SEWEL MEMORANDUM

DISABILITY DISCRIMINATION BILL

Motion

1. The motion to be put to the Parliament is:

Disability Discrimination Bill: "That the Parliament agrees the principles contained in the provisions of the Disability Discrimination Bill including the power to impose duties on public authorities so far as those provisions relate to matters within the legislative competence of the Scottish Parliament or confer functions on the Scottish Ministers."

Background and Content of the Bill

2. The draft Disability Discrimination Bill was published in December 2003. After a period of pre-legislative scrutiny by a Committee of both Houses at Westminster, the Bill has now been introduced formally. The Bill as introduced will make a wide range of amendments to the Disability Discrimination Act 1995 including changes to further extend the statutory anti-discrimination regime in relation to public authorities.

3. Clause 3 of the Bill will give public authorities a new duty to have regard to the need to eliminate discrimination of and harassment against disabled people, to promote equality of opportunity between disabled people and other people, and to take steps to take account of disabled persons' disabilities, even where that involves treating disabled people more favourably than others. Paragraph 27 of Schedule 1 will give the Disability Rights Commission the power to issue codes of practice in relation to this duty.

4. The Scottish Executive proposes that the provisions for the creation of a public sector duty to promote equality of opportunity for disabled people should extend to Scotland. The purpose of this memorandum is to outline the terms of those provisions which, by virtue of the Sewel Convention, require the consent of the Scottish Parliament.

Proposal

5. The matters dealt with in the Bill are, as matters relating to equal opportunities, almost entirely reserved by Schedule 5 of the Scotland Act 1998. There are two exceptions to the reservation: the encouragement (other than prohibition or regulation) of equal opportunities, and in particular the observance of the equal opportunities requirements; and the imposition of duties on any office holder in the Scottish Administration, or any Scottish public authority with mixed functions or no reserved functions, to make arrangements with a view to securing that the functions of the office-holder or authority are carried out with due regard to the need to meet the equal opportunity requirements.

6. New section 49A(1), inserted by Clause 3 of the Bill, introduces a general duty on every public authority in carrying out its functions to have due regard to the need to:

- eliminate discrimination that is unlawful;
- eliminate harassment that is unlawful
- promote equality of opportunity between disabled persons and other persons; and

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- to take steps to take account of disabled persons' disabilities, even where that involves treating disabled people more favourably than others.

7. New section 49D, as inserted by Clause 3 of the Bill, introduces a power to allow Ministers to impose specific duties and Section 49D(3) gives the Scottish Ministers a regulation making power to impose on a relevant Scottish authority such duties as the Scottish Ministers consider appropriate for the purpose of ensuring the better performance by that authority of its duty under section 49A(1) (the general duty to eliminate discrimination etc.). The new general duty on public authorities to promote equality of opportunity for disabled people will therefore impact on devolved areas of responsibility and the powers in new section 49D fall within the terms of the exception to the reservation.

Codes of Practice

8. Paragraph 27 of Schedule 1 (minor and consequential amendments) of the Bill amends Section 53A of the 1995 Act to give the Disability Rights Commission authority to prepare and issue codes of practice in relation to the new public sector duties, including those introduced by section 49D. Where a draft of a code of practice deals with performance of the new duties under section 49A or 49D the Secretary of State will be required to consult Scottish Ministers.

Financial Implications

9. The public sector is already pursuing policies which are designed to promote equality of opportunity for employees. The Disability Discrimination Act 1995 already requires employers to make reasonable adjustments in relation to disabled employees and job applicants. As far as service provision is concerned the public sector, like any other provider of goods, facilities and services to the public, is already under an obligation, imposed by Part III of the Disability Discrimination Act 1995, to anticipate the needs of disabled people and have in place reasonable adjustments to remove barriers to service use or provide services in a different way that suits the needs of disabled people. In addition, the public sector is already building systems to comply with the duty to promote race equality introduced – with the consent of the Scottish Parliament – through the Race Relations (Amendment) Act 2000 and for reasons of efficiency and effectiveness the mechanisms being developed to implement the race duties are being applied by many public sector organisations to other groups such as disabled people.

10. Given existing requirements under both the Disability Discrimination Act 1995 and the Race Relations (Amendment) Act 2000, the Regulatory Impact Assessment for the Disability Discrimination Bill (available at www.disability.gov.uk) considers that additional financial consequences arising specifically from the public sector duty to promote equality for disabled people are unlikely to be significant.

SCOTTISH EXECUTIVE
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