

**Department for Work and Pensions
Delivering Equality for Disabled People
28 October 2004**

1. NASUWT welcomes the opportunity to comment on the Government's proposals for a public sector duty to eliminate discrimination and promote equality of opportunity for disabled people.
2. NASUWT is the largest union representing teachers and headteachers in all sectors of education throughout the UK.

GENERAL COMMENTS

3. NASUWT welcomes the proposals to introduce a new duty on the public sector to promote equality and eliminate discrimination for disabled people in line with that which currently exists within the Race Relations (Amendment) Act 2000.
4. The Union believes that eliminating disability discrimination and pursuing equality of opportunity for disabled people can only be achieved by the introduction of comprehensive disability civil rights legislation and welcomes the Government's commitment to deliver these long awaited rights by means of the Disability Discrimination Bill.
5. However, NASUWT remains concerned that the Government's deregulation and privatisation agenda that provides greater powers of self-determination to individual institutions will undermine the potential for equality for disabled service users and employees. Moreover, in many

areas the continued drive towards a market-led solution has reduced the capacity for public bodies to provide the leadership and support required to bring about real improvements on equalities matters.

NASUWT strongly recommends that:

- ***the Government abandon its commitment to extended deregulation and privatisation within the public sector;***
- ***the Government and the DRC undertake an assessment of the equality impact of public service deregulation and privatisation and report on its findings.***

SPECIFIC COMMENTS

Eliminating discrimination: extending the DDA to public functions

6. NASUWT warmly welcomes the anticipatory duties within the draft Disability Discrimination Bill that will require public authorities to make reasonable adjustments within all of its functions, in line with the existing duties placed on employers and service providers. NASUWT asserts that some of the most effective adjustments will involve simple changes of policies, practices and procedures, rather than extensive physical adjustments to premises as generally perceived. Trade unions have for many years negotiated successful workplace policies and adjustments with employers that have resulted in considerable improvements to the working conditions of disabled employees.

7. Guidelines for public authorities on what constitutes reasonable adjustment should provide a helpful resource and should be included in the proposed Disability Rights Commission (DRC) guidance on the new duties. NASUWT supports the principle that the extent to which any particular adjustment would be 'reasonable' will depend on the individual circumstances of each case, including the resources available to the public

authority, and moreover the extent to which the adjustment would make a positive difference to a disabled person. However, adequate funding should be provided to public authorities to ensure the necessary adjustments are achieved.

NASUWT strongly recommends that:

- ***advice from trade unions and other key constituencies are sought on the development of DRC guidance on reasonable adjustments.***
- ***the Government provide public authorities with adequate funding to deliver the necessary requirements to afford equality of access and opportunity to disabled service users and employees.***

8. Notwithstanding the above comments, NASUWT believes that there is a need for a clearer definition of what constitutes 'reasonableness'. At present the provisions within the Disability Discrimination Act (DDA) provide an unhelpful loophole for employers and service providers who refuse to take seriously these provisions.

9. NASUWT asserts that the Government should take the opportunity within the draft Bill to introduce a clear objective test wherein public bodies would have to identify the nature of the adjustments considered in relation to each disabled person and which requires these bodies to demonstrate why certain adjustments may not be reasonable. This should also be included in the DRC guidance for public bodies. Furthermore, it is necessary to ensure that any guidance produced by the DRC make clear what criteria would be used to determine the extent of financial costs that would render an adjustment unreasonable.

NASUWT recommends that the Government provide a clear objective test to ensure that public bodies employ robust and equitable criteria in determining reasonable adjustments in relation to each disabled person.

Changing cultures: the duty to promote equality

10. NASUWT welcomes the clarification provided in Annex B of the consultation document to the specific duties of educational bodies required to publish Disability Equality Schemes. It is helpful that the proposals make explicit reference to the specific legal categories of public bodies and that these include governing bodies of schools and colleges. However, NASUWT is concerned that it is proposed that a number of bodies providing a public function might be exempt from the specific duties. In the education field this would include Voluntary Aided, Foundation and other Independent schools, including Academies.

NASUWT recommends that:

- ***The bodies subject to the specific duties to promote equality be extended to include all organisations providing a public function (e.g. Voluntary Aided, Foundation and other Independent schools.)***

11. NASUWT is concerned that a number of other educational bodies and standard setting agencies are not required to comply with the specific duties. For example, NASUWT regards it as unhelpful and confusing that whilst arrangements exist for examinations to be covered within the provisions of the Special Educational Needs and Disability Act 2001, examining bodies are not included. NASUWT believes that this sends conflicting messages to disabled pupils and students who may require adjustments in order to participate in examinations and tests.

12. Furthermore, the Association believes that the Inspectorates and regulatory bodies will have an essential role to play in ensuring that schools, colleges and other public bodies comply with their duties to promote disability equality. In addition the Teacher Training Agency has responsibilities for ensuring that disabled students do not encounter

barriers in gaining access to initial teacher training institutions and their provisions.

NASUWT recommends that *the Government extend the specific duties to the following bodies:*

- ***OFSTED;***
- ***HM Inspectorate of Education;***
- ***ACCAC;***
- ***Estyn;***
- ***Adult Learning Inspectorate;***
- ***Teacher Training Agency;***
- ***Qualifications and Curriculum Authority;***
- ***National College for School Leadership;***
- ***School Teachers' Review Body;***
- ***University and College Admission Service***

13. NASUWT regards the introduction of a positive duty to promote equality for disabled people a welcome and positive step towards tackling the serious inadequacies in the DDA. The Union concurs with the view that the parallel duty within the Race Relations (Amendment) Act 2000 to promote race equality has brought about some improvements to tackling race discrimination generally. However, NASUWT asserts that the public duty to promote race equality and good race relations has not provided the demonstrable improvements to the extent cited in the consultation document. For example, research evidence has shown that many LEAs and schools have not fulfilled their statutory duties under the Race Relations (Amendment) Act 2000 despite the fact that this legislation has been in force for a number of years. Indeed, NASUWT has worked collaboratively with the Employer's Organisation, the Commission for Racial Equality and other bodies on the provision of a practical resource for schools and LEAs that should provide an effective vehicle for much needed improvement in this regard.

14. NASUWT asserts that lessons must be learned from the implementation of the race equality duties to ensure that the duty to promote equality for disabled people is sufficiently robust and enforcement action taken as appropriate. For example, LEAs have experienced considerable difficulties in collecting ethnic monitoring data from schools due to the absence of a specific requirement on schools to provide such information. In view of this, NASUWT asserts that the provisions within the regulations should impose a clear and unequivocal requirement on schools to collect disability monitoring data in respect of their activities and to provide such information to their LEA on a regular basis.
15. The Union welcomes the recognition in the consultation document that schools and other education institutions are already subject to a wide range of legislation with regard to special educational needs and disability and that consideration of these existing requirements will be taken into consideration in the drafting of regulations.
16. NASUWT further welcomes the requirement on public bodies to prepare and publish a Disability Equality Scheme that sets out how public authorities will fulfil its duties to promote equality of opportunity for disabled people. However, the Union asserts that it is essential that this must not become a bureaucratic exercise. Additionally, the introduction of mandatory training for headteachers and governing bodies should also be addressed.
17. Furthermore, it is essential that public authorities recognise and take account of the views of key constituencies in the formulation and implementation of their Disability Equality Schemes. In particular, the Government needs to address how it will build upon the social partnership model established through the National Agreement for school workforce reform.

NASUWT recommends that DRC guidance should specifically direct public authorities to consult with trade unions when drawing up or reviewing the effectiveness of Disability Equality Schemes, including full collaboration with the school workforce social partners..

18. NASUWT, as a signatory to the National Agreement on 'Raising Standards and Tackling Workload' believes that the workforce reforms will provide an opportunity to tackle the recruitment and retention of disabled teachers and support staff in schools and colleges. Moreover, the workforce reforms which advocate extended roles for support staff will provide additional non-teaching staff to undertake the necessary administrative and evidence gathering tasks required for producing the disability equality scheme, developing action plans and in meeting the specific needs of disabled students.

Promoting equality in practice

19. NASUWT welcomes the emphasis on involving disabled people in drawing up Disability Equality Schemes and identifying barriers to access and is encouraged by the statement that "*all public bodies must continue to seek to serve the whole population – disabled and non-disabled - fairly.*" The Union asserts that compliance with the specific and general duties can be best achieved by the inclusion of a wide and diverse group which includes disabled people. Furthermore, additional overly-bureaucratic mechanisms must be avoided. Many public authorities already have in existence consultative and governance forums whereby the expertise of disabled people may be sought.

20. NASUWT further welcomes the requirement on public bodies to assess the impact of their activities. The Union believes that any impact assessment must include the employment functions of public bodies. The problem of discrimination is particularly a cause for concern within the

context of employment in schools and colleges. There are few disabled teachers employed in schools and colleges. Moreover, schools and colleges may appear less willing to 'risk' employing disabled teachers on the grounds that such employment might impact adversely on the educational standards achieved by pupils and students. Such beliefs are unfounded, but nevertheless, have a very real impact on the careers of disabled teachers.

21. Schools and LEAs are already required to implement extensive planning strategies to improve access to schools under the Special Educational Needs and Disability Act (SENDA) 2001. NASUWT therefore asserts that schools and LEAs be encouraged to incorporate activities for the new duties within existing accessibility plans and other work identified to meet SENDA requirements, to avoid excessive administrative bureaucracy and workload burdens. Moreover, NASUWT strongly asserts that the planning burdens on schools must be reduced as a matter of urgency.

22. NASUWT believes that the Government's extended schools agenda will provide opportunities for public bodies to work jointly on the delivery of effective and accessible services for disabled service users. For example, schools and LEAs will be able to undertake collaborative work with local social services to provide support to disabled employees and service users. However, NASUWT regards it essential that the appropriate trade unions are consulted on any proposals to undertake joint working in this area.

NASUWT recommends that:

- ***the Government requires public bodies to include employment function activities within equality impact assessments of its services.***
- ***the Government seriously consider workload reduction and planning burdens on schools as a matter of urgency.***

Gathering evidence and reporting progress

23. NASUWT asserts that effective monitoring, the analysis of issues and trends and the review of practice are fundamental to the delivery of equality for disabled people. Furthermore, it is essential that the administration and provision of data required, in particular, by schools should be undertaken by appropriately-trained school support staff in conjunction with LEA personnel.

24. NASUWT has argued strongly against the introduction of 'third party' or 'managerial' classifications on ethical grounds. NASUWT asserts that the principles of self-declaration must apply within any disability monitoring arrangements. The Union recognises that impairments vary in the extent to which they affect individuals and would therefore regard it unacceptable and moreover, unethical to classify disability impairments using third party strategies.

25. Furthermore disability monitoring data should be collected and analysed in conjunction with other equalities datasets and as a basis for the conduct of effective equal opportunities reviews. In particular, disability monitoring should, at a minimum, take account of differences in the experiences of employees with regard to ethnicity, gender, age, sexual orientation, and religion or belief.

26. NASUWT welcomes the proposed requirements on public bodies to publish the results of their monitoring activity on a regular basis. Most public bodies already have effective monitoring and reporting mechanisms and should be encouraged to report on their progress on disability equality within these publications.

NASUWT recommends that the Government direct public authorities to ensure that disability monitoring data are collected solely by means of self-declaration.

Implementing the new duties

27. NASUWT welcomed the recommendations of the Parliamentary Joint Committee on the draft Disability Discrimination Bill and indeed submitted evidence to its deliberations. However, the Union is concerned that the Government has not sought to accept the recommendations in full. NASUWT regards this position as wholly unacceptable and considers that disabled service users and employees will be detrimentally affected as a consequence.

28. NASUWT is pleased to be included in the DRC consultations on the drafting of guidance and Code of Practice for public authorities on implementation of the new duties. The Union believes that the DRC Code of Practice should provide a standard against which the activities of public authorities can be measured in respect of the achievement of disability equality.

29. Furthermore, NASUWT asserts that the establishment of legislative arrangements that provide equality for all and which take full account of the linkages between and across the various equalities strands is fundamental to any long-term equal rights agenda.

30. NASUWT notes that the Government intends to allow public bodies between six and twelve months after the publication of the DRC's guidance to prepare for implementation of the new duties. However, the Union regards the statement that this would allow the duties to commence no earlier than December 2006 unhelpful and confusing. NASUWT asserts that a clear deadline for commencement of the new duties should be outlined within the DRC Codes.

NASUWT strongly recommends that the Government:

- ***move towards the enactment of a single legislative framework for equal opportunities and anti-discrimination.***
- ***implements the recommendations of the Parliamentary Joint Committee within revisions to the draft Disability Discrimination Bill as a matter of urgency.***
- ***adopt the approach that provides public bodies to issue a single Equality Scheme that meets all its responsibilities under race and disability legislation, and the prospective duty on gender equality.***

31. NASUWT strongly supports the proposal to include a duty on Secretaries of State to report on progress towards equality. The Union believes that such a duty will provide the much needed impetus and central direction to public authorities. Within education, NASUWT regards it essential that the Department for Education and Skills takes the lead and report on progress towards equality for disabled people across its sphere of influence (e.g. schools, LEAs, Learning and Skills Councils and other bodies).

NASUWT strongly recommends the introduction of a duty on Secretaries of States to report on progress towards equality for disabled people .

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