

Health & Social Services Committee

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Venue: Committee Rooms 3&4, National Assembly for Wales

Title: Disability Discrimination (Public Authorities) (Statutory Duties) Regulations 2005

Jane Hutt AM

Business Minister and Minister for Children

Y Trefnydd a Gweinidog dros Blant

Cardiff Bay/Bae Caerdydd

Cardiff/Caerdydd

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Our Ref:

Your Ref:

5 October 2005

David Melding AM

Chair

Health & Social Services Committee

National Assembly for Wales

Cardiff Bay

Cardiff

Disability Discrimination (Public Authorities) (Statutory Duties) Regulations 2005

I would like to bring to your attention to the above Regulations, which will be debated in Plenary on 19 October 2005. I'd be grateful if you could also bring it to the attention of your Committee for information.

Following Royal Assent of the Disability Equality Bill, the Disability Discrimination Act 2005 was passed by Parliament in April 2005. One of the amendments made by the Act introduces a new positive duty, under section 49A(1) of the Disability act 1995 (as amended by the Disability Discrimination Act 2005), on the public sector to promote equality of opportunity for disabled people.

The duties in relation to a public authority under section 49A(1) of the Disability Discrimination Act 1995 relate to the general duty that every public authority has in carrying out its functions and must have due regard to:

- the need to eliminate discrimination that is unlawful under the Act;
- the need to eliminate harassment of disabled persons that is related to their disabilities;
- the need to promote equality of opportunity between disabled persons and other persons;
- the need to take steps to take account of disabled persons' disabilities, even where that involves treating disabled persons more favourably than other persons;
- the need to promote positive attitudes towards disabled persons; and
- the need to encourage participation by disabled persons in public life.

In addition to this general duty, certain public authorities are subject to what are known as "specific duties", as laid down in Regulations. These specific duties are placed on certain Secretaries of State and the National Assembly for Wales. The Regulations set out what steps must be taken to assist public authorities in fulfilling the general duty.

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 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.

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.

It is intended that the Department for Work and Pensions (DWP) will lay the Regulations and a Code of Practice (drafted by the Disability Rights Commission) before Parliament in October with a coming into force date of 5 December 2005. The National Assembly for Wales' consent is required in Plenary, which is scheduled for 19 October 2005, before the Regulations can be made. The Regulations were notified to the Equality of Opportunity Committee on 22 September 2005. A copy of the Regulations is attached.

Statutory Instruments

2005 No. []

Disabled Persons

The Disability Discrimination (Public Authorities)(Statutory Duties) Regulations 2005 Made - - - - []

Laid before Parliament []

Coming into force - - 5th December 2005

The Secretary of State for Work and Pensions, in exercise of the powers conferred upon him by sections 49D(1) and (2) and 67(2) and (3) of the Disability Discrimination Act 1995, after consultation with the National Assembly for Wales and with the consent of the Assembly, after consultation with the Scottish Ministers and with the Disability Rights Commission, makes the following Regulations:

Citation, commencement and interpretation

1. These Regulations may be cited as the Disability Discrimination (Public Authorities) (Statutory Duties) Regulations 2005 and shall come into force on 5th December 2005.

1. In these Regulations—

"section 49A(1) duty", in relation to a public authority, means its duty under section 49A(1) of the Disability Discrimination Act 1995; and

"school" means a school maintained by a local education authority.

Preparation and Publication of a Disability Equality Scheme

2. A public authority listed in Schedule 1 shall, on or before the relevant publication date, publish a Disability Equality Scheme ("Scheme"), that is, a scheme showing how it intends to fulfil its section 49A(1) duty and its duties under these Regulations.

2.1 Such an authority shall involve in the development of the Scheme disabled people who appear to that authority to have an interest in the way it carries out its functions.

2.2. Scheme shall include a statement of—

- a. the ways in which such disabled people have been involved in its development;
- b. that authority's methods for assessing the impact of its policies and practices, or the likely impact of its proposed policies and practices, on equality for disabled persons;
- c. the steps which that authority proposes to take towards the fulfilment of its section 49A(1) duty;
- d. that authority's arrangements for gathering information on the effect of its policies and practices on disabled persons and in particular its arrangements for gathering information on—
 - i. their effect on the recruitment, development and retention of its disabled employees,
 - ii. their effect, in the case of an authority specified in Part II, III or IV of Schedule 1, on the educational opportunities available to, and on the achievements of, disabled pupils and students, and
 - iii. the extent to which, in the case of an authority specified in Part I of Schedule 1, the services it provides and those other functions it performs take account of the needs of disabled persons;
- e. that authority's arrangements for making use of such information to assist it in the performance of its section 49A(1) duty and, in particular, its arrangements for—
 - i. reviewing on a regular basis the effectiveness of the steps referred to in sub-paragraph (c), and
 - ii. preparing subsequent Schemes;

3. Such an authority shall review its Scheme and publish a revised Scheme—

- a. not later than the end of the period of three years beginning with the date of publication of its first Scheme; and
- b. subsequently at intervals of not more than three years beginning with the date of publication of the last revision of the Scheme.

4. Such an authority may comply with the duty to publish under paragraph (1) or (4) by setting out its Scheme as part of another published document or within a number of other published documents.

5. In this regulation, "the relevant publication date" means—

- a. in the case of a public authority listed in Part I or II of Schedule 1, 4th December 2006;
- b. in the case of a public authority listed in Part III of Schedule 1, 3rd December 2007;
- c. in the case of a public authority listed in Part IV of Schedule 1, 1st April 2007.

Implementation of the Disability Equality Scheme

3. A public authority listed in Schedule 1 shall within the period of three years beginning with the date when a Scheme prepared for the purposes of regulation 2 is published—

- a. take the steps which it has been required to set out in the Scheme by virtue of regulation 2(3)(c);
- b. put into effect its arrangements, which it has been required to set out in the Scheme by virtue of regulations 2(3)(d) and (e), for—
 - i. gathering information, and
 - ii. making use of such information.

1. Nothing in this regulation imposes any duty on an authority where, in all the circumstances, it would be unreasonable or impracticable for it to perform the duty.

Annual Reporting

4. 1 A public authority listed in Schedule 1 shall publish a report—

- a. not later than the end of the period of one year beginning with the date of publication of its first Scheme; and
 - b. subsequently at intervals of not more than one year beginning with the date of publication of the last report.
1. The report shall contain a summary of—
- a. the steps it has taken for the purposes of regulation 3(1)(a);
 - b. the results of the information-gathering it has carried out for the purposes of regulation 3(1)(b)(i);
 - c. the use it has made of such information it has gathered for the purposes of regulation 3(1)(b)(ii).
2. **Such an authority may comply with the duty to publish under paragraph (1) by setting out its report within another published document.**

Duty on Public Authorities listed in Schedule 2

5. A reporting authority shall, in respect of its policy sector, publish a report—

- a. not later than 1st December 2008; and

- b. subsequently not later than the end of each successive period of three years beginning with 1st December 2008.
- 1. The report shall—
 - a. give an overview of progress towards equality of opportunity between disabled persons and other persons made by public authorities operating in the policy sector; and
 - b. set out the reporting authority's proposals for the coordination of action by public authorities operating in that sector so as to bring about further progress towards equality of opportunity between disabled persons and other persons.

(3) In paragraph (1) –

"reporting authority" means a person specified in Schedule 2;

"policy sector" means the sector of public activity in which the reporting authority carries out public functions.

Signed by the authority of the Secretary of State for Work and Pensions

Name

Parliamentary Under Secretary of State

Date Department for Work and Pensions

Schedule 1 Regulation 2

Part I

The Adult Learning Inspectorate

The Advisory, Conciliation and Arbitration Service

Any of the naval, military or air forces of the Crown (except in relation to employment in the armed forces)

The Arts Council of England

The Arts Council of Wales

The Audit Commission for Local Authorities and the National Health Service in England and Wales

The Arts and Humanities Research Council

An Assembly subsidiary as defined by section 99(4) of the Government of Wales Act 1998()

The Big Lottery Fund

The [Biotechnology & Biological Sciences Research Council](#)

A body corporate established pursuant to an order under section 67 of the Local Government Act 1985()(transfer of functions to successors of residuary bodies, etc)

The British Broadcasting Corporation, in respect of its public functions

The British Council

The British Educational Communications and Technology Agency (BECTA)

The British Library

The British Museum

The British Tourist Authority

The British Transport Police

The British Waterways Board

The Central Police Training and Development Authority (CENTREX)

The Channel Four Television Corporation, in respect of its public functions

The Chief Constable for the Ministry of Defence Police appointed by the Secretary of State under section 1(3) of the Ministry of Defence Police Act 1987()

A chief constable of a police force maintained under section 2 of the Police Act 1996()

The Children and Family Court Advisory and Support Service

The Children's Commissioner for Wales

The Commission for Healthcare Audit and Inspection

The Commission for Patient and Public Involvement in Health

The Commission for Racial Equality

The Commission for Social Care Inspection

The Commissioner of Police for the City of London

The Commissioner of Police of the Metropolis

The Common Council of the City of London, in its capacity as a local authority or port health authority

The Common Council of the City of London, in its capacity as a police authority

In England, a county council, a London borough council or a district council

In Wales, a county council or a county borough council

The Council of the Isles of Scilly

The [Council for the Central Laboratory of the Research Councils](#)

The Countryside Council for Wales

The Criminal Injuries Compensation Authority

The Director-General of the National Crime Squad

The Disability Rights Commission

The [Economic & Social Research Council](#)

The Electoral Commission

English Heritage

English Nature

English Partnerships

The [Engineering & Physical Sciences Research Council](#)

The Environment Agency

The Equal Opportunities Commission

Estyn

The Financial Services Authority

A fire authority constituted by a combination scheme under section 5 or 6 of the Fire Services Act 1947()

The General Dental Council

The General Medical Council

The General Social Care Council

The General Teaching Council for England

The Greater London Authority

A Health Authority established under section 8 of the National Health Service Act 1977()

The Health and Safety Commission

The Health and Safety Executive

The Heritage Lottery Fund

The Higher Education Funding Council for England

The Higher Education Funding Council for Wales

The Historic Royal Palaces Trust

The Horniman Museum

A housing action trust established under Part 3 of the Housing Act 1988()

The Housing Corporation

The Human Fertilisation and Embryology Authority

The Imperial War Museum

The Independent Police Complaints Commission

The Independent Regulator on NHS Foundation Trusts

The Independent Review Service

The Information Commissioner

A joint authority established under Part 4 of the Local Government Act 1985() (fire services, civil defence and transport)

A joint authority established under section 21 of the Local Government Act 1992()

The Law Society of England and Wales

The Learning and Skills Council for England

The Legal Services Commission

A Local Health Board established under section 16BA of the National Health Service Act 1977

A local probation board established under section 4 of the Criminal Justice and Court Services Act 2000()

The London Development Agency

The London Fire and Emergency Planning Authority

The [Medical Research Council](#)

The Metropolitan Police Authority established under section 5B of the Police Act 1996

A Minister of the Crown or government department

The Museum of London

The Museum of Science and Industry in Manchester

The Museums, Libraries and Archives Council

The National Assembly for Wales

The National Audit Office

The National College for School Leadership

The National Consumer Council

The National Forest Company

The National Gallery

A National Health Service trust established under section 5 of the National Health Service and Community Care Act 1990()

The National Library of Wales

The National Lottery Commission

The National Maritime Museum

The National Museum for Science and Industry

A National Park Authority established by an order under s. 63 of the Environment Act 1995()

The National Portrait Gallery

The [Natural Environment Research Council](#)

The Natural History Museum

The Nursing and Midwifery Council

Ofcom

The [Particle Physics & Astronomy Research Council](#)

A Passenger Transport Executive for a passenger transport area in England and Wales within the meaning of Part 2 of the Transport Act 1968()

A police authority established under section 3 of the Police Act 1996

A primary care trust established under section 16A of the National Health Service Act 1977

The Qualifications and Curriculum Authority (QCA)

A regional development agency established under the Regional Development Agencies Act 1998() (other than the London Development Agency)

Remploy Limited

Royal Mail Group

The Science Museum

The Scottish Parliamentary Corporate Body

The Security Industry Authority

The Service Authority for the National Crime Squad

The Service Authority for the National Criminal Intelligence Service, otherwise than in respect of its Scottish functions within the meaning given by section L2 of Part II of Schedule 5 to the Scotland Act 1998()

Sianel Pedwar Cymru (Welsh Fourth Channel Authority), in respect of its public functions

Sir John Soane's Museum

The Social Fund Commissioner of the Independent Review Service

A special health authority established under section 11 of the National Health Service Act 1977

The Sports Council for Wales

Sport England

The Standards Board for England

A Strategic Health Authority established under section 8 of the National Health Service Act 1977

Student Loans Company Ltd.

The Sub-Treasurer of the Inner Temple or the Under-Treasurer of the Middle Temple, in his capacity as a local authority

The Tate Gallery

The Training and Development Agency for Schools

Transport for London

UK Film Council

UK Sport

The UK Sports Council

The Victoria and Albert Museum

The Wallace Collection

Part II

The governing body of a secondary school, in England, within the meaning of section 5(2) of the Education Act 1996, such school being maintained by a local education authority, and any such school as may be determined by the Secretary of State to be treated as a secondary school under section 5(4) of that Act

The proprietor of a City Technology College, City College for Technology of the Arts, or an Academy

The governing body of an institution within the further education sector within the meaning of section 91(3) of the Further and Higher Education Act 1992()

The governing body of an institution within the higher education sector within the meaning of section 91(5) of the Further and Higher Education Act 1992

A local education authority

Part III

The governing body of a primary school, in England, within the meaning of section 5(1) of the Education Act 1996, and any such school as may be determined by the Secretary of State to be treated as a primary school under section 5(4) of that Act

The governing body of a community special school or a foundation special school, in England, within the meaning of section 20 of the School Standards and Framework Act 1998()

A local authority with respect to the pupil referral units it establishes and maintains, by virtue of section 19 of the Education Act 1996

Part IV

The governing body of an educational establishment maintained by a local education authority, in Wales

The National Assembly for Wales

The First Secretary of State

The Secretary of State for Constitutional Affairs

The Secretary of State for Culture, Media and Sport

The Secretary of State for Education and Skills

The Secretary of State for Environment, Food and Rural Affairs

The Secretary of State for Health

The Secretary of State for the Home Department

The Secretary of State for Trade and Industry

The Secretary of State for Transport

The Secretary of State for Work and Pensions

Explanatory Note

(This note is not part of the Order)

These Regulations impose duties on public authorities listed in Schedule 1 and 2 to the Regulations. The purpose of the duties generally is to ensure better performance by the public authorities concerned of their duty to have due regard to the need to eliminate disability discrimination etc. under section 49A(1)(a) to (f) of the Disability Discrimination Act 1995 (as inserted by the Disability Discrimination Act 2005).

Regulation 2 requires public authorities listed in Schedule 1 to publish a Disability Equality Scheme and prescribes the various components of such a Scheme. The date by which a Scheme must be published differs according to whether the public authority is listed in Part I, II, III or IV of Schedule 1 to the Regulations. The Scheme can be published as part of another document or within a number of other documents. The authorities are required to publish a revised scheme at the latest three years after the publication of their first scheme, and to continue to publish a revised Scheme every three years thereafter.

Regulation 3 requires those same listed public authorities to implement certain components of the Disability Equality Scheme that they published pursuant to regulation 2. They should do this within three years beginning with the date when they published the Scheme.

Regulation 4 requires those same listed public authorities to report annually on the implementation of their Disability Equality Scheme. The report can be published as part of another document. The first report should be published no later than one year after the publication of the initial Scheme and annually

thereafter

Regulation 5 deals with a different set of duties that apply to the Secretary of State (as described in Schedule 2) and to the National Assembly for Wales ("NAW"). The Regulation requires the Secretary of State and the NAW - in relation to public authorities which operate in policy spheres for which they are responsible – to publish a report, containing an overview of progress made towards equality of opportunity for disabled persons in these policy spheres. In addition, the report should set out the Secretary of State's or the NAW's strategies for coordinating action by public authorities operating in these spheres so as to bring about further progress towards equality of opportunity for disabled persons. The report is to be published every three years.

The regulatory impact of these Regulations was assessed as part of the regulatory impact assessment in relation to the Disability Discrimination Act 2005. A copy of that document may be obtained from: Disability Rights Division, Department for Work and Pensions, 6th Floor, The Adelphi, 1-11 John Adam Street, London WC2N 6HT. A copy of the regulatory impact assessment for the Disability Discrimination Act 2005 has been placed in the Library of each House of Parliament.