

The Disability Discrimination Bill: Implications for HEIs

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Speaker from the ECU:
Joyce Hill, Director

Slide 1: Title (introduction)

The Equality Challenge Unit was set up in August 2001 by and for the sector to promote equality of opportunity for all who work or seek to work in the UK higher education sector. It is sponsored both by the HE funding bodies in England, Scotland Wales and Northern Ireland, and by the two representative bodies, Universities UK and the Standing Conference of Principals. With support and 'buy-in' from the funders and the institutions, the Unit thus has an important measure of independence, which allows it to address the issues as they need to be addressed. The seminar's focus on (a) students and (b) the interaction of staff with students is extended through the ECU's presentation, which directs attention to a third important area, that of the institutions' responsibilities towards their staff. At the same time, in commenting on the Disability Discrimination Bill, the presentation draws attention to forthcoming changes which will have a major impact on everything that we do.

Slide 2: DDA 1995

A quick summary of the areas covered by the existing Disability Discrimination Act (1995) is provided, because the Disability Discrimination Bill builds on this earlier legislation. The DDA (1995) and subsequent amendments need to be seen as the steps leading us to the much more challenging approach set out in the Bill. SENDA, which is so important for HEIs, was an amendment to Part 4 of the DDA.

Slide 3: DDA 1995 – ECU guidance on employment

Bearing in mind that so much attention has necessarily been focused recently on implementing SENDA, the ECU, in April 2004, issued substantial guidance on HEIs' continuing responsibilities under the DDA (1995) in respect of employment. These have been widely disseminated. Further copies can be ordered free from the ECU or be downloaded from the website: see www.ecu.ac.uk for details. The major sections of the Guidance are listed on the slide. In discussing dismissal or detrimental treatment, we have concentrated on the steps that can be taken to retain staff who become disabled in the course of their employment, and the reasonable adjustments that it might be appropriate to make.

Slide 4: Reasonable adjustments

The reasonable adjustment that may need to be made in employment are outlined on Slide 4. They are discussed further in the ECU guidance publication.

Slide 5: Employment Tribunal remedies

Slide 5 lists the principal remedies that can be determined by an Employment Tribunal, if an employee wins a case.

Slide 6: Disability Discrimination – further developments

This slide lists the implementation dates of amendments to the DDA and gives the best information we currently have of the date when the new Bill is likely to be passed. Once it is in force as an Act, there will be a period of time to allow for the work to be done to achieve implementation. The DRC is working to a timetable which assumes that the implementation deadline will be December 2006. The Parliamentary Joint Committee considering the draft Bill reported on 27 May 2004. You can access the Report at:

<http://www.publications.parliament.uk/pa/jt200304/jtselect/jtdisab/82/8202.htm>

Slides 7 and 8: Disability Discrimination Bill

The Bill is drafted as a series of amendments to the DDA (1995). The major elements are listed on slides 7 and 8. The changes to DDA Parts 1, 2, and 3 are important, but the major challenge is presented by the New Part 5A, which sets out a positive duty. Confusingly, Part 5 of the DDA (1995) is about Transport (see slide 2 above); in numbering the new clause as Part 5A, it might be thought that this is somehow an amendment about Transport. It is not. It is a fundamental new clause, which will affect everything.

Slide 9: Implications for HEIs

An important new element in the Bill is an expansion of the definition of disability. At the moment it is necessary to prove, on an individual basis, that certain conditions have both a substantial and long-term effect. The Bill proposes that many types of cancer will automatically be included, but others that are likely to be 'cured' within the 12-month period that is already established in the DDA (1995) will not be (e.g. skin cancer). HIV and multiple sclerosis will also be automatically included. Other conditions may have been added by the time the Bill is passed. The implications for HEIs are the same as those for any other employer in that a previously grey area has been clarified.

With regard to the amendments regarding advertisements, we need to be alert to the wide interpretation that might be placed on what constitutes an advertisement and what constitutes a publication, which is likely to include websites. Students Unions will need to be alert to this clause.

No additional duty is proposed regarding physical adjustment to accommodation, but if a policy, practice, procedure, etc can be amended, it must be (e.g. students might have to take rubbish to a central collecting point. A disabled student could have theirs picked up.)

HEIs might not be able to foresee all the adjustments they could possibly make, but they must introduced systematic and transparent procedures to deal with requests once problems have been identified. It will no longer be possible deal with situations in an ad hoc way.

Slides 10 and 11 Positive Duty (1) and (2)

The big change — and the big challenge — in the Bill is the establishment of a Positive Duty for disability. This is something we are already familiar with for race, where the Race Relations Amendment Act only a few years ago introduced this concept for the first time. This marked a change from the ‘don’t discriminate’ approach of the Race Relations Act of 1976 to a much more challenging set of requirements, in which action is required through the positive duty being set out in clauses that begin with active verbs: ‘eliminate’.....’promote....’promote’. This signals a move from risk-avoidance (the ‘*don’t*’ mentality) to risk-taking (the active verbs requiring us to alter our practices so that we *eliminate* discrimination and *promote* equality of opportunity).

Slides 12, 13 and 14: Integrating and mainstreaming disability equality (1), (2), and (3)

Implementing a positive duty, as we already know from the tackling the RRAA, requires us to re-examine everything that we do, and change not only our policies and procedures, but also our whole processes of thought, so that the positive duty is integrated and mainstreamed into every aspect of how the HEI carries out its multifarious functions.

Steps are also being taken to introduce a positive duty for gender equality, and it is likely that the new single Equality Commission will take a ‘positive duty’ approach generally. The harmonisation of approach, which we can already see beginning to happen through the extension of the positive duty from race to disability, will be very helpful in facilitating an integrated approach within HEIs.

Slides 15, 16 and 17: Next steps (1) and (2), and Scotland

The next steps, summarised on slides 15 and 16 will be applicable in England, Scotland and Wales, and the terms of the Bill will be applicable in all three countries, since equalities legislation is in principle reserved to the Westminster Parliament. There is, however, a legal issue for Scotland relating to the enactment of the clause on the promotion of equality of opportunity for disabled people, although it is not anticipated that the requirements in Scotland will actually differ from those in England and Wales in this respect. The probable way forward for Scotland in dealing with this clause is explained on the slide.(Equalities legislation in Northern Ireland is differently framed.)

Slide 18: What is the ECU doing

We are participating in talks with the relevant bodies (e.g. DRC, DfES, Funding Councils) in order to share an understanding of how the new Bill will affect HEIs, and how the implementation can best be supported. We will be offering support directly ourselves, through publications, workshops, conferences, and presentations. We are also available on the phone and by email or letter, and we will post information and useful links on our website, www.ecu.ac.uk Liz Sutherland (Policy Adviser) and Alex Miles (Policy Officer) are our specialists in disability matters.