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# *Disability Rights* **Commission Bill [HL]**

**Bill 73 of 98-99**

This Research Paper has been written for the Second Reading debate of the *Disability Rights Commission Bill* [HL], which is due to take place on 22 April 1999. The purpose of the Bill is to set up a Disability Rights Commission to replace the National Disability Council, which was set up under the *Disability Discrimination Act 1999*. This Paper provides background information, describes the Bill's provisions and summarise some responses to it.

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## Summary of main points

- The Bill's main purpose is to establish a Disability Rights Commission to replace the National Disability Council set up under the *Disability Discrimination Act 1995*.
- The establishment of the Disability Rights Commission is a response to criticisms of the *Disability Discrimination Act*, in particular that the Council did not have powers of enforcement.
- The Commission will have powers to enforce the Disability Discrimination Act and will also have a wider role in eliminating discrimination against, and promoting equal opportunities for, disabled people
- The Commission is modelled on the Equal Opportunities Commission (EOC) and The Commission for Racial Equality (CRE) but there are some difference and the Bill is designed to allow flexibility so that changes could be introduced as a result of reviews of the legislation governing the first EOC and CRE.
- The Bill does not specify the date on which the new Commission is to come into force but the Government has said that, subject to the Bill's approval by Parliament, it expects the Commission to be established in the year 2000.

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## I Background and Context

Enforcement of the *Disability Discrimination Act 1995* will be one of the main functions of the Disability Rights Commission that is to be set up under the present Bill. The 1995 Act was the first measure to outlaw discrimination against disabled people in the UK and it was the result of a long fought battle by disabled people. But even as it was making its way through Parliament, representatives of disability groups were arguing that it was flawed. Indeed, a rival, Private Member's Bill that did have the full support of many disability groups and some cross-party support was progressing through Parliament at the same time but did not have the support of the Government of the day and failed to reach the statute book.<sup>1</sup>

The establishment of a Disability Rights Commission is a response to one of the criticisms of the *Disability Discrimination Act (DDA)*. The Act gives disabled people rights in the areas of employment, access to goods, facilities and services, and buying or renting land or property. It also requires schools, colleges and universities to provide information for disabled people and allows the government to set minimum standards so that disabled people can use public transport easily. As with other anti-discrimination legislation, these rights are enforceable through Employment Tribunals<sup>2</sup> and County Courts (Sheriff Courts in Scotland).

The Act provides for the National Disability Council (in Northern Ireland, the Northern Ireland Disability Council) to advise the government on discrimination against disabled people. It also provides for separate arrangements to be made for the provision of advice and assistance designed to promote the settlement of disputes under the access to goods, facilities, services and premises provisions – through the Disability Access Rights Advisory Service (DARAS). In relation to employment issues, the pre-existing Advisory, Conciliation and Arbitration Service (ACAS) and the Labour Relations Agency in Northern Ireland are available to help with the settlement of disputes.

Criticisms of the *DDA* included the definition of disability used, the narrowness of the Act's scope and the weakness of the National Disability Council. The last is an advisory body. It produces codes of practice, at the request of the Secretary of State, but does not have the powers of investigation or enforcement that the Equal Opportunities Commission (in the field of sex discrimination) and the Commission for Racial Equality (in the field of racial discrimination) have. It is with this last criticism that the present Bill

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<sup>1</sup> *The Civil Rights (Disabled Persons) Bill of 1994/95*. See previous Library Research Papers 94/37,94/97,95/9,95/18 for background to the Disability Discrimination Act and Bills relating to civil rights for disabled people.

<sup>2</sup> previously known as Industrial Tribunals

deals by abolishing the National Disability Council and setting up a Disability Rights Commission with greater powers, including powers of investigation and enforcement.

When the present Government came to power, the *DDA* was not yet fully in force. The employment provisions and the basic non-discrimination provisions in relation to goods and services came into force in December 1996. But there was no definite date for the implementation of the more far-reaching provisions relating to goods and services, including those that require providers to make changes to accommodate disabled people. Given the Government's Manifesto commitment to introduce comprehensive and enforceable civil rights for disabled people, there was some doubt whether the Government would proceed with the implementation of the remaining stages of the *DDA* or introduce a new set of measures instead.

The Labour Party's Manifesto for the 1997 General Election said:

“We will seek to end unjustifiable discrimination wherever it exists. For example, we support comprehensive, enforceable civil rights for disabled people against discrimination in society or at work, developed in partnership with all interested parties.”

As soon as the Government came to power, it transferred overall responsibility for disability issues from the Department of Social Security to the Department for Education and Employment. In a press release issued in May 1997, Andrew Smith, the Minister for Employment, Welfare to Work and Equal Opportunities, said:

“The transfer of responsibility from the Department of Social Security to the Department for Education and Employment means that we will be able to work towards ensuring that disabled people fulfil a wider role in society as people able to take advantage of education, training opportunities and the employment market. I intend disabled people to play a full part in the opportunities that our Welfare to Work initiative will provide.”

The future of the *DDA* was clarified a few months later, when Andrew Smith said that there would be a three-point strategy on disability rights, including a Government commitment to implement the remaining stages of the *DDA*.<sup>3</sup> According to a later statement, Andrew Smith said that the three point strategy was to:

- establish a Ministerial Task Force to undertake a wide consultation on how to implement comprehensive and enforceable civil rights for disabled people
- move to establish a Disability Rights Commission;
- go ahead with implementing the remaining rights of access to goods and services in the *Disability Discrimination Act*.

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<sup>3</sup> Department for Education and Employment Press Notice, 1 October 1997

In relation to the *DDA*, he said:

“Flawed though it is, there are practical benefits to disabled people which will come about as a result.”<sup>4</sup>

The two-stage timetable for implementing the remaining provisions of the *DDA* was announced in June 1998 by Alan Howarth, then Minister for Employment and Equal Opportunities under Andrew Smith. In relation to the employment provisions of the Act, the Government has lowered the exemption threshold for businesses from 20 to 15 employees, with effect the beginning of December 1998<sup>5</sup> and, under the transport provisions, introduced accessibility regulations for rail vehicles first brought into use after 31 December 1998.<sup>6</sup> The timetable for implementation of the goods and services provisions is set out below, as announced by Alan Howarth:

“...From October 1999, service providers will have to take reasonable steps to change practices, policies or procedures which make it impossible or unreasonably difficult for disabled people to use a service; provide auxiliary aids or services which would enable disabled people to use a service; and overcome physical barriers by providing a service by a reasonable alternative method.

From 2004, service providers will have to take reasonable steps to remove, alter, or provide reasonable means of avoiding physical features that make it impossible or unreasonably difficult for disabled people to use a service...”<sup>7</sup>

The consultation on how to implement comprehensive and enforceable civil rights for disabled people is being undertaken by the Disability Rights Task Force, whose membership and remit were announced in December 1997.<sup>8</sup> The membership included people from business, the trade unions, local government and the health service. About half the members are disabled people. It is led by the Minister for Disabled People (currently Margaret Hodge, the Minister for Employment and Equal Opportunities who succeeded Alan Howarth).<sup>9</sup>

As a priority, the Task Force was asked to make recommendations on the role and functions of a Disability Rights Commission. That job is now complete but the final recommendations of the Task Force in other areas are not due until July 1999.<sup>10</sup> It is examining a wider range of issues, such as the appropriate definition of a disabled person, and general civil rights issues relating to disabled people, such as whether they are best

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<sup>4</sup> Department for Education and Employment Press Notice, 3 December 1997

<sup>5</sup> Department for Education and Employment Press Notice, 1 December 1998

<sup>6</sup> *The Rail Vehicle Accessibility Regulations*, SI 1998/2456

<sup>7</sup> HC Deb 9 June 1998 c544W

<sup>8</sup> Department for Education and Employment Press Notice, 3 December 1997

<sup>9</sup> HL Deb 16 February 1998 c3

<sup>10</sup> HC Deb 14 January 1999 c258-9W

achieved through establishing broad principles or whether detailed duties should be set out in legislation.<sup>11</sup> Its documents can be obtained from its web site.<sup>12</sup>

In relation to its first task, the establishment of a Disability Rights Commission, the Disability Rights Task Force published a discussion paper at the beginning of 1998, asking for replies by the end of March 1998.<sup>13</sup> The Paper describes the background to the present situation, including existing bodies, such as the EOC and the CRE, and relevant legislation in the USA and Australia, as well as suggestions for the role, structure and membership of the proposed Commission.

The Task Force's recommendations, made by Easter 1998, were unanimous and formed the basis of the Government's consultative White Paper on a Disability Rights Commission published in July 1998. Responses to the White Paper were requested by October 1998.<sup>14</sup> Announcing the publication of the White Paper, Alan Howarth outlined the role that the Government envisaged for the Commission:

“We envisage that the role and functions of the Disability Rights Commission will be broadly similar to those of the Equal Opportunities Commission and the Commission for Racial Equality. Our proposals aim to take account of over twenty years of experience gained by equality Commissions here and abroad in combating discrimination. We want to create a Disability Rights Commission fit for the 21st century.

The Commission will make a large contribution to ending discrimination against disabled people and enabling them to play a full part in society. Discrimination against disabled people remains all too extensive and is totally unacceptable. The Commission will provide disabled people with support to sustain the rights which the law creates for them. It will promote conciliation and, where necessary, enforcement. But its role will also be to promote good practice and educate, and it will provide a central source of information and advice to employers and service providers to assist them in meeting their duties.

We emphasise that we expect that the Commission should not work in an adversarial or oppressive way. There need be no tension between the interests of disabled people and the interests of employers and service providers. The Commission should be seen as supportive of both disabled people and businesses alike. We are proposing that there should be a single Commission in Great Britain but with offices in Scotland and Wales. The Commission will comprise between

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<sup>11</sup> See Disability Rights Task Force, *Civil Rights And Disabled People – Who Should Have Rights And What Rights Should They Be?* DRFT/10/98

<sup>12</sup> (<http://www.disability.gov.uk>)

<sup>13</sup> Disability Rights Task Force, *Moving Toward The Establishment Of A Disability Rights Commission*, DRFT/1/98

<sup>14</sup> Department for Education and Employment, *Promoting Disabled People's Rights: creating a Disability Rights Commission fit for the 21<sup>st</sup> Century*, Cm 3977, July 1998



10 and 15 Commissioners. Their appointment will comply with the guidance issued by the Office of the Commissioner of Public Appointments.

The Commission must be credible with all stakeholders. The body of Commissioners between them will need to have sufficient diversity of experience to be able to take account of the interests of all disabled people and to reflect the interest of all key stakeholders, including those of small businesses. We intend that at all times a majority of the Commissioners should be disabled.

The Commission will be an independent executive non-departmental public body, subject to the formal management and reporting arrangements and accountabilities laid on such bodies. The Commission's main duties will be to:

- work towards the elimination of discrimination against disabled people;
- promote the equalisation of opportunities for disabled people with those of non-disabled people;
- promote good practice; and
- advise the Government on the operation of the *Disability Discrimination Act* and other relevant existing legislation, and any future legislation dealing with discrimination against disabled people, and whether changes need to be made to it.

We will expect the Commission to work in partnership with other organisations and networks which have expertise relating to disability discrimination.

Within this framework of general duties, the Commission's specific functions will be to:

- provide a central source of information and advice, particularly to disabled people, business, and the public and voluntary sectors;
- assist individuals in securing their rights under the *Disability Discrimination Act* and other relevant domestic legislation, under any legislation resulting from the implementation of relevant European Union directives and under Article 14 of the European Convention on Human Rights which makes it unlawful to discriminate against disabled people in the enjoyment of their rights under the Convention;
- prepare and review statutory codes of practice containing practical guidance on what is necessary to comply with legislation. The Commission will have a duty to publish a draft of any codes which it prepares for consultation;
- arrange for the provision of an independent conciliation service in respect of access to goods, facilities, services and premises and monitor the performance of that service. The Advisory, Conciliation and Arbitration Service (ACAS) will continue to provide conciliation on employment issues.

The Commission will have also the power to undertake formal investigations. Such investigations would normally be reserved for serious and complex situations or issues. There will be adequate safeguards in place to ensure that the rights of those under investigation are not transgressed.

Finally, the Commission will be able to carry out research about issues that fall within its purview.

We believe that a Disability Rights Commission is essential in tackling discrimination against disabled people and promote an inclusive and just society. We invite comments on our White Paper by 16 October and will introduce legislation to establish the Commission as soon as the Parliamentary timetable allows.”<sup>15</sup>

The Queen’s Speech in the autumn of 1998 announced that the Government would introduce legislation to establish a Disability Rights Commission that would assist disabled people in securing comprehensive civil rights and help employers meet their obligations.<sup>16</sup> The *Disability Rights Commission Bill* was introduced in the House of Lords on 3 December 1998, completed its Third Reading and entered the House of Commons at the end of March 1999.<sup>17</sup> The Second Reading debate in the Commons is due to take place on Thursday 22 April.

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<sup>15</sup> HC Deb 21 July 1998 c518-520W

<sup>16</sup> Queen’s Speech, HC Deb, 24 November 1998

<sup>17</sup> Dates of the debates in the House of Lords were as follows: Second Reading 17 December 1998; Committee 4 February 1999; Report 11 March 1999; Third Reading 23 March 1999

## II The Bill

### A. Overview

**Purpose:** The purpose of the Bill is to provide for a Disability Rights Commission, modelled, with some differences, on the Equal Opportunities Commission (EOC) and the Commission for Racial Equality (CRE), which have been in existence for more than 20 years. The Government has said that the provisions in the Bill, though based on the other two Commissions, have taken account of evolving practice in these other two bodies.

Both the EOC and the CRE have put forward proposals in relation to their own legislation, which the Government is currently considering, that are relevant to the operation of the Disability Rights Commission. For example, the Government has specifically referred to their concerns about the length of time that it takes to conclude formal investigations and their criticisms of the limited scope of non-discrimination notices.<sup>18</sup>

This has influenced the form of the Bill in that the Government has felt it necessary to build in enough flexibility into it to enable Regulations to allow for changes if experience shows there is a need for it.<sup>19</sup> A new feature introduced by the present Bill is the power for the Disability Rights Commission to enter into legally binding agreements with a body that is subject to a formal investigation (see Provisions below).<sup>20</sup>

**Definitions:** The definition of a disabled person used throughout the Bill is the same as that used in the *Disability Discrimination Act 1995*, as are the definitions of other terms that are defined in the 1995 Act (Clause 12 of the present Bill). The basic definition is a person who has a disability, which means a person who has “*a physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities*”.<sup>21</sup> The *DDA* extends the definition to someone who has had disability<sup>22</sup> and also provides a more detailed interpretation of the definition.<sup>23</sup>

**Extent:** Unlike the *Disability Discrimination Act*, which applies to the UK, the present Bill applies to Great Britain but, like the 1995 Act, it binds the Crown. In Northern

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<sup>18</sup> HL Deb 17 December 1998 c1464

<sup>19</sup> As above c 1463

<sup>20</sup> As above, c1464

<sup>21</sup> *The Disability Discrimination Act 1995* Section 1

<sup>22</sup> *The Disability Discrimination Act 1995* Section 2

<sup>23</sup> *The Disability Discrimination Act 1995* Schedule 1

Ireland arrangements set out in the *Northern Ireland Act 1998* will apply.<sup>24</sup> Northern Ireland is in the process of establishing a single Commission covering all forms of discrimination - an issue that is not covered in this Paper.

**Powers of Delegation:** There are a number of regulation-making powers in the Bill. All except the commencement powers are subject to the negative procedure. The House of Lords Select Committee on Delegated Powers and Deregulation was satisfied that the procedure was appropriate even in relation to Regulations under Clause 4 (3). The Committee considered that the regulatory power important because it could add teeth to non-discrimination notices (see Bill's Provisions below) and might extend the meaning of "unlawful act". The Committee also judged that Clause 10, which relates to exemptions for small employers, did not create a new power but modified an existing one that was subject to the negative procedure. It commented approvingly on the inclusion in Clause 8, which relates to codes of practice to be issued by the Commission, requirements as to consultation and the laying of draft codes before Parliament.<sup>25</sup>

**Financial Effects:** The Bill's *Explanatory Notes* say that the budget for the Disability Rights Commission is £3 million in 1999-2000 and £11 million in 2000-2001 and 2001-2002. The figures for 2000-2001 and 2001-2 are provisional and may be adjusted within the Department for Education and Employment's overall Comprehensive Spending Review Settlement. Final figures will be confirmed in the course of 1999 and 2000 respectively.

A Written Answer given by Margaret Hodge, Minister at the DfEE, about the allocation of the Commission's resources said:

"A provisional annual allocation of £11 million has been made for the Disability Rights Commission in 2001-2002. It will be for the Commission when it is established to decide how to allocate its resources. Meanwhile interim estimates indicate some 10 per cent of that annual budget may be devoted to administrative costs; 40 percent to advice and information, conciliation, assistance to individuals and formal investigations; 30 per cent to promotional work, and 20 per cent to policy work...

The Government will keep the annual allocations under review in the light of operational experience of the Commission."<sup>26</sup>

**Effects on Public Service Manpower:** The Bill's *Explanatory Notes* say that commissioners and staff of the Disability Rights Commission will not be civil servants but will be paid by the Commission whose expenses are payable out of public funds by

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<sup>24</sup> HL Deb 17 December 1998 c1466

<sup>25</sup> The House of Lords Select Committee on Delegated Powers and Deregulation, House of Lords Paper 12 of 1998/99 pp 3-4

<sup>26</sup> HC Deb 2 February 1999 c599-600W

the Secretary of State. The transfer to the Commission of functions relating to statutory codes of practice and other guidance material, currently prepared by civil servants in the DfEE, should lead to a small reduction in central government manpower needs.

**Regulatory Appraisal:** The Bill's *Explanatory Notes* say that the Bill imposes no compliance costs on business.

**European Convention on Human Rights:** Margaret Hodge, Minister for Employment and Equal Opportunities, states on the front of the Bill that in her view the provision of the Disability Rights Commission Bill are compatible with the Convention Rights.

**Commencement:** A Written Answer given at the beginning of 1999 said that, subject to Parliament enacting the Bill, the Government would expect the Commission to be established in the year 2000.<sup>27</sup> The Bill provides for the Secretary of State to specify by order the date or dates on which the Bill is to come into force.

**Changes, and assurances about future changes, to the Bill made in the House of Lords:** The Bill passed through the House of Lords with few amendments, most of which were clarificatory or technical.<sup>28</sup>

The main amendment of substance, which was made on Report, was introduced by the Government in response to concerns expressed in Committee but did not go so far as some would have liked (see Issues and Responses below). This was to include a requirement that either the chairman or the deputy chairman of the Commission be a disabled person or a person who has had a disability.<sup>29</sup> This is now paragraph 6(2) of Schedule 1.

The Government also responded to some other concerns by giving assurances for the future. In relation to the provisions on formal investigations there was some concern that, where the Commission refuses to receive oral representations, it should be required to give its reasons in writing to the parties concerned. Lady Blackstone, Minister at the DfEE, said on Third Reading:

“I am prepared to accept the principle behind the amendment and can confirm that we shall be bringing forward a Government amendment at the next stage.”<sup>30</sup>

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<sup>27</sup> HC Deb 14 January 1999 c259-60W

<sup>28</sup> These included the addition of an extra subsection in Clause 2, which is now Clause 2 (b), to ensure that the Commission can make proposals to or advise any government agency; the addition of the words ‘or arrange for the provision of’ in Clause 6(3)(a) to ensure that the Commission can, where appropriate, arrange for someone or somebody to provide legal advice; the substitution of ‘shall’ instead of ‘may’ in Clause 8(8) to ensure that courts have to take into account relevant aspects of a code of practice; the Commission’s role in promoting good practice is now a duty instead of a power and is listed in Clause 2(1) as item (c) instead of as a separate subsection.

<sup>29</sup> HL Deb 11 March 1999 c425-8

<sup>30</sup> HL Deb 23 March 1999 c1249

The Bill makes no provision for a non-discrimination notice to be removed from the public register when with notice has been complied with. Lady Blackstone responded to the concern it should have to be removed by saying that she was sympathetic but that there were a number of practical issues to be addressed:

“We are currently considering the practical issues raised by this amendment with Ministerial colleagues. We need to consult them as it has implications for future policy on the powers of the EOC and the CRE ... While I hope that it will be possible to bring forward a Government amendment at the next stage, I cannot give a firm commitment at this point until that interdepartmental discussion has taken place.”<sup>31</sup>

On report, the Government gave a commitment to strengthening the non-discrimination notice stage of a formal investigation process, where the experience of the existing Commissions has shown it to be falling short.<sup>32</sup>

## **B. Provisions**

This section outlines some of the specific provisions in the Bill. It does not cover each clause in detail but highlights those points that are thought to be of most interest to Members.

The provisions of the Bill (as amended in the House of Lords) can be divided into two broad areas:

- The establishment of the Commission, its structure and membership (Clause 1, Schedules 1 and 2)
- The Commission’s role and functions (Clauses 2 – 10, Schedule 3)

### **1. Structure and Membership**

The Bill establishes the Disability Rights Commission and abolishes the National Disability Council. It provides for the Commission to be funded by the Secretary of State out of money provided by Parliament (Clause 1) although some of its expenses can be recovered out of charges and by recovery of costs in legal cases (see Role and Functions below).

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<sup>31</sup> HL Deb 23 March 1999 c1250

<sup>32</sup> HL Deb 11 March 1999 c404-5

The Commission must consist of at least 10 and not more than 15 commissioners appointed by the Secretary of State, although there is provision for the Commission to appoint extra commissioners approved by the Secretary of State for the purpose of a formal investigation. At least half of the commissioners must be disabled or have had a disability (excluding the first three appointments) and the chairman or deputy chairman must be a person with a disability or who has had a disability (Schedule 3). This last provision was added during the Bill's passage through the House of Lords (see previous section).

The Commission will be required to submit an annual report to Parliament and the Secretary of State is required to lay a copy of the report before Parliament.(Schedule 3)

The Bill leaves the Commission free to set up offices wherever it thinks best to enable it to fulfil its functions but the Government has said that the experience of the existing equality Commissions has shown that offices in each of England, Scotland and Wales have been necessary and invaluable. It would therefore expect the Disability Rights Commission to operate in a similar manner but thinks that it should determine what other arrangements are necessary in the light of experience.<sup>33</sup>

## 2. Role and Functions

The general duties of the Disability Rights Commission (Clause 2) will be to:

- work towards the elimination of discrimination against disabled people
- promote the equalisation of opportunities for disabled people
- take such steps as it considers appropriate with a view to encouraging good practice in the treatment of disabled people
- keep under review the working of the *Disability Discrimination Act 1995* and the *Disability Rights Commission Act* (if approved by Parliament)

The Commission is given general powers, which are duties when a Minister requests their use (Clause 2) :

- to make proposals or give other advice to any Minister of the Crown as to any aspect of the law or a proposed change to the law
- make proposals or give other advice to any government agency as to the practical application of any law
- undertake, or arrange for or support (whether financially or otherwise) the carrying out of research or the provision of advice or information

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<sup>33</sup> HL Deb 17 December 1999 c1466

The Bill says that “the law” in this context includes Community law and the international obligations of the UK (Clause 2).

The Commission is given power to charge for facilities or services that it makes available for any purpose (Clause 2). The Government has said that this does not mean charges for support in formal investigations.<sup>34</sup>

The Bill also provides for a number of specific functions in relation to:

- formal investigations (Clause 3 and Schedule 3)
- non-discrimination notices (Clause 4 and Schedule 3)
- agreements in lieu of enforcement action (Clause 5)
- assistance in relation to legal proceedings (Clause 6)
- recovery of expenses of providing assistance (Clause 7)
- codes of practice (Clause 8)
- conciliation of disputes under Part III of the *Disability Discrimination Act 1995*, which deals with goods, services, facilities and premises (Clause 9)
- the exemption for small employers (Clause 10)

These are outlined below.<sup>35</sup>

**Formal investigation:** The Bill gives the Commission the *power* to conduct formal investigations and *requires* it to do so if asked by the Secretary of State. According to the Bill’s *Explanatory Notes*, it provides for different types of investigation:

- a general investigation to find out what is happening in particular sectors of society or in relation to particular kinds of activity
- a named party (individual or organisation) investigation, which is the form that must be used if the Commission wants to investigate a case where it has reason to believe that a person has committed or is committing unlawful acts under the *Disability Discrimination Act 1995* - it can only carry out the investigation where it has reason to hold such a belief
- an investigation to monitor compliance with a non-discrimination notice or with a statutory agreement

The Bill sets out the procedure to be followed when a formal investigation is being undertaken. Key stages include: drawing up formal terms of reference (either by the Commission or, where the investigation has been requested by the Secretary of State, by the Secretary of State); publication or notice of the holding of the investigation and,

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<sup>34</sup> HL Deb 17 December 1998 c1496

<sup>35</sup> Unless otherwise stated, the following descriptions are summaries of the Bill’s provisions and draw on the descriptions of the Bill’s provisions in the *Explanatory Notes* written for the House of Commons Stage, Bill 73-EN, 24 March 1999



where it is into a named person, that person must be informed in advance and given the opportunity to make representations; serving a notice requiring a person to give information orally or in writing (in certain cases with the authorisation of the Secretary of State) and, where necessary, an application to a county or sheriff court for an order requiring compliance; and a published report of the findings (excluding any prejudicial material about an individual's private or business affairs).

**Non-discrimination notice:** If the Commission becomes satisfied during a formal investigation that a person is committing, or has committed, an act of unlawful discrimination, the Bill gives it the power to issue a non-discrimination notice requiring the person to stop. Such notices may be issued in respect of acts made unlawful by Parts II (employment) and III (goods, facilities, services and premises) of the *Disability Discrimination Act* and the Bill provides for the scope to be extended by Regulations to any other unlawful act. The *Explanatory Notes* suggest that a breach of section 6 of the *Human Rights Act 1998* (actions by public authorities) affecting disabled people might be included by this means. The Secretary of State is given Regulation-making powers to extend the scope of non-discrimination notices - and for other related matters.

The Bill sets out the arrangements relating to the issue of a non-discrimination notice, which include the right of appeal to an employment tribunal or County (Sheriff) court. The Commission is given the power to apply to a court for an order to enforce compliance with a non-discrimination notice and is required to maintain a public register of non-discrimination notices that have become final.

**Agreements in lieu of enforcement action:** The Bill gives the Commission power to enter into a legally binding written agreement with a person during a formal investigation if it has reason to believe that the person may be committing or have committed an unlawful act. This is a new power in that neither of the two existing Commissions possess it. Once the agreement has been entered into, the investigation must stop. As in the case of non-discrimination notices, the Secretary of State is given Regulation-making powers (although separate ones) to extend the definition of unlawful acts beyond those covered by the Parts II and III of the *Disability Discrimination Act 1995*. Again, the *Explanatory Notes* suggest that the *Human Rights Act 1998* Section 6 might be included by this means. The Commission is given the power to apply to the court for an order to enforce the agreement if it is broken.

**Assistance in relation to legal proceedings:** The Bill gives the Commission power to assist individuals in relation to actual or potential legal proceedings relating to the Part II and Part III of *Disability Discrimination Act*. This power also includes assistance in relation to victimisation, which is covered in Part VII of the *Disability Discrimination Act*. The Secretary of State is given power to extend by Regulations the list of proceedings in relation to which the Commission can give assistance.

**Recovery of expenses of providing assistance in legal proceedings:** When a person who has been assisted by the Commission becomes entitled to have relevant costs repaid to him by another party, for example under a court order or as part of a settlement, the

Commission is entitled to recover its expenses out of the amount paid for costs. This only applies to amounts paid for costs and not to amounts paid as compensation.<sup>36</sup>

**Codes of practice:** The Bill amends the *Disability Discrimination Act* so that the Commission will have the power to issue codes of practice. It will be required to do so if asked by the Secretary of State. Courts and Tribunals will be required to take into account relevant provisions of a code - a requirement added during the passage of the Bill through the Lords (see previous section) - although, as now, failure to observe any provision of a code will not of itself make a person liable to any proceedings. The Commission must publish proposals for a code (or part of a code) for consultation and a code cannot be issued unless first approved by the Secretary of State and then laid before Parliament. Either House can resolve not to approve a draft.<sup>37</sup>

**Conciliation of disputes under Part III of the *Disability Discrimination Act*:** The Bill allows the Commission to make arrangements for the provision of a conciliation service dealing with disputes under Part III (access to goods, services, facilities and premises) of the *Disability Discrimination Act*. Conciliation arrangements are already available in the areas of employment, where the function is undertaken by the Advisory, Conciliation and Arbitration Service (ACAS). At present, under the *Disability Discrimination Act*, the Secretary of State has the power to provide to make arrangements for the settlement of disputes and, under this power, has set up an advice and conciliation service called the Disability Access Rights Advice Service (DARAS).<sup>38</sup>

The Bill amends the *Disability Discrimination Act* so that the Secretary of State will no longer have the power to make arrangements for advice and assistance to promote the settlement of disputes arising under Part III of the 1995 Act. Instead, the Bill gives the Commission that power. The Bill provides for the Commission to arrange conciliation services but the Commission is barred from providing these itself. The Bill also provides for a number of safeguards designed to ensure that the information disclosed during the process is not inappropriately used.

**Small employers' exemption:** The Bill amends the *Disability Discrimination Act 1995* so as to replace the existing mechanism for reviewing the small employer's threshold. At the moment the Secretary of State can amend by threshold by order. The Bill replaces the current requirement for the Secretary of State to conduct a review before making such an order with a requirement for the Secretary of State to consult the Commission and, as now, employer and disability organisations. The Bill requires the Secretary of to publish a summary of the views expressed to him in consultations before any changes are made.

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<sup>36</sup> HL Deb

<sup>37</sup> House of Lords Select Committee on Delegated Powers and Deregulation, as cited above

<sup>38</sup> HL Deb 17 December 1998 c1466

### III Issues and Responses<sup>39</sup>

The Bill has received emphatic and widespread support from disability groups and their supporters, even from those who fought hard for changes during the passage of the Bill through the House of Lords. For example, Lord Ashley, on Second Reading said:

"The All-Party Disablement Group is the engine-room of campaigns on disability - it is where the hard, laborious work is done - and I am very proud of the work of that group of people. Today is the culmination of their efforts, the efforts of the disability organisations and the efforts of disabled people themselves. It really is a great day for disabled people.

We are debating an historic development for Britain's 6.5 million disabled people, I believe that this Commission will transform their lives and will transform their dream of full civil rights into a reality. That will be a considerable achievement. From time immemorial disabled people have had little voice, few rights and absolutely no role. They have been excluded from society because of the deep-rooted discrimination so eloquently mentioned by my noble friend when she opened the debate. The new Commission will mount a head-on challenge to that discrimination. That is why it is so very important."<sup>40</sup>

Other groups such as the TUC and the CBI have also welcomed the Bill although the former joined with many disability groups in wanting certain provisions in the Bill strengthened while the CBI opposed a number of aspects of the Bill, for example the requirement that the majority of Commissioners be disabled and the introduction of legally enforceable binding agreements. The CBI also expressed concern about a number of possible future developments, such as the inclusion of the *Human Rights Act* 1998 Section 6 among the laws with which the new Commission might be able to deal.

Some issues raised in the context of the Bill raise issues outside the present Bill's scope although some are being examined separately. For example, the question of the definition of disability used both in the *Disability Discrimination Act* and in this Bill was raised on Second Reading by Lord Campbell of Troy and is being examined separately by the Disability Rights Task Force, which is due to report this summer (see Background and Context above). Another broader issue was mentioned by Lord Rix, who raised the question of rights to services and the need to promote greater co-ordination of government policy in relation to disability:

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<sup>39</sup> This Section is drawn from the debates during the Bill's passage through the House of Lords and from Briefings received from interested groups. The latter included: the Confederation of British Industry (CBI), Mind (the mental health charity), the Royal Association for Disability and Rehabilitation (a co-ordinating body with over 500 member associations), the Royal National Institute for the Blind (RNIB), the Royal National Institute for the Deaf (RNID), and the Trade Union Congress (TUC).

<sup>40</sup> HL Deb 17 December 1998 c1469

"...How far do civil rights take us in the absence of service rights? It is a little like respecting people's citizenship but not facilitating their survival. How can we secure in legislation a right to independent living and equality which means that basic domiciliary care, accessible transport, and equality of access to education and employment are delivered as of right?..."<sup>41</sup>

The two most frequently raised issues relating directly to the Disability Rights Commission, as proposed in the Bill, appear to be:

- funding
- membership of the Commission.

In relation to funding, there was some concern that the £11 million whether the Commission is due to receive in its first full year would be adequate. Although more than the EOC receives, the sum is less than the £15 million received by the CRE. Several of those speaking during the Lords debates were not convinced by the Government's argument that the CRE's four regional offices, which are not part of the CRE but are funded by it, adequately accounted for the difference. They felt that disability issues were more complex.<sup>42</sup>

Several issues were raised in relation to membership, for example, whether more than half of the Commissioners should be disabled and whether there should be a requirement that they represent people with different forms of disability, such as learning disabilities, mental health problems and families with disabled children. The Government has said that it is its intention that all forms of disability should be covered by the work of the Commission<sup>43</sup> but has also referred to the Disability Rights Task Force's conclusion that it would be impossible to ensure that people with personal experience of all types of disabilities and impairments were appointed to the Commission, given the need to keep the number of commissioners at a reasonable level.<sup>44</sup>

The most strongly felt point seemed to be that the Bill as originally published did not include any disability requirement for the chair and vice-chair. (A parallel requirement does not exist for the EOC or the CRE). The Government made a concession to this view and the Bill now contains a provision that either the chair or the vice-chair should be disabled (or have had a disability). But campaigners, such as Lord Ashley were not satisfied with this as they wanted a requirement that the chair be a disabled person. Lord Ashley argued that the matter would be pursued "very vigorously" at a later stage in the Commons.<sup>45</sup>

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<sup>41</sup> HL Deb 17 December 1998 c1482

<sup>42</sup> HI Deb 17 December 1998 c1497; 4 February 1999 c1616-1625

<sup>43</sup> HL Deb 17 December 1998 c1492

<sup>44</sup> HL Deb 4 February 1999 c1681

<sup>45</sup> HI Deb 11 March 1999 c426-8

Other issues raised include whether:

- the Commission should have powers in relation to Section 6 (public authorities) of the *Human Rights Act* 1998 as it affects disabled people and whether these should be written on the face of the Bill. The Government has said that the Act is not expected to come into force until the year 2000 and that it will be consulting on the details of its implementation<sup>46</sup>
- the Commission should be able to initiate proceedings in its own name rather than wait for an individual to allege discrimination, as the CRE and EOC have requested in their reviews of their establishing legislation,<sup>47</sup> and how this might fit in with the Lord Chancellor's wider consultation on the possibility of introducing representative actions<sup>48</sup>
- the small employer's exemption from the employment provisions of the *Disability Discrimination Act* should be examined again before it is due to be in 1 January 2000 - some people argued that the exemption should be abolished altogether<sup>49</sup>
- the recovery of costs in legal proceedings in cases where the Commission has provided assistance will be recovered from any compensation that might be paid - the Government has said that although the Bill does not provide for this, the possibility has not been ruled out for all time<sup>50</sup>
- there should be some way of ensuring that staff of the Commission include a high proportion of people with legal qualifications
- the Commission should be required to have regional offices, how they should be funded and how the Bill takes into account the changing constitutional position of the UK<sup>51</sup>

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<sup>46</sup> HL Deb 4 February 1999 c 1625-1628; HL Deb 11 March 1999 c358-366

<sup>47</sup> Equal Opportunities Commission, *Equality in the 21<sup>st</sup> Century: A New Sex Equality Law for Britain*, 1998; Commission for Racial Equality, *Reform of the Race Relations Act 1976*, 1998

<sup>48</sup> HL Deb 4 February 1999 c1632-1640 and 1658-1664; 11 March 1999c379-393

<sup>49</sup> HL Deb 17 December 1998 c1495; 4 February 1999 c1666-1675; 11 March 1999c413-422

<sup>50</sup> HL Deb 17 December 1998 c1492

<sup>51</sup> HL Deb 17 December 1998 c1488; HL Deb 4 February 1999 c 1640-1647; 11 March 1999 c393-397