build on existing Government policies and initiatives and so we did not provide costings for these. Better awareness of disability issues would ensure treatment and services are better targeted and appropriate to the needs of the individual. We would expect, if our recommendations are fully implemented, to see benefits such as more disabled people becoming economically active and, for example, returning to work faster after becoming disabled or having taken time off work.

30. Recommendations 10.17 and 10.18, on better co-ordination of services and the removal of financial and other regulatory barriers to joint working between agencies, should lead to better use of existing resources, enhancing the service disabled people receive.

Annex E

List of Recommendations

Chapter 3 Defining Disability

3.1 The Government, the DRC and the Equality Commission for Northern Ireland should ensure that guidance and other communication on disability matters cover the wide range of disabled people, including all age groups and impairments.

3.2 HIV infection should be deemed a disability from the point at which it is diagnosed.

3.3 To extend coverage beyond those people with, or who have had, cancer already covered by the DDA definition, people with cancer should also be deemed to be disabled from the point at which it has significant consequences on their lives.

3.4 People who are certified as blind or partially sighted should be conclusively presumed to meet the DDA definition of disability.

3.5 The list of capacities relating to normal day-to-day activities in the DDA definition should be reviewed and consulted on, with a view to extending it, if necessary, to ensure an appropriate comprehensive coverage of mental health conditions and dysphasia.

3.6 The concept of covering only "clinically well-recognised" mental illnesses in the DDA definition should be reviewed and consulted on to identify the advantages and disadvantages of removing the limitation.

3.7 The statutory guidance to tribunals and courts should be improved and clarified to help ensure that the legislation's intention for what constitutes normal day-to-day activities is met, particularly in relation to work.

3.8 The issue of disregarding disabled people's coping/avoidance strategies should be made clearer in statutory guidance to tribunals and courts so that the true effects of a disability are considered. The guidance should also seek to ensure that tribunals and courts probe further, where appropriate, into the issue of effects on normal day-to-day activities and not just accept that the person is coping within reasonable expectations.

3.9 In order to bring into coverage severe but short-term conditions, such as some heart attacks, strokes or depression, consideration should be given to 'long-term' being removed from the definition with the concept of 'substantial' covering both duration and severity of adverse effects. We recognise that the wider implications of this proposal will need to be explored. In particular, regulations or guidance must make clear that such conditions should not be covered, unless the chance of recurrence is significantly increased by their having occurred once, to avoid including temporary or readily curable conditions, which may nevertheless have a severe short-term effect (such as broken legs generally do).

3.10 At this time, genetic pre-dispositions to impairments should not be considered a disability under the DDA. The DRC and the Equality Commission for Northern Ireland should work closely with the Government Department or Agency assigned responsibility for following up the HGAC report and keep this issue under review.

3.11 The current DDA position on limited exclusion of particular conditions from being disabilities should continue but the DRC and the Equality Commission for Northern Ireland should keep this under review.

3.12 The DRC and the Equality Commission for Northern Ireland should monitor the definition of disability and review it to see whether further improvements can be made.

Chapter 4 Education

4.1 The Government should continue to implement the SEN Action Programmes in England and Wales.

4.2 In reviewing the statutory framework for inclusion, the Government should strengthen the rights of parents of children with statements of SEN to a mainstream placement, unless they want a special school and a mainstream school would not meet the needs of the child or the wishes of either the parent or child.

4.3 Both the National Curriculum and the Early Learning Goals should continue to reflect the needs of children with SEN. The new opportunities for raising awareness of disability issues in schools within Citizenship and Personal, Social and Health Education should be used to the full.

4.4 Providers¹ of school education should be placed under a statutory duty not to discriminate unfairly against a disabled pupil, for a reason relating to his or her disability, in the provision of education. There should be a defence for acceptable less favourable treatment. The pupil's parents should have a right of redress.

4.5 Providers of school education should be placed under a statutory duty to review their policies, practices and procedures and make reasonable adjustments to any that discriminate against disabled pupils for a reason relating to their disability.

4.6 Where a policy, practice or procedure places an individual disabled pupil at a substantial disadvantage in comparison with pupils who are not disabled, the provider of school education should be under a statutory duty to make a reasonable adjustment so that it no longer has that effect. The pupil's parents should have a right of redress.

4.7 Where a physical feature places an individual disabled pupil at a substantial disadvantage in comparison with pupils who are not disabled, the provider of school education should be under a statutory duty to take reasonable steps to provide education using an alternative method, so that the disabled person is no longer at a substantial disadvantage. The pupil's parents should have a right of redress.

4.8 A separate Code of Practice should be produced on school education in relation to the proposed new rights.

4.9 The rights conferred by education legislation for pupils to have their special educational needs identified and met, and in England and Wales, the right to appeal

¹ LEAs, maintained schools, non maintained special schools, independent schools and pupil referral units

to the Special Educational Needs Tribunal, should be maintained. There should be a review of the measures in the SEN Action Programme to assess their effectiveness in meeting the needs of children with SEN/disability, including access to auxiliary aids and services.

4.10 Providers of school education should be placed under a statutory duty to plan to increase accessibility for disabled children to schools. This duty should cover both adjustments for physical access, including those for children with sensory impairments, and for access to the curriculum.

4.11 The jurisdiction of the SEN Tribunal should be extended to hear cases brought in relation to the new rights in recommendations 4.4, 4.6 and 4.7.

4.12 There should be a public consultation, with all those with an interest, on the practical implementation of the new rights proposed.

4.13 A separate section on further, higher and LEA-secured adult education should be included in civil rights legislation to secure comprehensive and enforceable rights for disabled people.

4.14 The legislation should have an associated statutory Code of Practice, explaining the new rights.

4.15 The Department for Education and Employment should consult with interested parties on improved rights of redress for disabled students in relation to complaints of discrimination, although ultimately the new rights proposed should be exercisable through the courts or tribunals.

4.16 Non-legislative measures to improve the rights of disabled people to further and higher education should continue to be developed and implemented to underpin civil rights legislation.

4.17 The new rights recommended in further, higher and LEA-secured adult education should be applied to the Youth Service.

4.18 The exclusion from the DDA access to services provisions of voluntary organisations providing education, social, cultural and recreational activities and facilities for physical education and training should be ended.

Chapter 5 Employment

5.1 The DDA's approach to employer defences for less favourable treatment should continue at present. It should be monitored and, if there is evidence that the justification test is not operating fairly, then the Government should consider the issue and consult on appropriate proposals to remedy any problems.

5.2 The DDA employment provisions' justification for failure to make a reasonable adjustment should be removed. The Employment Code of Practice should be revised to include examples of when it may be reasonable not to make an adjustment and the factors to be taken into account in assessing reasonableness should be expanded to reflect valid justifications.

- 5.3 The DDA's approach to allowing employers to appoint the best person for a job, once they have made any reasonable adjustment, should continue in civil rights legislation.
- 5.4 The DDA's approach to the coverage of employment, trade organisations and employment agencies should continue in civil rights legislation.
- 5.5 The DDA's approach to an employer's duty to make reasonable adjustments and factors to be considered in assessing reasonableness should continue in civil rights legislation.
- 5.6 The DDA's approach to listing examples of steps to consider in making reasonable adjustments should continue with the addition of two more examples: training for other persons in disability issues or in the use of equipment; and providing external support or access to external support.
- 5.7 The DDA's approach to an employer's knowledge of disability and confidentiality of medical information should continue.
- 5.8 All disabled employees should have civil rights in relation to employment, irrespective of the size of the business. The threshold should be lowered from 15 to two employees.
- 5.9 Future civil rights legislation should allow coverage of both businesses with one employee and businesses seeking to recruit their first employee.
- 5.10 Employment in private households should be exempt from future civil rights legislation.
- 5.11 In calculating the number of employees, the SDA approach to associated companies should be adopted.
- 5.12 Business partners should be covered in civil rights legislation on employment but with small partnerships not initially having a duty to make reasonable adjustments. Further consideration should be given as to how the reasonable adjustment duty should operate.
- 5.13 Qualifying bodies should be covered in civil rights legislation on employment with careful consideration being given as to what adjustments they might be expected to make (for example, they should not be expected to make adjustments that altered requirements essential to the qualification).
- 5.14 Statutory office holders² should be covered by civil rights legislation on employment with further consideration as to where responsibility for reasonable adjustments should rest.
- 5.15 The employment provisions of civil rights legislation should cover police and prison officers and firefighters.
- 5.16 The employment provisions of civil rights legislation should cover the Armed Forces whilst recognising the need for adequate safeguards to maintain operational effectiveness.

² See recommendation 5.15 in relation to police officers

- 5.17 The employment provisions of civil rights legislation should cover barristers and advocates with enforcement through Employment Tribunals.
- 5.18 Local councils should be placed under a duty not to discriminate against disabled councillors, including a duty to make reasonable adjustment.
- 5.19 The territorial coverage of civil rights legislation on employment should match that of the RRA.
- 5.20 The DDA's approach to former employees should follow whatever changes are made to the SDA.
- 5.21 In principle, voluntary workers should be covered by civil rights legislation. However, in recognition of the diversity of voluntary workers and organisations that engage them, a good practice approach should be adopted. Organisations engaging volunteers should be consulted on the preparation of guidance and a power taken in civil rights legislation to bring volunteers into coverage through regulations.
- 5.22 Trustees of voluntary organisations and charities should be included in the good practice approach to volunteers in recommendation 5.21.
- 5.23 The public sector should have a duty to promote equalisation of opportunities for disabled people in employment. There should be further discussion on the details of this duty, recognising the diversity of public sector organisations. The public sector's purchasing power should be used to promote compliance among contractors and suppliers to the public sector.
- 5.24 The private sector should be encouraged to adopt a proactive approach to the equalisation of employment opportunities for disabled people. The DRC and the Equality Commission for Northern Ireland should play the central role in developing best practice in this area.
- 5.25 The scope of local government legislation should be broadened, as necessary, to allow more positive action schemes for disabled people by local authority employers.
- 5.26 Employment tribunals should be able to order reinstatement or reengagement in cases brought under the DDA and future civil rights legislation.
- 5.27 The time limit for issuing a questionnaire once a complaint has been made to tribunal should be extended to 4 weeks. Respondents should be required to reply to a questionnaire within 8 weeks of its date of issue. Where they do not, the tribunal should be required to draw an inference that the respondents are refusing to reply, or any other inference which the tribunal believes to be appropriate.
- 5.28 Policy and practice in employment tribunals should ensure that, wherever possible, cases of disability discrimination should be heard by a panel including at least one person with disability expertise.
- 5.29 Employment tribunals should have a power to make recommendations regarding the future conduct of the respondent and a mechanism for the DRC to enforce this should be developed.

5.30 The DDA's approach to protection from harassment in employment should continue. Any revised Employment Code of Practice should include stronger references to this issue with clear examples.

5.31 The examples of adjustments in the DDA are adequate to meet the purposes of 'disability leave'. There should, however, be more emphasis on this issue in guidance, informed by the Government's work on improving retention and rehabilitation.

5.32 Disability or disability-related enquiries before a job is offered should be permitted only in limited circumstances:

- when inviting someone for interview or to take a selection test, employers could ask if someone had a disability that may require reasonable adjustments to the selection process; and
- when interviewing, employers would be allowed to ask job related questions, including if someone had a disability which might mean a reasonable adjustment would be required.

Further consideration should be given to other circumstances where such enquiries should be permitted, for instance, for monitoring purposes, with rules on confidentiality of information obtained, and in the particular case of the guaranteed interview scheme.

5.33 Except in the circumstances in recommendation 5.32, disability or disability related inquiries should only take place, where justified, when a job offer, conditional on passing a medical or other test, has been made.

5.34 Occupational pension schemes should be required to offer equal access to scheme membership for disabled people when starting their employment. Restricted access to certain benefits should be permitted for disabled people choosing to join a scheme later in their employment or re-joining a scheme, but only if restricted access to benefits is strictly limited to a specific pre-existing impairment or condition; such restrictions can be justified, eg. based on relevant and reliable information such as up-to-date actuarial or statistical data; and schemes regularly review any restrictions or impose time limits on them.

5.35 Occupational pension schemes should have to make 'reasonable adjustments' to their documentation and information.

5.36 Coverage of insured benefits provided by an occupational pension scheme by section 17 of the DDA should be clarified in future guidance to prevent confusion with the provision of group insurance under section 18 of the DDA.

5.37 In principle, in line with arrangements for Equal Pay cases, complaints of disability discrimination against trustees and managers of occupational pension schemes should be heard by employment tribunals.

5.38 Changes should be made to legislation to ensure that an insurer offering group insurance will only be liable for his own acts of discrimination and not those performed by an employer as his agent. (The employer's responsibilities would remain the same.)

5.39 The DDA's approach to leases, building regulations and requirement for statutory consent for employers making reasonable adjustments to premises should

continue. Access improvements which an employer chooses to make should not be unreasonably refused by a landlord.

5.40 We recognise that some employers have concerns about the health and safety implications of employing disabled people. We recommend that examples which illustrate these concerns should be investigated and that consideration should be given as to how the concerns might best be addressed (without risking employers becoming more concerned as a result).

5.41 Work is taken forward to explore ways of employers having to anticipate the need for adjustments rather than awaiting contact with individual employees and job applicants before considering and making adjustments.

5.42 For consistency with the SDA and RRA, the provisions relating to instructions to discriminate and pressure to discriminate should be included in civil rights legislation.

Chapter 6 Access To Goods, Services And Premises

6.1 In defining discrimination in access to goods and services, the DDA categories of less favourable treatment and adjustments should continue.

6.2 The DDA's approach to a service provider's duty to make reasonable adjustments and the factors to be considered in assessing reasonableness should continue in civil rights legislation. However, the factors contained in the Code of Practice should be placed in legislation.

6.3 Consideration should be given to the Code of Practice on the 2004 duties including access standards, which would give a level of certainty to service providers on meeting their legal obligations.

6.4 The key principles in the DDA duty to make reasonable adjustments should continue in civil rights legislation: it is a duty to disabled people at large; it is an anticipatory duty; it is continuous and evolving over time; and it is enforceable when an individual has been discriminated against. In future civil rights legislation, these rights and duties should be expressed in clearer terms.

6.5 The trigger for the duty on service providers to make reasonable adjustments has not been tested in the courts. The courts' interpretation of the level of the trigger should be monitored by the DRC and the Equality Commission for Northern Ireland and, if it is interpreted as high, it should be lowered to a more central level.

6.6 The limited, specific justifications for less favourable treatment in the DDA access to services provisions should continue. There should be better guidance to service providers on the appropriate use of the 'health and safety' and 'greater expense' justifications. The DRC and the Equality Commission for Northern Ireland should monitor that the justifications are operating fairly for both disabled people and service providers and, if not, the Government should use regulation making powers to amend the list.

6.7 Justifications for failure to make reasonable adjustments should be removed and the factors to be taken into account in assessing reasonableness should be expanded to reflect valid justifications.

- 6.8 As the test for service providers seeking to justify less favourable treatment has not been tested greatly in the courts, the DRC and the Equality Commission for Northern Ireland should keep case law under review and make recommendations if there is evidence that the test is not operating fairly for disabled people or service providers. Any recommendations should balance the interests of service providers and disabled people and protect service providers acting in good faith but without giving undue weight to their opinion.
- 6.9 Achieving the most integrated approach to the provision of services as is reasonably possible should be society's aim. We welcome the Government's request to the National Disability Council to promote the benefits of inclusive services in its preparation of the Code of Practice on the 2004 duties. The DRC should review the effectiveness of this good practice approach and consider whether legislation is necessary.
- 6.10 Private clubs should be covered by civil rights legislation but the definition of a club should not extend to private social arrangements.
- 6.11 The Company Law Review should consider whether there is, as part of its review, scope for introducing measures that improve communications between companies and disabled shareholders.
- 6.12 In principle, civil rights legislation should extend to all functions of public authorities but the Government needs to give careful thought to what the implications of a duty to make reasonable adjustments would mean in practice.
- 6.13 The public sector should be under a duty to promote the equalisation of opportunities for disabled people in the provision of services. Any duties on the public sector in civil rights legislation on disability should parallel those in sex and race legislation. The production of action plans should form an element of the public sector duty and should be encouraged in the private sector. There should be further public discussion on the most effective mechanisms for achieving equalisation of opportunities for disabled people, recognising the diversity of public sector organisations.
- 6.14 Voluntary sector service providers should continue to be treated in the same way as those in the private sector. The DRC and the Equality Commission for Northern Ireland should raise awareness amongst voluntary sector service providers of their duties under disability legislation.
- 6.15 Disability organisations and private sector advocates of design for all look for opportunities to make use of the Department of Trade and Industry's close contact with the manufacturing sector in communicating the benefits of design for all.
- 6.16 The DRC, working with the Department of Trade and Industry, retailers and manufacturers, should promote best practice in relation to the provision of information in accessible formats accompanying manufactured goods.
- 6.17 The Government should gather a comprehensive picture of what is happening at a European level on accessibility standards for products and accompanying information and should examine the opportunities for using European legislation and the DDA in this area, especially as regards the provision of information accompanying manufactured goods in accessible formats.

6.18 The Department of Trade and Industry (DTI) should assist disability organisations in making contact with those in the design community with a strong interest in this area, such as the Royal College of Art, the Design Council and Central Saint Martins College of Art and Design. DTI should facilitate contacts between disability organisations and the Design Council to discuss possible joint avenues for promotion and celebration of Millennium Products.

6.19 Insurance services should continue to have special provisions in civil rights legislation. These provisions should be in secondary legislation to allow them to be amended in response to changing circumstances. The DRC and the Equality Commission for Northern Ireland should monitor the special treatment of insurance and work with the Human Genetics Commission and the Genetic and Insurance Committee in this area to safeguard the interests of people with genetic pre-dispositions to conditions who are likely to become disabled.

6.20 We welcome the readiness, in principle, of the Department of Trade and Industry to include in future copyright legislation an exception for visually impaired people. In implementing the final EU Directive through UK law, disability organisations and organisations for copyright owners should be consulted to ensure the right balance between their interests.

6.21 The DDA's approach to re-instatement of alterations made to leased premises should continue. Landlords should not unreasonably withhold consent to service providers seeking to make their leased premises more accessible to disabled people.

6.22 The DRC, in carrying out its duty to keep disability legislation and case law under review, should make recommendations to Government if the operation of the provisions identified by the National Disability Council cause difficulties.

6.23 The DDA exemption for the private disposal of premises should continue in civil rights legislation.

6.24 The small dwellings exemption should continue in civil rights legislation with a reserve power to lower the limit of "six persons" as necessary.

6.25 In civil rights legislation, those covered by the DDA premises provisions should be under a duty to make reasonable adjustments to their policies, practices and procedures, in the same way as service providers.

6.26 In civil rights legislation, those disposing of premises to the public should continue to be covered by the duty under the DDA access to service provisions to provide auxiliary aids and services in the selling and letting of premises. This duty should extend to any communications between those disposing of premises and the lessee once the premises had been let.

6.27 There should be no duty on those disposing of premises to make adjustments to the physical features of the premises. However, in civil rights legislation, they should not be allowed to withhold consent unreasonably for a disabled person making changes to the physical features of the premises. There should be a wide consultation on the factors in determining when it would be reasonable and unreasonable for a landlord to withhold consent, with the aim of achieving the right balance between the rights of the owner of the premises and the disabled person.

6.28 The Government should do more to raise awareness amongst owners of premises of the benefits of physical adaptations that increase accessibility for disabled people.

6.29 The Government should work with the housing sector to promote the inclusion of access information in sales and letting materials.

Chapter 7 Travel

7.1 An 'end date' by which all passenger rail vehicles should comply with rail accessibility regulations should be introduced following consultation. Accessibility regulations should be introduced to apply to refurbishment of existing rolling stock. Those requirements should be set after full consultation, which will also need to consider the definition of 'refurbishment' to which the regulations apply. In both cases, we acknowledge that full account will need to be taken of the costs and benefits of the proposals.

7.2 The exemption for transport operators from the first and October 1999 phases of the DDA access to services duties should be removed in civil rights legislation.

7.3 The DRC should consider with the Disabled Persons Transport Advisory Committee mechanisms for increasing the availability of accessible private hire vehicles, including the carrying of registered assistance dogs. The DDA provisions on requiring accessible vehicles at transport interchanges should be retained in civil rights legislation.

7.4 The DDA provisions on taxis carrying guide and hearing dogs should be brought into force as soon as possible.

7.5 The DDA access to service provisions should apply to car hire and breakdown recovery services in civil rights legislation.

7.6 We welcome DETR's review of the Orange Badge Scheme with a view to ensuring its continuation as a vital and effective mechanism for enabling disabled motorists to enjoy maximum mobility.

7.7 Local Transport Plans should be placed on a statutory basis and their effectiveness in meeting disabled people's transport needs and improving the pedestrian environment for disabled people should be reviewed over time.

7.8 We welcome the DETR having established a group, drawn from the aviation industry and the Disabled Persons Transport Advisory Committee, to develop a Code of Practice on access for disabled people to air travel for public consultation. We recommend that a reserve power should be taken to give the Code statutory backing if agreement and compliance cannot be achieved on a voluntary basis.

7.9 DETR should consult on the remit of a formal review, including any need for legislative provisions, for accelerating progress in compliance with the International Maritime Organisation and Disabled Persons Transport Advisory Committee guidance on access for disabled people in the shipping industry. The review should be conducted to an agreed timetable and produce recommendations to Government.

Chapter 8 The Environment And Housing

8.1 We welcome DETR's agreement to consult on the remit of a review of Part M of the Building Regulations before the end of 2000. The consultation should consider the extent to which guidance should be clarified to ensure consistency of interpretation and how this will be handled in the review. Any consultation should involve disability interests as well as commercial bodies such as property service managers. Consideration should also be given to the mechanisms by which disabled people are consulted.

The review, which should start before the middle of 2001, should preferably be carried out in conjunction with reviews of Part R (Northern Ireland) of the Building Regulations and Part T (Scotland) of the Technical Standards.

We also welcome DETR's agreement to undertake further research into the current effectiveness and enforcement of Part M in advance of the broader review.

8.2 The scope for extension of Part M to apply to existing buildings should be included in the review of Part M.

8.3 In light of our recommendations, DETR should establish an advisory group similar to the Disabled Persons Transport Advisory Committee, on improving access to the built environment for disabled people, drawing its membership from the building and planning worlds and disability organisations.

8.4 DETR should commission the preparation of a good practice guide on planning and access as part of its 2000/01 Planning Research Programme. The proposed document should look at good practice in relation to both the development plan policies and the planning and access aspects of different types of environment. The views of disability organisations and the Planning Officers' Society should be sought.

8.5 DETR should, where necessary, add or strengthen references to disability access in relevant Policy Planning Guidance Notes and planning circulars as these come up for revision.

8.6 The Government should consider the future role of section 76 of the Town and Country Planning Act 1990, which requires planning authorities to alert developers to disability access requirements, when a suitable legislative opportunity arises. Developers should be alerted to disability access legislation at the earliest possible opportunity in the planning process.

8.7 English Heritage should, in discussion with disability organisations, update its guidance note Easy Access to Historic Properties, by Summer 2000. This should then be given a wide circulation to emphasise the need for all those involved to adopt a positive approach to access issues.

8.8 English Heritage should prepare a new set of desk instructions for its staff on access issues by Summer 2000.

8.9 Housing Authorities should ensure that the needs of disabled households are covered in the housing strategy produced for addressing housing need in their area. They should take account of links with the planning process to ensure that accessible housing is placed in areas where, for example, there is good access to public transport and local services such as shops.

8.10 Local authorities and Registered Social Landlords (RSLs) should introduce performance indicators locally under 'Best Value' to show the quality of the adaptation service they provide to disabled people.

8.11 Councils and estate agents should be encouraged to keep up-to-date records of all known dwellings that are potentially suitable for disabled people, in order to compile cross sector databases to match needs.

8.12 In discharging their statutory obligations under Best Value, local authorities should consult the beneficiaries of adaptations and take account of their views.

8.13 DETR should implement the two legislative proposals in its Improving Rights of Way in England and Wales Consultation Paper for improving access to the rights of way network for disabled people. The Countryside Agency and the Countryside Council for Wales should fully involve disability organisations in drafting guidance on how the principle of easing passage should be interpreted for each category³ of rights of way.

Chapter 9 Participation In Public Life

9.1 Given that electoral procedure is prescribed in specific electoral statutes, further civil rights for disabled people in this area should be secured through changes in electoral law.

9.2 We endorse the Howarth Working Party's recommendations that the restriction on using a mental health hospital as a residence for electoral registration purposes should be removed and that the patient's declaration should be abolished.

9.3 Electoral administrators should continue to be covered by the access to service provisions of civil rights legislation. The introduction of national minimum access standards is welcomed and the effectiveness of these in improving access to polling stations should be monitored.

9.4 We support proposals for pilot schemes for alternative voting methods and recommend that disability organisations are consulted on their development of the schemes.

9.5 We endorse the Howarth Working Party's recommendation that the provisions for blind voters to be assisted to cast their vote by a companion should be extended to all electors who would not otherwise be able to cast a vote. Further consideration should be given to allowing a companion from outside the constituency to assist.

9.6 In publicising registration and existing and new voting arrangements, the Home Office and local electoral authorities should consider the needs of disabled people for information in accessible formats and advice on accessibility of polling stations.

9.7 We welcome the consolidation and revision of advice to electoral administrators on all aspects of disabled people's access to electoral service. In order that it meets good practice and addresses the needs of all disabled people, disability organisations should be consulted in its preparation.

³ Footpaths; bridleways; byways open to traffic; and roads used as public paths

9.8 The Court Service, local authorities and magistrates' courts committees continue to be covered by access to service provisions in civil rights legislation.

9.9 We welcome the measures in the Speaking Up for Justice report and Youth Justice and Criminal Evidence Act 1999 to assist vulnerable witnesses, many of whom will be disabled people.

9.10 We welcome the blind magistrates' pilot and recommend, subject to the Lord Chancellor's Department's review of the pilot, that the bar on blind people serving as magistrates should be lifted permanently.

9.11 There are many reasons why a juror may not be able to carry out his duties effectively; the need for a specific statutory reference to physical disabilities should be reviewed.

9.12 The definition of those mentally disordered people ineligible to serve as jurors should be considered further in consultation with the DRC.

9.13 We welcome the Home Office's review of the bar on the presence of third party support in a jury room, in relation to disabled jurors requiring communication support or care assistance. We recommend that, subject to the outcome of the review, the bar is lifted. We recognise that safeguards may need to be put into place to accompany such a change.

9.14 We welcome the work of the Judicial Studies Board's Equal Treatment Advisory Committee in preparing guidance for the judiciary on disability issues. The Judicial Studies Board also needs to consider appropriate disability awareness training for judges to ensure that disabled people are not disadvantaged in the legal system.

9.15 In future, the Community Legal Service (CLS) should work with the DRC to ensure that the CLS's services are accessible for disabled people.

Chapter 10 Local Government, Health And Social Services

10.1 As part of 'Best Value', local government should be measured by a specific equality performance indicator in the area of disability.

10.2 There should be performance measures and statutory guidance for Beacon Council status on disability issues.

10.3 A Beacon Council should be set up to focus on the equality agenda as a champion for best practice in the area of disability.

10.4 Local Government should facilitate the involvement of disabled people in local democracy to improve their participation in the decisions that affect their lives and the provision of services.

10.5 We endorse the Government's commitment to ensure that access to health and social services is on the basis of need alone, without discrimination on the basis of disability or other factors, such as age, sex, or race.

10.6 The Department of Health and the DRC should work together to decide what further action might be needed to implement the DDA, and to monitor its

implementation in both the NHS and Social Services, taking account of initiatives already under way in both services.

10.7 The DRC and the Department of Health should work together in areas such as: living in the community; dignity and prevention of abuse; freedom of movement and consistency of service provision; the involvement of disabled people in planning and commissioning services; and complaints and inspection procedures.

10.8 The Department of Health should, in consultation with the DRC, pursue a rolling programme of guidance and other communication with health and social services staff to ensure that all staff are fully aware of their obligations to:

- serve all disabled users on a non-discriminatory basis;
- take a proactive role in informing and supporting disabled service users to pursue their rights and opportunities - for example, mental health staff should take active steps to provide the support that may be necessary to enable clients to pursue employment opportunities; and
- employ disabled people on a non-discriminatory basis.

10.9 The Department of Health should provide a lead in challenging attitudes towards disabled people in health and social services which lead to discrimination. It should consult with the DRC, disability organisations and the health professions on guidance to ensure decision making in key areas such as access to treatment and continuation of treatment is consistent and not influenced by inappropriate judgements on 'quality of life'.

10.10 GPs should not discriminate on grounds of disability when accepting or declining patients to be taken onto their lists, or in deciding the removal of patients from those lists.

10.11 The General Medical Council should be asked to add to its guidance 'Duties of the Doctor' a commitment that doctors should not allow their views of disability to prejudice the treatment given or arranged.

10.12 The Department of Health should look at improving the arrangements for advocacy support, including whether sections 1 to 3 of the Disabled Persons (Service, Consultation and Representation) Act 1986 should be implemented.

10.13 The Government should maintain its commitment to consider allowing the DRC to assist individuals under the Human Rights Act.

10.14 For people compulsorily detained under mental health legislation, the principle of 'reciprocity' should apply: it is not reasonable to detain someone under compulsion for treatment, and not to offer them good quality health and social care.

10.15 The DRC should consider commenting on the regular reports of the Mental Health Act Commission (MHAC), or whatever body may replace it, to ensure that mental health law is applied in ways that safeguard people with mental health problems from discrimination. The DRC should work with the Mental Health Act Commission to ensure the MHAC's staff are adequately trained in disability discrimination matters. This will enable the MHAC to inform disabled people of their rights under the DDA and how to secure them.

10.16 The Department of Health should ensure that all aspects of its quality improvement agenda, such as National Service Frameworks, the work of the

National Institute for Clinical Excellence and Commission for Health Improvement and information materials for users mainstream disability rights issues. The Department of Health should consider adopting national minimum standards, with an emphasis on services being provided in an integrated setting where possible, to ensure fairness for disabled people in the delivery of health and social services.

10.17 Barriers to joint working in the provision of services and support should be tackled. Particular attention should be paid to points of transition such as when someone moves from education to employment. Improving working practices and providing good practice guidance on joint working should be taken forward, building on the current interfaces between services that already exist. The first stage should be to identify the barriers - both legislative and budgetary - prior to reviewing the scope for change in this area.

10.18 Where a person could helpfully retain equipment for use when passing from one provider to another, for example, equipment provided by a school being retained by the disabled person for use at a college or university, barriers to this should be tackled. Barriers to equipment being transported between authorities and different parts of the country should also be removed. This would be of potential benefit to both the providers of services and the individual.