

To: Business Committee

From: Jane Hutt AM
Business Minister

EXPLANATORY MEMORANDUM

DISABLED PERSONS

THE DISABILITY DISCRIMINATION (PUBLIC AUTHORITIES) (STATUTORY DUTIES) (AMENDMENT) REGULATIONS 2007

Summary

These Regulations amend the Disability Discrimination (Public Authorities) (Statutory Duties) Regulations 2005. They require a number of public authorities to carry out certain specific disability equality duties. In particular, these bodies will be required to publish a Disability Equality Scheme by 3 December 2007, which will set out how the body intends to carry out its disability equality duties under section 49A of the Disability Discrimination Act 1995.

1. This Memorandum is submitted to the Assembly's Business Committee in relation to The Disability Discrimination (Public Authorities) (Statutory Duties) (Amendment) Regulations 2007, in accordance with Standing Order 26.
2. A copy of the Instrument is submitted with this Memorandum.

Enabling Power

3. The powers enabling this Instrument to be made are contained in sections 49D(1) and (2) and 67(3) of the Disability Discrimination Act 1995. The National Assembly for Wales' consent is required before this Instrument can be made.

Background

4. The Disability Discrimination Act 2005 amends the Disability Discrimination Act 1995. It introduces a general duty on public authorities to have due regard to the need to:
 - eliminate unlawful discrimination against disabled people;
 - eliminate unlawful harassment of disabled people for reasons related to their disabilities;
 - promote equality of opportunity between disabled persons and other persons by improving opportunities for disabled persons;
 - take steps to take account of disabled people's disabilities;

- promote positive attitudes to disabled people; and
 - encourage disabled people's participation in public life.
5. In addition to this general duty, certain public authorities, including the National Assembly for Wales are subject to what are known as “specific duties”, as laid down in The Disability Discrimination (Public Authorities) (Statutory Duties) Regulations 2005. Those Regulations set out what steps must be taken to assist public authorities in fulfilling the general duty.
6. As part of the specific duties public bodies are required to draft and implement a Disability Equality Scheme (DES). The production of a DES will require public bodies (including the National Assembly for Wales) to ensure that their policies, services and employment address the different needs of disabled people. Ultimately, the goal of the DES is to narrow the gaps in the outcomes and experiences of disabled people and non-disabled people. In producing the DES public authorities are required to involve disabled people in its development. The National Assembly for Wales prepared and published its DES on 4 December 2006.
7. The Scheme itself should include:
- an introduction which provides information about the public authority, its broad values and objectives, as well as a statement of its current position in relation to disability equality;
 - a statement on the ways in which disabled people have been involved in its development;
 - the authority's methods for assessing the impact of its policies and practices, or the likely impact of proposed policies and practices, on equality for disabled people;
 - the steps it will take to fulfil the general duty and improve outcomes for disabled people within the period of time covered by the scheme (i.e. measurable indicators/key milestones/action plans); and
 - arrangements for gathering information on the effect of their policies and practices on disabled persons particularly in relation to:
 - the effect of recruitment, development and retention of its disabled employees;
 - the educational opportunities available to, and on the achievements of disabled pupils and students; and
 - the extent to which the services it provides and those other functions it performs take account of the needs of disabled persons.
8. The Scheme will also include details on arrangements for:

- reviewing, on a regular basis, the effectiveness of the steps public authority's propose to take to fulfil the requirements of the duty, monitoring whether outcomes are improving for disabled people and act on this;
 - preparing subsequent Disability Equality Schemes; and
 - reviewing and publishing a revised scheme every 3 years. However, there is an expectation to publish annual summary report's to serve as updates on progress.
9. The list of bodies subject to the specific duties, including the requirement to produce a Disability Equality Scheme, needs to be updated on a regular basis to take account of new bodies, and bodies that have changed their status or ceased to exist. As a result, the list of bodies in The Disability Discrimination (Public Authorities) (Statutory Duties) Regulations 2005 is to be updated.

Effect

10. These Regulations amend The Disability Discrimination (Public Authorities) (Statutory Duties) Regulations 2005 by adding to the list of public authorities to which the duties imposed by the 2005 Regulations apply. The proposed list adds three public bodies whose functions are exercisable only in relation to Wales. These are:
- the Welsh Language Board;
 - the General Teaching Council for Wales; and
 - the Auditor General for Wales.

These public bodies will be required to develop a Disability Equality Scheme by 3 December 2007.

11. Section 49D(7) of the Disability Discrimination Act 1995 (as amended) requires the Secretary of State to obtain the consent of the National Assembly for Wales before making Regulations, which impose specific duties on bodies whose functions are exercisable only in relation to Wales.
12. The proposed list of additional public bodies also includes a number of authorities whose functions are exercisable in relation to England *and* Wales. The Secretary of State is required under section 49D(6) of the 1995 Act to consult the National Assembly before imposing specific duties on these bodies. In order to enable Ministers to respond formally to this consultation, I am going to propose in a separate motion that the function be delegated by the National Assembly to the First Minister. The delegation motion will enable Welsh Ministers to formally respond to consultation from the Secretary of State on bodies who operate in England and Wales. However, consent to the Regulations on bodies operating wholly and exclusively in Wales can be made without the delegation being made.

Target Implementation

13. It is intended that this Instrument will proceed to Plenary on 14 February 2007 for the Assembly to consider giving its consent to the Regulations. The Department for Work and Pensions will then lay the Regulations before Parliament in March 2007, in order for it to come into force date on 6 April 2007.

Financial Implications

14. The implementation of these Regulations will have no additional financial implications on the Assembly. Any work associated with the preparation and implementation of a Disability Equality Scheme will be met by the respective public bodies.

Consultation

With Stakeholders

15. There has been no public consultation on these Regulations as they merely add additional public bodies to the existing list of public bodies in Schedule 1 of the Disability Discrimination (Public Authorities) (Statutory Duties) Regulations 2005.

16. Anne McGuire MP, Parliamentary Under Secretary of State for the Department of Work and Pensions, wrote to the First Minister on 20 November 2006 to seek his views on the Disability Discrimination (Public Authorities) (Statutory Duties) (Amendment) Regulations 2007. On 5 December 2006, I responded advising that in principal I was content with those public bodies being included in the revised Regulations, but that agreement to those bodies operating wholly and exclusively in Wales was subject to the consent of the National Assembly for Wales. I also informed Anne McGuire MP that the function to formally respond to the consultation on those bodies operating in England and Wales would need to be delegated by the National Assembly for Wales to the First Minister.

17. The Department for Work and Pensions consulted the Disability Rights Commission (DRC) in July 2006 on the list of proposed bodies to be included in the 2007 Regulations. They also asked the DRC for suggestions on public bodies to include in the 2007 Regulations. The DRC put forward both the Auditor General for Wales and the Welsh Language Board. These suggestions were subsequently included in the proposed 2007 Regulations.

With Subject Committee

18. On 19 December 2006, the Disability Rights Commission advised the Equality of Opportunity Committee that they were content with the additional Welsh public bodies to be included in the Regulations and therefore the Clerk to the Committee confirmed that a paper to the Committee to discuss or note was not required. However, I have subsequently written to the Chair of the Equality of Opportunity Committee, the Presiding Officer, the Chair of the House Committee and to all Subject Committee Chairs on 31 January 2007 enclosing a copy of the Regulations.