

A SUMMARY OF RESPONSES TO THE CONSULTATION ON PROPOSED DRAFT REGULATIONS TO PROHIBIT DISCRIMINATION BY GENERAL QUALIFICATIONS BODIES ON THE GROUNDS OF DISABILITY

INTRODUCTION

1. On 30 July 2007, the Department of Education commenced a twelve week consultation inviting comments on proposals for two sets of draft regulations being made under the Special Educational Needs and Disability (Northern Ireland) Order 2005, prohibiting discrimination by general qualifications bodies on the grounds of disability. One set of regulations prescribes the list of qualifications covered by the legislation and the other set outlines the enforcement mechanisms for making a claim.
2. The Department welcomes the contributions of all who participated in the consultation and this report summarises the responses.

RESPONDENTS

3. The consultation was web-based, with response forms being available for downloading or completion online. The Department wrote to a wide range of stakeholders, including charities, disability groups, general qualifications bodies and trades unions, informing them of the consultation. In addition, information on the consultation issued to Principals of all Post-Primary Schools and Principals of Special Schools with Post-Primary Pupils. A total of 12 responses were received by the end of the consultation period and a list of respondents is shown at Annex A to this summary.

KEY ISSUES

Qualifications covered by the Regulations

4. The majority of respondents were content with the proposed list of qualifications that will come under the scope of the regulations. The Department received arguments that the list should be amended to include a number of specific qualifications (some of which were vocational in nature or were not available here) or extended to cover all accredited general qualifications. The Department has given this matter further consideration and has taken advice from both the Qualifications Regulator and the Departmental Solicitor's Office. With the exception of General National Vocational Qualifications (GNVQs) which are no longer available, the Department is satisfied that the list is appropriate. In conclusion, it would be impracticable to cover all general qualifications, as the list would become extremely long and would have to be constantly updated.

Enforcement Procedures and Legal Issues

5. A number of respondents expressed concern that the regulations would be enforced through a county court. Having sought advice from Departmental Solicitor's Office the Department is satisfied that this method of enforcement is appropriate.
6. The Equality Commission for Northern Ireland (ECNI) and the Northern Ireland Human Rights Commission (NIHRC) advocated the use of a Single Equality Court/Tribunal which may be established under the proposed Single Equality Bill. The Department will give this matter further consideration should the Bill be passed by the Assembly.
7. The ECNI recommended that the questionnaire procedure available to persons making complaints against trades qualifications bodies through an Industrial Tribunal should be extended to cover general qualifications bodies. The Department believes that this suggestion merits further careful consideration and has also raised this point with colleagues in the Department for Children, Schools and Families in London as it is relevant to GB legislation and to the operation of the three-country framework within which the regulation of qualifications takes place. It will consider the introduction of additional legislation in that context.
8. The Department is pleased to note that the ECNI will extend its conciliation services to complaints against general qualifications bodies once the draft regulations come into force.

Special Arrangements Based on Individual Need

9. Both Disability Action and the Northern Ireland Public Service Alliance (NIPSA) welcomed the proposed duty on qualifications bodies to grant an exemption from one or more of the components of any examination or assessment to prevent the placing of a disabled person at a substantial disadvantage. Both organisations emphasised that decisions in this regard should be entirely dependent on the needs of the individuals involved. The Qualifications Regulator here, the Council for the Curriculum, Examinations and Assessment (CCEA) has confirmed that when considering requests for special arrangements, qualifications bodies judge the needs of each individual candidate.

Regulatory Impact Assessment

10. Some respondents expressed concern at the Department's view that a regulatory impact assessment was not required, as it is envisaged that there will be a negligible impact on general qualifications bodies and others in terms of cost and burden. Similar regulations have been introduced in England, Scotland and Wales. As it is difficult in the pre-implementation period to predict the exact impact in terms of cost and burden, the Department for Children, Schools and Families in England is establishing a group comprising representatives from awarding bodies and the

regulatory authorities from the four countries to monitor the impact of the legislation and to review it fully after one year.

Other Issues

11. The ECNI highlighted a number of inconsistencies which exist, as regards protection against discrimination by general qualifications bodies under the SENDO 2005, and qualifications bodies under the DDA 1995, on the grounds of disability. The Department has already raised this matter with the Department for Children, Schools and Families and, again, will consider further action.
12. The ECNI also referred in its response to the decision to screen out the draft Regulations as not requiring an Equality Impact Assessment. The Department has met the Commission and explained how the regulations are designed to promote equality of opportunity for people with disabilities. After meeting with officials, the ECNI indicated its support for the regulations being made.

Next Steps

13. The regulations will be subject to scrutiny by the Departmental Education Committee. Once cleared by the Committee, the regulations dealing with enforcement mechanisms and procedures will be subject to affirmative resolution and will take effect only if approved by resolution of the Assembly.
14. The regulations prescribing the list of qualifications covered by the legislation will be subject to negative resolution by the Assembly. The regulations will be made and will come into operation unless a motion is passed in the Assembly to annul them.
15. It has been necessary to revise the proposed commencement date for the regulations. Current plans are that they will come into operation on 1 April 2008.
16. The Department will commission annual reports from CCEA on the uptake of special arrangements and/or reasonable adjustments for candidates undertaking qualifications here, to enable the impact of the regulations to be monitored.

Qualifications and ICT Team
Department of Education
9 February 2008

ANNEX A

List of Respondents:

Aspergers Network

Disability Action

Downshire School – Teacher

Equality Commission Northern Ireland (ECNI)

Friends School, Lisburn

Irish National Teachers Organisation (INTO)

Northern Ireland Commissioner for Children and Young people (NICCY)

Northern Ireland Human Rights Commission (NIHRC)

Northern Ireland Public Service Alliance (NIPSA)

Oxford Cambridge and RSA Examinations (OCR)

Southern Education & Library Board

University of Ulster