

# Provisions of the Article 13 Employment Directive

## 1. Title

Regulatory Impact Assessment for draft Regulations under Article 2(2) of the European Communities Act 1972 implementing the disability provisions of the Employment Directive (2000/78/EC) brought forward under Article 13 of the EC Treaty.

## 2. Purpose and Intended Effect

### (i) Issues and Objectives

1. Disabled people are protected against unlawful discrimination by the Disability Discrimination Act. Whilst recognising that the Act offers a number of significant protections, the Government believes it can be improved in a number of areas. In its 1997 manifesto, the Government gave a commitment to supporting comprehensive civil rights for disabled people in employment and society more widely.

2. In December 1997, the Government established a Disability Rights Task Force, comprising members from disability organisations, organisations representing large and small employers, trade unions, businesses and local authorities, to consider how best to deliver this commitment. In December 1999, the Task Force reported to Government ("From Exclusion to Inclusion") with 156 recommendations for action (both legislative and non-legislative) across a number of areas: defining disability; education; employment; access to goods, facilities, services and premises; travel; the environment and housing; participation in public life; local government; and health and social services.

3. The Government has implemented the Task Force's recommendations on civil rights in education in the Special Educational Needs and Disability Act 2001. Ministers at the Department for Transport have consulted on the Task Force's proposals which would bring transport operators within the scope of Part 3 of the DDA. In its 2001 consultation document, "Towards Inclusion – civil rights for disabled people" – the Government responded to the Task Force's recommendations and consulted on its own proposals for further civil rights for disabled people. The Task Force's recommendations foreshadowed a number of the changes that are now required by the Employment Directive. In its 2001 manifesto, the Government set out its commitment to extend basic rights and opportunities as indicated in "Towards Inclusion".

4. The Employment Directive established a general framework for equal treatment in employment, vocational training and occupation and requires Member States to introduce legislation to prohibit discrimination in those areas on grounds of religion and belief, disability, age or sexual

orientation. This impact assessment deals only with those obligations arising from the Employment Directive which require the Government to amend the employment and related provisions of the DDA. The Government's proposals for implementing the Directive were consulted upon in the 2001 document "Towards Equality and Diversity". As well as looking at a number of crosscutting issues which impact on all the areas in the Directive, that document sought views on the Government's proposals for the Directive's requirements on group insurance and pension schemes, performance related pay schemes and qualifying bodies. More detailed proposals, including draft Regulations, formed part of the consultation exercise "Equality and Diversity - the way ahead", which ended on 24 January 2003. The Government has carefully considered the responses to the consultation, which were largely supportive of the proposed approach on disability, a number of which have helped in framing the final draft Regulations.

5. The measures proposed by the Government will:

- a. end the current exemption of small employers (i.e. those employing fewer than 15 employees) from the scope of the DDA;
- b. bring into scope of the DDA, or end the exclusion from it of, a number of occupations (i.e. fire-fighters, the police, prison officers, barristers in and their pupils, advocates and their pupils, partners in partnerships, and employment onboard ships, planes and hovercraft) and remunerated office holders;
- c. take account of the Employment Directive's requirements on: occupational pension schemes (Regulations for which will be laid later in 2003), performance related pay schemes and qualifying bodies (i.e. those that award qualifications or control entry into professions);
- d. ensure that discrimination on the grounds of prejudice is outlawed;
- e. outlaw harassment of disabled people; and
- f. shifting the burden of proof in Employment Tribunal cases so that it will be for employers to prove that a prima facie act of discrimination was not unlawful.

6. There are a number of structural and consequential amendments that are required to the DDA as a consequence of the Employment Directive. For example, the Directive expressly defines the concepts of direct and indirect discrimination and, in the case of the latter, provides that Member States may choose either to make a reasonable accommodation for a disabled person where an apparently neutral provision, practice or criterion places him at a particular disadvantage or to objectively justify such a provision, practice or criterion. The DDA, whilst not differentiating between direct and indirect discrimination, already provides that employers (and others) must make reasonable adjustments to their working arrangements or premises. In the vast majority of cases, the Government has concluded that it will retain the current

approach in the DDA. In some limited cases, which are explained later in this assessment, the Government has said it will adopt the objective justification approach. Other than in this respect, this assessment does not cover purely structural or consequential amendments to the DDA which have no effect on benefits or costs, other than to ensure the Act complies fully with the Directive.

### **3. Options**

#### **(i) Identifying the options**

7. The Government is required under Community law to implement the disability provisions of the Employment Directive. In doing so, it must not lessen existing protections in the DDA. The Directive allows the Government until 2006 to implement its disability provisions but the Government has concluded that it will do so in October 2004. This will have the advantage of linking up with implementation of the final phase of Part 3 of the DDA (requiring reasonable adjustments to physical premises of service providers if access to services is impossible or unreasonably difficult for disabled people) which also comes into force in October 2004.

8. This approach will rationalise the process of introducing two significant changes to disability legislation. In this way, it will help to limit any burdens imposed on those small employers newly brought within scope who are also service providers.

### **4. Costs and Benefits**

9. Appendix A provides details of the potential costs and benefits. It should be noted that some of the assumptions and calculations that underpin the original RIA which appeared in "Towards Inclusion", the Government's response to the recommendations of the Disability Rights Task Force, and on which this RIA is based, have been altered to reflect the availability of new and more up-to-date data sources or to provide continuity with other Article 13 strands.

#### **4.1 Business**

10. The Regulations will ensure that businesses must consider disabled applicants who may be the best person for the job and encourage them to retain the expertise and experience of workers who become disabled or whose disability worsens when they might not have done previously. Employers will also be better informed about minor adjustments that often help them to employ or retain effective workers. This will also reduce recruitment and training costs.

11. Overall, the costs to business are around £4.3 million one off costs, and £2.4 million recurring costs. The issue that has the most substantial impact on costs is the extension of the employment provisions of the DDA to cover small business. The average cost per business for **small businesses** of removing

the employer exemption is **£5.50 although many businesses will have no costs at all.**

## **4.2 Other benefits and costs**

12. There are clear benefits to society and disabled people in the promotion and extension of a more diverse workforce. Disabled people are able to make a greater contribution to the economy and to participate in a wider range of social and other activities. Employers can call upon a wider range of knowledge and expertise to ensure their services and products are available to disabled people, who have an estimated spending power of £45 billion.

13. There are costs to Government with employees and office holders working for it, due to the extension of the DDA to cover police and prison officers and remunerated office holders. These are estimated at around £90,000 recurring and £30,000 one-off costs.

14. There are recurring costs to Government as the body responsible for the Tribunal Service, and these are estimated at around £0.4 million.

15. There are potential benefits to individuals who may become more likely to obtain a job, or higher paid job, as a result of the measures. We estimate that the potential gains to individuals may be £1.78 million per annum.

## **Employees and Individuals**

16. There are two main benefits to employees and individuals: first, an extension of the coverage of the DDA to include more employees, occupations or individuals; and second, greater protection for those covered by the DDA. These proposals extend DDA protection to over 600,000 additional disabled people in employment and occupations.

## **5. Compliance Costs for Business**

17. We have assumed, as is the usual practice, that where an employer successfully defends a complaint to a tribunal or court, there will be compliance costs. These costs have been included in our assessment of the costs to business and Government given above. However, where a claim is lost, the employer has obviously not complied, so the costs are not included.

## **6. Impact on Small Business**

18. Consultation with small businesses was carried out in developing the Government's initial proposals in "Towards Inclusion". Focus groups of small business interests were also held – see Appendix C of this RIA. That document was circulated to over 5,000 organisations including small employers and their representative organisations. "Towards Equality and Diversity", the Government's consultation document on implementing the

Employment Directive, was circulated to over 6,000 organisations including small employers and their representative bodies.

## **7. Other Costs and Benefits**

19. All costs and benefits have been incorporated into the Appendices.

## **8. Results of Consultations**

20. This RIA will be made publicly available. Earlier versions have formed part of the various consultation exercises mentioned in heading 2 above.

## **9. Summary and Recommendations**

21. This impact assessment estimates that the total compliance cost for business is around £4.3 million for one off costs and around £2.4 million for recurring costs. The ending of the small employer threshold in Part II of the DDA is expected to be the most significant element, imposing additional costs of approximately £6 million on 1.087 million small businesses.

22. There are also costs to the Government as an employer and as the authority responsible for the tribunal service. Overall, the costs to Government are expected to be approximately £0.5million.

23. There are also significant benefits arising from these proposals. They will ensure greater fairness and participation for disabled people by extending the coverage of the DDA to more employees and occupations and will help to promote greater social inclusion. In particular, the proposals to extend the DDA will ensure that around a further 600,000 disabled people in employment and occupations are covered by the Act's employment provisions.

## **10. Enforcement, Sanctions, Monitoring and Review**

24. Enforcement and sanctions are already laid down in the DDA and the Disability Rights Commission Act 1999. The courts and Employment Tribunals continue to be the means for individuals to obtain legal redress. The DRC continues to have enforcement powers and can support individual disabled people with legal complaints. Where new measures are being proposed, or existing measures are being extended, enforcement and sanctions will involve the tribunals, the courts and the DRC as appropriate. The DRC has a duty to keep under review the working of the DDA.

## **Appendix A: Identifying the costs and benefits**

### **2. Main changes required to the employment provisions of the DDA as a result of the Article 13 Directive**

#### **General**

2.1 The main costings covered in this RIA were consulted upon in the 2001 document "Towards Inclusion". It should be noted that some of the assumptions and calculations that underpin the original RIA which appeared in "Towards Inclusion", the Government's response to the recommendations of the Disability Rights Task Force, and on which this RIA is based, have been altered to reflect the availability of new and more up-to-date data sources or to provide continuity with other Article 13 strands.

## **Outlawing discrimination on grounds of prejudice**

2.2 This will have a largely neutral effect. Although the DDA does not expressly outlaw justification of less favourable treatment on grounds of disability alone, it is unlikely that an Employment Tribunal would endorse less favourable treatment by an employer solely on the grounds of prejudice (i.e. a person's disability rather than their competence to perform a particular job). However, this measure will clarify the position.

## **Outlawing harassment**

2.3 This will have a largely neutral effect. Although the DDA does not expressly outlaw harassment, the statutory Employment Code of Practice states that harassing a disabled person will almost always amount to a "detriment" under the Act. Therefore, the position will remain unchanged although this measure will introduce greater clarity.

## **Shifting the burden of proof in ET cases**

2.4 This will have a largely neutral effect. Established case law means that Employment Tribunals already require respondents to prove that an act of discrimination was not unlawful once a prima facie case of discrimination has been made out by the applicant. This measure will enshrine existing practice in law and provide greater clarity.

## **Removing the justification for failure to make an adjustment**

2.5 Removing the justification for failure to make a reasonable adjustment will have a neutral effect. In any situation where an employer could justify such a failure, the adjustment would in fact not have been reasonable in the first place. The employer's only necessary defence is therefore one of unreasonableness. In fact, there might be modest tribunal savings from the combining of defences.

## **Small business exemption**

2.6 Currently, all businesses employing fewer than fifteen workers are exempt from having to comply with the requirements of Part II of the DDA. Removing this exemption would result in costs for familiarisation with legislation, small

recruitment costs (eg. occasional adjustments for interviews), some workplace adjustment costs, as well as occasional costs arising from tribunals.

2.7 Only a small minority of employers are expected to have to make adjustments under Part II of the DDA. Employers are not required to make anticipatory changes, that is they only have to make changes when a disabled person applies for and/or is recruited into the job. Those employers with no disabled employees may not incur any costs. Furthermore, the majority of disabled employees do not require any adjustments to be made and most of those that are needed have nil or minimal cost. This will make the average cost to employers much lower. Small employers may take time to acquaint themselves with the new legislation and may need to seek advice when recruiting or retaining disabled employees. However, many employers with a disabled employee are unlikely to seek advice if they have no difficulties with adjustments or their employee.

2.8 However, small businesses which are service providers already need to make reasonable adjustments under Part III of the DDA, where there is no small business exemption. The final stage of Part III comes into force on 1 October 2004 and applies to businesses and other providers of services to the public where physical features make access to their services impossible or unreasonably difficult. The estimated costs for all businesses from adjustments in relation to physical features is in the range of £606-1238m<sup>1</sup>. There are approximately 2.1 million service providers<sup>2</sup> in the UK, hence the cost per service provider is estimated to be in the range of £289-590. In comparison, the cost to small business of removing the exemption in the employment provision is estimated to be only £5.50 per business on average. (Detailed costing is below.)

2.9 The impact on industries will vary dependent on the number and the proportion of small businesses. There are approximately 1.087 million<sup>3</sup> businesses with 1-14 employees. Extending Part II to incorporate businesses with 1-14 employees brings 382,000 DDA disabled employees into coverage of the employment provisions of the DDA.

2.10 Research evidence<sup>4</sup> suggests:

- a. Fewer than 10% of firms with disabled employees (now or in the past) have had to make adjustments in order to recruit a disabled person.
- b. Between a half and two thirds of firms have not had to make adjustments or provide support for disabled employees that they have, or have had.
- c. Four fifths of firms that have made adjustments have found it easy or very easy to do so.
- d. Only a third of those who have made adjustments say that they have incurred any direct financial cost in doing so.
- e. Small firms are less likely to have disabled employees: 28% of those with 1-14 employees have a disabled employee, compared to 53% of those with 20-49 employees.

- f. The most common adjustments relate to changes in working patterns or hours, and the organisation of work.
- g. Hardly any small employers express a negative attitude towards the Act, with two-thirds saying they are in favour of the Act, and the remaining third saying they are neither in favour nor against it.

2.11 The research thus suggests that most businesses who have or recruit disabled employees will face no costs. Furthermore, if costs are faced, there is Government support for disabled people through Access to Work which can help mitigate costs, although the scheme is not directly linked to DDA adjustments. The Access to Work programme is delivered by Jobcentre Plus and provides support tailored to the needs of individual disabled people to enable them to overcome the effects of their disability in the work place. Individuals must be in or about to enter paid work.

2.12 Support can take the form of help with the cost of getting to work, help with the cost of aids and adaptations to equipment, computers or the work place and with the cost of communicator support for those with a hearing or visual impairment. In the financial year 2001/02 over 32,000 disabled people were helped at a cost of just over £41 million.

2.13 Under Access to Work, a Disability Employment Adviser will normally visit the employer's premises and together with the applicant and the employer, arrive at the most effective solution to the needs of the disabled applicant in the work place. All help is for a maximum period of 3 years after which Jobcentre Plus reviews the circumstances. If the beneficiary continues to be eligible for help under the rules that then apply, Access to Work may provide help for a further period.

2.14 There are two main sources of direct advice for businesses adapting to the employment provisions of the DDA - the Disability Rights Commission (DRC) and Equality Direct. The DRC was set up in April 2000. It has a general duty to work towards the elimination of discrimination against disabled people; to promote the equalisation of opportunities for disabled people; and to encourage good practice in the treatment of disabled people. One of its specific functions is to provide an authoritative source of information and advice to employers and service providers about their obligations under the Disability Discrimination Act and guidance on good practice. The DRC's Helpline dealt with 145,000 enquiries in the Commission's first two years of operation, around 12% of which have been from employers or their advisers. Equality Direct was launched on 29 January 2001. Open to all businesses in England, but designed with the needs of small business in mind, the telephone advice service provides business with information and advice on equality issues, including disability. The service aims to help businesses resolve specific management issues and identify the costs and benefits of the options open to them.

**Cost/benefit to business:** There are approximately 1.087 million businesses with between 1 and 14 employees. 28% of these businesses<sup>5</sup>, i.e. about 304,000, have a disabled employee

We assume that all of the 304,000 businesses with a disabled employee will read guidance and/or seek advice from either Equality Direct or the DRC helpline (both helplines are free phone numbers). We further assume that of the small businesses without a disabled employee 6% would seek guidance. Therefore 351,000 businesses will read guidance and/or phone one of the helplines. We assume a manager at each of these businesses spends 30 minutes reading the guidance and/or phoning the helpline and that these managers are paid an hourly rate of £22<sup>6</sup>. Thus the cost to small businesses of reading guidance and contacting one of the helplines is £3.94m (351,000 x 1/2 the hourly pay of £22).

There will also be some recruitment costs. There are approximately 6,000,000 vacancies advertised a year. Approximately 13% of employees are in small firms<sup>7</sup> and approximately 9% of them are DDA disabled<sup>8</sup>. The costs of altering recruitment procedures in order to allow for disabled people will probably be comparatively low. Firms are unlikely to need to place more adverts in order to meet the provision or to place them in different media. Some firms may need to make some adjustments to job adverts but we assume that the costs of this will be fairly low. If we assume that the average cost is £10 then the total comes to around £0.7 million.

There will also be some tribunal costs. As noted above approximately 28% of disabled employees are in small firms. There are currently 2642 disability cases which go to the tribunal. We assume that this will increase by 680 cases<sup>9</sup>. The cost per case to business is £2,000<sup>10</sup> which implies a total cost of £1.36m.

The total cost to small business will be about £6m. The average cost to the 1,087 small businesses brought under the scope of the act will be approximately £5.50 per business.

**Cost/benefit to Government:** Tribunal cases are estimated to cost the government £540<sup>11</sup> on average. On the basis of 680 extra cases this generates a cost to government of £0.37million.

**Cost/benefit to employees:** Removing the exemption for small businesses means that all employees working in businesses with fewer than fifteen employees will benefit from DDA coverage. This is estimated to bring benefits to **382,000** DDA disabled employees.

## Partners in business partnerships

2.15 The DDA will be extended to cover partners in business partnerships. This is not expected to have a significant effect on overall costs to businesses. In particular, we assume that there are no additional recruitment costs involved and that tribunal costs would not generally occur because the partners themselves would suffer if they took legal proceedings against their own partnerships. However, adjustments to the workplace might still have to be made.

**Cost/benefit to business:** There are around 558,000<sup>12</sup> business partnerships in the UK of which 99%<sup>13</sup> are estimated to have fewer than six partners. Assuming that the average number of partners in partnerships is three, then there are approximately 1.67 million partners in the UK. It is assumed that the same proportion of partners are disabled as disabled people in employment generally. So, there will be around 148,000 (8.87% x 1.67 million)<sup>14</sup> disabled partners. We need only concern ourselves with the workplace adjustment costs of the DDA's employment provisions which are a non-recurrent cost of £1.50 per person. So, additional costs to partnerships will be **£223,000 one off** (£1.50 per disabled partner x 148,000 disabled partners).

**Cost/benefit to partners:** 148,000 disabled partners will benefit from coverage from the employment provisions of the DDA.

## **Police officers, firefighters and prison officers**

2.16 The extension of the employment provisions of the DDA to cover police officers, firefighters and prison officers will incur recruitment, workplace adjustment and tribunal costs to Government as an employer. In addition, the increase in tribunals will involve a further cost to the Government.

**Cost/benefit to Government:** There are 166,000 police officers, 46,000 firefighters and 45,000 prison officers in the UK<sup>15</sup>. We assume the proportion of police and prison officers and firefighters who are current-DDA disabled to be 8%<sup>16</sup>. So there will be around 20,560 (8% x 257 000) DDA disabled employees in these professions. Assuming that the average cost to public sector employers of the DDA's employment provisions is the same as the average cost to private sector employers, the average cost to the public sector of the DDA's employment provisions will be around £6.00 per disabled employee [comprising £1.50 non-recurrent costs (adjustments to the workplace costs) and £4.50 recurrent costs (recruitment and tribunal proceeding costs)]. So, additional costs to the public sector will be **£30,840 one off** (£1.50 per disabled employee x 20,560 disabled employees) and **£92,520 recurrent** (£4.50 x 20560 disabled employees).

**Cost/benefit to Government:** There is also the direct government cost of the increase in tribunals. The number of DDA disabled employees will increase by approximately 1%<sup>17</sup> from 2.15 million. After the removal of the small business exemption there are assumed to be 3031<sup>18</sup> tribunal cases involving disability: therefore an increase of 1% will mean 31 more tribunal cases at a cost of £16,717 (£540 x 31) to the government and £61,915 (£2000 x 31) to business.

**Cost/benefit to employees:** Approximately 20,560 employees will benefit from coverage from the DDA.

## **Barristers and advocates and their pupils**

2.17 The DDA will be extended to cover barristers and barristers' and advocates' pupils. This will result in an increase in recruitment, workplace adjustment and tribunal costs, for barristers and pupils.

**Cost/benefit to business:** The employment provisions of the DDA will be extended to cover barristers in chambers and their pupils. There are 10,132<sup>19</sup> barristers in independent practice in England and Wales and 686 pupils<sup>20</sup>. It is assumed that the same proportion of barristers and pupils are disabled as disabled people in employment generally. There are 10,132 barristers in independent practice in England and Wales and 686 pupils<sup>21</sup>. It is assumed that the same proportion of barristers and pupils are disabled as disabled people in employment generally. So, there will be around 959 (8.87% x 10,818) disabled barristers and pupils. The average cost of the DDA's employment provisions will be around £6.00 per disabled barrister/pupil (comprising £1.50 non-recurrent costs (adjustment to the workplace costs) and £4.50 recurrent costs (recruitment and tribunal proceeding costs)). So, additional costs to barristers will be £1,430 one off and £4,316 recurrent. In Scotland, there are only 400 advocates so the costs will be minimal.

**Cost/benefit to employees:** Approximately 974 barristers and pupils will benefit from coverage from the DDA.

## Employment onboard ships, planes and hovercraft

2.18 The DDA's Employment Provisions will be extended to cover employment onboard ships, planes and hovercraft.

**Cost/benefit to business:** The extension of the territorial coverage of the DDA will bring in employment on ships, aircraft and hovercraft. It is estimated that the extension would cover around 90,000 employees. So, there will be around 7,980<sup>21</sup> (8.87% x 90,000 employees) disabled employees affected by the extension of territorial coverage. The average cost of complying with the DDA employment provisions is £6.00 per disabled employee, comprising £1.50 non-recurrent and £4.50 recurrent costs. The total costs would be: £11,969 non-recurrent and £35,908 recurring costs per year.

**Cost/benefit to Government:** In 2000/01, there were 2,624 tribunal cases involving disability discrimination. If there had been no small business exemption we estimate that there would have been 3,031. There will be 7,980 additional disabled employees who fall within scope of the DDA, an increase of 0.37%. If the changes lead to a 0.37% increase in disability tribunal cases (11 cases a year) at £2,000 a case this implies a cost to business of £22,434

**Cost/benefit to employees:** 7,980 employees benefit from DDA coverage.

## Office holders

2.19 The DDA's employment provisions will be extended to cover remunerated office holders (in addition to employees), many of whom are

likely to be in the public sector although other significant groups are company directors and many Ministers of religion.

2.20 There are 22,000 appointees to public bodies of whom 3.3% consider themselves to have some form of disability <sup>22</sup>. Although not all of these would be covered by the implementation of the Employment Directive (as many are not remunerated) this suggests there would be a maximum of 725 (3.3% x 22,000) additional disabled people covered by the DDA who work in the public sector or about one hundredth of one percent of the current total

2.21 There are 31,000 sole company directors who meet the DDA definition of disability <sup>23</sup>. This would increase the number of people covered by the DDA by one half of one percent.

2.22 There are 6,000 ministers of religion who meet the DDA definition of disability <sup>24</sup>. This would increase the number of people covered by the DDA by one tenth of one percent.

2.23 The Regulations identify who is responsible for making any reasonable adjustment that is required for a person appointed as an office holder. Broadly speaking, they do this as follows:

**i. appointment** - the person making or recommending the appointment;

**ii. terms of appointment** - the person responsible for determining them;

**iii. working conditions** - the person responsible for determining those conditions.

**iv. termination of appointment** - the person with the power to terminate the appointment.

**Cost/benefit to business/government :** these are likely to be insignificant. There will be some costs which arise as part of the need to make reasonable adjustments for appointed office holders. However, because the approach being taken to the duty to make adjustments is to identify the person who, generally speaking, would currently be responsible for ensuring office-holders, whether disabled or not, could fulfil their functions, we estimate there would be little in the way of additional costs.

**Cost/benefit to employees:** 700 to 1,000 public appointees benefit from DDA coverage, 31,000 company directors, and 6,000 ministers of religion

## **Employment Tribunals**

2.24 Employment Tribunals would be able to consider, in the main, former employees' claims about discrimination where the discrimination has arisen directly out of the former employment. An example would be securing an

appropriate reference for a new job. This may result in a marginal increase in the number of tribunals, with resultant costs for businesses and Government and benefits for the individual employees concerned.

**Cost/benefit to business:** As noted above we estimate that there would be 3031 disability employment tribunal cases if the small business exemption were removed. If the effect of the above change is to increase the number of claims - by way of illustration by say 0.5% - then there will be an additional 15 cases. The compliance cost to business it therefore estimated to be approximately **£18,000** recurring per year.

**Cost/benefit to Government:** On an average cost to government of £540 cases per year the total cost to government would be £8,100

**Cost/benefit to employees:** Any disabled employee who is dismissed or leaves a job stands to benefit from this change.

## **Trustees and managers of occupational pension schemes**

2.25 Complaints against trustees and managers of occupational pension schemes should be heard by Employment Tribunals. There could be an increase in tribunal cases imposing a cost on both the pensions business and the Government. However, there will be greater consistency of remedies within Part II of the DDA.

**Cost/benefit to government:** As noted above we estimate that there would be 3031 disability employment tribunal cases if the small business exemption were removed. If the effect of the above change is to increase the number of claims - by way of illustration by say 0.5% - then there will be an additional 15 cases. The compliance cost to business it therefore estimated to be approximately **£18,000** recurring per year.

**Cost/benefit to Government:** On an average cost to government of £540 cases per year the total cost to government would be £8,100

**Cost/benefit to employees:** Any disabled employee who is dismissed or leaves a job **could** stand to benefit from this change.

## **Instructions or pressure to discriminate**

2.26 The DRC will be able to bring an action against employers who instruct or bring pressure to bear on people to commit an act of unlawful discrimination. This will benefit disabled employees and other employees who have been pressured to act in an unlawful way. However, judging by the slight use of the similar power in the SDA and RRA, this new power is unlikely to lead to many actions and therefore will not impose significant costs on either the public sector or employers.

**Cost/benefit to employees:** There will be a general benefit to employees

who are pressured to discriminate and to disabled employees who suffer such discrimination.

## **Discriminatory adverts**

2.27 Adverts published by those covered by Part 2 of the Act will be made unlawful where they indicate an intention to discriminate against disabled people and the DRC will be able to bring an action against those who publish such adverts. Tribunals are already able to infer a discriminatory nature where such adverts are used by an employer. We are not aware of such adverts being published, nor of significant use by the Equal Opportunities Commission or Commission for Racial Equality of similar enforcement powers. The costs are likely to be neutral from the new provisions.

**Cost/benefit:** There will be some benefit to disabled people from having a clear prohibition.

## **Occupational pension schemes**

2.28 The DDA will be amended to require employers, where they set pension scheme rules, and pension scheme managers and trustees, where they apply discretion, to make reasonable adjustments to eliminate substantial disadvantage faced by a disabled person. Employers and managers/trustees will be able to argue against an adjustment on grounds which might include cost or other factors (often based on actuarial evidence) which might make it unreasonable. This approach has been adopted following representations made by the pensions industry during the public consultation on the draft Regulations. Previously, the Government had proposed that there should be a split between employers and pension scheme managers and trustees so that employers were required to make reasonable adjustments and managers or trustees were required to objectively justify any of their policies, practices or criteria which placed disabled people at a particular disadvantage. The Government believes the changed approach will ensure consistency of the law as between employers and pension scheme managers/trustees and create greater certainty for disabled people participating in such schemes. It is anticipated that regulations covering trustees and managers of schemes will be laid in Autumn 2003 to be implemented in October 2004.

2.29 In total there are up to 14.4 million employees who are potentially covered by a pension scheme, although not every employee will be a member of the scheme offered by their employer. Approximately 10-11 million of these employees will be active members of their employer's occupational pension arrangements. According to the 2000/2001 Family Resources Survey, about 7.7% of individuals who are making a contribution to these schemes have a long-standing illness/disability which limits their activities. However, we are not aware of evidence from our research that disabled people covered by

occupational pension schemes are disadvantaged by the rules nor that disabled people generally have limited access to schemes.

## **Group Insurance schemes**

2.30. It is now clear that the Employment Directive does not cover any payments made to individuals by insurance companies under group insurance schemes. The draft Regulations that were consulted upon in this respect will therefore not be taken forward but the Regulations will ensure that employers' contributions to such schemes on behalf of their employees are covered by the duty to make reasonable adjustments as proposed in the consultation.

## **Performance related pay schemes**

2.31. Employers will be required to make reasonable adjustments for particular disabled people to help overcome a particular disadvantage where a performance pay scheme is in operation. We anticipate that the costs of this amendment would not be significant: an employer would take reasonable steps to improve a disabled employee's performance as part of normal staff development taking into account the sort of changes that employers currently covered by the DDA might have to make to overcome workplace difficulties. If the employee did not qualify for performance-related pay after these steps had been taken, the employer would have to consider if further steps might be 'reasonable' in relation to the way in which the scheme itself operated. We cannot repeat the analysis in 2.29 above because the FRS does not record whether people are covered by performance-related pay schemes

## **Qualifications Bodies**

2.32 The DDA will be amended to bring within scope of its employment provisions Qualification Bodies. These are bodies (such as the General Medical Council and the Law Society) which can confer a professional or trade qualification) i.e. any type of authorisation which facilitates engagement in a particular profession or trade. The new provisions will provide that where a Qualifications Body applies a "competence standard" (that is an academic, medical or other standard used to determine whether a person has a particular level of competence or ability), that body will need to objectively justify that standard if it would substantially disadvantage persons who have a particular disability. The Body will need to do that by showing that the standard meets a legitimate aim and is a proportionate way of achieving that aim.

2.33 The approach on Qualifications Bodies will also ensure that where a Body is responsible for delivering any of its activities to disabled applicants for, or holders of, a professional or trade qualification, it will have to make a reasonable adjustment if any provision, practice, criterion or physical feature places a disabled person concerned at a substantial disadvantage. This could include, for example, allowing extra time for examinations, supplying exam papers in alternative formats or supplying a separate room for disabled

candidates. (as long as doing so does not compromise a necessary aspect of an objectively justified competence standard).

2.34 We do not anticipate that there will be significant additional costs. In the main, we expect Qualifications Bodies to already be operating effective policies in respect of those disabled applicants or professionals they cover and that any adjustments which may be needed will be inexpensive.

## Appendix B: Summary of Quantifiable Costs and Benefits

### Business

There are clear benefits to business: improved retention of staff, reduced recruitment and training costs, and improved ability to anticipate adjustment changes.

There are a number of quantifiable costs to business.		
Quantifiable Cost	£ one-off	£ recurring
removal of the small business exemption	3.94	2.1
business partner workplace adjustments	0.22	-
extension to cover barristers		*
extension to ships, aircraft and hovercraft	0.01	0.036
extension to remunerated office holders	*	*
extension to former employees	*	0.03
extension to company directors	*	*
Extension to ministers of religion	*	*
Additional cases to cover occupational pension trustees	*	0.03
<b>Total</b>	<b>4.2 (4.3)**</b>	<b>2.22 (2.4)**</b>

\* denotes less than £10,000

\*\* figures in brackets allow for inclusion of extension to cover fire-fighters, police and prison officers.

### Government

There are a number of quantifiable costs to Government: as an employer, as the body responsible for the Employment Tribunal Service and as a provider of research, guidance and advice.

As an employer the costs are shown in this table.

<b>Quantifiable Cost</b>	<b>£ one-off</b>	<b>scope="col"£ recurring</b>
extension to cover police/prison/fire officers	0.03	0.09

The costs for undertaking more cases through the Employment Tribunal service are shown in this table.

<b>Quantifiable Cost</b>	<b>£ one-off</b>	<b>£ recurring</b>
additional cases due to small business exemption	-	0.36
additional cases to cover police/prison/fire officers	-	0.02
additional cases to cover ships, aircraft and hovercraft	-	*
Extension to cover remunerated office holders	-	*
additional cases to cover former employees	-	*
extension to company directors	-	*
Extension to ministers of religion	-	*
additional cases to cover occupational pension trustees	-	*
<b>Total</b>	-	0.4

\* denotes less than £10,000

## Employees

There are two main benefits to employees and individuals: first, an extension of the coverage of the DDA to include more employees or individuals; and second, greater protection for those covered by the DDA.

The benefits to disabled employees and individuals are as follows

<b>Benefit</b>	<b>Number</b>
extension to small business	382,000
extension to business partners	148,000
extension to police/prison officers	21,000
extension to barristers	1,000
extension to remunerated office holders	1,000
extension to company directors	31,000

Extension to ministers of religion	6,000
extension to ships, aircraft and hovercraft	8,000
<b>Total</b>	<b>596,000</b>

### **Greater protection for those covered by the DDA:**

- Coverage of all former employees for anyone discriminated against by their employer after employment
- Coverage of occupational pension schemes for all discriminated against by such schemes
- Coverage against those who pressurise or instruct others to discriminate

### **Appendix C: Summaries of Focus Group Findings on Implementation Timetable**

#### **Focus group with 9 participants:**

The consensus was that the most sensible course would be to introduce both customer and employee provision at the same time, since this would:

- i. keep it simple;
- ii. eliminate the need to classify businesses according to type, regarded by some as a potentially fractious exercise;
- iii. obviate the need for two rounds of potential adjustments;
- iv. eliminate confusion as to whether a business was or was not fully complying with regulations - or whether customers only were covered (only partially recognized by respondents).

#### **Two focus groups with 13 participants plus phone survey of 20 others:**

- Of the 33 companies, only 3 felt that it might be helpful to phase the implementation, eg. delay for companies which never served the public.
- All the companies agreed that phasing the implementation would lead to confusion over which businesses were covered at what point.
- All of those questioned felt that it would be 'fairer' if all businesses had to comply with the threshold removal from the same date.

### **Footnotes**

<sup>1</sup> [DDA 1995 Access to Goods, Services and Facilities Regulatory Impact Assessment, Supplementary Information.](#)

- <sup>2</sup> [DDA 1995 Access to Goods, Services and Facilities Regulatory Impact Assessment, Supplementary Information.](#)
- <sup>3</sup> [Calculated from Small Business Service statistics and Labour Force Survey.](#)
- <sup>4</sup> [Impact on Small Business of Lowering the DDA Part II Threshold Project, Interim report.](#)
- <sup>5</sup> [Impact on Small Businesses of Lowering the DDA Part II Threshold Project, Interim report.](#)
- <sup>6</sup> [Hourly wage for a manager/administrator – 2001 NES updated to include non wage costs.](#)
- <sup>7</sup> [Spring 2002 LFS.](#)
- <sup>8</sup> [Spring 2002 LFS.](#)
- <sup>9</sup> [Calculated from Employment Tribunal Service stats and Labour Force Survey.](#)
- <sup>10</sup> [Employment Tribunal Service.](#)
- <sup>11</sup> [Employment Tribunal Service.](#)
- <sup>12</sup> [Small Business Service 2001.](#)
- <sup>13</sup> [Inland Revenue.](#)
- <sup>14</sup> [Spring 2002 LFS shows 8.87% of employees are DDA disabled. Therefore 8.87% \\* 1.67million partners = 148,000.](#)
- <sup>15</sup> [Summer 2000 LFS.](#)
- <sup>16</sup> [Summer 2000 LFS.](#)
- <sup>17</sup> [Spring 2002 LFS shows approximately 2.156m DDA disabled who are employees. The extension will increase the coverage of the DDA by 20,560 ie approximately 1%.](#)
- <sup>18</sup> [Currently 2,641 disability tribunal cases \(Employment Tribunal Service\). This is updated to 3,301 using the proportion of employees in small firms from the Labour Force Survey.](#)
- <sup>19</sup> [Bar Council as of 1<sup>st</sup> October 2000.](#)
- <sup>20</sup> [Bar Council as of 5<sup>th</sup> January 2001.](#)
- <sup>21</sup> [Spring 2002 LFS shows 8.87% of employees are disabled. 8.87% \\* 90,000 = 7,980.](#)

<sup>22</sup> ['Public Bodies 2002'](#)

<sup>23</sup> [Spring 2002 LFS.](#)

<sup>24</sup> [Spring 2002 LFS.](#)