

13 May 2009

Work and Pensions: UN Convention of the Rights of Persons with Disabilities

The Parliamentary Under-Secretary of State for Work and Pensions (Mr. Jonathan Shaw):

I am pleased to announce that the Government is taking the final steps towards ratification of the UN Convention on the Rights of Persons with Disabilities, and we aim to deposit our instrument of ratification with the United Nations on Monday 8 June. I will make a further announcement when this has been done.

The Government has given very careful consideration to the views that have been expressed in response to the Explanatory Memorandum which we laid before Parliament on 3 March setting out the basis on which we propose to ratify, including those of the Joint Committee on Human Rights in their report of 17 April. It remains our view that the handful of reservations and the interpretative declaration are required and we will now proceed to ratification on that basis.

With regard to education, an interpretative declaration will be entered to make clear that the UK general education system includes both mainstream and special schools, thereby clarifying how the UK Government interprets the Convention. A reservation will be entered to allow for circumstances where disabled children's needs may be best met through specialist provision, which may be some way from their home, and which means that they will need to be educated outside their local community. This also maintains parental choice for schools outside the local community. The purpose of the interpretative declaration and reservation is to maintain the present policy and legislative position in respect of inclusive education.

On freedom of movement, a general reservation will be entered in order to retain the right to apply immigration rules and to retain the right to introduce wider health screening for applicants entering or seeking to remain in the UK, particularly in the event of a global health emergency, if this is considered necessary to protect public health.

A reservation will be entered in respect of service in the Armed Forces to preserve the position already reflected in the Disability Discrimination Act 1995 as amended (DDA). Service in the Armed Forces is exempt from the

employment provisions of the DDA. This approach is entirely consistent with EU Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation. Service in any of the naval, military or air forces of the Crown are excluded from the DDA's employment provisions to preserve their combat effectiveness. The Government decided to exclude members of the Armed Forces in the DDA because Armed Forces personnel need to be combat effective in order to meet a world-wide liability to deploy, and to ensure that military health and fitness remain matters for Ministry of Defence Ministers based on military advice, not for the courts. The Explanatory Memorandum of 3 March explained that the UK's reservation in respect of service in the armed forces and a complementary one proposed by the European Commission in respect of its proposals for European Community Conclusion (ie ratification) would be the subject of discussion. Following (and reflecting) discussion with the European Commission, the terms of that will be entered are:

“The United Kingdom accepts the provisions of the Convention, subject to the understanding that none of its obligations relating to equal treatment in employment and occupation, shall apply to the admission into or service in any of the naval, military or air forces of the Crown.”

This is a slight change in wording – but the substance and rationale for the reservation have not changed.

A reservation will be entered in respect of Article 12.4, which concerns safeguards for the exercise of substituted decision-making and includes a requirement for "regular review" by a competent, independent and impartial authority or judicial body. There is currently no review system for Department for Work and Pensions (DWP) appointees i.e. people who are appointed to claim and collect benefits on behalf of another person due to that person's lack of physical or mental capacity. Those appointee arrangements are not at present subject to the safeguard of regular review, as the Government believes this Article requires. DWP is therefore actively working towards a proportionate system of review to address this issue.

Ratification of the Convention is our immediate objective, and represents the end of a detailed process. But equally importantly it marks a beginning, and enables the start of the process of implementing this important Convention within the UK.

Ratification of the Convention is further demonstration of our commitment to equality of human rights for disabled people, and our determination to achieve equality by 2025.