

# **Civil Rights (Disabled Persons) Bill**

## **[Bill 12 of 1994-95]**

**Research Paper 95/18**

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This Paper covers the Civil Rights (Disabled Persons) Bill, introduced by Harry Barnes, which is due to have its Second Reading on 10 February 1995. The Bill is similar to the Private Member's Bill introduced by Roger Berry in the last (1993-94) Session of Parliament and can be viewed as a competitor to the Government's Disability Discrimination Bill. Previous Research Papers have covered both these Bills in detail. Members are therefore referred to papers 94/37, 94/97 and 95/9. It outlines the Civil Rights (Disabled Persons) Bill, the extensions that it has made to previous such Bills and its relationship to the Government Disability Discrimination Bill, which will be in Committee at the time that the Civil Rights Bill is debated on 10 February.

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## Background

Like previous Private Members' Bills of the same title, the aim of the Civil Rights (Disabled Persons) Bill introduced by Harry Barnes is to give disabled people the right to reasonable access and non-discrimination in all areas and to set up a Disability Rights Commission with powers to enforce the provisions in the Bill.<sup>1</sup>

The Bill has the overwhelming support of disability groups, who have been campaigning for 10-15 years to establish some form of anti-discrimination legislation. Since 1982, when the report of the Committee on Restrictions Against Disabled People (CORAD)<sup>2</sup> recommended making discrimination on grounds of disability illegal, there has been a series of Private Members Bills of increasing sophistication which have had this as their central aim.<sup>3</sup> The one introduced by Harry Barnes in December 1994 is the latest of these. It came fifth in the recent ballot for Private Members' Bills and is due for a Second Reading on 10 February.<sup>4</sup>

Although Private Members' Bills have so far failed to pass through all Parliamentary stages, the Bill introduced by Dr. Roger Berry in the last Session of Parliament reached the Report Stage in May 1994, having attracted cross-party support and a good deal of publicity. Its failure due to Government tactics<sup>5</sup> led to renewed campaigning by disability groups including the introduction of an amended and strengthened version of the "Berry" Bill (now referred to as the "Barnes" Bill) which is the subject of this Paper.

## Procedure

The Government responded to the "Berry" Bill with its own initiatives, including the Disability Discrimination Bill which will be in Committee when the Barnes Bill will be debated on 10 February.<sup>6</sup> The existence of two Bills dealing with similar subjects, both making their way through the House of Commons at the same time, has raised questions of procedure on which the Speaker made a Statement on 24 January 1995, just before the Second Reading of the Government's Bill took place:

"Before we embark on the Second Reading of the Disability Discrimination Bill, the House may wish to know how I view the position of the Civil Rights (Disabled Persons) Bill presented by the

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<sup>1</sup> See previous Library Research Papers 94/37 and 94/97 for details of previous Bills.

<sup>2</sup> The Committee on Restrictions Against Disabled People was set up in 1979 under a Labour Government by Alf Morris, then Minister for the Disabled. A general election took place soon after it came into being and it reported to Hugh Rossi, Minister in the ensuing Conservative Government.

<sup>3</sup> Details of previous Private Members Bills are contained in previous Research Papers No 94/37 and 94/97.

<sup>4</sup> *Civil Rights (Disabled Persons) Bill*, Bill 12 of 1994-95

<sup>5</sup> HC Deb 10.5.94 c.155

<sup>6</sup> See Research Paper 95/9.

hon. member for Derbyshire, North-East (Mr. Barnes) which is due to receive its Second Reading on Friday 10 February.

Obviously the question arises as to whether the Private Member's Bill can properly proceed once a decision has been reached on today's Bill. Erskine May states on pages 468 to 469:

*"There is no rule or custom which restrains the presentation of two or more bills relating to the same subject, and containing similar provisions. But if a decision of the House has already been taken on one such Bill, for example, if the Bill has been given or refused a second reading, the other is not proceeded with if it contains substantially the same provisions."*

The Disability Discrimination Bill and the Civil Rights (Disabled Persons) Bill clearly overlap in many respects, but in many respects they are incompatible and they cannot be said to contain substantially the same provisions. To the extent that their provisions differ and are incompatible, the House may at some stage have a choice to make between them. I do not consider that it would be right for me as Speaker to prevent the House from proceeding with the Second Reading of the Bill presented by the hon. Member for Derbyshire, North-East if it wishes to do so, even if the

Government's Bill has previously been given a Second Reading."<sup>7</sup>

### **Second Reading of the Government's Disability Discrimination Bill (update of Library Research paper 95/9)**

During the Second Reading of its Disability Discrimination Bill, the Government clarified some of the provisions in its anti-discrimination Bill over which there appeared to be some doubt and also announced a few changes. In particular, William Hague, Minister for Social Security and Disabled People, announced that two aspects of the Bill would be amended in Committee to take account of representations made since the Bill was published:

- The Bill would be extended to cover Northern Ireland from the outset instead of corresponding provision being made by Order in Council as originally planned.
- The sale and letting of property would be specifically added to the areas to which the anti-discrimination provisions would apply.<sup>8</sup>

Mr Hague also gave new details about the proposed advice and conciliation service for which the Bill makes general provision and responded to the criticism that the employment provisions were discriminatory because they excluded firms with fewer than 20 employees by promising to keep the

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<sup>7</sup> HC Deb 24 January 1995 c.146

<sup>8</sup> HC Deb 24 January 1995 c.155

level of that threshold under review. In relation to the former, he said that the service was to be locally available and that discussions had begun with the National Association of Citizens Advice Bureaux about the possibility of using local CABs to provide this service.<sup>9</sup> In relation to the latter, he stressed that the Government had provided that the threshold of 20 employees could be changed through regulation and that, "we shall keep the level of that restriction under review."<sup>10</sup>

During her winding up speech for the Government, Ann Widdecombe, Minister at the Department of Employment, confirmed that it was the Government's intention to keep the restriction under review and that it was certainly not the intention to amend it to a larger number. In that case, there would have to be "some mighty compelling evidence and some consultation as well. The idea is to find out in time to come, whether experience shows that we could decrease that number, but we are starting with what we consider are a reasonable number."<sup>11</sup>

In contrast with the spokesman for the Labour Party (Tom Clarke) and the spokeswoman for the Liberal Democrats (Liz Lynne) who have declared their support for the Barnes Bill, Miss Widdecombe made clear that the Government would not be able to support the rival Bill.<sup>12</sup> As for the positions taken by the Parties on the Government Bill, there was no Division on the Second Reading itself but Tom Clarke put forward a Reasoned Amendment, which was supported by Liz Lynne, on which the vote was 280 for and 307 against - a Government majority of 27. This majority included some Conservatives who had previously supported the Berry Bill (on which the Vote was 231 in favour with none against) although in the view of some of these, it was clear that, the Government Bill, although welcome did not go far enough.<sup>13</sup>

The Reasoned Amendment put forward by Tom Clarke was worded as follows:

"That this House declines to give the Disability (Discrimination) Bill a Second Reading because it believes that the Bill is not an acceptable or enforceable measure to ensure civil rights for all disabled people because its employment provisions would extend to less than five per cent of firms, because it fails to provide for a comprehensive definition of disability or for a Disability Rights Commission to work towards the elimination of discrimination, because it specifically excludes access to the means of transport and because it fails to make unlawful discrimination in the sale and letting of premises."<sup>14</sup>

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<sup>9</sup> HC Deb 24 January 1995 c.154

<sup>10</sup> HC Deb 24 January 1995 c.150

<sup>11</sup> HC Deb 24 January 1995 c.231

<sup>12</sup> HC Deb 24 January 1995 c.230

<sup>13</sup> See, for example, the speeches of Alan Howarth and John Hannam.

<sup>14</sup> HC Deb 24 January 1995 c.156

## **The Barnes Bill: Structure**

The Civil Rights (Disabled Persons) Bill introduced by Harry Barnes is considered by most of the major disability groups and by the Opposition to contain the elements that they consider to be missing from the Government's proposals. In particular, the definition of disability is broader; the scope of the Bill is wider; and the powers of the proposed Disability Rights Commission are greater than those of the Government's National Disability Council.

Given its similarity to the Berry Bill covered in Library Papers 94/37 and 94/97 and the discussion of the differences between the Barnes and Government Bill contained in Library Paper 95/9, this Paper simply concentrates on those aspects which differ from its predecessor and from the rival Government Bill. The structure of the Barnes Bill is as follows:

Part I includes the definition of disability;

Part II and Schedule 3 cover the proposed Disability Rights Commission;

Part III covers employment;

Part IV covers the provision of goods, facilities and services;

Part V covers premises and new constructions

Part VI and Schedule 2 cover access to polling stations;

Part VII covers enforcement; and

Part VIII covers various miscellaneous provisions such as amendments to education acts and duties of local authorities.

## **The Barnes Bill: compared with the Berry Bill**

Ways in which the Barnes Bill differs from the Berry Bill have been summarised by the organisation, Rights Now, which represents about 30 disability groups that have supported the Barnes Bill and the previous Berry Bill (which was in turn based on a Bill introduced by Alf Morris - see previous Library Papers). Among the major changes mentioned in their summary<sup>15</sup> are the following (some of which were written into the Berry Bill at its Committee Stage):

- Protection from discrimination in employment would be extended to all employees. (The employment provisions had previously applied to firms with 20 or more employees).
- Access requirements for new buildings are specifically mentioned. According to Rights Now, at present Part M of the Building Regulation requires most new public building to be accessible to disabled people but it can only be enforced by local authorities and implementation is thus patchy. The provision in the Civil Rights Bill

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<sup>15</sup> Rights for Disabled People Now!, *Briefing on The Civil Rights (Disabled Persons) Bill*, introduced by Harry Barnes MP 14 December 1994

would operate alongside the Building Regulations and would allow disabled people to if a new building was inaccessible. The Barnes Bill would apply to all buildings.

- The Secretary of State's proposed power to exempt certain categories of provision from the legislation would be extended to an unlimited period because certain requirements might need to be phased in over a long period to reduce the cost.
- Requirements for the telecommunications industry are covered by a specific clause. These concern in particular services for people who are deaf or hard of hearing .
- A new clause would specifically ban discrimination in the sale & rental of property.
- A new Part is added to deal with the right of access to polling stations
- A new clause would impose a general duty on local authorities to counter discrimination.
- A new clause would strengthen the provisions in the Education Act 1993 which provide for children with "special educational needs" to be educated in ordinary schools .

## **The Barnes Bill: compared with the Government's Bill**

**Wider definition of disability:** In his own Briefing on his Bill issued on 12 January 1995, Harry Barnes argued that his Bill contained a more comprehensive social definition of disability which recognised that disability is a process by which people with physical, mental and sensory impairments (and sometimes their relatives) are excluded unnecessarily from equal participation in society.

Rights Now argues that the Government's definition of disability excludes many people who experience discrimination, such as those with previous histories of mental health problems or those who are HIV positive. The Civil Rights Bill, like the Berry Bill, would include a person with

- "a) a physical, sensory or mental impairment the consequence of which substantially limits one or more of the major life activities of that person; or
- b) a history of having had such an impairment; or
- c) a reputation as a person who has or had such an impairment."<sup>16</sup>

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<sup>16</sup> Clause 2 of the Barnes Bill.

**More comprehensive:** In his Briefing, Harry Barnes argues that his Bill gives a general right to reasonable access and non-discrimination in all areas of life. In particular, his Bill covers people in firms with less than 20 employees - a point emphasised by the Labour Party during the Second Reading of the Government Bill. Among other areas, it covers education and transport, all new buildings, polling stations and the sale and rental of property. As noted above, the Government has now said that it will add the last to its Bill during the Committee Stage and it is also the case that the Government Bill applies to employment in the education sector and to transport infrastructure, such as access to stations, but not access to the vehicles.

The Civil Rights Bill would also leave the employment quota scheme unchanged whereas the Government Bill would abolish it. Although many disability groups would criticise the workings of the quota scheme, Rights Now argues that it could have been strengthened instead of abolished.

**Disability Rights Commission:** The *Commission* proposed in the Barnes Bill would have powers of investigation and enforcement which the Government's proposed *Disability Council* would not have as it is intended to be an advisory body only. The Barnes Commission is modelled on the Equal Opportunities Commission and the Commission for Racial Equality which deal with sex and race discrimination respectively. In addition, the Barnes Bill proposes that the Commission's membership would contain a minimum of 75% disabled people whereas, under the Government Bill, the Disability Council would only contain 50%.

Recent papers on related subjects have been:

**Personal social services**

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|--------|---|----------|
| 95/9   | Disability Discrimination Bill<br>[Bill 32 of 1994/95]              | 19.01.95 |
| 94/125 | Children (Scotland) Bill [Bill 4 of 1994/95]                        | 30.11.94 |
| 94/97  | Civil Rights (Disabled Persons) Bill<br>[Bill 16 of 1993-94] Update | 15.09.94 |
| 94/37  | Civil Rights (Disabled Persons) Bill<br>[Bill 16 of 1993/94]        | 28.02.94 |
| 94/20  | Child Support   | 31.01.94 |