

# Rights of People with Intellectual Disabilities

Access to Education and Employment

United Kingdom

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## List of Abbreviations

ACAS	Advisory, Conciliation and Arbitration Service
DAS	Disablement Advisory Service
DCS	Disability Conciliation Service
DDA	Disability Discrimination Act
DEA	Disablement Employment Advisor (N Ireland)
DEL	Department for Employment & Learning (N Ireland)
DENI	Department of Education Northern Ireland
DfES	Department for Education and Skills
DHSSPSNI	Department of Health & Social Services and Public Safety Northern Ireland
DOH	Department of Health
DRC	Disability Rights Commission
DWP	Department for Work and Pensions
EA	Education Authority (Scotland)

ECNI	Equality Commission Northern Ireland
ELB	Education and Library Boards (Northern Ireland)
ELWa	National Council for Education and Training for Wales
HMI	Her Majesty's Inspectors of Schools
LEA	Local Education Authority (England and Wales)
LHA	Local Health Authority
NAfW	National Assembly for Wales
NHS	National Health Service
OPSI	Office of Public Sector Information (formerly known as Her Majesty's Stationery Office – HMSO)
SEN	Special educational needs
SENDA	Special Educational Needs and Disability Act
SEND O	Special Educational Needs & Disability (Draft) Order (Northern Ireland)
SENDIST	Special Education Needs and Disability Tribunal (England)
SENT	Special Educational Needs Tribunal (Wales)

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# I. Main Findings

## Preface

The **EU Monitoring and Advocacy Program (EUMAP)** of the Open Society Institute monitors human rights and rule of law issues throughout Europe, jointly with local NGOs and civil society organisations. EUMAP reports emphasise the importance of civil society monitoring and encourage a direct dialogue between governmental and non-governmental actors on issues related to human rights and the rule of law. In addition to its reports on the Rights of People with Intellectual Disabilities, EUMAP has released monitoring reports focusing on Minority Protection, Judicial Independence and Capacity, Corruption and Anti-corruption Policy, and Equal Opportunities for Women and Men. Reports on the Regulation and Independence of the Broadcast Media are also forthcoming in 2005. EUMAP is currently preparing reports on Equal Access to Quality Education for Roma; publication is expected in 2006.

EUMAP reports are elaborated by independent experts from the countries being monitored. They are intended to highlight the significance of human rights issues and the key role of civil society in promoting governmental compliance with human rights standards throughout an expanding Europe. All EUMAP reports include detailed recommendations targeted at the national and international levels. Directed at Governments, international organizations and other stakeholders, the recommendations aim to ensure that the report findings directly impact on policy in the areas being monitored.

The present reports have been prepared in collaboration with the **Open Society Mental Health Initiative (MHI)**, part of OSI's Public Health Programs. MHI seeks to ensure that people with mental disabilities (mental health problems and/or intellectual disabilities) are able to live as equal citizens in the community and to participate in society with full respect for their human rights. MHI promotes the social inclusion of people with mental disabilities by supporting the development of community-based alternatives to institutionalisation and by actively engaging in policy-based advocacy.

Throughout Europe people with intellectual disabilities still face serious stigma, prejudice and significant barriers to realising their fundamental human rights. Discrimination against people with intellectual disabilities is deeply rooted and widespread, standing in the way of positive change. Providing real access to education and employment for people with intellectual disabilities is key to ensuring their social inclusion, and enabling them to live and work in the community as equal citizens. The EUMAP reports focus specifically on these two areas because of their importance to

people with intellectual disabilities and because of the existence of international standards, and national law and policy, relating to these areas.

Monitoring of the rights of people with intellectual disabilities was based on a detailed methodology (available at [www.eumap.org](http://www.eumap.org)), intended to ensure a comparative approach across the countries monitored. The reports cover the eight Central and Eastern European (CEE) countries that joined the EU in May 2004 (the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, and Slovenia), Bulgaria and Romania, expected to join in 2007, one candidate country (Croatia), and three older EU member States (Greece, the Netherlands, and the United Kingdom).

The preparation of reports on both member and non-member States highlights the fact that international human rights standards apply equally, and provides an opportunity to comment on general trends in the development and the policy application of these standards. The States selected represent a geographical spread and illustrate a spectrum of policy, practice and implementation.

Reports on each of the 14 countries monitored, plus an overview report resuming the main findings across all the countries, will be published separately. First drafts of each of the country reports were reviewed at national roundtable meetings. These were organised in order to invite comments on the draft from Government officials, civil society organisations, self-advocates, parents, and international organisations. The final report reproduced in this volume underwent significant revision based on the comments and critique received during this process. EUMAP assumes full responsibility for its final content.

## Foreword

This report is one of a series of 14 country reports prepared by the Open Society Institute's EU Monitoring and Advocacy Program and the Open Society Mental Health Initiative. The report presents an overview of the opportunities and challenges facing people with intellectual disabilities in accessing education and employment. It provides an important contribution to research on this group, one of the most vulnerable groups throughout Europe.

The initiative of producing this report fulfils important objectives. There is a clear need for comprehensive studies based on reliable research about the situation of people with intellectual disabilities in Europe. Without reliable information, the strategies and policies targeting this particular group of people are often inadequate in terms of meeting their real needs. The monitoring underlying the reports also aims to provide a comparative overview on the countries analysed. The present report goes far beyond previous reports that have brought this issue to the attention of European and national decision-makers.

Presenting a wider picture, this series of reports provides a thorough analysis of the situation of people with intellectual disabilities in their access to education and employment in eight new EU Member States (Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia), two accession countries (Bulgaria and Romania) and one candidate country (Croatia). To give a broader view of practice across Europe, Greece, the Netherlands and the United Kingdom have also been studied. The conclusions of the series of reports indicate that people with intellectual disabilities in Europe continue to face significant barriers as far as real access to education and employment is concerned. Discrimination also remains a major issue, despite measures taken at the national level and within a larger European context.

The reports also stand for the importance of civil society monitoring and the overall involvement of different stakeholders in dialogue regarding the human rights of people with intellectual disabilities. In each country, a local expert, or experts prepared the monitoring report, while local NGOs were involved throughout the monitoring process, providing the basis for broad consultation wherever possible. A central goal of this monitoring is to promote greater awareness and discussion of the issues at stake for people with intellectual disabilities at the local, national, and international levels.

Across the countries monitored, common problems continue to block access to education and employment for people with intellectual disabilities. In many countries, data on the situation of this group is extremely limited or insufficiently disaggregated, making it difficult for Governments to develop policy tailored to their needs. What data there is, shows that while integration of children with intellectual disabilities in mainstream schools is generally increasing, a more fundamental process towards

inclusion, as presented in the 1994 Salamanca Declaration on Special Needs Education, has made little headway. Many children throughout the region are still segregated in special schools or denied an education altogether, leaving little hope that they will be able to find jobs as adults. In most countries monitored, there is only the most basic support for the transition from education to employment.

Existing incentive schemes in many countries, particularly hiring quotas, have not been successful in increasing the number of people with intellectual disabilities who have entered the work force. More specifically targeted programmes must be developed to meet the needs of this group. Throughout Europe, NGOs have piloted effective projects offering supported employment to people with intellectual disabilities, providing assistance such as job coaches, specialised job training and individually tailored supervision. However, this approach has not yet been adopted as Government policy and therefore the opportunities it offers cannot be extended to a much larger group of people.

The reports highlight numerous obstacles that people with intellectual disabilities face in accessing education and employment in various countries across Europe. Improved legislation still needs to be adopted and implemented nationally as well as at the EU level. Existing models of good practice in inclusive education and supported employment should be replicated on a more extensive scale. These reports should help domestic and European decision-makers to develop effective policies ensuring the inclusion of people with intellectual disabilities into society.

From the perspective of Inclusion Europe, the European Association of People with Intellectual Disabilities and their Families, this report makes a very important contribution to the present discussion on access to education and employment for people with intellectual disabilities. We only can encourage local, national and European decision-makers, service providers and disability and social NGOs to consider and follow the recommendations developed in this report.

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## 1. EXECUTIVE SUMMARY

Throughout Europe people with intellectual disabilities<sup>1</sup> face major stigma and prejudice and are confronted with significant barriers to realising their fundamental human rights. Discrimination against people with intellectual disabilities is deeply rooted and widespread, standing in the way of positive change. Providing real access to education and employment for people with intellectual disabilities is critical to ensuring that they can live and work in the community as equal citizens. There is a strong link between education and employment: without access to adequate education, people with intellectual disabilities cannot secure meaningful employment. This denial of access leads to life long dependency, poverty and social exclusion adding to the stigma of intellectual disability. This monitoring report focuses specifically on the areas of education and employment because of their importance to people with intellectual disabilities, and because of the existence of both international standards and national legislation that specifically address them.

### *Background*

The UK has ratified most international human rights instruments, including those with provisions relating to the rights of people with disabilities. However, the UK has yet to ratify the revised European Social Charter, or to sign and ratify Protocol No. 12 to the European Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR). It has also not ratified ILO Convention C159 on Vocational Rehabilitation and Employment (Disabled Persons), 1983.

From May 1997, the UK Government introduced devolution of powers to Scotland, Wales and Northern Ireland, with the Westminster Parliament retaining sovereignty for areas such as foreign affairs, defence and macro-economic policy. The Scottish Parliament and the National Assembly for Wales (NAfW) assumed their responsibilities in 1999, but the Northern Ireland Assembly is presently suspended. Unlike most European countries, the UK does not have a written Constitution, but the UK has a comprehensive legislative framework to counter discrimination and ensure equal rights.

The Human Rights Act 1998 includes a prohibition of discrimination, although not explicitly on the grounds of disability. The most important legislation on the rights of people with disabilities is the Disability Discrimination Act 1995 (DDA). This provides a definition of disability, and measures to prevent discrimination on the ground of disability in the areas of employment; access to goods, facilities and services; and buying or renting land or property. The DDA was extended to cover education (in

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<sup>1</sup> The term “intellectual disability” (also described as “learning disability” or, in the USA for example, “mental retardation”) here refers to a lifelong condition, usually present from birth or which develops before the age of 18. It is a permanent condition that is characterised by significantly lower than average intellectual ability and results in significant functional limitations in intellectual functioning and in adaptive behaviour as expressed in conceptual, social and practical adaptive skills.

schools and further and higher education) through the Special Educational Needs and Disability Act 2001 (SENDA 2001). In the area of employment, it was further amended through the Disability Discrimination Act 1995 (Amendment) Regulations 2003 (DDA Regulations 2003), which entered into force on 1 October 2004. The Disability Discrimination Act 2005 (DDA 2005) will in December 2006 create a “Disability Equality Duty” on Public Sector organisations to counter discrimination in employment and to actively promote disability equality in all aspects of their work. The DDA and subsequent amendments apply to England, Wales, Northern Ireland and (with minor exceptions) to Scotland. There are regional amendments to DDA which apply to different UK jurisdictions. The DDA 2005 does not fully extend to Scotland and Northern Ireland, but the Scottish Parliament is to legislate to ensure all its additional features are provided there.

In the UK, intellectual disability is defined and diagnosed in accordance with the World Health Organization’s ICD-10. However, the term “learning disability” is mainly used, rather than intellectual disability (as defined in this report). In education, the broader terms “children with learning difficulties” – which includes children with a range of disabilities and conditions, not only children with intellectual disabilities – and “children with special educational needs” are used. The diagnosis of intellectual disability is usually carried out by paediatricians in the health service or associated professionals charged with monitoring the normal development of all children born in the UK, such as general practitioners (GPs) and health visitors. Local Education Authorities are responsible for assessing the Special Educational Needs that result from any disability, intellectual or otherwise.

In the UK, guardianship is infrequently used and, where it is, it is rarely used for people with intellectual disabilities. In England there were only 473 new cases of guardianship in 2004, of which the majority concerned people with mental health problems. In all cases, the guardian was the Local Authority. It is important to note that in the UK, guardianship is a very different power than in many other European countries, and it is not linked to an individual’s capacity. In England and Wales, the Mental Health Act 1983 defines guardianship. A guardian only has three powers; to require the person under guardianship to reside at a specified place; or attend specified places for medical treatment, occupation, education or training; and to require access be given to the individual by a doctor, approved social worker or other specified person. The Mental Capacity Act 2005, which will not enter into force until 2007, will in future provide a comprehensive legislative framework for decision-making on behalf of people who lack the capacity to make decisions for themselves. In Scotland, legislation improving the protection of the rights of adults who lack the mental capacity has already been enacted.

Due to differing definitions of intellectual disability, and the fact that much official data is not available disaggregated by type of disability, official data on people with intellectual disabilities in the UK can be difficult to interpret. Statistical evidence from epidemiological studies based on IQ assessments (using a two level classification



system), indicate around 580,000 people in the UK with *mild* intellectual disabilities and 217,000 people with severe intellectual disabilities. However, depending on the definition used (such as number of people accessing services for people with intellectual disabilities), there may be over two million people with some level of intellectual disability. Internationally, higher poverty levels have been correlated with an increased prevalence rate of *mild* or *moderate* intellectual disabilities (using the ICD four-level classification). There are indications that the higher levels of poverty in Northern Ireland, as compared to the rest of the UK, are therefore reflected in a higher prevalence of *mild* intellectual disability. More than half of people with intellectual disabilities in the UK live with their families. Across the UK, a process of deinstitutionalisation has been ongoing since the late 1980s. Only around two thousand people with intellectual disabilities are now in long stay hospitals. In England, community-based residential services are increasingly available. A proportionally low number (44,000) of adults with intellectual disabilities are in residential homes, of which an increasing number are in homes for three people or less. This tendency is reflected across the rest of the UK.

### *Access to education*

The most important legislation for the education of children with intellectual disabilities is the Special Education Needs and Disability Act 2001 (SENDA 2001), which brought education legislation in line with key international and EU standards. This act only covers Great Britain, but equivalent legislation (the Special Education Needs and Disability (SEND) Order) will also be introduced in Northern Ireland. The SENDA 2001 consolidates and amends previous education legislation – including the Education Act 1996, which provides a definition of children with learning difficulties and special educational needs (SEN). It significantly extends the right of children with SEN, including children with intellectual disabilities, to be educated in mainstream schools. It states that education must be provided in a mainstream school, unless this is incompatible with either the wishes of the child's parent or the provision of efficient education for other children. The SENDA 2001 also extends the DDA to provide protection against discrimination in education (in schools and further education) on the basis of disability, including in admission and provision of services. Schools are obliged to draw up "accessibility strategies" to facilitate the inclusion of pupils with disabilities and to make reasonable adjustments, so that they are not disadvantaged. The act extends the remit of the DRC for discrimination in education. In England and Wales, claims of unlawful discrimination in education are heard by special tribunals.

Depending on the level of a child's intellectual disabilities, in the UK intellectual disability may be diagnosed at birth; in the preschool age; or at a later stage in the child's education. Early intervention services are widely available for preschool children with intellectual disabilities and their families; even children as young as two years old can be offered special education. Recent Government policy has focused on improving the coordination of early intervention services and improving support to families. The "Sure Start Programme" includes a range of initiatives which will improve services for

disadvantaged children, including children with intellectual disabilities, and their families, including extension of home teaching services, such as Portage.

In the UK, the period of compulsory education is nine years, to age 16. Children attend either maintained (State funded) or non-maintained (independent) schools. Children and young people with intellectual disabilities mainly receive education in mainstream schools (either in an inclusive class; or in a special class or unit); special schools (which they can attend from preschool age up to age 19); or pupil support units. Very few receive education in a long-stay hospital or through home schooling on a long-term basis. Children with intellectual disabilities assessed as having *severe*, *moderate* or *profound* learning difficulties (and some children with *mild* intellectual disabilities) will most often be educated in special schools or special needs units.

In the UK, Local Authorities are responsible for the assessment of children's special educational needs. There are similar assessment procedures in England, Wales and Northern Ireland. In England, assessments are carried out in accordance with a SEN Code of Practice, which has been revised in line with the SENDA 2001, and a similar code for Wales has also been drafted. There are now four levels of assessment, all of which are carried out by multidisciplinary teams which include health and education professionals, and fully involve the child's parents. In levels one and two, the special educational needs of the child are assessed; additional support provided; and an Individual Education Plan (IEP) prepared for the child. In the case of children with severe and complex special needs, a further level of assessment is carried out. If required (level four), a statement of SEN is then prepared. A statement is only prepared in cases where a child's needs cannot reasonably be provided within the resources normally available to a school. It details the special educational (and non-educational) provision the child requires and names an appropriate school (or other arrangement) for the child. LEAs (or, in Northern Ireland, the Education and Library Boards) are obliged to provide the form of support detailed in the statement. Parents have the right to appeal the results of the assessment procedures, which have been extended by the SENDA 2001, but do not have the right to choose a school if the LEA considers that a "placement in mainstream would be incompatible with the efficient education of other children." However, the LEA is obliged to show that there are no reasonable steps that could be taken to prevent incompatibility.

In Scotland, in future there will be significant changes to assessment procedures, in line with recently introduced legislation. The term "additional support needs" will replace "special educational needs". At present, in Scotland children with SEN receive a Record of Needs (equivalent to the statement of SEN), but parents do not have the right to appeal against the listed measures and there is no appeals tribunal. The proportion of children with a Record of Need varies between education authorities (a similar tendency has also been noted in England) and this is thought to reflect Education Authority concerns over the costs of providing the support listed in the record. In Scotland, at age 14, a Future Needs must be carried out, to establish a transitional planning for the child. When the child moves from school to further education, responsibility for further

assessments is transferred to the Careers Scotland. Similarly, in England and Wales at age 13 a Transition Plan must be drawn up for all children with a statement of SEN. The Connexions service (England); Careers Wales (Wales); and the Careers Service (Northern Ireland) play a similar role to Careers Scotland. In a recent Green Paper, the Government has proposed to reform the Connexions service. The plan is to devolve responsibility for the commissioning of information and advice services to young people and the funding of that goes with it from the Connexions service to Local Authorities, through children's trusts, schools and colleges. This will help integrate Connexions with a wider range of services at local level.

In the UK, a number of EU programmes (including Horizon, Leonardo and Employ) have provided innovative projects for people with intellectual disabilities in transition from school and colleges. Programmes of action aiming to improve the educational achievements of children with SEN have been implemented in England (from 1998) and Wales (from 1999). The goals of these programmes, including increasing the numbers of children with SEN integrated into mainstream schools, are highly relevant to children with intellectual disabilities.

In England, Wales and Northern Ireland, the relevant National Curriculum is mandatory for all pupils in state-maintained schools, up to the age of 14. However, pupils with a statement of SEN can be exempted from the National Curriculum; or the National Curriculum (and its assessment arrangements) can be adjusted accordingly. Given the National Curriculum's academic focus, there are different views among self-advocates and education experts, as to its effectiveness for teaching children with intellectual disabilities. However, there is consensus that this group of children must be given the support they need to achieve the greatest level of achievement both academically and in terms of acquiring vocational skills. In Scotland, schools are responsible for developing their own curriculum, but these must be adapted to the needs of individual pupils, including those with intellectual disabilities. Across the UK, Individualised Educational Programmes (IEPs) must be prepared for pupils with a statement of SEN (or Record of Needs); these are used as a basis for planning, setting targets and ensuring that pupils make progress.

In most mainstream schools, a SEN Coordinator (SENCO) is responsible for developing the school's SEN policy and for helping staff teach and support children with SEN. Teacher training for mainstream teachers includes elements on the teaching of children with SEN, but the extent to which children with intellectual disabilities are taught in mainstream classes, and the severity of intellectual disabilities the children included experience, varies between primary and secondary schools, and between LEAs. Learning support assistants (LSAs) or special needs assistants/teaching assistants provide extra support. Children with severe and complex forms of SEN (including many children with intellectual disabilities) are taught by SEN teachers, primarily in special units or in special schools.

Recent legislation and Government policy has clearly prioritised the education of children with SEN in a mainstream environment. However, at present, the majority of

young people with intellectual disabilities are assessed as having learning disabilities of sufficient severity to be educated either in special schools or in segregated special units within mainstream schools. The inclusive education of children with intellectual disabilities has often only been applied to some children with *mild* intellectual disabilities. As an increasing number are integrated into mainstream education at the primary level, parents are now seeking their inclusion in secondary and further education. At present, though, most mainstream schools do not have sufficient skills, experience and resources to provide the support required for the inclusive education of children with intellectual disabilities; special schools are considered to have an important role in preparing mainstream schools for their inclusion. Nonetheless, although policy now recognises that children with *mild* and *moderate* intellectual disabilities should be educated in mainstream schools, there is wide variation in the extent to which young people with more severe intellectual disabilities are educated in mainstream or special schools.

### *Transition from education to employment*

At present, most young people with intellectual disabilities do not leave school with marketable skills and, in particular, do not gain work experience, although some special schools are now offering “job tasters” and a few have arranged for students to find part-time jobs outside of school. The preferred post-school option is a place at a college, either on a special course or in a special unit within the college. However, there is still only limited awareness of the needs of people with intellectual disabilities in further education. Among the barriers they encounter are lack of curriculum flexibility and adequate support staff; courses geared towards success in achieving a qualification, rather than in developing students’ abilities; and a lack of orientation towards employment as an end goal. Many young people with intellectual disabilities are therefore not able to use the skills they learn.

This limited transition from further education to real employment is surprising, given that transition planning is well developed in the UK. Based on the Transition plan, in England Connexions are currently responsible for identifying the needs of young people with SEN, and the Learning and Skills Councils (LSCs) have a statutory duty to ensure that appropriate funding and support for the recommended options are made available. (Careers Wales, Careers Scotland the Northern Ireland Careers Service play a similar role to Connexions). Nonetheless, there are concerns that people with intellectual disabilities are too often passed on to various different courses and “non-work” options, rather than being successfully orientated towards a path leading to employment. All too often, they and their parents are not sufficiently informed of available options and are left confused by the transition from known services to the new adult services. Unlike school, college placements are often not full-time, placing an additional strain on parents. In addition, those who move straight into employment may find a lack of sufficient support. Several reasons have been identified for this, including a lack of clear overall responsibility for transition planning among the many

agencies involved. As mentioned above, there are plans to disband, the Connexions service in England, and move their responsibilities back to Local Authorities.

As an alternative to college courses, there are also some work-based vocational training programmes available for people with special educational needs, in which young people spend most of their time on placement in a company. The “Entry to Employment (E2E)” programme, in particular, is useful for those with *mild* intellectual disabilities. There is also a well-developed system of adult education in the UK, and people with intellectual disabilities are able to benefit from the wide range of part-time courses available at adult education centres.

### *Access to employment*

The UK has a comprehensive framework of employment legislation and has transposed most of the provisions of the EU Employment Directive into national legislation, mainly through amendments to the DDA. When it enters into force, the DDA 2005 should bring UK legislation fully in line with the directive. People with disabilities who wish to pursue complaints about discrimination in employment can be assisted by the Disability Rights Commission (DRC) framework in England, Wales and Scotland, and the Equality Commission in Northern Ireland.

Most people with intellectual disabilities in the UK are reliant on State welfare benefits. The main welfare benefit which people with intellectual disabilities receive is Income Support (IS), including a premium for people with disabilities. This is basically a benefit for people who are not in “remunerative work.” Many also receive the Disability Living Allowance (DLA), as well as other non-disability specific benefits. People with intellectual disabilities usually have the status of “economically inactive” and can continue to receive their benefits without regular review. The social welfare system is designed to facilitate the transition from benefits to employment. On moving into full-time employment, loss of benefits such as the IS can be offset by “top-up” benefits, including the Working Tax Credit. Nonetheless, for people with intellectual disabilities in staffed accommodation, the potential loss of Housing Benefit can still act as a disincentive to moving into full-time employment. Usually, for people with intellectual disabilities, the move to part-time employment while retaining benefits is the preferred option. Under the “Supported Permitted Work” rules, people with disabilities can work up to 16 hours a week in supported work indefinitely, if they receive recognised forms of support. This is a particularly important way for people with intellectual disabilities to join the mainstream workforce, although existing regulations mean that, in practice, they may be even more restricted in the hours they can work, and only receive limited additional income from their work as a result.

The two main areas of assessment for adults with intellectual disabilities are for eligibility for welfare benefits and for Government employment schemes. An individual with disabilities can be referred to specialised Government employment schemes, such as “Access to Work,” WORKSTEP and Employment Support in Northern Ireland, following an assessment carried out by a Disability Employment Advisor (DEA) of the

DWP's Disability Services Teams, or their national equivalents. The DEA develops an action plan that orientates the individual towards suitable opportunities.

In the UK, EU funds – in particular from the European Social Fund (ESF) – have been directed towards programmes encouraging the employment of people with disabilities, including intellectual disabilities. In particular, in the past they have provided a significant source of development funding for supported employment agencies, although due to a shift in priorities the level of funding has now fallen and moved to other scheme types.

The Government has a clear policy on providing new employment opportunities specifically for people with intellectual disabilities, as set out in the 2001 White Paper *Valuing People*. In the UK, there are a number of routes for people with disabilities seeking to enter the job market, including via Jobcentre Plus, where all go to seek work and access welfare benefits as job seekers. The UK no longer has a quota system to encourage the employment of people with disabilities, so their two main options, depending on their level of disability, are mainstream Active Labour Market Programmes (ALMPs) or specialist employment schemes for people with disabilities – provided through central Government and through local authority-run programmes. At present, few people with intellectual disabilities access the mainstream programmes, such as “New Deal” and “Work-based Training”.

In the UK, the majority of people with intellectual disabilities are unable to access employment. Estimates vary, but the most recent statement from the *Valuing People* strategy estimates the number of people with intellectual disabilities in paid employment at only 11 per cent, compared to 49 per cent for people with disabilities in general. Over seventy-five thousand people are estimated to be attending day centres run by local authorities across the UK, which vary considerably in their emphasis on employment preparation. Although exact figures are not available, it can be estimated that around 16,000 people with intellectual disabilities access specialist Government employment programmes for people with disabilities.

Supported employment is one of the most effective ways for people with intellectual disabilities to access employment on the open market. In the UK, NGOs, including Mencap, are heavily involved in the provision of supported employment. It is very difficult to obtain estimates of the number of services offering supported employment, and how many people have jobs through this model. There are over 400 agencies operating in the UK. A significant number are NGOs, but there is no data on exactly how many. People with intellectual disabilities benefit when they have access to a full model of supported employment. The Government offers a number of specialist employment programmes (at one time regarded as sheltered provision) that are relevant to people with intellectual disabilities. The WORKSTEP programme offers jobs through a network of supported factories and of community placements – historically these have provided help through offering employers a wage subsidy, but more recently through more flexible on-the-job staff support and financial assistance packages. WORKSTEP factory and community placements are supplemented by opportunities

offered by Remploy Ltd, the biggest Government-funded national provider. The Government also provides help to people seeking open employment through the “Access to Work programme”, which offers financial help with on-the-job support, transport, work aids and workplace adaptations.

The specialist WORKSTEP and “Access to Work” programmes do now allow for payments for a job coach – a very important element important for people with intellectual disabilities – although in the case of the “Access to Work” programme, this is time-limited. Nonetheless, these programmes do not pay for the full model, from Vocational Profiling through to workplace support and follow-up services. Supported employment agencies are largely funded by local authority social services, but there are increasing calls for central Government mainstream funding to be made available. At present, access to supported employment services is uneven across the UK.

## 2. RECOMMENDATIONS<sup>2</sup>

### General recommendations

#### *International standards*

1. The UK should ratify ILO Convention C159 on Vocational Rehabilitation and Employment (Disabled Persons) 1983.
2. The UK should ratify the Revised European Social Charter of 1996 and bind itself to Article 15 on the right of persons with disabilities to independence, social integration and participation in the life of the community. It should also sign and ratify Protocol 12 to the on the Protection of Human Rights and Fundamental Freedoms (ECHR).

### Recommendations on access to education

3. The general thrust of Government SEN policy towards the inclusion of people with disabilities in mainstream schools wherever possible is welcomed.<sup>3 4</sup> However, the Government should see through its commitment to bring

<sup>2</sup> Note: The recommendations in this section are based on conclusions from the OSI roundtable meeting, held in London on 17 May 2004, held to discuss the draft version of this report. Some of the proposals build on the analysis contained in O’Byrne et al., *Framework for Supported Employment*.

<sup>3</sup> Department for Education and Skills *Removing the Barriers to Achievement: The Government’s Strategy for SEN*, 2004, available at [http://www.teachernet.gov.uk/\\_doc/5970/removing%20barriers.pdf](http://www.teachernet.gov.uk/_doc/5970/removing%20barriers.pdf) (accessed 30 August 2005).

<sup>4</sup> Scottish Executive, *Moving Forward! Additional Support for Learning*, Scottish Executive, HMSO, Edinburgh, 2003.

specialist support, and additional teacher experience into mainstream schools, and adequate resources, if children and young people with intellectual disabilities are to flourish in mainstream schools.

4. The Government should ensure that children can be catered for in their own communities and should reduce reliance on special residential schools, to avoid the removal of young people with significant intellectual disabilities from their locality, peers and families.

## **Recommendations on transition from education to employment**

### *Curriculum development*

5. Governments in the UK should place more emphasis on a flexible and individual approach to teaching young people with intellectual disabilities, including the option of using a functional curriculum, rather than on a modified National Curriculum, for those who would benefit. Any functional curriculum should ensure that young people with intellectual disabilities are taught the skills they need in real home, work, leisure and community life situations, and are able to acquire the basic skills that will enable them to take a place in the work force, with all the associated benefits of status and integration.

### *Transition planning*

6. Governments in the UK should recognise the need for young people with intellectual disabilities, particularly those with more severe intellectual disabilities, to progressively spend more time and instruction in the environments where they will later spend their adult lives-in real home, leisure, community life and, particularly, work situations. To implement this approach, increased support resources should be made available for young people with intellectual disabilities in special schools (and in mainstream schools if they are more fully integrated) and a wider role foreseen for Learning Support Workers in supporting community based learning.
7. Agencies<sup>5</sup> involved in transition should ensure that transition plans are person-centred and participatory.
8. Schools, and careers, social and health services should ensure that the families and carers of young people with intellectual disabilities in transition are equal and collaborative partners, and that they receive the information, support and

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<sup>5</sup> Schools, Connexions/Careers Wales/Careers Scotland/Careers Service (Northern Ireland), social services, the NHS (where involved).and NGOs involved in providing any activities, experiences and support.



advice they need, to make informed decisions and think aspirationally about the young person's future.

9. All the agencies with statutory responsibilities in the transition planning process should ensure that the outcomes of transition planning are as specific as possible. The aim of transition planning should be to identify clear outcomes for the future and specific supports to achieve them.
10. Agencies involved in transition should share information more effectively and not use confidentiality as a reason not to share relevant client information needed for planning. They should ensure that there is a more effective handover between children's and adult services at these crucial times. This must be a priority within the emerging system of Children's Trusts in England. A tracking system should be introduced for students as they move through transition and beyond, to ensure that the outcomes of transition plans are delivered.
11. We recognise that Governments in the UK are concerned to make transition effective, and that changes have been proposed<sup>6</sup>. In implementing these, Governments should make sure that agencies involved in transition ensure that in transition years, adult services become progressively involved before young people with intellectual disabilities leave school, rather than delaying this until they do leave. Much can also be gained by all concerned in breaking down artificial barriers and setting up placements for adult life before people leave school.
12. Governments in the UK should clarify which agencies should take a lead in improving transition planning. In particular, the responsibilities of Connexions (or its successor)/Careers Wales/Careers Scotland/Careers Service (Northern Ireland for people with intellectual disabilities should be clarified, along with the resources, staffing and training they need to deliver better outcomes
13. Governments in the UK should promote the concept of a Personal Advisor to help people with intellectual disabilities during the transition process.

### *Supported employment*

14. The departments responsible for developing employment opportunities,<sup>7</sup> along with those responsible for transition planning, should ensure that

<sup>6</sup> Prime Minister's Strategy Unit *Improving the life chances of disabled people: Final Report*, 2005, available at [http://www.strategy.gov.uk/downloads/work\\_areas/disability/disability\\_report/pdf/disability.pdf](http://www.strategy.gov.uk/downloads/work_areas/disability/disability_report/pdf/disability.pdf) (accessed 31 August 2005).

<sup>7</sup> Department of Work and Pensions, Scottish Executive's Enterprise and Lifelong Learning Department, Department for Employment & Learning (NI), and, under *Valuing People*, Local Partnership Boards.

supported employment placements are made available for young people with intellectual disabilities in school. At present, the majority of supported employment services are for adults, and these services need to be made available across the adult/school divide, in conjunction with education, for example, rather than in isolation. Supported employment agencies should also be available to “pick people up” at age 19-21 after college.

### *Adult education and Lifelong Learning*

15. The agencies involved in Further Education<sup>8</sup> should ensure that young people with intellectual disabilities are not restricted to segregated “access courses” and that curriculum modification, and possibly more powerful systematic instruction techniques are available through Learning Support systems. Learning Support systems should help young people with intellectual disabilities take part in a full range of vocational courses, depending on their ability and interests and should be capable of providing personal support to people towards their wider integration into college courses. Courses should be well connected to the local employment market and be responsive, providing training in the skills needed by local industry.
16. Colleges should provide adequately supported work tasters during further education to young people with intellectual disabilities, in the same way as it is currently offered to many non-disabled college students on vocational courses. Such work experience should include support, structure and clear, evaluated objectives for young people with intellectual disabilities.
17. Colleges should develop strong partnerships with local supported employment agencies to provide job finding and work-based support to help young people with intellectual disabilities bridge the gap they still face in graduating into jobs.

### *Funding*

18. Governments in the UK should take steps to ensure that there is greater flexibility in funding of services that can provide individual support young people’s transition from school to college and employment, and from training into employment.

## **Recommendations on access to employment**

### *Modification of the welfare benefits system*

19. The Government should abandon the requirement that applicants for the Permitted Work concession must demonstrate that the work they undertake would “improve or maintain their condition.”

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<sup>8</sup> The LSCs/EIWA/LECs/Department of Education (NI) and Colleges of Further Education.

20. The Government<sup>9</sup> should explore a more flexible approach to bridging the gap between Incapacity Benefits and the Tax Credits. This should address in particular the 100 per cent taper in Income Support on entering employment, and the inflexibility of the 16 hours per week boundary between Incapacity Benefit and the Working Tax Credit. One possibility would be to extend the lower hours limit of the Working Tax Credit downwards, and allow individuals to opt into it at a different stage, which would, in effect, create a hybrid benefit for people working less than 16 hours, and an in-work credit for people working more than 16 hours.
21. The Government should consider ideas for a more radical reform in the future. This could include:
  - Abandoning “incapacity” as an organising principle and replacing it with compensation for “disadvantage in the labour market”. This would remove inherent contradiction between any form of move to work and receiving protection offered by special benefit status. A case in point concerns young people who wish to claim the new non-contributory form of Incapacity Benefit, who will have to declare themselves “incapable of work” before they have had a chance to explore what work means.
  - Integrating the Tax Credits and Incapacity Benefits into a single structure that values all forms of work, while providing a guaranteed minimum income should people not be in work, along with continuous and progressive incentives for individuals to work longer hours. By combining both these changes, it would be possible to do away with the need for the Permitted Work Concession, to provide greater financial security through permanent links back to previous levels of financial assistance for people who continue to be at a disadvantage in the labour market.

### *Employment services*

22. Governments in the UK should improve individual planning for people who have greater support needs, including people with more severe intellectual disabilities. Person-centred planning for people who have greater support needs can be time consuming, and it is unlikely that Personal Advisors with large caseloads will be able to undertake this kind of activity on any scale. In such cases, Personal Advisors should be able to contract out the task of vocational profiling to specialist agencies which have the appropriate skills; PA's should have resources to pay for this service; and should be able to commission services flexibly, in ways that realise the outcomes of this planning process.

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<sup>9</sup> Primarily the Department of Work and Pensions and the Inland Revenue.

*Enhancing the WORKSTEP programme*

23. The Government should gather information on good practice and innovation in the WORKSTEP programme that cater effectively for people with intellectual disabilities- for example, some WORKSTEP providers have offered individualised support to job applicants and providers- and share such experience across providers.
24. The Government should move WORKSTEP to a support model, rather than a programme model. An important cultural change involves moving away from an assessment process which focuses on eligibility for fixed programmes, and replacing it with individualised action planning, designed to establish what support each individual needs. Thus people should be regarded as “employable” when they want to work and require support.
25. The Government should improve the capacity of the WORKSTEP programme. In particular, the work of WORKSTEP providers could be built on, to encourage individualised support to people with intellectual disabilities and employers, by:
  - Combining with other funding sources (such as health and social services) to provide long-term support to those people who need it;
  - Redefining “progression”, within the WORKSTEP context, to include increases in responsibility, job status, hours and wages, as well as independence. This would encourage providers to support individuals’ career development.
  - Increasing available funding and working with providers to increase availability of the full supported employment model.

*Government leadership*

26. The Government should ensure that the recommendations of the *The Same as You?* report in Scotland are also taken into consideration for improving services in other parts of the UK.
27. The new Equality Duty<sup>10</sup> on public sector organizations is welcomed, and urge Governments in the UK should encourage local authorities, health trusts and other public bodies across the UK to give much greater priority to developing a range of employment opportunities for people with intellectual disabilities. Local authorities and health trusts should, in particular, lead by example by

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<sup>10</sup> The DDA 2005 will require larger public sector organizations to draw up a Disability Equality Scheme to set out how they are actively promoting equality for disabled people. This might include prioritising those disabled groups that have the least presence in the workforce, and changing policies and procedures when they are forming a barrier to equality.

employing more people with intellectual disabilities within their own workforces.

28. The Government should take steps to ensure that people with intellectual disabilities do not fall between the many services and welfare benefit systems that the Government has in place. One idea would be to consider commissioning a “social exclusion report”<sup>11</sup> to draw together the issues, and plan to close the gaps that exist.
29. DWP/Jobcentre Plus should take steps to ensure that their services are tailored to the needs of people with intellectual disabilities. In particular:
  - Personal Advisors, those implementing Jobcentre Plus and DEA teams, should be positive in identifying what work tasks people with intellectual disabilities could do, what work environments would best suit them, and what it would take to support them in jobs.
  - There should be increased flexibility in the forms of support that can be funded.
  - There should be a shift from a culture of assessing a person’s “job readiness”, to profiling what people could do with effective support and training, which is crucially important for people with intellectual disabilities.

### *Interagency coordination*

30. There should be improved collaboration between Jobcentre Plus, the specialist supported employment sector, and other key Government departments with an interest in developing employment for people with disabilities (Department of Health), as well as other critical players (for example the Social Firms movement).<sup>12</sup>
31. Such collaboration should, in particular, focus on the large-scale development of training materials designed to improve training for Personal Advisors, WORKSTEP and other staff geared to equipping people with appropriate skills.

### *Supported employment*

32. The Government should make changes to the way supported employment is funded, to enable it to meet the needs of more people with intellectual

<sup>11</sup> The Government’s Social Exclusion Unit have completed cross-departmental analyses of issues causing social exclusion to particular groups (e.g. *Mental Health and Social Exclusion*, <http://www.socialexclusionunit.gov.uk/page.asp?id=5> (accessed 31 August 2005)).

<sup>12</sup> Social firms are a form of social enterprise set up with the aim of employing people with disabilities and disadvantages in the open labour market. See <http://www.socialfirms.co.uk> (accessed 31 August 2005) for more information.

disabilities. In particular, core funding should be made available for the full model of supported employment from central Government sources.

33. The Government should take a lead in assuring quality in the provision of supported employment services, by introducing quality standards for supported employment providers. These could be based on those that already exist within WORKSTEP, but would reflect good practice specifically in the full supported employment model.

## II. Prif ganfyddiadau (Main Findings)

### Rhagair (Preface)

Mae **Rhaglen Monitro ac Eirioli yr UE (EUMAP)** yn monitro materion yn ymwneud â hawliau dynol a rheolaeth y Gyfraith ledled Ewrop, ar y cyd â chyrff anllwyodraethol a sefydliadau cymdeithas sifil. Mae adroddiadau EUMAP yn pwysleisio pwysigrwydd monitro cymdeithas sifil ac yn annog deialog uniongyrchol rhwng sefydliadau llwyodraethol ac anllwyodraethol ar faterion yn ymwneud â hawliau dynol a rheolaeth y gyfraith. Yn ogystal â'i hadroddiadau ar Hawliau Pobl ag Anableddau Deallusol, mae EUMAP wedi rhyddhau adroddiadau monitro yn canolbwyntio ar Ddiogelu Lleiafrifoedd, Annibyniaeth a Gallu Barnwrol, Llygredd a Pholisi Gwrth-lygredd, a Chyfle Cyfartal i Ferched a Dynion. Mae adroddiadau ar Reoleiddio ac Annibyniaeth y Cyfryngau Darlledu hefyd ar y gweill yn 2005. Mae EUMAP ar hyn o bryd yn paratoi adroddiadau ar Gyfle Cyfartal i Addysg o Safon ar gyfer Roma; disgwylir iddynt gael eu cyhoeddi yn 2006.

Ymhelaethir ar adroddiadau EUMAP gan arbenigwyr annibynnol o'r gwledydd sy'n cael eu monitro. Eu bwriad yw amlygu pwysigrwydd materion hawliau dynol a rôl allweddol cymdeithas sifil wrth hyrwyddo cydymffurfiaeth llwyodraethau â safonau hawliau dynol drwy Ewrop sy'n ehangu. Mae pob adroddiad EUMAP yn cynnwys argymhellion manwl wedi eu targedu at y lefel genedlaethol a'r lefel ryngwladol, wedi eu cyfeirio at Lywodraethau, sefydliadau rhyngwladol a rhanddeiliaid eraill, gyda'r nod y bydd canfyddiadau'r adroddiad yn effeithio'n uniongyrchol ar bolisi yn y meysydd sy'n cael eu monitro.

Paratowyd yr adroddiadau presennol mewn cydweithrediad â **Menter Iechyd Meddwl y Gymdeithas Agored (MHI)**, rhan o Raglenni Iechyd Cyhoeddus yr OSI. Mae MHI yn ceisio sicrhau bod pobl ag anableddau meddwl (problemau iechyd meddwl a/neu anableddau deallusol) yn gallu byw fel dinasyddion cydradd yn y gymuned a chyfranogi mewn cymdeithas lle y perchir eu hawliau dynol yn llawn. Mae MHI yn hyrwyddo cynhwysiant cymdeithasol pobl ag anableddau meddwl drwy gefnogi'r gwaith o ddatblygu dewisiadau amgen yn y gymuned yn lle sefydliadu a thrwy ymwneud ag eirioli ar sail polisi.

Ledled Ewrop mae pobl ag anableddau deallusol yn dal i wynebu stigma difrifol, rhagfarn a rhwystrau sylweddol i wireddu eu hawliau dynol sylfaenol. Mae gwahaniaethu yn erbyn pobl ag anableddau deallusol wedi ei wreiddio'n ddwfn ac yn beth cyffredin, gan rwystro newid cadarnhaol. Yr allwedd i sicrhau bod pobl ag anableddau deallusol yn cael eu cynnwys yn gymdeithasol yw drwy ddarparu cyfleoedd gwirioneddol iddynt fanteisio ar addysg a chyflogaeth, a'u galluogi i fyw a gweithio yn

y gymuned fel dinasyddion cydradd. Mae adroddiadau EUMAP yn canolbwyntio'n benodol ar y ddau faes hyn oherwydd eu pwysigrwydd i bobl ag anableddau dysgu ac am fod safonau rhyngwladol yn bodoli, a chyfraith a pholisi rhyngwladol, yn ymwneud â'r meysydd hyn.

Seiliwyd y gwaith o fonitro hawliau pobl ag anableddau deallusol ar fethodoleg fanwl (ar gael yn [www.eumap.org](http://www.eumap.org)), a fwriadwyd i sicrhau ymagwedd debyg ar draws y gwledydd a gafodd eu monitro. Mae'r adroddiadau yn cwmpasu'r wyth gwlad yng Nghanol a Dwyrain Ewrop (CEE) a ymunodd â'r UE ym mis Mai 2004 (Gweriniaeth Tsiec, Estonia, Hwngari, Latfia, Lithwania, Gwlad Pwyl, Slofacia a Slofenia), Bwlgaria a Rwmania, y disgwylir iddynt ymuno yn 2007, un wlad sydd wedi gwneud cais (Croatia) a thair Aelod-wladwriaeth hyn yn yr UE (Groeg, yr Iseldiroedd a'r Deyrnas Unedig).

Mae'r gwaith o baratoi adroddiadau ar aelod-wladwriaethau a gwledydd nad ydynt yn aelod-wladwriaethau yn amlygu'r ffaith bod safonau hawliau dynol rhyngwladol yn gymwys i'r ddau, ac yn gyfle i roi sylwadau ar dueddiadau cyffredinol yn y gwaith o ddatblygu'r safonau hyn a chymhwyso polisi mewn perthynas â hwy. Mae'r Gwladwriaethau a ddewiswyd yn cynrychioli rhychwant daearyddol a sbectrwm o bolisi, arfer a dulliau gweithredu.

Caiff adroddiadau ar bob un o'r 14 o wledydd a gafodd eu monitro, ynghyd ag adroddiad trosolwg yn crynhoi'r prif ganfyddiadau ar draws pob un o'r gwledydd, eu cyhoeddi ar wahân. Adolygwyd drafft cyntaf pob un o adroddiadau'r gwledydd mewn cyfarfodydd cenedlaethol o amgylch y bwrdd. Trefnwyd y rhain er mwyn gwahodd sylwadau ar y drafft gan swyddogion Llywodraethau, sefydliadau cymdeithasau sifil, hunan-eiriolwyr, rhieni a sefydliadau rhyngwladol. Diwygiwyd yr adroddiad terfynol a atgynhyrchwyd yn y gyfrol hon yn sylweddol yn seiliedig ar y sylwadau a'r feirniadaeth a dderbyniwyd yn ystod y broses hon. Mae EUMAP yn derbyn cyfrifoldeb llawn am ei gynnwys terfynol.



## Rhagarweiniad (Foreword)

Mae'r adroddiad hwn yn un o gyfres o 14 o adroddiadau gwlad a baratowyd gan Raglen Monitro ac Eirioli yr UE Sefydliad y Gymdeithas Agored a Menter Iechyd Meddwl y Gymdeithas Agored. Mae'r adroddiad yn cyflwyno trosolwg o'r cyfleoedd a'r heriau sy'n wynebu pobl ag anableddau deallusol wrth fanteisio ar addysg a chyflogaeth. Mae'n gyfraniad pwysig i ymchwili i'r grŵp hwn, un o'r grwpiau mwyaf diamddiffyn ledled Ewrop.

Mae'r fenter o gynhyrchu'r adroddiad hwn yn cyflawni amcanion pwysig. Mae angen gwirioneddol am astudiaethau cynhwysfawr yn seiliedig ar ymchwili ddibynadwy ar sefyllfa pobl ag anableddau deallusol yn Ewrop. Heb wybodaeth ddibynadwy, mae strategaethau a pholisïau sy'n targedu'r grŵp arbennig hwn o bobl yn aml yn annigonol o ran diwallu eu hanghenion gwirioneddol. Mae'r gwaith monitro sy'n sail i'r adroddiadau hefyd yn anelu at roi trosolwg cymharol o'r gwledydd a ddadansoddiwyd. Mae'r adroddiad presennol yn rhagori llawer ar yr adroddiadau blaenorol sydd wedi dwyn hyn at sylw'r rhai sy'n gwneud penderfyniadau yn Ewrop ac yn genedlaethol.

Mae'r gyfres hon o adroddiadau, sy'n creu darlun ehangach, yn rhoi dadansoddiad trylwyr o sefyllfa pobl sydd ag anableddau deallusol wrth geisio manteisio ar gyfleoedd addysg a chyflogaeth mewn wyth Aelod-wladwriaeth newydd yn yr UE (Gweriniaeth Tsiec, Estonia, Hwngari, Latfia, Lithwania, Gwlad Pwyl, Slofacia a Slofenia), dwy wlad sydd wedi eu derbyn (Bwlgaria a Rwmania) ac un wlad sydd wedi gwneud cais (Croatia). Er mwyn creu darlun ehangach o arfer ledled Ewrop, astudiwyd Groeg, yr Iseldiroedd a'r Deyrnas Unedig hefyd. Noda casgliadau'r gyfres o astudiaethau fod pobl ag anableddau deallusol yn Ewrop yn parhau i wynebu rhwystrau sylweddol wrth geisio manteisio ar gyfleoedd gwirioneddol o ran addysg a chyflogaeth. Mae gwahaniaethu yn broblem fawr o hyd, er gwaethaf mesurau a gymerwyd yn genedlaethol ac o fewn cydestun Ewropeaidd ehangach.

Mae'r adroddiadau hefyd yn dynodi pwysigrwydd monitro cymdeithas sifil a chynnwys rhanddeiliaid gwahanol yn gyffredinol mewn trafodaethau o ran hawliau dynol pobl ag anableddau deallusol. Paratôdd arbenigwr lleol ym mhob gwlad yr adroddiad monitro, ac roedd cyrff anllwyodraethol lleol yn gysylltiedig â'r gwaith drwy gydol y broses fonitro, gan ddarparu'r sail ar gyfer ymgynghori'n eang lle bo hynny'n bosibl. Nod canolog y gwaith monitro hwn yw hyrwyddo mwy o ymwybyddiaeth a thrafodaeth o'r materion hollbwysig i bobl ag anableddau deallusol, yn lleol, yn genedlaethol ac yn rhyngwladol.

Ar draws y gwledydd a gafodd eu monitro, mae problemau cyffredin yn parhau i rwystro cyfleoedd i fanteisio ar addysg a chyflogaeth i bobl ag anableddau deallusol. Mewn llawer o wledydd, mae data ar sefyllfa'r grŵp hwn yn brin iawn neu heb ei ddatgrynhoi'n ddigonol, gan ei gwneud yn anodd i Lywodraethau ddatblygu polisi

wedi ei deilwra i'w hanghenion hwy. Mae'r data sydd ar gael yn dangos, er bod integreiddio plant ag anableddau deallusol mewn/ag ysgolion prif ffrwd yn cynyddu'n gyffredinol, nid yw'r broses fwy sylfaenol tuag at gynhwysiant, fel y'i cyflwynwyd yn Natganiad Salamanca ar Addysg Anghenion Arbennig yn 1994, wedi datblygu rhyw lawer. Mae llawer o blant yn y rhanbarth yn cael eu haddysgu ar wahân mewn ysgolion arbennig neu ni chânt y cyfle i gael addysg o gwbl, sy'n golygu nad oes llawer o obaith y cânt swyddi fel oedolion. Yn y rhan fwyaf o'r gwledydd a gafodd eu monitro, dim ond y cymorth mwyaf sylfaenol sydd ar gael ar gyfer trosglwyddo o addysg i gyflogaeth.

Ni fu'r cynlluniau cymhelliant presennol mewn llawer o wledydd, yn arbennig cwtâu hurio, yn llwyddiannus wrth gynyddu nifer y bobl ag anableddau deallusol sydd wedi ymuno â'r gweithlu. Rhaid datblygu rhaglenni wedi eu targedu'n fwy penodol i ddiwallu anghenion y grŵp hwn. Ledled Ewrop, mae cyrff anllywodraethol wedi treialu prosiectau effeithiol yn cynnwys cyflogaeth dan gymorth i bobl ag anableddau deallusol, darparu cymorth megis hyfforddwyr swyddi, hyfforddiant arbenigol ar gyfer swyddi a goruchwyliaeth wedi ei theilwra i'r unigolyn. Fodd bynnag, ni fabwysiadwyd yr ymagwedd hon eto fel polisi Llywodraethol ac felly ni ellir estyn y cyfleoedd a gynigir ganddi i grŵp mwy o lawer o bobl.

Mae'r adroddiad yn amlygu nifer o rwystrau a wynebier gan bobl ag anableddau deallusol o ran cyfleoedd i fanteisio ar addysg a chyflogaeth mewn amryw wledydd ledled Ewrop. Mae angen llunio gwell deddfwriaeth o hyd a'i gweithredu'n genedlaethol yn ogystal ag ar lefel yr UE. Dylai modelau presennol o arfer da mewn addysg gynhwysol a chyflogaeth dan gymorth gael eu hatgynhyrchu ar raddfa fwy helaeth. Dylai'r adroddiadau hyn helpu'r rhai sy'n gwneud penderfyniadau domestig ac Ewropeaidd i ddatblygu polisiau effeithiol gan sicrhau y cynhwysir pobl ag anableddau deallusol mewn cymdeithas.

O safbwynt Inclusion Europe, sef Cymdeithas Ewrop dros Bobl ag Anableddau Deallusol a'u Teuluoedd, mae'r adroddiad hwn yn gwneud cyfraniad pwysig iawn i'r drafodaeth bresennol ar gyfleoedd i fanteisio ar addysg a chyflogaeth i bobl ag anableddau deallusol. Ni allwn ond annog y rhai sy'n gwneud penderfyniadau lleol, cenedlaethol ac Ewropeaidd, darparwyr gwasanaeth a chyrff anllywodraethol anabledd a chymdeithasol i ystyried a dilyn yr argymhellion a ddatblygwyd yn yr adroddiad hwn.

*Geert Freyhoff*

Cyfarwyddwr  
Inclusion Europe

## 1. Crynodeb Gweithredol (Executive Summary)

Ledled Ewrop mae pobl ag anableddau deallusol<sup>13</sup> yn wynebu stigma difrifol, rhagfarn a rhwystrau sylweddol i wireddu eu hawliau dynol sylfaenol. Mae gwahaniaethu yn erbyn pobl ag anableddau deallusol wedi ei wreiddio'n ddwfn ac yn beth cyffredin, gan rwystro newid cadarnhaol. Yr allwedd i sicrhau bod pobl ag anableddau deallusol yn cael eu cynnwys yn gymdeithasol yw drwy ddarparu cyfleoedd gwirioneddol iddynt fanteisio ar addysg a chyflogaeth gan sicrhau y gallant fyw a gweithio yn y gymuned fel dinasyddion cydradd. Mae cysylltiad cryf rhwng addysg a chyflogaeth: heb gyfle i gael addysg ddigonol, ni all pobl ag anableddau deallusol gael cyflogaeth ystyrlon. Mae gwarafun cyfleoedd yn y modd hwn yn arwain at ddibyniaeth, tlodi ac allgáu cymdeithasol drwy gydol oes gan ychwanegu at stigma anabledd deallusol. Mae'r adroddiad monitro hwn yn canolbwyntio'n benodol ar addysg a chyflogaeth oherwydd eu pwysigrwydd i bobl ag anableddau deallusol ac oherwydd bod safonau rhyngwladol, a chyfraith genedlaethol, sy'n mynd i'r afael â hwy.

### *Cefndir*

Mae'r DU wedi cadarnhau'r rhan fwyaf o offerynnau hawliau dynol rhyngwladol, gan gynnwys y rhai â darpariaethau sy'n ymwneud â hawliau pobl ag anableddau. Fodd bynnag, nid yw'r DU wedi cadarnhau Siarter Gymdeithasol Ewrop, na llofnodi a chadarnhau Protocol Rhif 12 i'r Confensiwn Ewropeaidd ar Ddiogelu Hawliau Dynol a Rhyddid Sylfaenol (ECHR) eto. Nid yw ychwaith wedi cadarnhau Confensiwn C159 y Sefydliad Llafur Rhyngwladol ar Adsefydlu Galwedigaethol a Chyflogaeth (Personau Anabl), 1983.

O fis Mai 1997, cyflwynodd Llywodraeth y DU ddatganoli pwerau i'r Alban, Cymru a Gogledd Iwerddon, gyda Senedd San Steffan yn cadw sofraniaeth dros feysydd megis materion tramor, amddiffyn a pholisi macroeconomaidd. Ymgwymerodd Senedd yr Alban a Chynulliad Cenedlaethol Cymru â'u cyfrifoldebau yn 1999, ond mae Cynulliad Gogledd Iwerddon wedi ei atal ar hyn o bryd. Yn wahanol i'r rhan fwyaf o wledydd Ewropeaidd, nid oes gan y DU gyfansoddiad ysgrifenedig, ond mae gan y DU fframwaith deddfwriaethol cynhwysfawr i atal gwahaniaethu a sicrhau hawliau cyfartal.

Mae Deddf Hawliau Dynol 1998 yn cynnwys gwaharddiad rhag gwahaniaethu, er nad ar sail anabledd yn benodol. Y ddeddfwriaeth bwysicaf ynglŷn â hawliau pobl ag anableddau yw Deddf Gwahaniaethu ar sail Anabledd 1995 (DDA). Mae hon yn rhoi

<sup>13</sup> Mae'r term "anabledd deallusol" (a ddisgrifir hefyd fel "anabledd dysgu" neu, yn DDA er enghraifft, "arafwch meddwl") yn cyfeirio yma at gyflwr am oes, sydd fel arfer yn amlygu ei hun ar adeg genedigaeth neu sy'n datblygu cyn 18 oed. Cyflwr parhaol ydyw ac fe'i nodweddir gan allu deallusol sydd dipyn yn is na'r arferol ac mae'n arwain at gyfyngiadau gweithredol sylweddol mewn gweithredu deallusol ac mewn ymddygiad ymaddasol fel y'u mynegir mewn sgiliau ymaddasol cysyniadau, cymdeithasol ac ymarferol.

diffiniad o anabledd, ynghyd â mesurau i atal gwahaniaethu ar sail anabledd ym meysydd cyflogaeth; mynediad i nwyddau, cyfleusterau a gwasanaethau; a phrynu tir neu eiddo neu eu gosod ar rent. Estynnwyd y Ddeddf i gwmpasu addysg (mewn ysgolion ac addysg bellach ac uwch) drwy Ddeddf Anghenion Addysgol Arbennig ac Anabledd 2001 (SENDA 2001). Ym maes cyflogaeth, fe'i diwygiwyd ymhellach drwy Reoliadau Deddf Gwahaniaethu ar sail Anabledd 1995 (Diwygio) 2003 (Rheoliadau DDA 2003), a ddaeth i rym ar 1 Hydref 2004. Daw Deddf Gwahaniaethu ar sail Anabledd 2005 (2005) i rym ym mis Rhagfyr 2006, a bydd yn creu "Dyletswydd Cydraddoldeb i Bobl Anabl" ar sefydliadau'r Sector Cyhoeddus i atal gwahaniaethu mewn cyflogaeth ac i hyrwyddo cydraddoldeb i bobl anabl ym mhob agwedd ar eu gwaith. Mae'r DDA a diwygiadau dilynol yn gymwys i Gymru, Lloegr a Gogledd Iwerddon, ac i'r Alban (gyda mân eithriadau). Ceir diwygiadau rhanbarthol i'r DDA sy'n berthnasol i awdurdodaethau gwahanol y DU. Nid yw DDA 2005 yn ymestyn yn llawn i'r Alban a Gogledd Iwerddon, ond bydd Senedd yr Alban yn deddfu i sicrhau bod pob un o'i nodweddion ychwanegol wedi'u darparu yno.

Yn y DU, caiff anabledd deallusol ei ddiffinio a'i ganfod yn unol ag ICD-10 Sefydliad Iechyd y Byd. Fodd bynnag, defnyddir y term "anabledd dysgu" gan mwyaf, yn hytrach nag anabledd deallusol (fel y'i diffinnir yn yr adroddiad hwn). Ym maes addysg, defnyddir y termau mwy cyffredinol "plant ag anableddau dysgu" – sy'n cynnwys plant ag ystod o anableddau a chyflyrau, nid yn unig plant ag anableddau deallusol – a "phlant ag anghenion addysgol arbennig". Gwneir diagnosis o anabledd deallusol gan baediatregwyr yn y gwasanaeth iechyd neu gan weithwyr proffesiynol cysylltiedig sydd â'r dasg o fonitro datblygiad normal pob plentyn sy'n cael ei eni yn y DU, megis meddygon teulu ac ymwelwyr iechyd. Mae Awdurdodau Addysg Lleol yn gyfrifol am asesu Anghenion Addysgol Arbennig sy'n deillio o unrhyw anabledd, deallusol neu fel arall.

Yn y DU, anaml y defnyddir gwarcheidwaeth a, lle y digwydd hynny, prin iawn y'i defnyddir ar gyfer pobl ag anableddau deallusol. Yn Lloegr dim ond 473 o achosion o warcheidwaeth a gafwyd yn 2004, ac roedd y rhan fwyaf ohonynt yn ymwneud â phobl â phroblemau iechyd meddwl. Ym mhob achos, yr Awdurdod Lleol oedd y gwarcheidwad. Mae'n bwysig nodi bod gwarcheidwaeth, yn y DU, yn bŵer gwahanol iawn o'i gymharu â'r pwerau mewn llawer o wledydd Ewropeaidd eraill, ac nid yw'n gysylltiedig â gallu unigolyn. Yng Nghymru a Lloegr, mae Deddf Iechyd Meddwl 1983 yn diffinio gwarcheidwaeth. Dim ond tri phŵer sydd gan warcheidwad; ei gwneud yn ofynnol i'r person o dan warcheidwaeth breswyllo mewn lle penodedig; neu fynychu lleoedd penodedig ar gyfer triniaeth feddygol, galwedigaeth, addysg neu hyfforddiant; a'i gwneud yn ofynnol i feddyg, gweithiwr cymdeithasol cymeradwy neu berson penodedig arall weld yr unigolyn. Bydd Deddf Gallu Meddyliol 2005, na ddaw i rym tan 2007, yn rhoi fframwaith deddfwriaethol cynhwysfawr yn y dyfodol ar gyfer gwneud penderfyniadau ar ran pobl nad ydynt yn gallu gwneud penderfyniadau drostynt hwy eu hunain. Yn yr Alban, mae deddfwriaeth sy'n gwella'r ffordd y diogelir hawliau oedolion sydd heb y gallu meddyliol eisoes wedi'i rhoi ar waith.

Oherwydd diffiniadau gwahanol o anabledd deallusol, a'r ffaith bod cymaint o ddata swyddogol heb fod ar gael ar ffurf sydd wedi'i dadgrynhai yn ôl math o anabledd, gall fod yn anodd dehongli data swyddogol ar bobl ag anableddau deallusol yn y DU. Mae tystiolaeth ystadegol o astudiaethau epidemiolegol yn seiliedig ar asesiadau o gyniferydd deallusrwydd (gan ddefnyddio system dosbarthu dwy lefel), yn awgrymu bod tua 580,00 o bobl â *mân* anableddau deallusol yn y DU a 217,000 o bobl ag anableddau deallusol difrifol. Fodd bynnag, yn dibynnu ar y diffiniad a ddefnyddir (megis nifer y bobl sy'n ceisio gwasanaethau i bobl ag anableddau deallusol), efallai fod dros ddwy filiwn o bobl â rhyw fath o anabledd deallusol. Yn rhyngwladol, gwelir cydberthynas rhwng lefelau uwch o dlodi a chyfradd uwch o *fân* anableddau deallusol neu anableddau *canolig* (gan ddefnyddio dosbarthiad ICD â phedair lefel). Ceir arwyddion yr adlewyrchir lefelau uwch o dlodi yng Ngogledd Iwerddon, o'u cymharu â gweddill y DU, felly mewn mwy o achosion o *fân* anabledd deallusol. Ar draws y DU, bu Proses o ddadsefydliadu yn mynd rhagddi ers diwedd y 1980au. Dim ond tua 2000 o bobl ag anableddau deallusol sy'n aros mewn ysbytai arhosiad hir erbyn hyn. Yn Lloegr, mae mwy a mwy o wasanaethau preswyl ar gael yn y gymuned. Mae nifer fach o oedolion ag anableddau deallusol (44,000), fel canran, mewn cartrefi preswyl ac mae nifer cynyddol ohonynt mewn cartrefi i dri o bobl neu lai. Adlewyrchir y duedd hon ar draws gweddill y DU.

### *Mynediad i addysg*

Y ddeddfwriaeth bwysicaf o ran addysg plant ag anableddau deallusol yw Deddf Anghenion Addysgol Arbennig ac Anabledd 2001 (SENDA 2001), a sicrhodd fod deddfwriaeth addysg yn gyson â safonau rhyngwladol allweddol a safonau allweddol yr UE. Dim ond Prydain Fawr a gwmpesir gan y ddeddf hon, ond caiff deddfwriaeth gyfatebol (Gorchymyn Anghenion Addysg Arbennig ac Anabledd) ei chyflwyno yng Ngogledd Iwerddon. Mae SENDA 2001 yn cydgrynhai ac yn diwygio deddfwriaeth addysg flaenorol – gan gynnwys Deddf Addysg 1996, sy'n rhoi diffiniad o blant ag anawsterau dysgu ac anghenion addysgol arbennig (AAA). Mae'n ymestyn yn sylweddol hawl plant ag AAA, gan gynnwys plant ag anableddau deallusol, i gael eu haddysg mewn ysgolion prif ffrwd. Noda fod yn rhaid i addysg gael ei darparu mewn ysgol brif ffrwd, oni bai bod hynny yn groes i ddymuniadau rhiant y plentyn neu nad yw'n cydweddu â'r ddarpariaeth o addysg effeithlon i blant eraill. Mae SENDA 2001 hefyd yn estyn DDA i roi diogelwch rhag gwahaniaethu ym maes addysg (mewn ysgolion ac addysg bellach) ar sail anabledd, gan gynnwys derbyn plant a darparu gwasanaethau. Mae dyletswydd ar ysgolion i lunio "strategaethau hygyrchedd" i hwyluso'r broses o gynnwys disgyblion ag anableddau ac i wneud addasiadau rhesymol fel na fyddant o dan anfantais. Mae'r ddeddf yn estyn cylch gwaith y Comisiwn Hawliau Anabledd i wahaniaethu ym maes addysg. Yng Nghymru a Lloegr gwrandewir ar honiadau o wahaniaethu anghyfreithlon mewn addysg gan dribiwnlysoedd arbennig.

Yn dibynnu ar lefel anableddau deallusol plentyn, yn y DU, gall anabledd deallusol gael ei ganfod ar adeg genedigaeth; ymhlith plant cyn ysgol; neu'n ddiweddarach yn ystod addysg plentyn. Mae gwasanaethau ymyrryd yn gynnar ar gael yn eang i blant

cyn ysgol ag anableddau deallusol a'u teuluoedd; cynigir addysg arbennig i blant mor ifanc â dwy flwydd oed. Mae polisi diweddar y Llywodraeth wedi canolbwyntio ar wella'r ffordd y caiff gwasanaethau ymyrryd yn gynnar eu cydlynu a gwella cymorth i deuluoedd. Mae'r "Rhaglen Cychwyn Cadarn" yn cynnwys nifer o fentrau a fydd yn gwella gwasanaethau i blant difreintiedig, gan gynnwys plant ag anableddau deallusol, a'u teuluoedd, gan gynnwys estyn gwasanaethau dysgu gartref, megis Portage.

Yn y DU, naw mlynedd yw'r cyfnod o addysg orfodol hyd 16 oed. Mae plant yn mynychu naill ai ysgolion a gynhelir (a ariennir gan y Wladwriaeth) neu ysgolion nas cynhelir (annibynnol). Bydd plant a phobl ifanc ag anableddau deallusol yn cael addysg mewn ysgolion prif ffrwd yn bennaf (naill ai mewn dosbarth cynhwysol; neu mewn dosbarth neu uned arbennig); ysgolion arbennig (y gallant eu mynychu o oedran cyn ysgol neu hyd at 19 oed); neu unedau cymorth i ddisgyblion. Ychydig iawn sy'n cael addysg mewn ysbyty arhosiad hir neu drwy wersi yn y cartref yn yr hirdymor. Bydd plant ag anableddau deallusol yr aseswyd bod ganddynt anawsterau dysgu *difrifol*, *canolog* neu *dduys* (a rhai plant â *mân* anableddau deallusol) yn cael eu haddysg mewn ysgolion arbennig neu unedau anghenion arbennig fel arfer.

Yn y DU, Awdurdodau Lleol sy'n gyfrifol am asesu anghenion addysgol arbennig plant. Ceir gweithdrefnau asesu tebyg yng Nghymru, Lloegr a Gogledd Iwerddon. Yn Lloegr, gwneir asesiadau yn unol â Chod Ymarfer AAA, sydd wedi cael ei ddiwygio yn unol â SENDA 2001, ac mae cod tebyg hefyd wedi ei ddrafftio i Gymru. Erbyn hyn ceir pedair lefel o asesiad, y cynhelir pob un ohonynt gan dimau amllddisgyblaeth sy'n cynnwys gweithwyr proffesiynol iechyd ac addysg, ac mae'n cynnwys rhieni'r plentyn yn llawn. Yn lefelau un a dau, asesir anghenion addysgol arbennig y plentyn; rhoddir cymorth ychwanegol; a pharatoir Cynllun Addysg Unigol ar gyfer y plentyn. Yn achos plant ag anghenion arbennig difrifol neu gymhleth, gwneir asesiad arall. Os oes angen (lefel pedwar), paratoir datganiad AAA. Dim ond mewn achosion lle na ellir darparu-'n rhesymol ar gyfer anghenion plant o fewn yr adnoddau sydd ar gael mewn ysgol fel arfer y caiff datganiad ei baratoi. Mae'n manylu ar y ddarpariaeth addysgol arbennig (a'r ddarpariaeth nad yw'n addysgol) sydd ei hangen ar y plentyn ac yn enwi ysgol briodol (neu drefniant arall) i'r plentyn. Mae dyletswydd ar AAL (neu, yng Ngogledd Iwerddon, y Byrddau Addysg a Llyfrgelloedd) i roi'r math o gymorth y manylir arno yn y datganiad. Mae gan rieni yr hawl i apelio yn erbyn canlyniadau'r gweithdrefnau asesu, a estynnwyd o dan SENDA 2001, ond nid oes ganddynt yr hawl i ddewis ysgol os cred yr AAL "a placement in mainstream would be incompatible with the efficient education of other children". Fodd bynnag, mae dyletswydd ar yr AAL i ddangos nad oes dim camau rhesymol y gellid eu cymryd i atal diffyg cydweddoldeb.

Yn yr Alban, bydd newidiadau mawr yn y dyfodol i weithdrefnau asesu, yn unol â'r ddeddfwriaeth sydd newydd ei chyflwyno. Disodlir y term "additional support needs" gan "special educational needs". Ar hyn o bryd, yn yr Alban mae plant ag AAA yn cael Cofnod o Anghenion (sy'n cyfateb â datganiad AAA), ond nid oes hawl gan rieni i apelio yn erbyn y mesurau a restrwyd ac nid oes tribiwnlys apeliadau. Mae cyfran y plant sydd â Chofnod o Anghenion yn amrywio rhwng awdurdodau addysg (nodir

tuedd debyg yn Lloegr hefyd) a chredir bod hyn yn adlewyrchu pryderon Awdurdodau Addysg ynglŷn â'r gost o roi'r cymorth a restrir yn y cofnod. Yn yr Alban, pan fydd plentyn yn 14 oed, rhaid sefydlu Asesiad o Anghenion yn y Dyfodol i gadarnhau cynllunio pontio ar gyfer y plentyn. Pan fydd y plentyn yn symud o'r ysgol i addysg bellach, trosglwyddir y cyfrifoldeb am asesiadau pellach i Careers Scotland. Yn yr un modd, yng Nghymru a Lloegr pan fydd plentyn yn 13 oed rhaid llunio Cynllun Pontio i bob plentyn gyda datganiad AAA. Mae gwasanaeth Connexions (Lloegr); Gyrfa Cymru (Cymru); a'r Careers Service (Gogledd Iwerddon) yn chwarae rhan debyg i Careers Scotland. Mewn Papur Gwyrdd diweddar, mae'r Llywodraeth wedi cynnig diwygio gwasanaeth Connexions. Y bwriad yw datganoli cyfrifoldeb am gomisiynu gwasanaethau gwybodaeth a chynghor i bobl ifanc a'r trefniadau ariannu sy'n rhan o hyn o'r gwasanaeth Connexions i Awdurdodau Lleol, drwy ymddiriedolaethau plant, ysgolion a cholegau. Bydd hyn yn helpu i integreiddio Connexions ag ystod ehangach o wasanaethau ar lefel leol.

Yn y DU, mae nifer o raglenni'r UE (gan gynnwys Horizon, Leonardo ac Employ) wedi darparu prosiectau arloesol ar gyfer pobl ag anableddau deallusol wrth iddynt bontio o'r ysgol i'r coleg. Mae rhaglenni gweithredu gyda'r nod o wella cyflawniadau addysgol plant ag AAA wedi cael eu rhoi ar waith yn Lloegr (o 1998) ac yng Nghymru (o 1999). Mae nodau'r rhaglenni hyn, gan gynnwys cynyddu nifer y plant ag AAA sy'n cael eu haddysg mewn ysgolion prif ffrwd, yn berthnasol iawn i blant ag anableddau deallusol.

Yng Nghymru, Lloegr a Gogledd Iwerddon, mae'r Cwricwlwm Cenedlaethol perthnasol yn orfodol i bob disgybl mewn ysgolion a gynhelir gan y wladwriaeth, hyd at 14 oed. Fodd bynnag, gall disgyblion sydd wedi cael datganiad AAA gael eu heithrio o'r Cwricwlwm Cenedlaethol; neu gellir addasu'r Cwricwlwm Cenedlaethol (a'i drefniadau asesu) yn unol â hynny. O gofio ffocws academaidd y Cwricwlwm Cenedlaethol, ceir gwahaniaeth barn ymhlith hunan-eiriolwyr ac arbenigwyr addysgol, ynglŷn â'i effeithiolrwydd i ddysgu plant ag anableddau deallusol. Fodd bynnag, ceir cytundeb bod yn rhaid i'r grŵp hwn o blant gael y cymorth sydd ei angen arnynt i gyflawni cymaint ag sy'n bosibl yn academaidd ac i ddysgu sgiliau galwedigaethol. Yn yr Alban, mae ysgolion yn gyfrifol am ddatblygu eu cwricwlwm eu hunain, ond rhaid i'r rhain gael eu haddasu at anghenion disgyblion unigol, gan gynnwys y rhai ag anableddau deallusol. Ar draws y DU, rhaid paratoi Rhaglenni Addysg Unigol ar gyfer disgyblion â datganiad AAA (neu Gofnodion o Anghenion); caiff y rhain eu defnyddio fel sylfaen ar gyfer cynllunio, gosod targedau a sicrhau bod disgyblion yn gwneud cynnydd. Yn y rhan fwyaf o ysgolion prif ffrwd, mae Cydlynnydd AAA yn gyfrifol am ddatblygu polisi AAA'r ysgol ac am helpu staff i ddysgu a chynorthwyo plant ag AAA. Mae hyfforddiant athrawon i athrawon prif ffrwd yn cynnwys elfennau o ddysgu plant ag AAA, ond mae'r graddau y caiff plant â *mân* anableddau deallusol eu dysgu mewn dosbarthiadau prif ffrwd, a difrifoldeb anableddau deallusol y plant sy'n cael eu cynnwys, yn amrywio rhwng ysgolion cynradd ac uwchradd, a rhwng AALI. Mae cynorthwywyr cymorth dysgu neu gynorthwywyr anghenion arbennig/cynorthwywyr dysgu yn rhoi cymorth ychwanegol. Caiff plant â mathau difrifol neu gymhleth o AAA

(gan gynnwys llawer o blant ag anableddau deallusol) eu dysgu gan athrawon AAA, yn bennaf mewn unedau arbennig neu mewn ysgolion arbennig.

Yn amlwg mae deddfwriaeth a pholisi diweddar y Llywodraeth wedi rhoi blaenoriaeth i addysg plant ag AAA mewn amgylchedd prif ffrwd. Fodd bynnag, ar hyn o bryd, mae'r rhan fwyaf o bobl ifanc ag anableddau deallusol yn cael eu hasesu fel plant ag anableddau dysgu sy'n ddigon difrifol i gael eu haddysg naill ai mewn ysgolion arbennig neu mewn unedau arbennig ar wahân mewn ysgolion prif ffrwd. O ran addysg plant ag anableddau deallusol, yn aml dim ond rhai plant â *mân* anableddau deallusol sydd wedi cael eu cynnwys yn y brif ffrwd. Wrth i nifer cynyddol gael eu haddysg yn y brif ffrwd mewn ysgolion cynradd, mae rhieni yn ceisio eu cynnwys mewn addysg uwchradd ac addysg bellach erbyn hyn. Ar hyn o bryd, beth bynnag, nid oes gan y rhan fwyaf o ysgolion prif ffrwd ddigon o sgiliau, profiad ac adnoddau i roi'r cymorth sydd ei angen i roi addysg gynhwysol i blant ag anableddau deallusol; ystyrir bod ysgolion arbennig yn chwarae rhan bwysig wrth baratoi ysgolion prif ffrwd ar gyfer cynnwys y plant hyn. Eto i gyd, er bod polisïau bellach yn cydnabod y dylai plant â *mân* anableddau deallusol neu anableddau deallusol *canolig* gael addysg mewn ysgolion prif ffrwd, ceir amrywiaeth mawr yn y graddau y mae pobl ifanc ag anableddau deallusol mwy difrifol yn cael eu haddysg mewn ysgolion prif ffrwd neu arbennig.

### *Y cyfnod pontio rhwng addysg a gwaith*

Ar hyn o bryd, mae'r rhan fwyaf o bobl ifanc ag anableddau deallusol yn gadael yr ysgol heb sgiliau gwerthadwy ac, yn arbennig, nid ydynt yn cael profiad gwaith, er bod rhai ysgolion arbennig yn cynnig "rhagflas o waith" erbyn hyn ac mae nifer fach wedi trefnu i fyfyrwyr gael swyddi rhan-amser y tu allan i'r ysgol. Yr opsiwn ar ôl gadael yr ysgol yw lle mewn coleg, naill ai ar gwrs arbennig neu mewn uned arbennig yn y coleg. Fodd bynnag, nid oes ond ychydig ymwybyddiaeth o hyd o anghenion pobl ag anableddau deallusol ym maes addysg bellach. Ymhlith y rhwystrau a wynebant mae diffyg hyblygrwydd o ran cwricwlwm a phrinder staff cymorth; cyrsiau sydd wedi'u hanelu at lwyddiant i gael cymhwyster, yn hytrach na datblygu galluoedd myfyrwyr; a methiant i ogwyddo tuag at gyflogaeth fel y nod terfynol. Felly mae llawer o bobl ifanc ag anableddau deallusol yn methu â defnyddio'r sgiliau y maent yn eu dysgu.

Mae'r pontio cyfyngedig hwn rhwng addysg bellach a chyflogaeth wirioneddol yn peri syndod, o gofio bod gwaith cynllunio pontio yn ddatblygedig iawn yn y DU. Yn ôl y cynllun Pontio, mae Connexions, yn Lloegr, yn gyfrifol ar hyn o bryd am nodi anghenion pobl ifanc ag AAA, ac mae dyletswydd statudol ar y Cynghorau Dysgu a Sgiliau i sicrhau bod cyllid a chymorth priodol ar gael ar gyfer yr opsiynau a argymhellir. (Mae Gyrfa Cymru, Careers Scotland a Gwasanaeth Gyrfaoedd Gogledd Iwerddon yn chwarae rôl debyg i Connexions). Eto i gyd, ceir pryder bod pobl ag anableddau deallusol yn rhy aml yn cael eu trosglwyddo i wahanol gyrsiau ac opsiynau nad ydynt yn ymwneud â gwaith, yn hytrach na chael eu tywys yn llwyddiannus tuag at lwybr sy'n arwain at gyflogaeth. Yn rhy aml, nid ydynt hwy na'u rhieni yn cael digon o wybodaeth am yr opsiynau sydd ar gael ac mae'r cyfnod pontio o wasanaethau



cyfarwydd i wasanaethau newydd i oedolion yn peri dryswch iddynt. Yn wahanol i'r ysgol, yn aml nid oes lleoedd llawn amser mewn coleg, ac mae hynny yn rhoi pwysau ychwanegol ar rieni. Yn ogystal â hynny, efallai na fydd digon o gymorth i'r rhai sy'n cael gwaith yn syth. Nodwyd sawl rheswm dros hyn, gan gynnwys diffyg cyfrifoldeb cyffredinol clir am gynllunio'r cyfnod pontio, ymhlith y lliaws o asiantaethau dan sylw. Fel y nodwyd uchod, mae cynlluniau i ddiddymu'r gwasanaeth Connexions yn Lloegr a dychwelyd eu cyfrifoldebau i Awdurdodau Lleol.

Yn lle cyrsiau coleg, mae rhai rhaglenni hyfforddiant galwedigaeth sy'n seiliedig ar waith ar gael i bobl ag anghenion addysgol arbennig, lle mae pobl ifanc yn treulio'r rhan fwyaf o'u hamser ar leoliad mewn cwmni. Mae rhaglen "Entry to Employment (E2E)", yn arbennig, yn ddefnyddiol i'r rhai â *mân* anableddau deallusol. Ceir hefyd system ddatblygedig iawn o addysg i oedolion yn y DU, ac mae pobl ag anableddau deallusol yn gallu manteisio ar yr amrywiaeth eang o gyrsiau rhan-amser sydd ar gael mewn canolfannau addysg i oedolion.

### *Mynediad i Gyflogaeth*

Mae gan y DU fframwaith cynhwysfawr o ddeddfwriaeth gyflogaeth ac mae wedi trosi'r rhan fwyaf o ddarpariaethau Cyfarwydddeb Cyflogaeth yr UE yn ddeddfwriaeth genedlaethol, yn bennaf drwy ddiwygiadau i'r Ddeddf Gwahaniaethu ar sail Anabledd (Deddf 2005). Pan ddaw i rym, dylai Deddf 2005 sicrhau bod deddfwriaeth y DU yn hollol gyson â'r gyfarwydddeb. Gall pobl ag anableddau sydd am gwyno ynglŷn â gwahaniaethu mewn cyflogaeth gael eu cynorthwyo gan fframwaith y Comisiwn Hawliau Anabledd yng Nghymru, Lloegr a'r Alban, a'r Comisiwn Cydraddoldeb yng Ngogledd Iwerddon.

Mae'r rhan fwyaf o'r bobl ag anableddau deallusol yn y DU yn dibynnu ar fudd-daliadau lles y Wladwriaeth. Y prif fudd-daliadau lles y mae pobl ag anableddau deallusol yn eu cael yw Cymhorthdal Incwm, gan gynnwys premiwm ar gyfer pobl ag anableddau. Budd-dal yw hwn, yn y bôn, ar gyfer pobl nad ydynt mewn "gwaith â thâl". Mae llawer hefyd yn cael Lwfans Byw i'r Anabl, yn ogystal â budd-daliadau penodol eraill nad ydynt yn ymwneud ag anabledd. Mae pobl ag anableddau deallusol fel arfer yn meddu ar statws "anweithgar yn economaidd" a gallant barhau i gael eu budd-daliadau heb gael eu hadolygu'n rheolaidd. Cynlluniwyd y system lles cymdeithasol i hwyluso'r broses o symud o fudd-daliadau i gyflogaeth. Wrth symud i gyflogaeth amser llawn, gall budd-daliadau a gollir megis y Cymhorthdal Incwm gael eu gwrthbwyso gan fudd-daliadau ychwanegol, gan gynnwys Credyd Treth Gwaith. Er hyn, ar gyfer pobl ag anableddau deallusol mewn llety gyda darpariaeth staffio, gall y posibilrwydd o golli Budd-dal Tai wneud i bobl beidio â symud i gyflogaeth amser llawn o hyd. Fel arfer, ar gyfer pobl ag anableddau deallusol, symud i gyflogaeth ran-amser tra'n cadw'r budd-daliadau yw'r dewis opsiwn. O dan reolau "Gwaith â Chymorth a Ganiateir", gall pobl ag anableddau weithio hyd at 16 awr yr wythnos mewn gwaith â chymorth am gyfnod amhenodol os ydynt yn cael mathau o gymorth cydnabyddedig. Mae hon yn ffordd arbennig o bwysig i bobl ag anableddau deallusol

ymuno â'r gweithlu prif ffrwd, er bod y rheoliadau presennol yn golygu, yn ymarferol, y gallant gael eu cyfyngu'n fwy byth o ran yr oriau y gallant eu gweithio a dim ond incwm ychwanegol cyfyngedig y byddant yn ei ennill o ganlyniad.

Y ddau brif faes asesu ar gyfer oedolion ag anableddau deallusol yw asesu cymhwyster i gael budd-daliadau lles ac i ymuno â chynlluniau cyflogaeth y Llywodraeth. Gall unigolyn ag anableddau gael ei gyfeirio at gynlluniau cyflogaeth y Llywodraeth, megis "Mynediad at Waith", CAM AT WAITH a Chymorth Cyflogaeth yng Ngogledd Iwerddon, yn dilyn asesiad a gynhelir gan Ymg-Gwaith i'r Anabl Timau Gwasanaethau Anabledd yr Adran Gwaith a Phensiynau, neu'r swyddogion cenedlaethol cyfatebol. Mae'r Ymgynghorydd Gwaith i'r Anabl yn datblygu cynllun gweithredu sy'n cyfeiriadu'r unigolyn tuag at gyfleoedd addas.

Yn y DU, cyfeiriwyd cronfeydd yr UE – yn arbennig Cronfeydd Cymdeithasol Ewrop – yn uniongyrchol at raglenni a oedd yn annog cyflogwyr i gyflogi pobl ag anableddau, gan gynnwys anableddau deallusol. Yn arbennig, yn y gorffennol, rhoddwyd swm sylweddol o arian i asiantaethau cyflogaeth â chymorth at ddibenion datblygu, er, o ganlyniad i newid mewn blaenoriaethau mae lefel yr arian wedi gostwng erbyn hyn ac wedi symud i fathau eraill o gynlluniau.

Mae gan y Llywodraeth bolisi clir ar roi cyfleoedd cyflogaeth newydd yn arbennig i bobl ag anableddau deallusol, fel y nodir ym Mhapur Gwyn 2001, sef Gwerthfawrogi Pobl. Yn y DU, ceir nifer o lwybrau i bobl ag anableddau sy'n ceisio ymuno â'r farchnad waith, gan gynnwys drwy'r Ganolfan Byd Gwaith, lle y bydd pawb yn mynd i geisio gwaith a hawlio budd-daliadau lles fel ceiswyr gwaith. Nid oes gan y DU system gwota mwyach i annog cyflogwyr i gyflogi pobl ag anableddau, felly y ddau brif opsiwn sydd ganddynt, yn dibynnu ar lefel eu hanabledd, yw Rhaglenni'r Farchnad Lafur Weithredol neu gynlluniau cyflogaeth arbenigol ar gyfer pobl ag anableddau – a ddarperir drwy Lywodraeth ganolog a thrwy raglenni a gynhelir drwy'r awdurdod lleol. Ar hyn o bryd, ychydig iawn o bobl ag anableddau deallusol sy'n cael mynediad i'r rhaglenni prif ffrwd, megis "y Fargen Newydd" a "Hyfforddiant yn seiliedig ar Waith".

Yn y DU, mae mwyafrif y bobl ag anableddau deallusol yn methu â chael mynediad i gyflogaeth. Mae'r amcangyfrifon yn amrywio, ond amcangyfrifa'r datganiad mwyaf diweddar o'r strategaeth Gwerthfawrogi Pobl mai dim ond 11 y cant o bobl ag anableddau deallusol sydd mewn cyflogaeth â thâl, o gymharu â 49 y cant ar gyfer pobl ag anableddau yn gyffredinol. Amcangyfrifir bod dros 75,000 o bobl yn mynychu canolfannau dydd a redir gan awdurdodau lleol ledled y DU, sy'n amrywio'n sylweddol o ran eu pwyslais ar baratoi ar gyfer cyflogaeth. Er nad oes ffigurau manwl gywir ar gael, gellir amcangyfrif bod tua 16,000 o bobl ag anableddau deallusol yn cael mynediad i raglenni cyflogaeth arbenigol a ddarperir gan y Llywodraeth i bobl ag anableddau.

Cyflogaeth â chymorth yw un o'r ffyrdd mwyaf effeithiol i bobl ag anableddau deallusol gael mynediad i gyflogaeth ar y farchnad agored. Yn y DU, mae cyrff anllywodraethol, gan gynnwys Mencap yn chwarae rhan bwysig yn y gwaith o ddarparu cyflogaeth â chymorth. Mae'n anodd iawn cael amcangyfrifon o nifer y gwasanaethau sy'n cynnig

cyflogaeth â chymorth, a faint o bobl sydd wedi cael swyddi drwy'r model hwn. Mae dros 400 o asiantaethau yn gweithredu yn y DU.<sup>14</sup> Mae nifer sylweddol yn gyrff anllywodraethol, ond nid oes unrhyw ddata ar faint yn union. Mae pobl ag anableddau deallusol yn elwa pan gânt fynediad i fodel llawn o gyflogaeth â Chymorth. Mae'r Llywodraeth yn cynnig nifer o raglenni cyflogaeth arbenigol (y'u hystyriwyd ar un adeg yn ddarpariaeth warchodol) sy'n berthnasol i bobl ag anableddau deallusol. Mae'r rhaglen CAM AT WAITH yn cynnig swyddi drwy rwydwaith o ffatrïoedd â chymorth a thrwy leoliadau yn y gymuned – yn hanesyddol mae'r rhain wedi rhoi cymorth drwy gynnig cymorth i dalu cyflogau i gyflogwyr, ond yn fwy diweddar, drwy gynnig cymorth mwy hyblyg i staff yn y gwaith a phecynnau cymorth ariannol. Caiff lleoliadau ffatri a lleoliadau yn y gymuned CAM AT WAITH eu hategu gan gyfleoedd a gynigir gan Remploi Cyf, y darparwr cenedlaethol mwyaf a ariennir gan y Llywodraeth. Mae'r Llywodraeth hefyd yn rhoi cymorth i bobl sy'n ceisio cyflogaeth agored drwy'r rhaglen "Mynediad at Waith", sy'n cynnig cymorth ariannol gyda chymorth yn y swydd, trafndiaeth, cymhorthion gwaith ac addasiadau yn y gweithle.

Nid yw'r rhaglenni arbenigol CAM AT WAITH a "Mynediad at Waith" yn darparu ar gyfer talu hyfforddwyr swyddi – sy'n elfen bwysig iawn i bobl ag anableddau deallusol – er bod cyfyngiadau o ran amser yn achos y rhaglen "Mynediad at Waith". Er hyn, nid yw'r rhaglenni hyn yn talu am y model llawn, o Broffilio Galwedigaethol hyd at gymorth yn y gweithle a gwasanaethau dilynol. Caiff asiantaethau cyflogaeth â chymorth eu hariannu'n bennaf gan wasanaethau cymdeithasol yr awdurdod lleol, ond ceir galw cynyddol i sicrhau bod arian prif ffrwd gan Lywodraeth ganolog ar gael. Ar hyn o bryd, anghyson yw'r mynediad i wasanaethau cyflogaeth â chymorth ledled y DU.

<sup>14</sup> Yn seiliedig ar aelodaeth o Gymdeithas Cyflogaeth â Chymorth Prydain ([www.afse.org.uk](http://www.afse.org.uk)); Undeb Cyflogaeth â Chymorth yr Alban ([www.suse.org.uk](http://www.suse.org.uk)), Cymdeithas Cyflogaeth â Chymorth Gogledd Iwerddon ([www.niuse.org.uk](http://www.niuse.org.uk)), a'r Gymdeithas Cyflogaeth â Chymorth (Cymru) (Cyfathrebu personol). (Cyrchwyd y gwefannau ym mis Awst 2005).

## 2. Argymhellion (Recommendations)

### Argymhellion cyffredinol

#### *Safonau Rhyngwladol*

1. Dylai'r DU gadarnhau Confensiwn ILO C159 ar Adsefydlu Galwedigaethol a Chyflogaeth (Pobl Anabl) 1983.
2. Dylai'r DU gadarnhau Siarter Gymdeithasol Ewropeaidd Ddiwygiedig 1996 ac ymrwmo ei hun i Erthygl 15 ar hawl pobl ag anableddau i fod yn annibynnol, integreiddio â chymdeithas a chyfranogi ym mywyd y gymuned. Dylai hefyd lofnodi a chadarnhau Protocol 12 ar Ddiogelu Hawliau Dynol a Rhyddid Sylfaenol (ECHR).

### Argymhellion ar fynediad i addysg

3. Croesewir byrdwn cyffredinol polisi AAA y Llywodraeth o gynnwys pobl ag anableddau mewn ysgolion prif ffrwd lle bo hynny'n bosibl.<sup>15 16</sup> Fodd bynnag, rhaid iddi gyflawni ei hymrwymiad i ddod â chymorth arbenigol, a phrofiad athrawon ychwanegol i mewn i ysgolion prif ffrwd, a sicrhau adnoddau digonol, er mwyn i blant a phobl ifanc ag anableddau dysgu ffynnu mewn ysgolion prif ffrwd.
4. Dylai'r Llywodraeth sicrhau y gellir darparu ar gyfer plant yn eu cymunedau eu hunain a dylai leihau'r ddibyniaeth ar ysgolion preswyl arbenigol, er mwyn osgoi symud y bobl ifanc hyn ag anableddau deallusol sylweddol o'u hardal, oddi wrth eu cyfoedion a'u teuluoedd.

### Argymhellion ar drosglwyddo o addysg i gyflogaeth

#### *Datblygiad y cwricwlwm*

5. Dylai llywodraethau yn y DU roi mwy o bwyslais ar ymagwedd hyblyg ac unigol tuag at addysgu pobl ifanc ag anableddau deallusol, gan gynnwys yr opsiwn o ddefnyddio cwricwlwm swyddogaethol, yn hytrach na Chwricwlwm Cenedlaethol wedi ei addasu, i'r rhai a fyddai'n elwa ar hyn. Dylai unrhyw gwrwlwm swyddogaethol sicrhau bod pobl ifanc ag anableddau deallusol yn

<sup>15</sup> Yr Adran Addysg a Sgiliau *Removing the Barriers to Achievement: The Government's Strategy for SEN*. 2004. [http://www.teachernet.gov.uk/\\_doc/5970/removing%20barriers.pdf](http://www.teachernet.gov.uk/_doc/5970/removing%20barriers.pdf) (agorwyd 20 Awst 2005).

<sup>16</sup> Gweithrediaeth yr Alban, *Moving Forward! Additional Support for Learning*, Gweithrediaeth yr Alban, HMSO, Caeredin, 2003.

dysgu'r sgiliau sydd eu hangen arnynt mewn sefyllfaoedd cartref, gwaith, hamdden a chymuned go iawn, ac y gallant gaffael y sgiliau sylfaenol a fydd yn eu galluogi i gymryd eu lle yn y gweithlu, gyda holl fanteision cysylltiedig statws ac integreiddiad.

### *Cynllunio'r broses drosglwyddo*

6. Dylai llywodraethau yn y DU gydnabod yr angen i bobl ifanc ag anableddau deallusol, yn enwedig y rhai ag anableddau deallusol mwy difrifol, yn gynyddol dreulio amser a chael cyfarwyddyd yn yr amgylcheddau lle y byddant yn treulio eu bywydau yn ddiweddarach fel oedolion – sefyllfaoedd cartref, hamdden, bywyd cymunedol ac, yn arbennig, sefyllfa waith go iawn. Er mwyn rhoi'r ymagwedd hon ar waith, dylai mwy o adnoddau cymorth fod ar gael i bobl ifanc ag anableddau deallusol mewn ysgolion arbennig (ac mewn ysgolion prif ffrwd os ydynt wedi eu hintegreiddio'n llawn) a dylid rhagweld rôl ehangach i Weithwyr Cymorth Dysgu wrth gefnogi dysgu yn y gymuned.
7. Dylai asiantaethau<sup>17</sup> sy'n gysylltiedig â throsglwyddo sicrhau bod cynlluniau'r broses drosglwyddo yn canolbwyntio ar y person ac yn gyfranogol.
8. Dylai ysgolion, a gwasanaethau gyrfaedd, gwasanaethau cymdeithasol ac iechyd sicrhau bod teuluoedd a gofalwyr pobl ifanc ag anableddau deallusol sy'n trosglwyddo o addysg i gyflogaeth yn bartneriaid cyfartal a chydweithredol, a'u bod yn cael y wybodaeth, y cymorth a'r cyngor sydd eu hangen arnynt, i wneud penderfyniadau hyddysg a meddwl yn uchelgeisiol ynghylch dyfodol y person ifanc.
9. Dylai'r holl asiantaethau â chyfrifoldebau statudol wrth gynllunio'r broses drosglwyddo sicrhau bod canlyniadau'r gwaith o gynllunio'r broses drosglwyddo mor benodol â phosibl. Dylai'r broses drosglwyddo anelu at nodi canlyniadau clir ar gyfer y dyfodol a chymorth penodol i'w cyflawni.
10. Dylai asiantaethau sy'n gysylltiedig â'r broses drosglwyddo rannu gwybodaeth yn fwy effeithiol a phaidio â defnyddio cyfrinachedd fel rheswm dros beidio â rhannu gwybodaeth berthnasol am gleientiaid sydd ei hangen er mwyn cynllunio. Dylent sicrhau bod proses drosglwyddo fwy effeithiol ar waith rhwng gwasanaethau plant ac oedolion ar yr adegau hollbwysig hyn. Rhaid i hyn fod yn flaenoriaeth yn y system Ymddiriedolaethau Plant arfaethedig yn Lloegr. Dylid cyflwyno system olrhain i fyfyrwyr wrth iddynt fynd drwy'r broses drosglwyddo a thu hwnt, i sicrhau bod canlyniadau'r cynlluniau trosglwyddo yn cael eu cyflawni.

<sup>17</sup> Ysgolion, Connexions/Gyrfa Cymru/Careers Scotland/Careers Service (Northern Ireland), gwasanaethau cymdeithasol, y GIG (lle mae'n gysylltiedig â hyn) a chyrrff anllywodraethol sy'n gysylltiedig â darparu unrhyw weithgareddau, profiadau a chymorth.

11. Rydym yn cydnabod bod Llywodraethau yn awyddus i sicrhau bod y broses drosglwyddo yn effeithiol, a bod newidiadau wedi cael eu cynnig.<sup>18</sup> Wrth weithredu'r rhain, dylai Llywodraethau sicrhau bod asiantaethau sy'n gysylltiedig â'r broses drosglwyddo, yn sicrhau mewn blynyddoedd trosglwyddo, bod gwasanaethau oedolion yn chwarae rhan gynyddol cyn i bobl ifanc ag anableddau deallusol adael ysgol, yn hytrach nag aros hyd nes eu bod yn gadael. Gall pawb ddysgu llawer hefyd drwy chwalu rhwystrau artiffisial a sefydlu lleoliadau ar gyfer bywyd fel oedolion cyn i bobl adael ysgol.
12. Dylai Llywodraethau yn y DU egluro pa asiantaethau ddylai arwain y blaen o ran gwella'r broses drosglwyddo. Yn arbennig, dylid egluro cyfrifoldebau Connexions (neu ei olynwyr)/Gyrfa Cymru/Careers Scotland/Careers Service (Northern Ireland), i bobl ag anableddau deallusol, ynghyd â'r adnoddau, y staff a'r hyfforddiant y bydd eu hangen arnynt i sicrhau canlyniadau gwell.
13. Dylai Llywodraethau yn y DU hyrwyddo cysyniad Cynghorydd Personol i helpu pobl ag anableddau deallusol yn ystod y broses drosglwyddo.

### *Cyflogaeth dan gymorth*

14. Dylai'r adrannau sy'n gyfrifol am ddatblygu cyfleoedd cyflogaeth,<sup>19</sup> ynghyd â'r rhai sy'n gyfrifol am gynllunio'r broses drosglwyddo, sicrhau bod lleoliadau cyflogaeth dan gymorth ar gael i bobl ifanc ag anableddau deallusol yn yr ysgol. Ar hyn o bryd, mae mwyafrif y gwasanaethau cyflogaeth dan gymorth ar gyfer oedolion, ac mae angen i'r gwasanaethau hyn fod ar gael rhwng y cyfnod ysgol a bywyd fel oedolion, ar y cyd ag addysg, er enghraifft, yn hytrach nag ar eu pen eu hunain. Dylai asiantaethau cyflogaeth dan gymorth hefyd fod ar gael i helpu pobl rhwng 19-21 oed ar ôl gadael coleg.

### *Addysg oedolion a Dysgu Gydol Oes*

15. Dylai'r asiantaethau sy'n gysylltiedig ag Addysg Bellach<sup>20</sup> sicrhau na chaiff pobl ifanc ag anableddau deallusol eu cyfyngu i "gyrsiau mynediad" ar wahân a bod addasu'r cwricwlwm, ac o bosibl mwy o dechnegau cyfarwyddo systematig pwerus ar gael drwy systemau Cymorth Dysgu. Dylai systemau Cymorth Dysgu helpu pobl ifanc ag anableddau deallusol i gymryd rhan mewn ystod lawn o gyrsiau galwedigaethol, yn dibynnu ar eu gallu a'u diddordebau a dylent fod yn gallu darparu cymorth personol i bobl i'w hintegreiddio yn fwy â chysiau coleg. Dylid sicrhau bod cysylltiad da rhwng y

<sup>18</sup> Uned Strategaeth y Prif Weinidog *Improving the life chances of disabled people: Final Report (2005)*. [Http://www.strategy.gov.uk/downloads/work\\_areas/disability/disability\\_report/pdf/disability.pdf](http://www.strategy.gov.uk/downloads/work_areas/disability/disability_report/pdf/disability.pdf) (agorwyd 31 Awst 2005).

<sup>19</sup> Yr Adran Gwaith a Phensiynau, Adran Menter a Dysgu Gydol Oes Gweithrediaeth yr Alban, Adran Cyflogaeth a Dysgu (Gogledd Iwerddon) ac, o dan *Valuing People*, Byrddau Partneriaeth Lleol.

<sup>20</sup> LSCs/ELWa/LECs/Adran Addysg (Gogledd Iwerddon) a Cholegau Addysg Bellach.

cyrsiau â'r farchnad gyflogaeth leol a dylent fod yn ymatebol, gan ddarparu hyfforddiant yn y sgiliau sydd eu hangen ar ddiwydiant lleol.

16. Dylai colegau ddarparu rhagflas gwaith dan gymorth digonol yn ystod addysg bellach i bobl ifanc ag anableddau deallusol, yn yr un ffordd ag a gynigir ar hyn o bryd i lawer o fyfyrwyr coleg nad ydynt yn anabl ar gyrsiau galwedigaethol. Dylai profiad gwaith o'r fath gynnwys cymorth, strwythur ac amcanion clir, wedi eu gwerthuso i bobl ifanc ag anableddau deallusol.
17. Dylai colegau ddatblygu partneriaethau cryf ag asiantaethau cyflogaeth dan gymorth lleol i ddarparu cymorth i ddod o hyd i swydd a chymorth seiliedig ar waith i helpu pobl ifanc ag anableddau deallusol i bontio'r blwch a wynebant o hyd wrth symud i fyd gwaith.

### *Ariannu*

18. Dylai llywodraethau yn y DU gymryd camau i sicrhau bod mwy o hyblygrwydd wrth ariannu gwasanaethau a all ddarparu cymorth unigol ar gyfer trosglwyddo pobl ifanc o ysgol i goleg a chyflogaeth, ac o hyfforddiant i gyflogaeth.

## **Argymhellion ar fynediad i gyflogaeth**

### *Addasu'r system budd-daliadau lles*

19. Dylai llywodraethau ddileu'r gofyniad bod yn rhaid i ymgeiswyr ar gyfer y consesiwn Gwaith a Ganiateir ddangos y byddai'r gwaith y maent yn ymgymryd ag ef yn "gwella neu'n cynnal eu sefyllfa."
20. Dylai llywodraethau<sup>21</sup> ymchwilio i ymagwedd fwy hyblyg tuag at bontio'r blwch rhwng Budd-daliadau Analluogrwydd a'r Credydau Treth. Dylai hyn fynd i'r afael yn benodol â'r meinhau 100 y cant mewn Cymhorthdal Incwm wrth ddechrau cyflogaeth, ac anhyblygrwydd y ffin 16 awr yr wythnos rhwng Budd-dal Analluogrwydd a'r Credyd Treth Gwaith. Un posibilrwydd fyddai ymestyn terfyn oriau is y Credyd Treth Gwaith tuag i lawr, a chaniatáu i unigolion ymuno â'r cynllun ar gam gwahanol, a fyddai, fwy neu lai, yn creu budd-dal hybrid i bobl sy'n gweithio llai nag 16 awr, a chredyd yn y gwaith i bobl sy'n gweithio mwy nag 16 awr.
21. Dylai llywodraethau ystyried syniadau ar gyfer diwygiadau mwy radical yn y dyfodol. Gallai hyn gynnwys:
  - Rhoi'r gorau i "analluogrwydd" fel egwyddor trefnu a'i ddisodli gydag iawndal ar gyfer "anfantais yn y farchnad lafur". Byddai hyn yn dileu'r gwrthddywediad cynhenid rhwng unrhyw fath o ddatblygiad tuag at fyd gwaith a chael diogelwch yn sgîl statws budd-daliadau arbennig. Un achos

<sup>21</sup> Yr Adran Gwaith a Phensiynau a Chyllid y Wlad yn bennaf.

o'r fath yw pobl ifanc sydd am hawlio'r math newydd anghyfrannol o Fudd-dal Analluogrwydd, a fydd yn gorfod datgan eu bod yn "analluog i weithio" cyn iddynt gael cyfle i ddarganfod beth mae gwaith yn ei olygu.

- Uno Credydau Treth a Budd-daliadau Analluogrwydd yn un strwythur sy'n gwerthfawrogi pob math o waith, tra'n darparu isafswm incwm gwarantedig os na fydd pobl yn gweithio, ynghyd â chymhellion cynyddol a pharhaol i unigolion weithio oriau hwy. Drwy gyfuno'r ddau newid hyn, byddai'n bosibl dileu'r angen am y Consesiwn Gwaith a Ganiateir, i roi mwy o ddiogelwch ariannol drwy gysylltiadau parhaol yn ôl i lefelau blaenorol o gymorth ariannol i bobl sy'n parhau i fod o dan anfantais yn y farchnad lafur.

### *Gwasanaethau cyflogaeth*

22. Dylai Llywodraethau yn y DU wella cynllunio unigol i bobl â mwy o anghenion cymorth, gan gynnwys pobl ag anableddau deallusol mwy difrifol. Gall cynllunio sy'n canolbwyntio ar y person ar gyfer pobl sydd â mwy o anghenion cymorth fod yn llafurus, ac mae'n annhebygol y bydd Cynghorwyr Personol â llwyth achosion mawr yn gallu ymgymryd â'r math hwn o weithgaredd ar unrhyw raddfa. Mewn achosion o'r fath, dylai Cynghorwyr Personol fod yn gallu gosod y gwaith proffilio galwedigaethol ar gontract i asiantaethau arbenigol sydd â'r sgiliau priodol: dylai fod gan Gynghorwyr Personol adnoddau i dalu am y gwasanaeth hwn; a dylent fod yn gallu comisiynu gwasanaethau yn hyblyg, mewn ffyrdd sy'n gwireddu canlyniadau'r broses gynllunio hon.

### *Gwella'r rhaglen WORKSTEP*

23. Dylai'r Llywodraeth gasglu gwybodaeth am arfer da ac arloesedd yn y rhaglen WORKSTEP sy'n darparu'n effeithiol ar gyfer pobl ag anableddau deallusol – er enghraifft, mae rhai darparwyr WORKSTEP wedi cynnig cymorth unigol i ymgeiswyr swyddi a darparwyr swyddi – a rhannu profiad o'r fath ar draws darparwyr.
24. Dylai'r Llywodraeth ddatblygu WORKSTEP i fod yn fodel cymorth, yn hytrach na model rhaglen. Mae newid diwylliannol pwysig yn cynnwys symud i ffwrdd o broses asesu sy'n canolbwyntio ar gymhwyster ar gyfer rhaglenni sefydlog, ac yn lle hynny creu cynllun gweithredu unigol, wedi ei gynllunio i sefydlu pa gymorth sydd ei angen ar bob unigolyn. Felly dylai pobl gael eu hystyried yn "gyflogadwy" pan fyddant am weithio a phan fydd angen cymorth arnynt.
25. Dylai'r Llywodraeth wella capasiti'r rhaglen WORKSTEP. Yn arbennig, gellid adeiladu ar waith darparwyr WORKSTEP, i annog rhoi cymorth unigol i bobl ag anableddau deallusol a chyflogwyr, drwy:



- Gyfuno â ffynonellau ariannu eraill (megis iechyd a gwasanaethau cymdeithasol) i ddarparu cymorth hirdymor i'r bobl hynny sydd ei angen;
- Ailddiffinio "cynnydd", yng nghyd-destun WORKSTEP, i gynnwys mwy o gyfrifoldeb, statws swydd, oriau a chyflog, yn ogystal ag annibyniaeth. Byddai hyn yn annog darparwyr i gefnogi datblygiad gyrfaol unigolion.
- Cynyddu'r arian sydd ar gael a gweithio gyda darparwyr i sicrhau argaeledd cynyddol y model cyflogaeth dan gymorth llawn.

### *Arweiniad Llywodraeth*

26. Dylai Llywodraeth y DU sicrhau bod argymhellion adroddiad The Same as You? Yn yr Alban yn cael eu hystyried hefyd ar gyfer gwella gwasanaethau mewn rhannau eraill o'r DU.
27. Croesawn y Ddyletswydd Cydraddoldeb<sup>22</sup> newydd ar sefydliadau sector cyhoeddus, gan bwysu ar Lywodraethau i annog awdurdodau lleol, ymddiriedolaethau iechyd a chyrff cyhoeddus eraill ledled y DU i roi mwy o flaenoriaeth o lawer i ddatblygu ystod o gyfleoedd cyflogaeth i bobl ag anableddau deallusol. Dylai awdurdodau lleol ac ymddiriedolaethau iechyd, yn arbennig, osod esiampl drwy gyflogi mwy o bobl ag anableddau deallusol o fewn eu gweithluoedd eu hunain.
28. Dylai'r Llywodraeth gymryd camau i sicrhau nad yw pobl ag anableddau deallusol yn syrthio rhwng y gwasanaethau a'r systemau budd-daliadau lles niferus sydd ar waith gan y Llywodraeth. Un syniad fyddai ystyried comisiynu "adroddiad allgáu cymdeithasol"<sup>23</sup> i dynnu ynghyd y materion, a chynllunio i gau'r bylchau sy'n bodoli.
29. Dylai'r Adran Gwaith a Phensiynau/Canolfan Byd Gwaith gymryd camau i sicrhau bod eu gwasanaethau wedi eu teilwra i anghenion pobl ag anableddau deallusol. Yn arbennig:
  - Dylai Cynghorwyr Personol, y rhai sy'n gweithredu timau Canolfan Byd Gwaith a Chynghorwyr Cyflogaeth i'r Anabl, fod yn gadarnhaol wrth nodi pa dasgau gwaith y gallai pobl ag anableddau deallusol eu gwneud, pa amgylcheddau gwaith a fyddai'n gweddu orau iddynt, a beth fyddai ei angen i'w cynnal hwy yn eu swyddi

<sup>22</sup> Bydd DDA 2005 yn ei gwneud yn ofynnol i sefydliadau sector cyhoeddus mwy o faint lunio Cynllun Cydraddoldeb Anabledd i nodi sut y maent yn hyrwyddo cydraddoldeb i bobl anabl. Gallai hyn gynnwys blaenoriaethu'r grwpiau anabl hynny sydd â'r presenoldeb lleiaf yn y gweithlu, a newid polisiau a gweithdrefnau pan fyddant yn creu rhwystr i gydraddoldeb.

<sup>23</sup> Mae Uned Allgáu Cymdeithasol y Llywodraeth wedi cwblhau dadansoddiadau trawsadrannol o faterion sy'n allgáu grwpiau penodol yn gymdeithasol (e.e. Mental health and Social Exclusion, <http://www.socialexclusionunit.gov.uk/page.asp?id=5> (agorwyd 31 Awst 2005).

- Bydd mwy o hyblygrwydd yn y mathau o gymorth y gellir ei ariannu yn helpu
- Dylid symud o ddiwylliant o asesu “parodrwydd am swydd” person, i broffilio yr hyn y gallai pobl ei wneud gyda chymorth a hyfforddiant effeithiol, sy’n hollbwysig i bobl ag anableddau deallusol.

### *Cydlynu rhwng asiantaethau*

30. Dylai fod gwell cydweithredu rhwng y Ganolfan Byd Gwaith, y sector cyflogaeth dan gymorth arbenigol, ac adrannau allweddol eraill y Llywodraeth sydd â diddordeb mewn datblygu cyflogaeth i bobl ag anableddau (Yr Adran Iechyd), yn ogystal â chyfranogwyr hollbwysig eraill (er enghraifft y mudiad Social Firms).<sup>24</sup> Dylai cydweithredu o’r fath, yn arbennig, ganolbwyntio ar ddatblygu deunyddiau hyfforddi ar raddfa fawr sydd wedi eu cynllunio i wella hyfforddiant i Gynghorwyr Personol, WORKSTEP a staff eraill gyda’r nod o roi’r sgiliau priodol i bobl.

### *Cyflogaeth dan gymorth*

31. Dylai Llywodraeth y DU wneud newidiadau i’r ffordd yr ariennir cyflogaeth dan gymorth, i’w galluogi i ddiwallu anghenion mwy o bobl ag anableddau deallusol. Yn arbennig, dylai arian craidd fod ar gael ar gyfer model llawn cyflogaeth dan gymorth o ffynonellau canolog y Llywodraeth.
32. Dylai’r Llywodraeth arwain y blaen o ran sicrhau ansawdd wrth ddarparu gwasanaethau cyflogaeth dan gymorth, drwy gyflwyno safonau ansawdd ar gyfer darparwyr cyflogaeth dan gymorth. Gallai’r rhain fod yn seiliedig ar y rhai sydd eisoes yn bodoli o fewn WORKSTEP, ond byddent yn adlewyrchu arfer da yn benodol yn y model cyflogaeth dan gymorth llawn.

<sup>24</sup> Math o fenter gymdeithasol yw Social Firms a sefydlir gyda’r nod o gyflogi pobl ag anableddau ac anfanteision yn y farchnad lafur agored. Gweler [www.socialfirms.co.uk/](http://www.socialfirms.co.uk/) am ragor o wybodaeth.

### III. Full Report

## A. Country Overview and Background

### 1. LEGAL AND ADMINISTRATIVE FRAMEWORK

*The UK has ratified most international human rights instruments, including those with provisions relating to the rights of people with disabilities. However, the UK has yet to ratify the revised European Social Charter, or to sign and ratify Protocol No. 12 to the European Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR). It has also not ratified ILO Convention C159 on Vocational Rehabilitation and Employment (Disabled Persons), 1983.*

*From May 1997, the UK Government introduced devolution of powers to Scotland, Wales and Northern Ireland, with the Westminster Parliament retaining sovereignty for areas such as foreign affairs, defence and macro-economic policy. The Scottish Parliament and the National Assembly for Wales (NAFW) assumed their responsibilities in 1999, but the Northern Ireland Assembly is presently suspended. Unlike most European countries, the UK does not have a written Constitution, but the UK has a comprehensive legislative framework to counter discrimination and ensure equal rights.*

*The Human Rights Act 1998 includes a prohibition of discrimination, although not explicitly on the grounds of disability. The most important legislation on the rights of people with disabilities is the Disability Discrimination Act 1995 (DDA). This provides a definition of disability, and measures to prevent discrimination on the ground of disability in the areas of employment; access to goods, facilities and services; and buying or renting land or property. The DDA was extended to cover education (in schools and further and higher education) through the Special Educational Needs and Disability Act 2001 (SENDA 2001). In the area of employment, it was further amended through the Disability Discrimination Act 1995 (Amendment) Regulations 2003 (DDA Regulations 2003), which entered into force on 1 October 2004. The Disability Discrimination Act 2005 (2005) will in December 2006 create a "Disability Equality Duty" on Public Sector organisations to counter discrimination in employment and to actively promote disability equality in all aspects of their work. The DDA and subsequent amendments apply to England, Wales, Northern Ireland and (with minor exceptions) to Scotland. There are regional amendments to DDA which apply to different UK jurisdictions. The DDA 2005 does not fully extend to Scotland and Northern Ireland, but the Scottish Parliament is to legislate to ensure all its additional features are provided there.*

#### 1.1 International standards and obligations

The United Kingdom of Great Britain and Northern Ireland has ratified most major human rights instruments, including those with provisions relating specifically to the rights of people with disabilities. It has also ratified many of the international standards and obligations relevant to the education and employment of people with intellectual disabilities, whose needs are not always the same as those of people with other disabilities, particularly in relation to actions and measures stemming from legislation and policy.

The UK ratified the International Covenant on Civil and Political Rights<sup>25</sup> (CCPR) and the International Covenant on Economic, Social and Cultural Rights<sup>26</sup> (CESCR) in 1976. The UK ratified the Convention on the Rights of the Child<sup>27</sup> (CRC) in 1991. The UK has accepted the UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities (hereafter, UN Standard Rules)<sup>28</sup> as a basis for its policy.

The UK ratified the European Convention on the Protection of Human Rights and Fundamental Freedoms<sup>29</sup> (ECHR) in 1951, but has not yet signed or ratified Protocol No.12 to the ECHR, which includes the general prohibition against discrimination.<sup>30</sup> The UK ratified the European Social Charter<sup>31</sup> (ESC) of 1961 in 1997 and is bound by Article 15 on the right of physically and mentally disabled persons to vocational training, rehabilitation and social resettlement. The UK signed the Revised European Social Charter (RESC) of 1996 in 1997, but has yet to ratify it.<sup>32</sup>

The UK has ratified all of the eight fundamental conventions of the International Labour Organization (ILO).<sup>33</sup> The UK has ratified ILO Convention C142 concerning Vocational Guidance and Vocational Training in the Development of Human Resources, 1975, but has not ratified ILO Convention C159 on Vocational Rehabilitation and Employment (Disabled Persons), 1983.

<sup>25</sup> International Covenant on Civil and Political Rights (CCPR), 23 March 1976, 999 U.N.T.S. 171.

<sup>26</sup> International Covenant on Economic, Social and Cultural Rights (CESCR), 3 January 1976, 993 U.N.T.S. 3.

<sup>27</sup> International Convention on the Rights of the Child (CRC), 2 September 1990, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989).

<sup>28</sup> UN Standard Rules for the Equalization of Opportunities for Persons with Disabilities, G.A. res. 48/96, 48 U.N. GAOR Supp. (No. 49) at 202, U.N. Doc. A/48/49 (1993).

<sup>29</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), 3 September 1953, E.T.S. 005, available on the COE website at <http://conventions.coe.int/Treaty/en/Treaties/Html/005.htm> (accessed 22 October 2004).

<sup>30</sup> Protocol 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, entered into force on 1 April 2005, available on the COE website at <http://conventions.coe.int/Treaty/en/Treaties/Html/177.htm> (accessed 20 January 2004).

<sup>31</sup> European Social Charter (ESC), 26 February 1965, C.E.T.S. 35, available at <http://conventions.coe.int/Treaty/en/Treaties/Html/035.htm> (accessed 22 October 2004).

<sup>32</sup> Revised European Social Charter (RESC), 1 July 1999, C.E.T.S. 163, available at <http://conventions.coe.int/Treaty/en/Treaties/Html/163.htm> (accessed 22 October 2004).

<sup>33</sup> The International Labour Organisation (ILO) has identified eight fundamental ILO Conventions: Convention on the Abolition of Forced Labour, 1930 (No. 29); Convention on Freedom of Association and Protection of the Right to Organize, 1948 (No. 87); Convention on the Right to Organize and Collective Bargaining, 1949 (No. 98); Convention on Equal Remuneration, 1951; (No. 100) Convention on Abolition of Forced Labour, 1957 (No. 105); Convention on Equality Discrimination (Employment and Occupation) 1958 (No. 111); Convention on the elimination of child labour and Minimum Age, 1973 (No. 138); Convention on Worst Forms of Child Labour, 1999 (No. 182).

## 1.2 Domestic legislation

### *Devolution*

To put the national legislation into context, in May 1997 the UK Government introduced devolution of powers to Scotland, Wales and Northern Ireland. In exercising their powers, the three devolved administrations are required by law to comply with the rights established in the ECHR. The Westminster Parliament has retained sovereignty for matters that affect the whole of the United Kingdom, such as foreign affairs, defence and macro-economic policy.

The Government of Wales Act 1998<sup>34</sup> provides for the establishment of the National Assembly for Wales (NAfW), which assumed its responsibilities in 1999. The National Assembly does not have primary legislation-making powers although it can make secondary legislation. The National Assembly is responsible for a wide range of matters previously undertaken by the Secretary of State for Wales, including economic development, agriculture, industry and training, education, local government, health, social services, housing, environment, transport and the Welsh language. Primary legislation for Wales continues to be made at Westminster.

The Scotland Act 1998<sup>35</sup> created the Scottish Parliament, which assumed its powers in 1999. The Scottish Parliament is able to make laws for Scotland on a wide range of devolved matters, such as health, education, training, local government, housing, social work, economic development, transport, law, environment, agriculture, fisheries, forestry, sport, the arts, and research and statistics.

Devolution in Northern Ireland is bound up with the 1998 Belfast (“Good Friday”) Agreement. The Agreement allows for a Northern Ireland Assembly, with devolved powers similar to those in Wales, including agriculture, economic development, education, environment, finance and personnel, and health and social services. The Northern Ireland Executive consists of ten Government departments.<sup>36</sup> At the time of writing, however, the Northern Ireland Assembly is in suspension, awaiting resolution of barriers to working together by the main political parties. Ministers within the Northern Ireland Office of the Westminster Parliament are acting in lieu of the Northern Ireland Executive.

<sup>34</sup> The Government of Wales Act 1998, available on the OPSI website at <http://www.opsi.gov.uk/acts/acts1998/19980038.htm> (accessed 15 May 2005).

<sup>35</sup> The Scottish Act 1998, available on the website of the Office of Public Sector Information (formerly known as Her Majesty’s Stationery Office – HMSO) at <http://www.opsi.gov.uk/acts/acts1998/19980046.htm> (accessed 15 May 2005).

<sup>36</sup> The ten Government Departments are: Agriculture and Rural Development; Education; Culture, Arts and Leisure; Health, Social Services and Public Safety; Employment and Learning; Finance and Personnel; Regional Development; Social Development; and the Office of the First and Deputy First Minister.

*UK legislation*

In the UK, the most relevant legislation with respect to the prevention of discrimination on the grounds of disability, and to the social integration and rehabilitation of people with disabilities is:

- The Human Rights Act 1998<sup>37</sup>
- The Disability Discrimination Act 1995 (DDA)<sup>38</sup>
- The Disability Discrimination Act 2005 (DDA 2005)<sup>39</sup> (*to enter into force on December 2006*)
- The Disability Discrimination Act 1995 (Amendment) Regulations 2003<sup>40</sup> (hereafter, DDA Regulations 2003) (*entered into force on 1 October 2004*)
- The Special Educational Needs and Disability Act 2001 (SENDA)<sup>41</sup>
- (Special Educational Needs & Disability (Draft) Order 2005 (SEND0) to be implemented in September 2005)]
- The Disability Rights Commission Act 1999 (DRCA)<sup>42</sup>

The Human Rights Act 1998 aims to give further effect to rights and freedoms guaranteed under the European Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR), and the First and Sixth additional protocols to the ECHR. This includes a prohibition on discrimination, although not explicitly on the

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<sup>37</sup> The Human Rights Act 1998, available on the OPSI website at <http://www.opsi.gov.uk/acts/acts1998/19980042.htm> (accessed 10 January 2005).

<sup>38</sup> The Disability Discrimination Act (DDA) 1995, available on the OPSI website at <http://www.opsi.gov.uk/acts/acts1995/1995050.htm> (accessed 10 January 2005), (hereafter, DDA).

<sup>39</sup> The Disability Discrimination Act 2005, available on the OPSI website at <http://www.opsi.gov.uk/acts/acts2005/20050013.htm> (accessed 1 May 2005), (hereafter, DDA 2005).

<sup>40</sup> The Disability Discrimination Act 1995 (Amendment) Regulations 2003, Draft Statutory Instrument 2003, available on the OPSI website at <http://www.opsi.gov.uk/si/si2003/draft/20035776.htm#1> (accessed 10 January 2005), (hereafter, Draft DDA Regulations 2003).

<sup>41</sup> The Special Educational Needs and Disability Act 2001 (SENDA) available on the OPSI website at <http://www.legislation.opsi.gov.uk/acts/acts2001/20010010.htm> (accessed 10 January 2005), (hereafter, SENDA 2001).

<sup>42</sup> The Disability Rights Commission Act 1999 (DRCA) available on the OPSI website at <http://www.legislation.opsi.gov.uk/acts/acts1999/19990017.htm> (accessed 10 January 2005), (hereafter, DRCA 1999).

grounds of disability.<sup>43</sup> Following the introduction of the HRA, individuals have been able to enforce their rights under the ECHR in domestic courts.

The Disability Discrimination Act 1995 (DDA) entered into force in the UK in 1996 and was specifically designed to end the discrimination faced by many people with disabilities. The DDA provides a definition of a person with disabilities (“disabled person”)<sup>44</sup> and introduced measures to prevent discrimination on the basis of disability in the areas of employment; access to goods, facilities and services; and buying or renting land or property. It allows the Government to set minimum standards for accessible public transport.<sup>45</sup>

The DDA was extended to schools and further and higher education following amendments introduced by the Special Educational Needs and Disability Act 2001 (SENDA), which entered into force in January 2002.<sup>46</sup> In the area of employment<sup>47</sup>, the DDA has been further amended through the DDA Regulations 2003 and a further amendment to legislation on pensions.<sup>48</sup>

A further extension of the DDA, the Disability Discrimination Act 2005 (DDA 2005), received Royal Assent on 7 April 2005 and will enter into force in December 2006. The DDA 2005 is intended to revise UK legislation to bring it fully in line with the provisions of the European Union’s Council Directive 2000/78/EC of 27 November 2000 completing the general framework for equal treatment in employment, occupation<sup>49</sup> (hereafter, the Employment Directive) including with respect to equality for people with disabilities. The Employment Directive requires EU Member States to introduce legislation to outlaw direct or indirect discrimination on grounds including

<sup>43</sup> “The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.” ECHR, art. 14; Human Rights Act 1998, schedule 1, art. 14.

<sup>44</sup> DDA 1995, Part I, section 1(1).

<sup>45</sup> Some of the provisions of the DDA concerning access to goods and services entered into force in 1999. Final rights on physical access to services entered into force in October 2004.

<sup>46</sup> See section: III.1.1

<sup>47</sup> See section: IV.1.1

<sup>48</sup> The Disability Discrimination Act 1995 (Pensions) Regulations 2003, Statutory Instrument 2003 No. 2770, available on the OPSI website at <http://www.legislation.opsi.gov.uk/si/si2003/20032770.htm> (accessed 10 January 2005), (hereafter, DDA Pensions regulations 2003).

<sup>49</sup> European Union Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, available on the European Commission website at [http://europa.eu.int/comm/employment\\_social/news/2001/jul/directive78ec\\_en.pdf](http://europa.eu.int/comm/employment_social/news/2001/jul/directive78ec_en.pdf) (accessed 3 September 2004), (hereafter, Employment Directive).

disability, across the full range of employment conditions.<sup>50</sup> The UK Government has sought to comply with the directive through amendments to the DDA.<sup>51</sup>

### *Specialised bodies*

The Disability Rights Commission Act 1999 (DRCA) provides for a regulatory mechanism for the DDA and created the Disability Rights Commission (DRC).<sup>52</sup> The remit of the DRC is to work towards the elimination of discrimination and harassment of people with disabilities. It promotes the equalisation of opportunities; encourages good practice in the treatment of people with disabilities; and keeps under review the working of the DDA. While promoting informal resolution of disputes, it can undertake formal investigations around failures to comply with the DDA<sup>53</sup> and may serve a non-discrimination notice on those who discriminate within the terms of the DDA, ordering them to cease the discrimination.<sup>54</sup> If this fails, in important, or test, cases the DRC can take the discriminating party to court to seek injunctions for this to stop.<sup>55</sup>

On 30 October 2003, the Government announced its intention to create a single Commission for Equality and Human Rights (CEHR).<sup>56</sup> This new anti-discrimination body would merge the DRC with the Commission for Racial Equality (CRE) and the Equal Opportunities Commission (EOC), which addresses discrimination based on gender. However, the creation of the Commission is not envisaged before the end of 2006 at the earliest.<sup>57</sup> The Equalities Bill has been published (this Bill is to introduce the Commission on Equalities and Human Rights) and had a second reading debate on 6 July 2005.

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<sup>50</sup> Employment Directive, art. 2.

<sup>51</sup> See section: IV.1.1

<sup>52</sup> DRCA 1999, section 1; The DRC has a chairperson who is a person with disabilities; a Chief Executive; and a board of a further 14 commissioners, two-thirds of whom are people with disabilities. Information from the DRC website, available at <http://www.drc-gb.org> (accessed 10 January 2005).

<sup>53</sup> DRCA 1999, section 2.

<sup>54</sup> DRCA 1999, section 4-6.

<sup>55</sup> DRCA 1999, section 7.

<sup>56</sup> Department of Trade and Industry, *Fairness for all: a new Commission for Equality and human rights*, White Paper, CM 6185, DTI, in association with the Department for Constitutional Affairs, DfES, DWP and the Home Office, London, May 2004, available on the DTI website at <http://www.dti.gov.uk/access/equalitywhitepaper.pdf> (accessed 10 January 2005), p. 11, (hereafter, DTI, *Fairness for all*).

<sup>57</sup> DTI, *Fairness for all*, p. 87.



## Variations within the UK

### Wales

The DDA and all subsequent amendments apply to Wales, but there are separate arrangements for the NAW to specify the dates when sections are to be applied.<sup>58</sup>

### Scotland

Apart from some minor exceptions,<sup>59</sup> the DDA and all subsequent amendments also apply to Scotland.

### Northern Ireland

#### *Legislation*

In Northern Ireland, legislation in support of a more equal society is further advanced than anywhere else in the UK. Additional provisions exist under the Northern Ireland (1998) Act.<sup>60</sup> Section 75 states that public authorities must promote equality of opportunity between “persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation; men and women generally; persons with a disability<sup>61</sup> and persons without; and persons with dependants and persons without”. There are presently 175 designated public authorities in Northern Ireland, including all Government organisations – for example, Government departments, local councils, education boards, health trusts and housing executives. For people with disabilities, the introduction of the Northern Ireland (1998) Act means that they have a say in any changes to policy on public authorities.<sup>62</sup> Public authorities also need to examine their recruitment policies, to ensure that people with disabilities are given the same opportunities, and ensure that the policies do not have an adverse impact on them.

The DDA applies across the UK, but there are some jurisdiction differences. While the DDA extends to the whole of the UK, separate secondary legislation, Orders and

<sup>58</sup> Department for Work and Pensions, Disability Discrimination Bill Explanatory notes, available on the website of the DWP Disability Unit at [http://www.disability.gov.uk/legislation/ddb/bill/dd\\_bill\\_explan-notes.asp](http://www.disability.gov.uk/legislation/ddb/bill/dd_bill_explan-notes.asp) (accessed 10 January 2005), points 10 and 239, (hereafter, DTI, *Disability Discrimination Bill Explanatory notes*).

<sup>59</sup> DTI, *Disability Discrimination Bill Explanatory notes*, point 10.

<sup>60</sup> Northern Ireland (1998) Act, available on the OPSI website at <http://www.legislation.opsi.gov.uk/acts/acts1998/19980047.htm> (accessed 10 January 2005), (hereafter, Northern Ireland Act 1998).

<sup>61</sup> Disability is defined as per the DDA 1995.

<sup>62</sup> For example, if the Department for Employment and Learning decided to discontinue the Access to Work Programme, they would have to consult with the nine categories listed under Section 75 – including people with disabilities – to see if this would have an adverse impact on them.

Codes of Practice are required to implement general legislation in Northern Ireland,<sup>63</sup> as disability discrimination and transport are “transferred matters” under the Northern Ireland Act 1998.<sup>64</sup> The DDA 2005 does not apply in Northern Ireland, because it primarily deals with these transferred matters. However, the Disability Discrimination Act 1995 (Amendment) Regulations (Northern Ireland) 2004 entered into force on 1st October 2004.<sup>65</sup> The public consultation period for the Draft Disability Discrimination (Northern Ireland) Order ran until 28 March 2005.<sup>66</sup>

### *Specialised bodies*

The Northern Ireland (1998) Act establishes the Equality Commission for Northern Ireland as the independent public body with power to oversee its implementation, and to monitor the effectiveness of Section 75. From 1 October 1999, the Equality Commission took over the functions previously exercised by the Commission for Racial Equality for Northern Ireland; the Equality Commission for Northern Ireland; the Fair Employment Commission; and the Northern Ireland Disability Council. The Equality (Disability, etc.) (Northern Ireland) Order 2000<sup>67</sup> expanded the duties and powers of the Equality Commission to enable it to oversee matters relating to disability including the implementation of equality legalisation, and the DDA.

## 2. GENERAL SITUATION OF PEOPLE WITH INTELLECTUAL DISABILITIES

*In the UK, intellectual disability is defined and diagnosed in accordance with the World Health Organization's ICD-10. However, the term “learning disability” is mainly used, rather than intellectual disability (as defined in this report). In education, the broader terms “children with learning difficulties” – which includes children with a range of disabilities and conditions, not only children with intellectual disabilities – and “children with special educational needs” are used. The diagnosis of intellectual disability is usually carried out by paediatricians in the health service or associated professionals charged with monitoring the normal development of all children born in the*

<sup>63</sup> Schedule 8 of the DDA sets out the modifications that apply to its application in Northern Ireland. See: Information from the Equality Commission for Northern Ireland website, available at [http://www.equalityni.org/yourrights/equality\\_law.htm#Disability1](http://www.equalityni.org/yourrights/equality_law.htm#Disability1) (accessed 4 August 2005).

<sup>64</sup> DTI, *Disability Discrimination Bill Explanatory notes*, point 10.

<sup>65</sup> The Disability Discrimination Act 1995 (Amendment) Regulations (Northern Ireland) 2004, Statutory Rule of Northern Ireland, Statutory Rule 2004, No. 55, available on the OPSI website at <http://www.opsi.gov.uk/sr/sr2004/20040055.htm> (accessed 1 May 2005).

<sup>66</sup> Draft Disability Discrimination (Northern Ireland) Order 2005, available at <http://www.ofindfmni.gov.uk/disabilitydiscrimination/disability/order.pdf> (accessed 4 August 2005).

<sup>67</sup> The Equality (Disability, etc.) (Northern Ireland) Order 2000, Statutory Instrument 2000/1110 (N.I. 2), available on the OPSI website at <http://www.legislation.opsi.gov.uk/si/si2000/20001110.htm> (accessed 1 May 2005).

UK, such as general practitioners (GPs) and health visitors. Local Education Authorities are responsible for assessing the Special Educational Needs that result from any disability, intellectual or otherwise.

In the UK, guardianship is infrequently used and, where it is, it is rarely used for people with intellectual disabilities. In England there were only 473 new cases of guardianship in 2004, of which the majority concerned people with mental health problems. In all cases, the guardian was the Local Authority. It is important to note that in the UK, guardianship is a very different power than in many other European countries, and it is not linked to an individual's capacity. In England and Wales, the Mental Health Act 1983 defines guardianship. A guardian only has three powers; to require the person under guardianship to reside at a specified place; or attend specified places for medical treatment, occupation, education or training; and to require access be given to the individual by a doctor, approved social worker or other specified person. The Mental Capacity Act 2005, which will not enter into force until 2007, will in future provide a comprehensive legislative framework for decision-making on behalf of people who lack the capacity to make decisions for themselves. In Scotland, legislation improving the protection of the rights of adults who lack the mental capacity has already been enacted.

Due to differing definitions of intellectual disability, and the fact that much official data is not available disaggregated by type of disability, official data on people with intellectual disabilities in the UK can be difficult to interpret. Statistical evidence from epidemiological studies based on IQ assessments (using a two level classification system), indicate around 580,000 people in the UK with mild intellectual disabilities and 217,000 people with severe intellectual disabilities. However, depending on the definition used (such as number of people accessing services for people with intellectual disabilities), there may be over two million people with some level of intellectual disability. Internationally, higher poverty levels have been correlated with an increased prevalence rate of mild or moderate intellectual disabilities (using the ICD four-level classification). There are indications that the higher levels of poverty in Northern Ireland, as compared to the rest of the UK, are therefore reflected in a higher prevalence of mild intellectual disability. More than half of people with intellectual disabilities in the UK live with their families. Across the UK, a process of deinstitutionalisation has been ongoing since the late 1980s. Only around two thousand people with intellectual disabilities are now in long stay hospitals. In England, community-based residential services are increasingly available. A proportionally low number (44,000) of adults with intellectual disabilities are in residential homes, of which an increasing number are in homes for three people or less. This tendency is reflected across the rest of the UK.

## 2.1 Definitions

The DDA defines a person with disabilities ("disabled person") as a person with "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>68</sup>

The UK statutory sector has adopted the definition of intellectual disability provided by the World Health Organisation's *International Classification of Diseases and Related*

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<sup>68</sup> DDA, Part I, section 1(1).

*Health Problems*, Tenth Edition, Geneva, 1992, (hereafter, ICD-10).<sup>69</sup> The ICD-10 defines four levels of intellectual disability, based on IQ score: *mild* (IQ of 50-70), *moderate* (IQ of 35-49), *severe* (IQ of 20-34) and *profound* (IQ of under 20). In line with the ICD-10, in the UK, a person is generally understood to have intellectual disabilities (“learning disabilities”) if all three of the following exist: a state of arrested or incomplete development of mind; significant impairment of intellectual functioning; and significant impairment of adaptive/social functioning.<sup>70</sup> A further dimension is that these impairments and difficulties are present from childhood, not acquired as a result of accident or following the onset of adult illness.

In the UK, from the early 1990s the term “learning disability” has been increasingly used in Government reports and by practitioners to describe “intellectual disability”, as defined in this report. The term preferred by many UK self-advocates is “people with a learning difficulty.”<sup>72</sup> However, the term “intellectual disability” is increasing being used in international dialogue, by academics, and by NGOs.

In education, the broader term “learning difficulty” is used rather than intellectual disability, education policy attempting not to categorise children by their type of disability. This term encompasses children with a range of disabilities and conditions, including children with intellectual disabilities. Four main levels of learning difficulty are distinguished:<sup>73</sup> specific learning difficulty (SpLD); moderate learning difficulty (MLD); severe learning difficulty (SLD); and profound and multiple learning difficulty (PMLD). As these categories cover more children than those with intellectual disabilities, it is not possible to correlate these educational learning disability categories

<sup>69</sup> World Health Organisation, *The International Classification of Diseases and Related Health Problems*, Tenth Edition, Geneva, 1992.

<sup>70</sup> Mental Health Foundation, *Learning Disabilities: The Fundamental Facts*, Mental Health Foundation, London 2001.

<sup>71</sup> “Significant impairment of intellectual functioning” is usually defined as corresponding to an IQ score of below 70 on a recognised IQ test (such as the Wechsler Adult Intelligence Scale). Deficits in social functioning or adaptive behaviour refer to how well people cope with both the natural and social demands of the environment. This may be assessed by a behavioural checklist (for example, the Vineland Adaptive Behavior Scales; the AAMR Adaptive Behaviour Scales – Residential and Community; and the Hampshire Assessment for Living with Others, HALO) covering such areas as communication, daily living skills and socialisation.

<sup>72</sup> From the early 1990s, the term “learning disabilities” has replaced outdated and stigmatising terms such as “mental handicap”, “mental retardation”, “mental subnormality” and “mental deficiency”. Learning Disability Advisory Group, *Fulfilling the Promises: Proposals for a framework for people with learning disabilities*, report to the National Assembly for Wales, 2001, available on the Welsh Assembly website at [http://www.wales.gov.uk/subsocialpolicy/content/learning/contents\\_e.htm](http://www.wales.gov.uk/subsocialpolicy/content/learning/contents_e.htm) (accessed 10 January 2004), section 4(1), (hereafter, Learning Disability Advisory Group, *Fulfilling the Promises*).

<sup>73</sup> Department for Education and Skills, *Data collection by type of SEN*, available on the DfES site at Department for Education and Skills, *Data collection by type of SEN*, available on the DfES site at <http://www.teachernet.gov.uk/wholeschool/sen/datatypes/> (accessed 10 January 2005), (hereafter, DfES, *Data collection by type of SEN*).

with the ICD-10 levels of intellectual disability. Those children with learning difficulties who require special educational provision are defined as “children with special educational needs”.<sup>74</sup>

## 2.2 Diagnosis and assessment of intellectual disability

In the UK, the main assessments for people with intellectual disabilities are for educational purposes (for children and young people); for further education and transitional planning; and when entering employment. For educational purposes, assessments of children’s special educational needs are carried out by schools (see III.1.3.1). Any child with identified special educational needs will subsequently receive further assessments from the age of 13 years old (up to the age of 19), with the aim to identify how best to support the child during the transitional period. (See III.1.3.2.) For adults with intellectual disabilities, there are further assessments to determine eligibility for welfare benefits and to Government employment schemes (see section IV.1.3).

## 2.3 Guardianship

It is important to note that in the UK, guardianship is a very different power than the all-encompassing forms of guardianship (in particular *plenary* guardianship) still applied in some other European countries. Importantly, guardianship is *not* based on an evaluation of an individual’s capacity.

In England and Wales, the Mental Health Act 1983<sup>75</sup> defines the circumstances under which a person with a “mental disorder”,<sup>76</sup> including, in certain cases, an individual with intellectual disabilities, may be compulsorily admitted to hospital for medical treatment or placed under guardianship. The act (Section 8) defines three powers that may be conferred on a guardian, who may be either the local social services authority or a named individual who has been approved by that authority. The guardian has the power to:

- require the patient to reside at a specified place;

<sup>74</sup> Education Act 1996, section 312(1-2).

<sup>75</sup> The Mental Health Act 1983.

<sup>76</sup> Mental disorder is defined in the Act (Section 1) as: “mental illness, arrested or incomplete development of mind, psychopathic disorder and any other disorder or disability of mind.” The act also specifies four categories of mental disorder: mental illness, mental impairment; severe mental impairment; and psychopathic disorder. Mental impairment is defined as: “a state of arrested or incomplete development of mind (not amounting to severe mental impairment) which includes significant impairment of intelligence and social functioning *and is associated with abnormally aggressive or seriously irresponsible conduct on the part of the person concerned*” (italics added). Severe mental impairment is defined in the same way, except that “significant impairment” is replaced by “severe impairment”.

- require the patient to attend specified places for medical treatment, occupation, education or training; and
- require that access be given to the patient by a doctor, approved social worker or other specified person.

Under the Mental Health Act 1983, there are two ways in which an individual aged over 16 years of age may be taken into guardianship. First (under Section 7 of the act), if, on the recommendation of two doctors, an approved social worker or the individual's nearest relative makes an application for guardianship.<sup>77</sup> Second (under Section 37 of the act), in the case that an individual is subject to criminal proceedings, a guardianship order may be issued by a court as an alternative to a penal disposal.<sup>78</sup>

Guardianship has not been used frequently in the UK, but where it has, it has most commonly been applied to people with mental health problems ("mental illness"), rather than people with intellectual disabilities. Detailed statistics are maintained on the number of people placed under guardianship. Since the Mental Health Act 1983 came into force, the number of new cases of people being placed under guardianship in England (under sections 7 and 37 of the Act) peaked at 672 cases in 2000 (see Table 1 below). It has since fallen to 437 cases in 2004, of which the majority (374 cases or 85 per cent) concerned people with mental health problems. In 2004, in all cases the individual concerned was placed under the guardianship of the Local Authority.

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<sup>77</sup> Both doctors must confirm that: (1) the patient is suffering from one of the four specified categories of mental disorder, and the nature or degree of that mental disorder justifies the individual being placed under guardianship, and (2) that this is necessary in the interests of the patient's welfare or for the protection of others.

<sup>78</sup> The duration of a guardianship order is up to six months, renewable for a further six months, then for one year at a time.

**Table 1. New cases of guardianship in England (2000–2004)**

		2000	2001	2002	2003	2004
Total number of cases (under Sections 7 and 37 of the Mental Health Act 1983)		672	583	559	472	437
First named disorder/Main disorder	Severe mental impairment	28	13	7	9	15
	Mental impairment	83	69	76	75	45
	Mental illness	551	498	470	387	374
	Psychopathic disorder	10	3	6	1	3
Guardianship conferred on	Local Authority	669	579	550	470	437
	Other person	3	4	9	2	-

Source: Department of Health<sup>79</sup>

It had long been acknowledged that the concept of lack of mental capacity to run one's own affairs needed to be reformed and in 1995 the Law Commission made recommendations in this area.<sup>80</sup> These recommendations were then used as the basis for Mental Capacity Act 2005, (for England and Wales).<sup>81</sup> Following wide consultation with experts and organisations representing people with intellectual disabilities and their families, the act received Royal Assent on 7 April 2005, but it will most likely not enter into force until 2007.<sup>82</sup>

The Mental Capacity Act 2005 provides a comprehensive legislative framework for decision-making on behalf of people who lack the capacity to make decisions for themselves. The act covers decision-making in relation to a range of matters: welfare (including healthcare) finance and property. Four areas of interest in the act merit particular mention:

First, the act defines the following guiding principles:<sup>83</sup>

<sup>79</sup> Department of Health, *Guardianship under the Mental Health Act 1983: England 2004, Table 1* available on the DH website at <http://www.dh.gov.uk/assetRoot/04/09/63/89/04096389.xls> (accessed 1 June 2005).

<sup>80</sup> Law Commission, *Report on Mental Incapacity*, Law Commission Report No 231, HMSO, London, 1 March 1995, available on the Law Commission website at <http://www.lawcom.gov.uk/549.htm> (accessed 10 January 2005).

<sup>81</sup> The Mental Capacity Act 2005, available on the OPSI website at <http://www.opsi.gov.uk/acts/acts2005/20050009.htm> (accessed 1 May 2005).

<sup>82</sup> The Mental Capacity Act 2005 will replace Part 7 of the Mental Health Act 1983 and the whole of the Enduring Powers of Attorney Act 1985, which currently permits a person to appoint someone as an attorney to take decisions about his or her property and affairs (although not about his or her personal welfare or health care).

<sup>83</sup> Mental Capacity Act 2005, Section 1.

- A person must be assumed to have capacity unless it is established that he lacks capacity.
- A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success.
- A person is not to be treated as unable to make a decision merely because he makes an unwise decision.
- An act done, or decision made, under this act for, or on behalf of, a person who lacks capacity must be done, or made, in his best interests.
- Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

Second, the act recognises that before an individual can be assessed as being unable to make a decision, there must be evidence of “an impairment or disturbance in the functioning of the mind or brain”, such as intellectual disability, dementia or a mental health problem. However, the key issue is the effect of, for example intellectual disability, on the functioning of the person's mind rather than the diagnosis itself. The act (Section 2) defines people who lack capacity as follows:

- (1) For the purposes of this Act, a person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain;
- (2) It does not matter whether the impairment or disturbance is permanent or temporary.
- (3) A lack of capacity cannot be established merely by reference to: (a) a person's age or appearance, or (b) a condition of his, or an aspect of his behaviour, which might lead others to make unjustified assumptions about his capacity.

Third, the act recognises that all relevant parties must use appropriate strategies to maximise the chance that persons will have the capacity to make decisions. This might include using specific communication strategies, and providing information in more accessible forms.

Finally, the Act states that the views of family carers must be taken into account (if it is “practicable and appropriate” to consult them), when decisions are made on behalf of their relative who lacks capacity.<sup>84</sup> If the person has no family or friends, he or she will be supported and represented by an “independent mental capacity advocate”

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<sup>84</sup> Mental Capacity Act, Section 4 (Best Interests).



(IMCA),<sup>85</sup> for decisions relating to the provision of serious medical treatment or placement in NHS or local authority accommodation.<sup>86</sup>

## Variations within the UK

### Northern Ireland

Legal Guardianship is largely similar to England and Wales except that the Mental Health (NI) Order (1986) defines both “severe mental handicap” as well as “severe mental impairment”. This can give rise to some discrepancies in which the mental health laws operate in the two jurisdictions. However a Review of Mental Health legislation is currently underway and recommendations for change are likely to be produced in early 2006.

### Scotland

In Scotland, the Adults with Incapacity (Scotland) Act 2000 changed the system for safeguarding the welfare, and managing the finances and property, of adults (aged 16 years or over) who lack the capacity to take some or all decisions for themselves, due to a “mental disorder or inability to communicate because of physical disability”.<sup>87</sup> The act allows other people to make decisions on behalf of these adults, subject to safeguards. The general principles underlying the act are that all decisions made on behalf of an adult with impaired capacity must benefit the adult; take account of the adult's wishes and the wishes of the nearest relative or primary carer, and any guardian or attorney; restrict the adult's freedom as little as possible, while still achieving the desired benefit; and encourage the adult to use existing skills or develop new skills, in the areas of property, financial affairs or personal welfare.

Under the act, a number of different agencies are involved in supervising those who take decisions on behalf of the adult. The Public Guardian<sup>88</sup>, an arrangement

<sup>85</sup> This may include people with more severe intellectual disabilities. For further information, see: Mental Capacity Act, Explanatory Notes, available on the DCA website at <http://www.dca.gov.uk/menincap/legis.htm#bill> (accessed 1 June 2005), point 103.

<sup>86</sup> Mental Capacity Act 2005, Sections 35-41.

<sup>87</sup> Adults with Incapacity (Scotland) Act 2000, available on the OPSI website at <http://www.scotland-legislation.opsi.gov.uk/legislation/scotland/acts2000/20000004.htm> (accessed 10 January 2005), section 1(6).

<sup>88</sup> The Office of the Public Guardian (OPG) was established by the Adults with Incapacity (Scotland) Act 2000. Its main functions are to supervise guardians in their functions overseeing the financial affairs of the person; investigate complaints on the actions of guardians; make publicly available registers of relevant documents; and consult the Mental Welfare Commission and any local authority on matters of common interest. Adults with Incapacity (Scotland) Act 2000, sections 6 and 7. Further information is available on the OPG website at <http://www.publicguardian-scotland.gov.uk> (accessed 10 January).

particular to Scotland, has a supervisory role and keeps registers of attorneys; people who can access an adult's funds; guardians and intervention orders. The local authorities look after the welfare of adults who lack capacity. The Mental Welfare Commission protects the interests of adults who lack capacity as a result of mental disorder.<sup>89</sup>

In accordance with the act, in Scotland, the main ways that other people can make decisions for adults who lack legal capacity to do so themselves because of mental disorder or inability to communicate are:

- Power of Attorney: individuals can arrange for their welfare to be safeguarded and their affairs to be properly managed in future, should their capacity deteriorate. They can do this by giving another person (who could be a relative, carer, professional person or trusted friend) Power of Attorney to look after some or all of their property and financial affairs and/or to make specified decisions about their personal welfare, including medical treatment.
- Access to the adult's funds: individuals (normally relatives or carers) can apply to the Public Guardian to gain access to the funds of an adult who is incapable of managing those funds (this applies to funds held in, for example, a bank or building society account in the sole name of the adult).
- Funds of residents in care establishments: authorised care establishments can manage a limited amount of the funds and property of residents who are unable to do this themselves.
- Medical treatment and research: the act allows treatment to be given to safeguard or promote the physical or mental health of an adult who is unable to consent. Special provisions apply where others, such as attorneys, have been appointed under the act with powers relating to medical treatment.
- Intervention and guardianship orders: individuals can apply to their local Sheriff Court for an intervention order or guardianship order. An intervention order is used where a one-off decision or short-term help is required; for example, selling property or signing a document. A guardianship order may be more appropriate where the continuous management of affairs or the safeguarding of welfare is

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<sup>89</sup> The Mental Welfare Commission was set up in 1960 and its powers were extended under the Adults with Incapacity (Scotland) Act 2000; and the Mental Health (Care and Treatment) (Scotland) Act 2003. The commission has the responsibility to protect the welfare of people with mental disabilities, including intellectual disabilities, in Scotland. They do this through visiting people within hospital and in the community; investigating cases of poor care or treatment; and providing information and advice. Further information is available on the commission website at <http://www.mwscot.org.uk> (accessed 10 January 2005). Mental Health (Care and Treatment) (Scotland) Act 2003, available on the OPSI website at <http://www.opsi.gov.uk/legislation/scotland/acts2000/20000004.htm> (accessed 10 January 2005), section 4; Adults with Incapacity (Scotland) Act 2000, Section 9.

required. Local authorities, or any person claiming an interest in the adult's affairs, may make applications for intervention and guardianship orders.<sup>90</sup>

## 2.4 Statistical data

In the UK, most official data on people with disabilities is not disaggregated by type of disability, so it is difficult to find precise information on people with intellectual disabilities. In education, for example, data on children and young people with special educational needs does not reveal specific details on children with intellectual disabilities. The 2001 National Census did include questions on respondents' state of health and whether they had a limiting long-term illness, however, again, specific information on people with intellectual disabilities is not available.<sup>91</sup>

Epidemiological studies of intellectual disability typically use IQ assessments to classify a person as having either *mild* or *severe* intellectual disabilities, rather than the four-level classification, using a combination of IQ score and adaptive behaviour assessments, recommended in international standards such as the ICD-10.<sup>92</sup>

The birth prevalence of intellectual disability is difficult to estimate, as it is not until later in life when IQ can be tested, when characteristic delays in social functioning and adaptive skills become clear. Only a proportion of the conditions associated with even *severe* intellectual disabilities are identifiable at birth. Typically, the age-specific prevalence of *severe* intellectual disability grows through the preschool and school years, as children are identified. Estimates for the UK at the beginning of the 1990s suggested that there were about five people with *severe* intellectual disabilities per 1,000 of the total population, aged 15-24.<sup>93</sup> Allowing for mortality during childhood, this gave an estimated birth prevalence of at least six per 1,000. The overall prevalence rate for people with *severe* intellectual disabilities was estimated at between three and four per 1,000 of the total population, (probably in the region of 360-380 per 100,000). Applied to the population of the UK such a rate would have suggested that there were about 217,000 people with *severe* intellectual disabilities.

Population screening studies yielded prevalence rates of *mild* intellectual disability of about 25-30 people per 1,000 of the total population.<sup>94</sup> This is much higher than those given by studies using administrative populations (based on information from agencies providing specialist services to people with intellectual disabilities), which indicate less than ten per 1,000. The former figure is approximately what would be expected given a

<sup>90</sup> For further information, see [http://www.publicguardian-scotland.gov.uk/html/news\\_pg2.htm](http://www.publicguardian-scotland.gov.uk/html/news_pg2.htm) (accessed 20 September 2005).

<sup>91</sup> Further information on the 2001 Census is available on the National Statistics website at <http://www.statistics.gov.uk> (accessed 10 January 2004).

<sup>92</sup> This section is informed by: Learning Disability Advisory Group, *Fulfilling the Promises*, section 4.

<sup>93</sup> Learning Disability Advisory Group, *Fulfilling the Promises*, section 4.

<sup>94</sup> Learning Disability Advisory Group, *Fulfilling the Promises*, Section 4

normal IQ distribution. Including a measure of adaptive behaviour (such as whether a person could dress themselves or prepare a basic meal) would be likely to reduce such a rate considerably, in line with the lower administrative prevalence. This translates into around 580,000 people in the UK with *mild* intellectual disabilities.

Overall, therefore, around 800,000 people in the UK have intellectual disabilities according to the definitions presented above.<sup>95</sup> However, it is fair to say that estimates do differ and that there is no definitive estimate of the number of people with intellectual disabilities in the UK. Estimates range up to two million for people with all forms of intellectual disability.<sup>96</sup>

## Variations within the UK

### Wales

Wales shares the UK definition of intellectual disability (“learning disability”). In accordance with the definitions used above for the UK, an overall prevalence rate of 360-380 per 100,000 of the total population, gives a population of 10,830 people with *severe* intellectual disabilities living in Wales.<sup>97</sup>

### Scotland

The most recent estimate for Scotland is that there were 120,000 people with all levels of intellectual disabilities.<sup>98</sup>

### Northern Ireland

In Northern Ireland, as with the Republic of Ireland, there is evidence that the prevalence rates of intellectual disability are higher than the UK. For the age range 20-

<sup>95</sup> For mid-2003 the total population of the UK is approximately 58,789,000; of England, 49,855,000 people; of Scotland, 5,075,000 people; of Wales, 2,938,000; and of Northern Ireland, 1,702,000 people. Information from the National Statistics website, available at <http://www.statistics.gov.uk> (accessed 10 January 2005).

<sup>96</sup> Foundation for People with Learning Disabilities, *Fundamental Facts*, News Release, 6 February 2001, available on the FPLD website at <http://www.learningdisabilities.org.uk> (accessed 10 January 2005), (hereafter, FPLD, *Fundamental Facts*).

<sup>97</sup> Intellectual Disability Advisory Group, *Fulfilling the Promises*, section 4.

<sup>98</sup> Scottish Executive, *The same as you? A Review of services for people with learning disabilities*, 2004, available on the Scottish Executive website at <http://www.scotland.gov.uk/ldsr/docs/tsay-00.asp> (accessed 10 January 2005), (hereafter, Scottish Executive, *The same as you? – 2004*).

34, this is around ten per 1,000 of the total population in receipt of services from agencies providing for people with intellectual disabilities.<sup>99</sup>

It is important to put these prevalence rates into context. In terms of national poverty levels, internationally there is clear evidence of a link between higher prevalence rates of *mild* or *moderate* intellectual disabilities and poorer socio-economic status and unstable family backgrounds.<sup>100</sup> The link with *severe* intellectual disabilities is less clear-cut, with some now questioning earlier findings of no association with socio-economic status.<sup>101</sup>

It is generally accepted that levels of poverty are higher in Northern Ireland than elsewhere in the UK.<sup>102</sup> Recent research in Northern Ireland has identified a significant association between the levels of deprivation and the prevalence of intellectual disability recorded on service information systems irrespective of the severity of their disability.<sup>103</sup> This is based on a small area analysis (quasi-electoral wards) of the characteristics of people living within each, as ascertained by the national census or other form of surveys using representative sampling.

In Northern Ireland, the association is best captured by three indicators of deprivation, namely that there tend to be more people with intellectual disabilities in wards that have higher proportions of: people aged 16 to 74 with no educational qualifications; children in households with job seekers allowances; or adults with a limiting, long-term illness. However, families may be poorer for other reasons. It has been estimated that parents of children with disabilities earn around 25 per cent less than parents of children without disabilities.<sup>104</sup> In addition, the direct costs to families of bringing up a child with *severe* disabilities is about three times greater than the cost of bringing up a child without disabilities.<sup>105</sup> The broader message is that many people and families are disadvantaged not only because of disability, but also because of social and economic deprivation.

<sup>99</sup> R. McConkey, M. Spollen and J. Jamison, *The administrative prevalence of Learning Disability in Northern Ireland*. Belfast, DHSSPS, Belfast, 2003; and Department of Health, *Annual Report of the Intellectual Disability Database for 2002*, Department of Health, Health Research Board, Dublin, 2003.

<sup>100</sup> N. Roeleveld, G.A. Zielhuis and F. Gabreels, "The prevalence of mental retardation: a critical review of recent literature", in *Developmental Medicine and Child Neurology*, 1997, 37, pp. 125–132.

<sup>101</sup> P. Louihala, "Risk indicators of mental retardation: changes between 1967 and 1981", in *Developmental Medicine and Child Neurology*, 1995, 37, pp. 631–636.

<sup>102</sup> Department of Health, Social Services and Public Safety, *Investing in Health*, DHSSPS, Belfast, 2002.

<sup>103</sup> P. Dixon, *Modelling the Distribution of Services for People with Learning Disabilities in Northern Ireland*, DHSSPS Belfast, 2003.

<sup>104</sup> K. Jarbrink, and M. Knapp, *The costs of autistic spectrum disorder: an exploratory study*, Mental Health Foundation, London, 1999.

<sup>105</sup> B. Dobson and S. Middleton, *Paying to care: The cost of childhood disability*, Joseph Rowntree Foundation, York, 1998.

## 2.5 Levels of institutionalisation

Since the late 1980s there has been a dramatic change in the pattern of residential services across the UK. The number of long stay hospital residents has decreased rapidly and consistently; by contrast, the number of places in small-scale community settings has increased.

Data from the statistics unit of the Department of Health illustrates this tendency. In England, between 2003-2004 (the most recent published data available) the average daily number of places occupied by adults with intellectual disabilities in long stay hospitals was 2,693.<sup>106</sup> This is about a quarter of the average hospital population for the period 1993-1994. A report on the progress of the *Valuing People* strategy, said that in March 2005 there were less than 450 people in 15 hospitals in England and, in a response to a Parliamentary Committee, that all but one hospital would be closed by March 2006.<sup>107</sup> On 31 March 2001, there were 44,130 places in staffed residential homes for adults with intellectual disabilities, of which 9,740 places were in homes for three people or fewer.<sup>109</sup> The number of places in these small group homes increased by more than 300 per cent, between 1994 and 2001. Thus, in addition to the trend for community-based residential services, these settings are now smaller than in the past.

The policy of not providing for children in large hospitals has led to virtually no young people being provided for in this way. The largest form of congregate care used today for children with intellectual disabilities is in residential special schools.<sup>110</sup>

In the UK the vast majority of children with intellectual disabilities live with their parents. The term “looked after” is generally applied to children who do not live with their natural families. Data specific to children with intellectual disabilities is not readily available. In England, as of 31 March 2002, an estimated 57,400 children were looked after by local authorities.<sup>111</sup> Of these, four per cent (2,296 children) were

<sup>106</sup> Department of Health, Residential Care Beds Data files, Hospital Activity Statistics website, available at [http://www.performance.doh.gov.uk/hospitalactivity/data\\_requests/residential\\_care\\_beds.htm](http://www.performance.doh.gov.uk/hospitalactivity/data_requests/residential_care_beds.htm) (accessed 10 January 2005).

<sup>107</sup> Department of Health, *Valuing people: The story so far... A New Strategy for Learning Disability for the 21st Century – Long report*, 22 March 2005, available at [http://www.dh.gov.uk/PublicationsAndStatistics/Publications/PublicationsPolicyAndGuidance/PublicationsPolicyAndGuidanceArticle/fs/en?CONTENT\\_ID=4107054&chk=i8aSgl](http://www.dh.gov.uk/PublicationsAndStatistics/Publications/PublicationsPolicyAndGuidance/PublicationsPolicyAndGuidanceArticle/fs/en?CONTENT_ID=4107054&chk=i8aSgl) (accessed 27 July 2005)

<sup>108</sup> See also: Mencap, Briefing, 22 March 2005, [http://www.mencap.org.uk/download/appg\\_briefing\\_250505.pdf](http://www.mencap.org.uk/download/appg_briefing_250505.pdf) (accessed 27 July 2005)

<sup>109</sup> National statistics, *Health and personal social services statistics. England*, available at <http://www.performance.doh.gov.uk/HPSSS/INDEX.HTM> Table B22 (accessed 27 July 2005).

<sup>110</sup> See section: III.3.3

<sup>111</sup> Department of Health, *Children looked after in England 2001/2002*, Statistical Bulletin 2002/22, Department of Health, National Statistics, available on the DfES website at <http://www.dfes.gov.uk/rsgateway/DB/SBU/b000513/SB0222.PDF> (accessed 10 January 2005).

looked after because of their disabilities; the proportion with intellectual disabilities is unknown. Overall, about two thirds of looked after children were in foster placements in 2002; approximately six per cent were placed for adoption; and 12 per cent were in children's homes. There are also children who attend residential schools on a year round basis, many of whom are still closely linked to their family, with their places paid for by local authorities.

## Variations across the UK

### Wales

A similar change in the pattern of residential service provision occurred in Wales. Health authority (hospital) provision fell by 31 per cent between 1987 and 1995; local authority provision remained constant; and private and voluntary sector provision rose by nine per cent and 22 per cent, respectively. An estimate for 2003-04 suggests that there are 220 people with learning disabilities living in long-stay hospitals.<sup>112</sup> Over the period 1987-1995, the mean size of residence decreased from 8.2 residents per local authority setting, to 4.3; from 14.2 to 2.8 in privately operated settings; and from 11.2 to 2.8 in voluntary sector settings.<sup>113</sup>

### Scotland

In Scotland, the number of people with intellectual disabilities in hospitals has also decreased, from nearly 6,500 in 1980, to fewer than 2,450 in 1998.<sup>114</sup> There has been a programme of hospital closures across the country with a view to closing all long-stay hospitals by 2005, and recent estimates for 2004 suggest that there are 899 people with learning disabilities living in hospital.<sup>115</sup> The reduction of the number of people in hospital has been matched by an increase in the number of people in nursing and residential care homes, and in informal supported accommodation.

In Scotland most children and adults with intellectual disabilities live with their own families. The number diminishes with age, although many continue to live with their families into middle age. Overall, 90 per cent of people with complex needs (3,600-4,500) are cared for in the community, mostly by their families. While the aim is for

<sup>112</sup> NafW, Statistical Bulletin, *Hospital Activity 2003-04. Volume 1: Bed use and in-patients*, 8 September 2004, available at <http://www.wales.gov.uk/keypubstatisticsforwales/content/publication/health/2004/sb66-2004/sb66-2004.pdf> (accessed 27 July 2005)

<sup>113</sup> J. Perry, S. Beyer, and D. Felce, *Strategic service change: Development of core services in Wales, 1983-1995*, in *Journal of Applied Research in Intellectual Disabilities*, no. 11, 15-33. D., 1998.

<sup>114</sup> Scottish Executive, *The same as you?*, p. 9.

<sup>115</sup> Scottish Executive, *Home at last?*, 2004, available at <http://www.scotland.gov.uk/library5/health/hal.pdf> (accessed 27 July 2005)

the majority of people to live as independently as possible, it is recognised that it will be necessary to retain a small number of in-patient places for people with specialised or complex needs. However, the aim is for most adults with intellectual disabilities to live in some form of group home or supported living accommodation. To this end, funds are being moved from health to local authorities budgets.

## Northern Ireland

In Northern Ireland, there are around 450 people living in long-stay accommodation.<sup>116</sup> The predominant model of residential provision is in registered care homes or nursing homes with an average of 19 persons living in one building. However more adults continue to live with family carers than in Great Britain and the Republic of Ireland.<sup>117</sup> Until recently, the birth rate has been higher in Northern Ireland with consequently more children requiring specialist services than elsewhere in Great Britain. For children who cannot live with their natural parents, fostering is the most common alternative. However, there are few places in specialist residential accommodation for children and many have to be accommodated in facilities for adult persons, which is in contravention of the Children (NI) Order 1995.<sup>118119</sup> In 2001, there were 18 young people aged 19 or under in hospital in Northern Ireland.

<sup>116</sup> The Review of Mental Health and Learning Disability (N. Ireland), *Equal Lives Report on Learning Disability*, 2004, Chapter 6, available at [http://www.rmhdni.gov.uk/learning\\_disability.asp](http://www.rmhdni.gov.uk/learning_disability.asp) (accessed 27 July 2005).

<sup>117</sup> R. McConkey, O. Barr and E. Slevin, *Accommodation and Support Needs of People with Learning Disabilities: Synopsis of Research in Northern Ireland*, Belfast, DHSSPS, 2004.

<sup>118</sup> The Children (NI) Order places a duty on the State to protect children from significant harm and provides a range of legal interventions to allow Health and Social Services Boards and Trusts to carry out this duty. Children (NI) Order, Statutory Instrument 1995 No. 755 (N.I. 2).

<sup>119</sup> R. McConkey, T. Nixon, E. Donaghy, and D. Mulhearn, "The Characteristics of Children with a Disability Looked After Away from Home and their Future Service Needs", in *British Journal of Social Work*, 200, no. 34, pp. 555–569.



## B. Access to Education

### 1. LEGAL AND ADMINISTRATIVE FRAMEWORK

*The most important legislation for the education of children with intellectual disabilities is the Special Education Needs and Disability Act 2001 (SENDA 2001), which brought education legislation in line with key international and EU standards. This act only covers Great Britain, but equivalent legislation (the Special Education Needs and Disability (SEND) Order) will also be introduced in Northern Ireland. The SENDA 2001 consolidates and amends previous education legislation – including the Education Act 1996, which provides a definition of children with learning difficulties and special educational needs (SEN). It significantly extends the right of children with SEN, including children with intellectual disabilities, to be educated in mainstream schools. It states that education must be provided in a mainstream school, unless this is incompatible with either the wishes of the child's parent or the provision of efficient education for other children. The SENDA 2001 also extends the DDA to provide protection against discrimination in education (in schools and further education) on the basis of disability, including in admission and provision of services. Schools are obliged to draw up “accessibility strategies” to facilitate the inclusion of pupils with disabilities and to make reasonable adjustments, so that they are not disadvantaged. The act extends the remit of the DRC for discrimination in education. In England and Wales, claims of unlawful discrimination in education are heard by special tribunals.*

*Depending on the level of a child's intellectual disabilities, in the UK intellectual disability may be diagnosed at birth; in the preschool age; or at a later stage in the child's education. Early intervention services are widely available for preschool children with intellectual disabilities and their families; even children as young as two years old can be offered special education. Recent Government policy has focused on improving the coordination of early intervention services and improving support to families. The “Sure Start Programme” includes a range of initiatives which will improve services for disadvantaged children, including children with intellectual disabilities, and their families, including extension of home teaching services, such as Portage.*

*In the UK, the period of compulsory education is nine years, to age 16. Children attend either maintained (State funded) or non-maintained (independent) schools. Children and young people with intellectual disabilities mainly receive education in mainstream schools (either in an inclusive class; or in a special class or unit); special schools (which they can attend from preschool age up to age 19); or pupil support units. Very few receive education in a long-stay hospital or through home schooling on a long-term basis. Children with intellectual disabilities assessed as having severe, moderate or profound learning difficulties (and some children with mild intellectual disabilities) will most often be educated in special schools or special needs units.*

*In the UK, Local Authorities are responsible for the assessment of children's special educational needs. There are similar assessment procedures in England, Wales and Northern Ireland. In England, assessments are carried out in accordance with a SEN Code of Practice, which has been revised in line with the SENDA 2001, and a similar code for Wales has also been drafted. There are now four levels of assessment, all of which are carried out by multidisciplinary teams which include health and education professionals, and fully involve the child's parents. In levels one and two, the special educational needs of the child are assessed; additional support provided; and an Individual Education Plan (IEP) prepared for the child. In the case of children with severe and complex special needs, a further level of assessment is carried out. If required (level four), a statement of SEN is then prepared.*

*A statement is only prepared in cases where a child's needs cannot reasonably be provided within the resources normally available to a school. It details the special educational (and non-educational) provision the child requires and names an appropriate school (or other arrangement) for the child. LEAs (or, in Northern Ireland, the Education and Library Boards) are obliged to provide the form of support detailed in the statement. Parents have the right to appeal the results of the assessment procedures, which have been extended by the SENDA 2001, but do not have the right to choose a school if the LEA considers that a "placement in mainstream would be incompatible with the efficient education of other children." However, the LEA is obliged to show that there are no reasonable steps that could be taken to prevent incompatibility.*

*In Scotland, in future there will be significant changes to assessment procedures, in line with recently introduced legislation. The term "additional support needs" will replace "special educational needs". At present, in Scotland children with SEN receive a Record of Needs (equivalent to the statement of SEN), but parents do not have the right to appeal against the listed measures and there is no appeals tribunal. The proportion of children with a Record of Need varies between education authorities (a similar tendency has also been noted in England) and this is thought to reflect Education Authority concerns over the costs of providing the support listed in the record. In Scotland, at age 14, a Future Needs must be carried out, to establish a transitional planning for the child. When the child moves from school to further education, responsibility for further assessments is transferred to the Careers Scotland. Similarly, in England and Wales at age 13 a Transition Plan must be drawn up for all children with a statement of SEN. The Connexions service (England); Careers Wales (Wales); and the Careers Service (Northern Ireland) play a similar role to Careers Scotland. In a recent Green Paper, the Government has proposed to reform the Connexions service. The plan is to devolve responsibility for the commissioning of information and advice services to young people and the funding of that goes with it from the Connexions service to Local Authorities, through children's trusts, schools and colleges. This will help integrate Connexions with a wider range of services at local level.*

## 1.1 The right to education

In the UK, the most relevant legislation concerning the right to education for people with intellectual disabilities is:

- The Human Rights Act 1998
- The Disability Discrimination Act 1995 (DDA)
- The Special Education Needs and Disability Act 2001 (SENDA 2001)
- The Education Act 2002<sup>120</sup>
- The Education Act 1996<sup>121</sup>
- The Education Reform Act 1988<sup>122</sup>

<sup>120</sup> The Education Act 2002, available on the OPSI website at <http://www.legislation.opsi.gov.uk/acts/acts2002/20020032.htm> (accessed 10 January 2005).

<sup>121</sup> The Education Act 1996, available on the OPSI website at <http://www.legislation.opsi.gov.uk/acts/acts1996/1996056.htm> (accessed 10 January 2005).

<sup>122</sup> The Education Reform Act 1988, available on the OPSI website at [http://www.legislation.opsi.gov.uk/acts/acts1988/Ukpga\\_19880040\\_en\\_1.htm](http://www.legislation.opsi.gov.uk/acts/acts1988/Ukpga_19880040_en_1.htm) (accessed 10 January 2005).

- The School Standards and Framework Act 1998<sup>123</sup>
- The Carers and Disabled Children Act of 2000<sup>124</sup>

In general terms, the Human Rights Act 1998 confirms the right of everyone to benefit fully from education.<sup>125</sup>

In terms of specific education legislation, a framework of legislation dates back to 1870, with legislation on free of charge primary and secondary level and further education (FE) coming into effect in 1944.<sup>126</sup> Prior to 1970, most people with intellectual disabilities were regarded as “uneducable” and were catered for legally within the health service. This changed with the Education (Handicapped Children) Act 1970, which, from 1971, gave responsibility for the education of children with learning disabilities to the Local Education Authorities (LEAs).<sup>127</sup> Following the DfES’s *Warnock Report*<sup>128</sup> (1978), which reviewed the situation of children with disabilities, the Education Act 1981 provided for the education of children with “special educational needs” (SEN).<sup>129</sup> The act established a policy expectation that all but a very small percentage of children with SEN should be catered for in mainstream education.

The Education Reform Act 1988 introduced a National Curriculum to provide a framework of common subjects for all children, including children with SEN,<sup>130</sup> and the delegation of budgets from LEAs to schools. The Education Act 1993 brought in an appeals procedure with respect to the content of the “statement of special educational needs”, the mechanism for addressing the child’s additional needs due to his or her disabilities.

<sup>123</sup> The School Standards and Framework Act 1998, available on the OPSI website at <http://www.legislation.opsi.gov.uk/acts/acts1998/19980031.htm> (accessed 10 January 2005).

<sup>124</sup> The Carers and Disabled Children Act of 2000, available on the OPSI website at <http://www.legislation.opsi.gov.uk/acts/acts2000/20000016.htm> (accessed 10 January 2005).

<sup>125</sup> “No person shall be denied the right to education. [...]”. Human Rights Act 1998, schedules, Part II, the First Protocol, art. 2; Additional Protocol to the ECHR, as amended by Protocol 11, 18 May 1954, available on the COE website at <http://conventions.coe.int/Treaty/en/Treaties/Html/009.htm> (accessed 20 January 2004).

<sup>126</sup> Elementary Education Act 1870; Education Act 1902; Education Act 1944.

<sup>127</sup> Education (Handicapped Children) Act 1970.

<sup>128</sup> Department for Education and Science, *Report of the Committee of Enquiry into the Education of Handicapped Children and Young People*, DfES, OPSI, London, 1978, (hereafter, Warnock Report),

<sup>129</sup> Education Act 1981.

<sup>130</sup> Article 18 of the Education Reform Act 1988 states that: “The special educational provision for any pupil specified in a statement under section 7 of the 1981 Act of his special educational needs may include provision: (a) excluding the application of the provisions of the National Curriculum; or (b) applying those provisions with such modifications as may be specified in the statement.”

The Education Act 1996 (which superseded the Education Act 1993) defines a child with “special educational needs” as a child who “has a learning difficulty which calls for special educational provision”.<sup>131</sup> The act also defines the procedures for providing a statement of a child’s special educational needs.<sup>132</sup>

The School Standards and Framework Act 1998 provided for LEAs to deliver preschool provision for all four-year-olds, including children with SEN, whose parents requested it. The Carers and Disabled Children Act 2000, helped young people with disabilities aged between 16 and 17 years old to access further or higher education, through provision of direct payments (which were already available to adults). The Learning and Skills Act 2000 makes provision for the planning of support needed for young people with disabilities to move from school to further education and training.

The Special Education Needs and Disability Act 2001 (SENDA 2001), which entered into force in January 2002, consolidates education legislation from previous acts. The act aims to ensure that people with disabilities have equal opportunities to benefit from, and contribute to, the learning and services available in higher education institutions. The act strengthens the rights of children with SEN to be educated in mainstream schools,<sup>133</sup> stating that a child with a SEN statement must be educated in a mainstream school “unless that is incompatible with: (a) the wishes of his parent; or (b) the provision of efficient education for other children”.<sup>134</sup> The act also provides more advice to parents; changes appeals procedures; and makes LEAs responsible for increasing the accessibility of all maintained (State funded) schools.

The SENDA 2001 also extends the DDA to address discrimination in education.<sup>135</sup> The act covers all education providers, including schools (also privately funded schools) and further and higher education establishments.<sup>136</sup> It protects students with disabilities from discrimination in application and admission,<sup>137</sup> as well as the services they receive in

<sup>131</sup> Education Act 1996, section 312(1). The act defines a child with a “learning difficulty” as a child who “has a significantly greater difficulty in learning than the majority of children of his age” and “has a disability which either prevents or hinders him from making use of educational facilities of a kind generally provided for children of his age in schools within the area of the local education authority”. The definition also encompasses preschool children likely to need special educational provision when of school age. Education Act 1996, section 312(1). The example of a child with asthma is often given: he or she may have a disability under the DDA 1995, but may not have special educational needs.

<sup>132</sup> Education Act 1996, section 324.

<sup>133</sup> The SENDA 2001 amends Part 4 of the Education Act 1996 (Special Educational Needs).

<sup>134</sup> SENDA 2001, section 1 (replaced section (Education Act 1996) 316(3)).

<sup>135</sup> The DDA defines a “disabled person” as a person with “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.” DDA, Part I, section 1(1).

<sup>136</sup> SENDA 2001, Part 2, Chapter 1 (Schools) and Chapter 2 (Further and higher education).

<sup>137</sup> SENDA 2001, section 11 (inserted section (DDA 1995) 28A(1)).

schools.<sup>138</sup> It also states that children with disabilities, once admitted, should not be disadvantaged in education or associated services,<sup>139</sup> and that schools are required to draw up “accessibility strategies” to increase the extent to which pupils with disabilities can participate in a school’s curricula and to improve physical accessibility.<sup>140</sup> In further and higher Education, the act makes it unlawful to discriminate against<sup>141</sup> or to substantially disadvantage<sup>142</sup> the student in application or admissions, or in student services provided.

In accordance with the SENDA 2001, education providers have a duty not to treat pupils with disabilities less favourably, without justification, for a reason that relates to their disability; and to make reasonable adjustments, so that pupils with disabilities are not put at a substantial disadvantage, as compared to non-disabled pupils.<sup>143</sup> A school can be guilty of discrimination either through giving a child less favourable treatment, or by failing to take “reasonable steps” to ensure that a child with disabilities is not at a substantial disadvantage compared to others. This could be in respect to: admissions, education and associated services (including school trips, the curriculum, teaching and learning, school sports, the serving of school meals, or exclusion from school).

The SENDA 2001 brings the UK into line with key EU and UN standards in the area of education discrimination, notably the UN Standard Rules;<sup>144</sup> Resolution C162 of

<sup>138</sup> “It is unlawful for the body responsible for a school to discriminate against a disabled pupil in the education or associated services provided for, or offered to, pupils at the school by that body.” SENDA 2001, section 11 (inserted section (DDA 1995) 28A(2)).

<sup>139</sup> The removal or alteration of a physical feature, or the provision of auxiliary aids or services are not required, but can be further defined through regulations and Codes of Practice, SENDA 2001, section 13, inserted section 28C(1-3).

<sup>140</sup> SENDA, 2001, section 14, inserted section (DDA 1995) 28D(2)a,b.

<sup>141</sup> SENDA, 2001, section 26(1).

<sup>142</sup> SENDA, 2001, section 28.

<sup>143</sup> The act does not define exactly what reasonable adjustments are, as they will relate to the type and nature of the service being provided. However, institutions are only expected to do what is “reasonable”; in determining this, they must take into account the effect on the *individual* person with disabilities, not on people with disabilities as a whole. They can also take into account academic standards, cost, practicality, health & safety, relevant interests of others and grants or loans available to the student. Further information on this is provided on the website of the Disability Office of the university of Edinburgh, available at <http://www.disability-office.ed.ac.uk/dda.html> (accessed 10 January 2005).

<sup>144</sup> UN Standard Rules, Rule 6 (Education).

EU Education Ministers of 1990;<sup>145</sup> and education aspirations contained in the Revised European Social Charter<sup>146</sup> (even though the UK has not yet ratified this charter).

The Education Act 2002 makes provision for schools in England to exclude the application of the National Curriculum to people with a statement of special educational needs, or to apply it with modifications if specified in the statement.<sup>147</sup> Section 113 extends these powers to Wales.

### *Specialised bodies*

Cases of discrimination in education can be handled through the Disability Rights Commission (DRC) framework, and the SENDA 2001 also extends the jurisdiction of the DRC accordingly. If discrimination occurs, a DRC Helpline is a first point of contact, followed by access to the DRC Casework Service, which can take up the child's case.<sup>148</sup> A Disability Conciliation Service (DCS) seeks to reach an agreement that both sides accept without court action. If there is a claim for unlawful discrimination the claim is heard by the Special Education Needs and Disability Tribunals (SENDIST). Claims of discrimination in admissions and exclusions against maintained schools are heard by admission appeal panels and exclusion appeal panels. The tribunals can order the offending school to provide any "reasonable" remedy, including policy change or staff training, with the exception of financial compensation.

<sup>145</sup> Resolution C 162 was issued on behalf of Education Ministers, including the UK, in 1990 and, noting the general move towards integration of people with disabilities, seeks to integrate pupils and students with disabilities into the ordinary systems of education (with the caveat that it may not be appropriate for all). The resolution looks for States to institute more dynamic actions in terms of integration and quality. It notes that full integration into the system of mainstream education should be considered as a first option in all appropriate cases, and that all education establishments should be in a position to respond to the needs of pupils and students with disabilities. The resolution looks for links between special and mainstream education, between all major family stakeholders and the worlds of leisure and work (Article 2). In particular, it highlights the need for cooperation among all (school education, preparation for work, leisure activities and health). The resolution has detailed prescriptions for the measures needed, including the need to overcome difficulties that curricula in mainstream education may present for children and young people with disabilities by developing individualised learning programmes. Resolution of the Council and the Ministers of Education Meeting within the Council of 31 May 1990. Concerning Integration of Children and Young People with Disabilities into Ordinary Systems of Education, 90/C 162/02, available on the European Commission website at <http://europa.eu.int/infonet/library/m/90c16202/en.htm> (accessed 10 January 2005).

<sup>146</sup> Revised European Social Charter art. 15(1): "to take the necessary measures to provide persons with disabilities with guidance, education and vocational training in the framework of general schemes wherever possible or, where this is not possible, through specialised bodies, public or private".

<sup>147</sup> Education Act 2002, section 92

<sup>148</sup> The Disability Rights Commission helpline ([enquiry@drc-gb.org](mailto:enquiry@drc-gb.org)).

## Variations within the UK

### Wales

In Wales, the National Assembly for Wales (NafW) now has the power to pass some secondary legislation in education, but the main Education Acts up to 1998 cover Wales as well. The SENDA 2001 also covers Wales. The Education Act 2002 established a separate Special Educational Needs Tribunal (SENT) for Wales (*Anghenion Addysgol Arbennig Cymru*), which is the equivalent of the English SENDIST.

### Scotland

#### *Legislation*

Education in Scotland has always been valued and most of the key principles on which it is built are long established. Major Government intervention in education in Scotland began in 1864, with a commission that examined the state of education, and this led to the Education (Scotland) Act 1872. The act created a Board of Education for Scotland; established the responsibility of parents to see that all children between the ages of five and 13 received education; and provided for the funding of education from local taxes, making it the responsibility of local elected bodies (the School Boards). Special education in Scotland began in the 19th century, with education for deaf people. Regulations were brought in to define categories of “special educational treatment” in 1954. The Education (Mentally Handicapped Children) (Scotland) Act 1974 rejected the idea that children with intellectual disabilities were uneducable, and replaced the care institutions that had looked after these children with education in school.

The most important legislation in Scotland concerning the provision for special educational needs is:

- The Education (Scotland) Act 1981
- The Disabled Persons (Services, Consultation and Representation) Act 1986
- The Self-Governing Schools Etc. (Scotland) Act 1989
- The Further and Higher Education (Scotland) Act 1992
- The Standards in Scotland’s Schools Etc. (Scotland) Act 2000<sup>149</sup>
- The Special Educational Needs and Disability Act 2001 (SENDA 2001)

<sup>149</sup> The Standards in Scotland’s Schools Etc. Act Scotland 2000, available on the OPSI website at <http://www.scotland-legislation.opsi.gov.uk/legislation/scotland/acts2000/20000006.htm> (accessed 10 January 2005).

- The Education (Disability Strategies and Pupils' Records) (Scotland) Act 2002<sup>150</sup>
- The Education (Additional Support for Learning) (Scotland) Act 2004<sup>151</sup>

The Education (Scotland) Act 1980 (as amended by the Education (Scotland) Act 1981) established the present policy with regard to children with SEN. The Disabled Persons (Services, Consultation and Representation) Act 1986 applied to the whole of the UK, but had a special section that applied to Scotland, dealing with children with disabilities. Sections 71 and 72 of the Self-Governing Schools etc. (Scotland) Act 1989 adjust the provisions of the Education (Scotland) Act 1980, with respect to children with Records of Need.<sup>152</sup> The Further and Higher Education (Scotland) Act 1992 requires further education colleges to consider the requirements of students with learning difficulties, by offering special courses and providing learning aids for those with particular disabilities.

The Standards in Scotland's Schools etc. (Scotland) Act 2000, reinforced by the Special Educational Needs and Disability Act 2001 (SENDA), establishes an obligation on education authorities in Scotland to provide education in mainstream schools for all children, except under certain specified circumstances.<sup>153</sup> Education must fit individual needs and be tailored to "age, ability and aptitude". It should aim to develop the "personality, talents and mental and physical abilities of children and young persons to their fullest potential".<sup>154</sup> The trend towards greater differentiation of classroom work, to match the range of abilities present, and the increased attention to young people with special educational needs, whether in mainstream schooling or special units, are examples of the extension of the principle of "appropriateness". In Scotland, the SENDA 2001 gives students with disabilities the right to be included alongside their peers, in the same educational programmes and in the same institutions. However, the change in the Scottish SEN framework for school pupils has been slower than in England.

The Education (Disability Strategies and Pupils' Records) (Scotland) Act 2002 improves access arrangements for school pupils with disabilities and gives all parents the right to access their children's educational records. By law, parents are assured rights to a free school place for their child from the age of five to 16 years old (their

<sup>150</sup> The Education (Disability Strategies and Pupils' Records) (Scotland) Act 2002, available on the OPSI website at <http://www.scotland-legislation.opsi.gov.uk/legislation/scotland/acts2002/20020012.htm> (accessed 10 January 2005).

<sup>151</sup> The Education (Additional Support for Learning) (Scotland) Act 2004, available on the OPSI website at <http://www.scotland-legislation.opsi.gov.uk/legislation/scotland/acts2004/20040004.htm> (accessed 10 January 2005).

<sup>152</sup> See section: III.1.3.1

<sup>153</sup> Standards in Scotland's Schools etc. Act Scotland 2000, section 15(3).

<sup>154</sup> Standards in Scotland's Schools etc. Act Scotland 2000, section 2(1).



child may then continue at school until the age of 17 or 18 or get a place at college); to choice of school, within certain limits; to receive information about their child's progress; to an appeal in cases of non-admission and exclusion; and over decisions with regard to a Record of Needs.

The Education (Additional Support for Learning) (Scotland) Act 2004 aims to modernise and strengthen the current system for supporting children's learning needs. The act was passed on 1 April 2004 and will come into force in autumn 2005.

### *Policy*

In 1978, the *Warnock Report* and the report by HM Inspectors of Schools (HMI), *The Education of Pupils with Learning Difficulties in Scottish Primary and Secondary Schools*,<sup>155</sup> moved policy forward. Clear guidance on provision came from the 1994 HMI report, *Effective Provision for Special Educational Needs*,<sup>156</sup> and by the 1999 Scottish Office Education and Industry Department (SOEID) report, *A Manual of Good Practice in Special Educational Needs*.<sup>157</sup> In 1999, the Riddell Advisory Committee on Education Provision for Children with Severe or Low Incidence Disabilities presented its report (hereafter, *Riddell Report*).<sup>158</sup>

Following the recommendations of the most recent reports, the Scottish Executive published a "Special Educational Needs Programme of Action" in June 2000.<sup>159</sup> The programme provided comprehensive funding for actions to implement inclusion in schools, including advice to families, staff training, additional resources for speech and language therapists, and grants for voluntary and non-statutory organisations in the SEN area. It also included a £12 million (or approximately €17.46 million<sup>160</sup>) Inclusion Programme to assist local authorities to include children with special

<sup>155</sup> HM Inspectors of Schools, *The Education of Pupils with Learning Difficulties in Scottish Primary and Secondary Schools*, HMI, Scottish Office Education Department, Edinburgh, 1978.

<sup>156</sup> HM Inspectors of Schools, *Effective Provision for Special Education Needs*, HMI, Scottish Office Education Department, Edinburgh, 1994.

<sup>157</sup> Scottish Executive, *A Manual of Good Practice in Special Educational Needs*, Scottish Office Education and Industry Department, Edinburgh, 1999, available on the Scottish Executive website at <http://www.scotland.gov.uk/library5/health/gpsenm-00.asp> (accessed 10 January 2005).

<sup>158</sup> Scottish Executive, *Report into the Education of Children with Severe Low Incidence Disabilities*, Scottish Executive Advisory Committee, Scottish Educational Needs Policy Branch, Edinburgh, 1999, available on the Scottish Executive website at <http://www.scotland.gov.uk/library2/doc04/ridm-00.htm> (accessed 10 January 2005), (hereafter, Scottish Executive, *Riddell Report*).

<sup>159</sup> Scottish Executive, *Special Educational Needs Programme of Action*, available on the Scottish Executive website at <http://www.scotland.gov.uk/library2/doc15/sen-00.asp> (10 January 2005).

<sup>160</sup> The exchange rate used throughout this report is £1 = €1.455.

educational needs in mainstream provision.<sup>161</sup> In January 2003, the Scottish Executive published a strategic framework document, *Moving Forward! Additional Support for Learning*.<sup>162</sup>

## Northern Ireland

In Northern Ireland, as in the rest of the UK, education legislation goes back to the 1800s.<sup>163</sup> The Education Act (Northern Ireland) 1947 introduced legislation similar to the 1944 Act in England and Wales. Primary and secondary schools were introduced, with secondary schools being intermediate, grammar and technical. Northern Ireland retains a selective secondary education system and the “11 plus” examination assesses eligibility for a scholarship to attend grammar school. A series of Education (Northern Ireland) Orders from 1996, 1997 and 1998 have since superseded the 1947 Education Act.

The SENDA 2001 did not extend to Northern Ireland, as equal opportunities issues were devolved to the Northern Ireland Assembly under the Northern Ireland (1998) Act.<sup>164</sup> However, in March 2004 the Department of Education and the Department of Employment and Learning issued the draft Special Education Needs and Disability (SEND) Order for consultation. This order will replicate the SENDA 2001 in Great Britain; the time frame for implementation is September 2005. It has been welcomed by institutions in Northern Ireland although it is still recognised that the order will,

not preclude the possibility that a system of special schools might still need to be maintained. Certain SEN and/or disabilities may be of a nature that, even once all the measures outlined above have been implemented, cannot be catered for adequately in ordinary schools. It is important that such schools are available to those pupils that require them and are also resourced adequately.<sup>165</sup>

The then Minister with responsibility for Education and Employment and Learning, the Rt. Hon. Jane Kennedy MP, announced at the end of March 2004 the start of a

<sup>161</sup> Scottish Executive, *Improving Our Schools: Special Educational Needs: The Programme of Action*, available on the Scottish Executive website at <http://www.scotland.gov.uk/library2/doc15/sen-02.asp> (accessed 10 January 2005).

<sup>162</sup> Scottish Executive, *Moving Forward! Additional Support for Learning*, Scottish Executive, HMSO, Edinburgh, 2003, available on the Scottish Executive website at <http://www.scotland.gov.uk/library5/education/mfas-00.asp> (accessed 10 January 2005).

<sup>163</sup> The Intermediate Education (Ireland) Act 1878 created a funding basis for “intermediate schools”.

<sup>164</sup> Northern Ireland (1998) Act, section 75.

<sup>165</sup> Northern Ireland Human Rights Commission, *Response of the Northern Ireland Human Rights Commission to the Consultation on a Proposed Special Educational Needs and Disability Bill*, 5 February 2003, available on the NIHRC website at <http://www.nihrc.org/documents/landp/97.pdf> (accessed 10 January 2004), section 22, p. 7.

12-week consultation exercise on the draft SEND legislation. In explaining the background to the draft SEND Order, the Minister said that it,

will implement the Government's Policy of strengthening the rights of children with Special Education Needs (SEN) to be educated in mainstream schools. In addition it will remove the current exemption of the education sector in Northern Ireland for the Disability Discrimination Act 1995, thereby increasing access to schools and institution of further and higher education for children and young people with disabilities. [ ]...It will give school pupils and students in Northern Ireland the same rights of access to schools and further higher education institutions as exist in the rest of the United Kingdom.<sup>166</sup>

In Northern Ireland, entry into force of the SENDO is aimed for September 2005. This will be in line with the final dates for implementation of the final articles of the SENDA in Great Britain – for example, concerning physical access to colleges of further and higher education. In Northern Ireland, the SENDO will not be a phased in, but will be fully implemented.

Special Educational Needs Tribunals (SENTs) were introduced in 1997 and, again, these operate along similar lines to those in England and Wales. The SENT Regulations (Northern Ireland) 1997 provide for appeals, hearings, and the other provisions relating to the SENT. Circular 1996/40 sets out the situations where parents have a right of appeal.<sup>167</sup> A recent study commissioned by the Department of Education showed a high level of parental satisfaction with these arrangements.<sup>168</sup>

## 1.2 Structure and administration of schools

### *Compulsory education*

By law, all children of school age (between the ages of five and 16 years old) must receive a full-time education. The Education Act 1996 requires all parents of a child aged between five and 16 in England and Wales to ensure that the child regularly attends a school or other teaching institution appropriate to their needs. If they do not, the LEA can take out an attendance order. Here, the term “parents” also includes the relevant authorities in cases where they act as parents for looked after children in local authority care.

<sup>166</sup> Department of Education and Department for Employment and Learning, Press Release, March 2004.

<sup>167</sup> Department of Education Northern Ireland, *Special Educational Needs: Implementation of Education (NI) Order 1966: Revision of Draft of Conduct of Practice*, Circular 1996/40, available on the DENI website at <http://www.deni.gov.uk/teachers/circulars/dc1997/dc1997-15.pdf> (accessed 10 January 2005).

<sup>168</sup> U. O'Connor, B. Hartrop, and R. McConkey, *Parental attitudes to the Statutory Assessment and Statementing procedures on Special Educational Needs*, Department of Education (Belfast: 2003).

The different types and categories of school were revised under the School Standards and Framework Act 1998. The school categories are:

- Community schools (including special) – owned and fully funded by LEAs for revenue and capital expenditure.
- Foundation schools (including special) – owned either by the governing body or trustees of the school and are funded by LEAs in a similar way to community schools.
- Voluntary schools (aided or controlled) – owned either by trustees or a founding body, such as the Church, and receive full funding for revenue expenditure. Voluntary aided schools must contribute 15 per cent to school capital costs.
- Independent (or “public”) schools – these are the only schools considered to be private schools. They are sometimes referred to as “non-maintained schools”, as they receive no LEA funding and are financed through fees and charitable donations.<sup>169</sup>

In accordance with the Education Act 2002, the period of compulsory education in England and Wales is divided into four key stages: key stage 1, for pupils between the ages of five and seven years old; key stage 2, for pupils between the ages of seven and 11; key stage 3, for pupils aged 11 to 14; and key stage 4, for pupils aged 14 to 16.<sup>170</sup> Primary education lasts from the age of five to 11 years old, and no exams are needed to move into secondary education. Most children transfer from primary to secondary school at age 11. Secondary schools mainly offer a general education, although a small number of secondary schools have specialist “college” status, offering advanced facilities in arts, technology or science. After five years of secondary education, young people in England and Wales can take examinations at the level of General Certificate of Secondary Education (GCSE). The GCSE is a single-subject examination set and is independently examined. Students can leave school after taking GCSEs.

At age 16, when education is no longer compulsory, pupils can continue their education at a vocational or technical college, or take higher level examinations in school. AS-level examinations take one year (usually four or five are taken); if extended to two years of study, students can take Advanced Level (A-level) examinations. Young people wishing to continue studying at higher education level, who have the correct qualifications, transfer to a university, normally at age 18. A-levels are usually the required examination level to gain entry to a UK university.

The same rules apply to people with intellectual disabilities. However, children with more severe disabilities, including many with intellectual disabilities, may attend special schools rather than mainstream schools.

<sup>169</sup> School Standards and Framework Act 1998, section 20.

<sup>170</sup> Education Act 2002, section 82.

*Types of schooling for children with intellectual disabilities*

In the UK, provision for children with special educational needs can take a number of forms:

- mainstream school: integration within a mainstream class, receiving extra attention in the class (inclusive class); or education in a special needs unit or class within a mainstream primary or secondary school;
- special school (either on a daily or residential basis);
- pupil support units: these are free-standing units, catering for young people who are difficult to teach in school, or who are perhaps excluded from school due to difficult behaviour; and
- education in hospitals; or
- home tuition.

Children and young people with intellectual disabilities are educated in a number of settings, including mainstream schools and special schools of all types. However, children with intellectual disabilities often are assessed to be in the category of having “severe” or, if they have additional significant difficulties, such as physical disabilities, sensory impairment or a severe medical condition, “a profound and multiple learning difficulty” and will commonly be educated in special schools or special needs units. Children with *mild* intellectual disabilities may be categorised as having a “moderate learning difficulty” and be more likely to go to a mainstream school. However, in the UK there are variations between Local Authorities in the how people are classified, and whether they are educated in a special or mainstream school at different ages.

The Education Act 1944 (superseded by the Education Act 1996) gave LEAs in England and Wales the power to establish special schools, which provide education for children whose special educational needs cannot be met properly in a mainstream school. Children can attend special schools from preschool (nursery school) age up to age 19. Special schools tend to be significantly smaller than mainstream schools and usually have a lower staff-student ratio than mainstream schools. They can offer day or residential provision. Special schools of different types provide for children with a wide variety of needs, including young people with moderate, severe or specific intellectual disabilities, with or without additional disabilities, and young people who are blind, have speech and language impairments, or hearing impairment, and emotional and behavioural difficulties (EBD).<sup>171</sup>

<sup>171</sup> EURYDICE, Information database on education systems in Europe, The Education System in the United Kingdom (2003–2004), section 10 (Special educational support), available at <http://www.eurydice.org/Eurydice/Application/frameset.asp?country=UK&language=VO> (accessed 10 May 2005)

Private organisations and NGOs in the UK provide day and residential education for people with intellectual disabilities in non-maintained (independent) special schools.<sup>172</sup> In England and Wales, these special schools must comply with the Education (Special Educational Needs) (Approval of Independent Schools) Regulations of 1994, to be approved as suitable for the placement for children with Statements of SEN.<sup>173</sup> Major charities or charitable trusts operate the majority of non-maintained special schools. These schools must meet similar standards to those in maintained special schools.<sup>174</sup>

Hospital schools are special schools located within the premises of a hospital to provide education for children who reside as patients. However, deinstitutionalisation policies in the UK mean that today very few young people are in long-stay special institutions. Similarly, only a few children are educated at home on a long-term basis. Home tuition for children with SEN can be arranged through LEAs in England and Wales; EAs in Scotland; and ELBs in Northern Ireland, but is usually only provided on a part-time basis. It is usually for children who cannot attend school because of illness, injury or because they have been excluded. Portage home teaching is also available for pre-school children.<sup>175</sup>

There is no specific information on the schools which children and young people with intellectual disabilities attend, as education statistics are collected in terms of children with SEN and are not presently available disaggregated by type of disability. However, from January 2004, information on the numbers of pupils with different types of SEN will be collected under the Pupil Level Annual Schools Census (PLASC). This data is intended for planning and monitoring purposes and for policy development. Data on children with learning difficulties will be collected according to the following categories:<sup>176</sup>

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<sup>172</sup> However, few children attend non-maintained special schools. In 2002 this figure was 5,700 children in England; 4,700 in Wales; and 50 in N. Ireland. Information from: (for England and Wales) Department for Education and Skills, *Education and Training Statistics for the United Kingdom*, DfES, 2002; for N. Ireland, personal communication with Roy McConkey, April 2004. Statistics are not collected for Scotland.

<sup>173</sup> Education (Special Educational Needs) (Approval of Independent Schools) Regulations of 1994. Amended by: the Education (Special Educational Needs) (Approval of Independent Schools) (Amendment) Regulations 1998; and the Education (Special Educational Needs) (Approval of Independent Schools) (Amendment) (England) Regulations 2002.

<sup>174</sup> Department for Education and Skills, Circular 10/96, available at [http://www.dfes.gov.uk/publications/guidanceonthelaw/10\\_96/intro.htm](http://www.dfes.gov.uk/publications/guidanceonthelaw/10_96/intro.htm) (accessed 27 July 2005).

<sup>175</sup> Portage involves workers helping to establish early support for systematic home teaching by families.

<sup>176</sup> Department for Education and Skills, *Data collection by type of SEN*, available on the DfES site at <http://www.dfes.gov.uk/sen> (accessed 10 January 2005), (hereafter, DfES, *Data collection by type of SEN*).

- Specific Learning Difficulty (SpLD):<sup>177</sup> this includes children with dyslexia, dyscalculia and dyspraxia;
- Moderate Learning Difficulty (MLD)<sup>178</sup>
- Severe Learning Difficulty (SLD)<sup>179</sup>
- Profound and Multiple Learning Difficulty (PMLD)<sup>180</sup>

In the UK, in 2003 nearly 1.4 million pupils were identified with SEN, of which nearly 300,000 received a statement of SEN<sup>181</sup> (or Record of Need, in Scotland).<sup>182</sup> Table 2 shows the breakdown across the UK for “statemented” children, for 2002.

<sup>177</sup> Pupils with specific learning difficulties (SpLD) have a particular difficulty in learning to read, write, spell or manipulate numbers, so that their performance in these areas is below their performance in other areas. They may also have problems with short-term memory, with organisational skills and with co-ordination. Pupils with SpLD cover the whole ability range and the severity of their impairment varies widely. Pupils should only be recorded as SpLD if their difficulties are significant and persistent, despite appropriate learning opportunities and if additional educational provision is being made to help them to access the curriculum. DfES, *Data collection by type of SEN*.

<sup>178</sup> Pupils with moderate learning difficulties (MLD) will have attainments significantly below expected levels in most areas of the curriculum, despite appropriate interventions. Their needs will not be able to be met by normal differentiation and the flexibilities of the National Curriculum. They should only be recorded as MLD if additional educational provision is being made to help them to access the curriculum. Pupils with moderate learning difficulties have much greater difficulty than their peers in acquiring basic literacy and numeracy skills and in understanding concepts. They may also have associated speech and language delay, low self-esteem, low levels of concentration and under-developed social skills. DfES, *Data collection by type of SEN*.

<sup>179</sup> Pupils with severe learning difficulties (SLD) have significant intellectual or cognitive impairments. This has a major effect on their ability to participate in the school curriculum without support. They may also have difficulties in mobility and co-ordination, communication and perception and the acquisition of self-help skills. Pupils with severe learning difficulties will need support in all areas of the curriculum. They may also require teaching of self-help, independence and social skills. Some pupils may use sign and symbols but most will be able to hold simple conversations. DfES, *Data collection by type of SEN*.

<sup>180</sup> Pupils with profound and multiple learning difficulties (PMLD) have complex learning needs. In addition to very severe learning difficulties, pupils have other significant difficulties, such as physical disabilities, sensory impairment or a severe medical condition. They require a high level of adult support, both for their learning needs and also for their personal care. They are likely to need sensory stimulation and a curriculum broken down into very small steps. Some pupils communicate by gesture, eye pointing or symbols, others by very simple language. DfES, *Data collection by type of SEN*.

<sup>181</sup> Scottish Executive, *Pupils with a Record of Needs, September 2002 29th October, 2003, A Scottish Executive National Statistics Publication*, available at <http://www.scotland.gov.uk/stats/bulletins/00291-00.asp> (accessed 27 July 2005).

**Table 2. Children with a statement of Special Educational Needs (SEN) in the UK (2002)**

	Children with a statement of SEN (2002)
England	249,000
Wales	17,000
Scotland	15,300
Northern Ireland	9,400
<b>UK (total)</b>	<b>292,400</b>

Source: Welsh Assembly Government;<sup>183</sup> National Statistics

In England, of the total 250,700 children with a statement of SEN in 2003, the majority (60 per cent) attended maintained mainstream schools, while 37 per cent (nearly 93,000 children) attended special schools or pupil referral units.<sup>184</sup> In England, the total number of children with a statement of SEN increased steadily throughout the 1990s, from 195,000 children in 1994. From 1994 to 2003, the proportion of children with a statement of SEN attending a maintained mainstream school increased from 52 per cent to 60 per cent. The thrust of policy within the Code of Practice is to reduce the numbers of statements completed in the future in favour of more school based actions.

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<sup>182</sup> National Statistics, *Statistics of Education: Special Educational Needs in England*, January 2003, Table 11b, information from the National Statistics website, available at <http://www.statistics.gov.uk/STATBASE/ssdataset.asp?vlnk=7298> (accessed 10 January), (hereafter, National Statistics, *SEN England*).

<sup>183</sup> Welsh Assembly Government, *The Learning Country*, 2000, Chapter 2, available at <http://www.wales.gov.uk/subieducationtraining/content/learningcountry/tlc-chapter2-20-e.htm> (accessed July 2005)

<sup>184</sup> National Statistics, *SEN England*.



**Table 3. Pupils with statements of Special Educational Needs (SEN) in England – breakdown by type of school (1994–2003)**

Year	Number of pupils (thousands)			
	Total	Maintained Mainstream schools	Special schools and pupil referral units <sup>185</sup>	Independent schools
1994	194.6	100.6	88.5	5.5
1995	211.3	113.2	92.3	5.8
1996	227.4	127.3	94.3	5.8
1997	234.6	134.1	94.0	6.5
1998	242.3	141.4	94.4	6.5
1999	248.1	147.6	93.6	6.9
2000	252.9	152.8	93.3	6.8
2001	258.3	158.0	93.7	6.6
2002	249.0	149.9	92.1	7.0
2003	250.5	150.9	92.6	7.0

Source: DfES<sup>186</sup>

## Variations across the UK

### Scotland

The Education (Scotland) Act 1980 makes parents (or guardians) legally responsible for ensuring that their children of school age receive an efficient education suitable to their age, ability and aptitude. The State provides free public schools and supporting services through the education authorities. Parents may also choose to send their children to independent schools, for which they pay fees.

The law broadly defines a person as being of school age if he or she is between the ages of five and 16 years old. Many younger children attend nursery schools before beginning primary school at age five. Pupils transfer to secondary school at around 12 years old and many stay on after age 16 for one or two additional years before going on to training or post-school education in further education colleges or higher education in universities. Children can leave school at the age of 16 years old if they wish.

<sup>185</sup> Pupil referral units did not exist prior to 1995. Estimates were made for 2001 because the SEN data were known to be incomplete.

<sup>186</sup> National Statistics, *SEN England*.

In Scotland, Standard Grade (Scottish Certificate of Education) examinations, for pupils usually age 15-16, are roughly equivalent to England's GCSE examinations. At age 17 pupils take Higher Grade examinations, and at age 18, Advanced Higher Grades.

## Northern Ireland

In accordance with the Education Reform (Northern Ireland) Order of 1989, as amended by the Education (Northern Ireland) Order of 1996, provision for compulsory education is divided into the same four key stages as in the English education system. At age 11, if pupils wish to be considered for a place at a grammar school they must sit Transfer Tests. However, pupils with a statement of SEN are precluded from taking these tests. Their admission to secondary schools is negotiated with individual schools. Pupils attending grammar schools normally stay until age 18, while those attending secondary schools usually leave at age 16, unless they are taking further educational courses such as GNVQ, BTEC or A Levels. All pupils with statements of SEN may receive schooling up to age 19 and many special schools operate on an all-age basis, from age two to age 19. Examinations at age 15-16, and at around age 18, are similar to those offered in England and Wales.

### 1.3 Assessment of disability for educational purposes

The diagnosis of intellectual disability is usually carried out by paediatricians in the health service or associated professionals charged with monitoring the normal development of all children born in the UK, such as general practitioners (GPs) and health visitors. Obvious conditions leading to intellectual disabilities, such as Down's syndrome, will be diagnosed at birth. However, many children with intellectual disabilities will never have a diagnosis and the cause of their intellectual disabilities will remain unknown. Many disabilities will appear as the child develops and fails to reach normal developmental stages, and sometimes only when they reach school.

#### 1.3.1 Assessment procedures for schools

The *Code of Practice on the Identification and Assessment of Special Educational Needs* (hereafter, *SEN Code of Practice*) is the main reference for the assessment of special educational needs in the UK. The code has recently been updated to reflect changes introduced under the SENDA 2001 – the new code entered into force in January 2002.<sup>187</sup> The term “children with special educational needs” includes pupils with a

<sup>187</sup> Department for Education and Skills, *Code of Practice on the Identification and Assessment of Special Educational Needs*, DfES 581/2001, HMSO, London, 2001, available on the Teachernet website at [http://www.teachernet.gov.uk/\\_doc/3724/SENCodeOfPractice.pdf](http://www.teachernet.gov.uk/_doc/3724/SENCodeOfPractice.pdf) (accessed 10 January 2005), (hereafter, DfES, *SEN Code of Practice*).

range of needs or disabilities: physical, sensory, mental, emotional and behavioural, or a combination of these. The definition provided in the *SEN Code of Practice* is that, “children have special educational needs if they have a learning difficulty which calls for special education provision to be made for them.”<sup>188</sup> The code then defines that children have a learning difficulty if they have:

- a) a significantly greater difficulty in learning than the majority of children of the same age; or
- b) a disability which prevents or hinders the child from making use of educational facilities of a kind generally provided for children of the same age in schools within the area of the local education authority; and
- c) are under compulsory school age and fall within the above definitions (a, b) or would do so if special education was not made available for them.

Children are not regarded as having a learning difficulty simply because the language they use at home is different from the school’s teaching language.

The fundamental principles informing the *SEN Code of Practice* are that:

- a child with special educational needs should have their needs met;
- the special educational needs of children will normally be met in mainstream schools or settings;
- the views of the child should be sought and taken into account;
- parents have a vital role to play in supporting their child’s education; and
- children with special educational needs should be offered full access to a broad, balanced and relevant education, including an appropriate curriculum for the foundation stage and the National Curriculum.

In the UK, schools are responsible for assessing the special educational needs that result from any type of disability, including intellectual disability. In accordance with the Education Act 1996, LEAs in England and Wales have a duty to:<sup>189</sup>

- identify children with special needs;
- make an assessment of those needs, taking account of educational, medical, psychological and other factors; and
- where necessary, make a formal statement of those needs and specify the provision which should be made to meet them.

LEAs must also draw up a SEN policy, which must be published and should include planning for access to the National Curriculum for all children. The LEA passes on its

<sup>188</sup> DfES, *SEN Code of Practice*, section 1:3

<sup>189</sup> Education Act 1996, section 321.

responsibilities to the governing body of the school. The *SEN Code of Practice* establishes that the governing body should ensure that provision is made for pupils who have SEN.<sup>190</sup> It should also ensure that the needs of pupils with SEN are made known to all who are likely to teach them, and that teachers are aware of the importance of identifying, and providing for, those children with SEN.<sup>191</sup> The governing body can identify a governor with particular responsibility for children with SEN.

The revised *SEN Code of Practice* (2001) made changes to the method of identifying and assessing SEN. This reduced the number of stages of identification of SEN from five to four:

In **Stage 1**, called School Action, a parent, teacher, health visitor, general practitioner (GP) or other person may highlight to the LEA a child's special needs and a parent can ask for an assessment. This stage includes setting targets and creating an Individual Education Plan (IEP) for the pupil. This right extends to parents of children from age two and the LEA has the discretion to make special educational provision for these younger children.

**Stage 2**, called School Action Plus, is required if the first actions have not been successful in helping the child with SEN. This may often involve the actions of wider LEA professionals, including an educational psychologist. In either case, the IEP will set out any arrangements that are additional to, or different from, the usual National Curriculum. Parents, teachers and a Special Educational Needs Coordinating Officer (SENCO) in the school will be involved in setting targets and developing strategies to help the child. LEAs and schools may look to the Local Health Authority (LHA) for help in carrying out an assessment, and the LHA must respond. This may include input from a speech therapist, physiotherapist or psychologist. The LHA is also obliged to inform parents if an NGO could help in the process (for example, through having specialist assessment capacity). The Health Act 1999 (implemented in April 2001) introduced more flexible arrangements for service funding between education, health and social services, and encourages greater partnership between these agencies for SEN provision.

**Stage 3** is required in a small number of cases, but commonly by children who have significant intellectual disabilities, where the needs are considered to be greater than can be coped with by school based measures.<sup>192</sup> A multi-disciplinary assessment from

<sup>190</sup> DfES, *SEN Code of Practice*, pp. 10–12.

<sup>191</sup> DfES, *SEN Code of Practice*, section 8.

<sup>192</sup> DfES, *SEN Code of Practice*, [http://www.teachernet.gov.uk/\\_doc/3724/SENCodeOfPractice.pdf](http://www.teachernet.gov.uk/_doc/3724/SENCodeOfPractice.pdf) (accessed 27 July 2001) sections 5.62 and 6.70. The terms “severe and complex” are not defined in the code. Severe is normally interpreted as affecting significant aspects of the child's life, particularly their learning, while complex, is used in the common sense way, where one disability, or a number of disabilities less significant in their own right, may cause significant interaction of problems in the child's life. We have noted a trend for some professionals to use the term “complex needs” to suggest that people exhibit behavioural difficulties.

the LEA will be requested, as additional resources may be needed to meet their needs, or perhaps a special school placement may be needed. This is only done when the measures of School Action and School Action Plus have not been sufficient to meet the needs of the child. This stage may result in a more co-ordinated plan of action, or provide the evidence for the issuing of a Statement of SEN.

In **Stage 4**, following a statutory assessment the LEA may issue a Statement of SEN, which details the special educational needs of the child; lists the special educational provision required; names an appropriate school or other arrangement; and, if appropriate, gives details of the non-educational provision required (for example, special transport arrangements or physiotherapy input). The representations, evidence and information taken into consideration by the LEA in compiling the statement must be included in the statement.

The *SEN Code of Practice* stresses the importance of taking account of the views of parents and, wherever possible, the wishes of the child, from the beginning of any assessment proceedings. The Education Act 1996 secures parental rights in the system to:

- be informed of an LEA's decision to assess a child formally (their consent to this assessment is needed only when the child is under two years of age);
- request the LEA to make a formal assessment of their child where they do not have a statement of special educational needs; the LEA is required to do this unless it judges the request to be unreasonable; be present during assessment procedures;
- have the LEA take into account the parent's representations to the assessment; to put forward the views of others known to the child in their representation;
- receive copies of the reports provided in the course of formal assessments; have access to an officer of the LEA for help; appeal against the provision specified in a statement of SEN; and
- refer to the Special Educational Needs and Disability Tribunal (SENDT) if they are not satisfied with the school suggested by the LEA.

The LEA will make a statement of SEN if they conclude that all the help a child's needs cannot reasonably be provided within the resources normally available to a school. If the LEA decides not to make a statement, it must inform the parents by sending them a "note in lieu of a statement" setting out their reasons. Parents have a legal right to appeal to the Special Educational Needs and Disability Tribunal (SENDIST) if they disagree with the statement the LEA creates, or if the LEA decides not to make a statement. They can also appeal against a head teacher's decision to modify or exempt their child from the National Curriculum. Under the 1996 Act, parents could not choose a school that the LEA considered would not meet the child's SEN, or which would entail an "inefficient use of the LEA's resources".<sup>193</sup> The

<sup>193</sup> Education Act 1996, Section 316.

SENDA 2001 effectively removed these two caveats as reasons to reject parent wishes, but a third reason for rejection that a “placement in mainstream would be incompatible with the efficient education of other children” can still be used to reject parental wishes, but the LEA is obliged to show that there are no reasonable steps that could be taken to prevent incompatibility.

LEAs must ensure that the child receives the provision specified in the statement. If the LEA cannot meet a child’s needs at one of its own schools, it may suggest placing the child in a non-maintained special school (in this situation, the LEA will meet all expenses); or can arrange for the child to attend an establishment outside their LEA (and outside the country). However, an “entitlement” to a place in a mainstream or particular special school is, in practice, heavily dependent on what the LEA originally decides is appropriate. There is some indication that there are problems in pursuing complaints or appealing against statement decisions, in terms of the cost and effort involved, and the need to be articulate.<sup>194</sup>

Every statement must be reviewed at least once every 12 months, but the school can review the statement more often if necessary. The review meeting is normally held at the school. Parents are invited to attend, and they can bring an adviser. The child can attend the meeting and express a view on progress during the year. Following the review meeting, the LEA is sent a report from the school concerning the statement. If the LEA wishes to amend or cease to maintain the statement, it must tell the parents of their intention and of their right to make comments on their decision. The LEA must consider parents’ views and inform them in writing of the result of its consideration. It must inform parents of the right to appeal if they disagree with the LEA’s decision.

There is some concern that statistics show greatly varying rates of producing statements of SEN across different LEAs. There is also evidence that children with similar needs will obtain a statement in one area, while they will not in another. Clearly, the Government intended for statements to be a doorway to the help people need and it is unacceptable to parents that refusal of a statement is used as a way of rationing resources.

In addition, the Government’s most recent SEN policy<sup>195</sup> is to reduce the number of statements completed on the basis of the resources that they take up, through making mainstream schools more able to cater for young people with SEN. They would prefer the resources to be focused on service provision rather than assessment of need. However, this would make statements of SEN an action of last resort. Parents have

<sup>194</sup> Comments expressed at OSI roundtable, London, 17 May 2004 (hereafter, OSI roundtable comment). *Explanatory note: OSI held a roundtable meeting in London in May 2004 to invite critique of the present report in draft form. Experts present included representatives of the Government, parents and NGOs.*

<sup>195</sup> Chief Secretary to the Treasury, *Every Child Matters*, CM 5860, HMSO, London, 2003, (hereafter, Treasury, *Every Child Matters*). Further information is available at <http://www.everychildmatters.gov.uk/childrens-trusts> (accessed 10 January 2005).

expressed some concern about these proposed changes, fearing that a move away from statements of SEN that legally establish need will lead to less appropriate service, rather than more support in the mainstream, and that consequently their son or daughter with intellectual disabilities will not receive the services that they need.<sup>196</sup>

### 1.3.2 Assessment procedures for further education and transitional planning

Following a child's 13th birthday, a Transition Plan is drawn up for any child with a statement of SEN, to plan for the child's transition to adult life. This plan is reviewed at the same time as the original statement. When a young person (aged 13-19) leaves school, responsibility for the assessment of learning difficulties and identification of suitable help for further education resides with the Connexions service in England. The Learning and Skills Council (LSC), which funds further education in England, has a statutory duty to take account of these assessments and to monitor the arrangements provision to meet the needs of young people with SEN in colleges.

Connexions is a Government provided service for all young people aged 13-19 in England.<sup>197</sup> It provides advice, guidance and access to personal development opportunities, to help them make a smooth transition to adulthood and working life. Connexions coordinates the input of six Government Departments, and their agencies and organisations on the ground, together with private and voluntary sector groups and youth and careers services. It brings together all the services and support young people need during their teenage years. All young people have access to a Connexion's Personal Adviser, to help them with choosing courses and careers, including access to broader personal development through activities such as sport, performing arts and volunteering activities. They will also provide help and advice on issues such as drug abuse, sexual health and homelessness. At the time of writing a Green Paper, *Youth Matters*,<sup>198</sup> has been issued in England that proposes the disbanding of the Connexions service, and to move its responsibilities back to Local Authorities, working through new Children's Trusts. The consultation will run until 4 November 2005.

The Learning and Skills Council (LSC) has the responsibility for funding and planning education and training for over 16-year-olds in England, other than those in

<sup>196</sup> OSI roundtable comment.

<sup>197</sup> Connexions is run on a private company basis. It is delivered through local partnerships working to national planning guidance; there are 47 such partnerships in England. Its progress has been patchy. See: Foundation for People with Learning Disabilities, *Developing Connexions*, 2004, available at <http://www.learningdisabilities.org.uk> and <http://www.connexions.gov.uk/partnerships/index.cfm?CategoryID=3> (accessed 10 January 2005).

<sup>198</sup> Department for Education and Science, *Youth Matters*, Cmnd 6629, July 2005, available at <http://www.dfes.gov.uk/consultations/downloadableDocs/Youth%20matters%20pdf.pdf> (accessed 27 July 2005).

universities.<sup>199</sup> The LSC aims to raise participation and attainment through individualised education and training which puts learners first. LSC responsibilities include further education; work-based training for young people; school sixth forms; workforce development; adult and community learning; information, advice and guidance for adults; and education business links.<sup>200</sup> In order to understand, define and then meet training and education needs, the LSC works closely with the DWP, Jobcentre Plus, the Small Business Service, Connexions, the National Training Organisations, further education and sixth form colleges, and representatives of community groups.

## Variations within the UK

### Wales

The *SEN Code of Practice for Wales*<sup>201</sup> gives practical advice and guidance and stresses that children's special educational needs should normally be met in mainstream schools. The Welsh Code addresses Welsh issues, arrangements and structures, and provides for the identification of learning difficulties, providing effective help in school. It aims to reduce paperwork and improve teaching and learning for staff. However, it adopts the same definitions of learning difficulties as in England.<sup>202</sup> For parents, the Welsh Code provides improved arrangements for getting help and information, independent support and access to a means of resolving disagreements while protecting their right to appeal. The Education Act 2002 establishes a separate Special Educational Needs Tribunal (SENT) for Wales (*Anghenion Addysgol Arbennig Cymru*) to which parents can appeal. This replicates the provision of the SENDT in England.

Careers Wales is the equivalent of Connexions in England and has responsibility for assessing intellectual disability and providing help to young people from age 13.<sup>203</sup> It has responsibility for delivering careers information, advice and guidance to young

<sup>199</sup> The Learning and Skills Council (LSC) was established by the Government in April 2001, merging the Training and Enterprise Councils and the Further Education Funding Council that operated before then. The LSC has a budget of £8 billion (for 2003–2004). It operates through 47 local offices and has a national office in Coventry.

<sup>200</sup> Department for Education and Employment, *Learning to Succeed: a new framework for post-16 learning*, Cm 4392, DfEE, June 1999, available on the website of the Learning and Skills Council at <http://www.skills.org.uk/lts-wp.pdf> (accessed 10 January 2005). This White Paper sets out the Government's aims.

<sup>201</sup> Welsh Assembly Government, *The SEN Code of Practice (Wales) (Draft)* and *SEN Thresholds (Draft)*, Welsh Assembly Government, 2000, available on the Welsh Assembly Government website at [http://www.wales.gov.uk/subieducationtraining/content/special/spcled\\_e.htm](http://www.wales.gov.uk/subieducationtraining/content/special/spcled_e.htm) (accessed 10 January 2005).

<sup>202</sup> Based on the definitions in: Education Act 1996, Section 312.

<sup>203</sup> Careers Wales was established by the Government in April 2001. It is funded by the Welsh Assembly Government and brings together the previous seven Welsh careers companies under one banner.



people and adults across Wales. Other responsibilities include: the Work Force Development initiative (a UK wide programme for equipping the existing workforce for work in the 21<sup>st</sup> Century);<sup>204</sup> Education Business Partnerships (which operate work experience for all young people in schools); and Youth Gateway (run from Careers Centres providing a Personal Advisor to help people identify their skills and abilities, set goals for the future, and get help to overcome barriers).<sup>205</sup> Careers Wales works with a range of organisations including Educational Establishments, Employers, Young People's Partnerships, Training Providers, Community Consortia for Education and Training (CCETs),<sup>206</sup> Youth Services, Job Centre Plus, local councils, Education and Learning Wales (ELWa) and the Voluntary sector.

The National Council for Education and Training for Wales (ELWa) picks up on such assessments and monitors provision for people with SEN in further education. It plays a central role in the transition process through its relationship with Careers Wales.<sup>207</sup> ELWa's objectives are the implementation of policies and strategic priorities of the Welsh Assembly Government, as articulated in the documents, *Wales: A Better Country*<sup>208</sup> (2003) and *The Learning Country* (2000).<sup>209</sup> It has a duty to secure appropriate and reasonable provision, which will meet the need of individuals, communities, employers and Wales as a whole, particularly in delivering high quality education and skills training; enhancing social justice and tackling the poverty trap; promoting local employment; helping create a bilingual country; and promoting participation.<sup>210</sup>

<sup>204</sup> Performance and Innovation Unit, *In Demand: Adult skills for the 21st century*, available on the PIU website at [http://www.strategy.gov.uk/su/wfd\\_1/report/5.html](http://www.strategy.gov.uk/su/wfd_1/report/5.html) (accessed 10 January 2005).

<sup>205</sup> Information from the Careers Wales website, available at <http://www.careerswales.com> (10 January 2005).

<sup>206</sup> Community Consortia for Education and Training (CCETs) are local bodies made up of representatives from all key groups with an interest in the learning system in Wales. CCETs make recommendations on how local learning provision can be improved.

<sup>207</sup> The National Council for Education and Training for Wales (ELWa) was established by the Welsh Assembly Government under the Learning and Skills Act 2000. It took over the majority of the functions of the four Training and Enterprise Councils and the Further Education Funding Council for Wales. It assumed responsibility for funding, planning and promoting all post-16 education and training in Wales with the exception of Higher Education. This includes further education, private and voluntary sector training provision, adult continuing education and sixth forms.

<sup>208</sup> Welsh Assembly Government, *Wales: A Better Country*. The strategic agenda of the Welsh Assembly Government, September 2003 available on the NafW website at <http://www.wales.gov.uk/themesbettercountry/> (accessed 10 January 2005).

<sup>209</sup> Welsh Assembly Government, *The Learning Country*, 2000, available at <http://www.wales.gov.uk/subieducationtraining/content/PDF/learningcountry-e.pdf> (accessed 27 July 2005)

<sup>210</sup> Information from the ELWa website, available at <http://www.elwa.ac.uk/elwaweb/portal.aspx> (accessed 10 January 2005).

## Scotland

There will be important changes to assessment procedures in Scotland following the entry into force of the Education (Additional Support for Learning) (Scotland) Act 2004, in autumn 2005. The aim of the new act is to ensure that all pupils have a positive inclusive educational experience, with the necessary support to help them towards achieving their full potential.

### *Current assessment procedures*

The current Record of Needs system in Scotland was introduced by the Education (Scotland) Act 1980. A Record of Needs is the equivalent of the statement of SEN in England and Wales, and identifies the child's special educational needs following a full assessment by an appropriate range of specialists, including the psychological/medical and education services, and after consultation with parents. This document contains a summary of a child or young person's difficulties and special educational needs, and the measures an education authority proposes to use to address his or her special educational needs, including the nominated school.

Consultation with parents generally begins well before children reach school age, often through contact with other local authority services, such as the health, psychological and social work services. At all stages parents are consulted about the special needs of their children, notably where it is deemed useful or necessary to establish a Record of Needs. Parents whose child has a Record of Needs can make a placing request to an independent special school. Independent special schools provide for a smaller number of children whose needs are too great for most ordinary schools to meet, such as those with profound and multiple disabilities.

At present, education authorities also have a duty to carry out a Future Needs Assessment (FNA), which is equivalent to the Transition Plan in England and Wales, for any young person with a Record of Needs when they reach age 14. This assessment looks at whether or not the young person will benefit from school education following their 16th birthday, and what provision will be required after they leave school or reach their 18th birthday. Social Work has a duty to assess young people with a Record of Needs and ascertain their needs for adult services.

For children aged 14 and over, Careers Scotland perform a similar role to Connexions and Careers Wales, with respect to responsibility for assessments and support. Careers Scotland was established in 2002, following the alignment of the Careers Service; Education Business Partnerships; Adult Guidance Networks and Local Learning Partnerships; and with the two Enterprise Networks of the Highlands and Islands and Scottish Enterprise (SE).

In practice, however, a number of problems have been identified with the present assessment procedures in Scotland. The proportion of children with a Record of Need varies between education authorities and it has been suggested that authorities have been nervous of the escalating costs of providing support. Unlike England, parents in

Scotland have not had a right to appeal against the measures, as there is no appeals tribunal structure in operation. Thus, details in Records of Needs were often vague, leaving education authorities some leeway should resources prove scarce. There have also been a number of problems with FNAs, including lack of participation by disciplines other than education and lack of knowledge of options for further education and adult services.

### *Envisaged changes*

Following changes in legislation, there will be a move from the term “Special Educational Needs” (SEN) to “Additional Support Needs” (ASN). Children or young people will be assessed as having ASN if they are (or are likely to be) unable to benefit from school education provided (or to be provided), without the provision of additional support.

In line with this change, the present Records of Needs will be replaced by a new type of individualised plan, the Co-ordinated Support Plan (CSP). It is envisaged that these CSPs will be “working documents” which will detail a child or young person's ASN; the proposed learning outcomes; the services to be provided; the nominated school; and the date of review. CSPs will be available to children or young people with ASN requiring significant support, to be provided by agencies outside education, arising from: one or more complex factors defined as having, or likely to have, a significant adverse effect on school education; or multiple factors which are likely to continue for more than one year. Multiple factors may not by themselves be complex factors but together have, or are likely to have, a significant effect.

Following the legislative changes, the FNA process will also be removed. It will be replaced by a duty on the education authorities (EAs), at least 12 months before a young person leaves school, to ask for information from other agencies about the provision they will have to make for the future needs of the young person, and to support the transition to these other services. They will also have to provide information to other agencies at least six months before the leaving date.

Parents’ right to appeal assessments will be widened, along with the establishment of an ASN Tribunal. An independent mediation service will also be established. The EAs will have the duty to make arrangements for these mediation services, which will be free of charge.

The bill outlines new duties for the EAs<sup>211</sup> to identify and address the additional support needs of pupils, and to seek and take account of advice from relevant agencies, parents and young people. The EAs will have the duty to make adequate and efficient provision for children and young people's ASN, subject to the authorities' powers and what is practicable at a reasonable cost. They will have a duty to specifically coordinate the support to be provided as set out in the CSP. There will be a named individual

<sup>211</sup> This can be delegated to an individual outside the education system if this is more appropriate.

who will manage the day-to-day implementation of the CSP. The EAs will have the duty to publish information on local policies and arrangements for young people with ASN, including the right of parents and young people.

EAs may ask other agencies, such as health boards or trusts, for help. These agencies must provide help unless the request is incompatible with their own statutory or other duties. A Code of Practice will be issued setting out minimum standards, the aim being to promote more and better joint planning, partnership and consistency across Scotland.

While these developments have been welcomed, concerns have been raised about the fact that not all children with disabilities will be identified as having ASN, and that some will not have a CSP. Parents of children who do not have a CSP, but do have ASN, will have access to dispute resolution outside the formal appeals route through a mediation procedure.<sup>212</sup> Parents will also have a right of appeal to the Tribunal if they are in the process of having a CSP drawn up, but encounter delays.<sup>213</sup> All parents of children with ASN will have the right to make placing requests to independent schools.

### Northern Ireland

The Education (Northern Ireland) Order 1996 makes similar arrangements for identifying, assessing and making provision for special needs education, to those outlined in the Education Act 1996 for England and Wales. In Northern Ireland, responsibility for children with SEN stands with Education and Library Boards (ELBs), which have similar responsibilities to LEAs in England and Wales, and the Order provides for similar multidisciplinary assessment and identification. It requires every statement of SEN to be reviewed within 12 months of the initial statement being made or the last review. The Education (Special Educational Needs) (Amendment) Regulations (Northern Ireland) 1998 sets out regulations for SEN assessments and for the issuing of statements of SEN. There are no plans at present to introduce any of the changes implemented in England and Wales, and in Scotland.

Boards of Governors of mainstream schools are required to report on their efforts to admit pupils who have SEN, but who do not have a statement, and on their efforts to prevent less favourable treatment of these students and the facilities provided to improve access to the school. Health and Social Services Boards and Trusts are required to provide assessment advice to ELBs within six weeks of a request.

<sup>212</sup> Scottish Executive *Draft Education (Additional Support for Learning) (Scotland) Bill*, para. 35-36.

<sup>213</sup> Scottish Executive *Draft Education (Additional Support for Learning) (Scotland) Bill*, para. 68-69.

## 1.4 Early intervention services

In the UK, children as young as two can be identified and offered special education. However, the latest Government policy document, *Every Child Matters* (2003), recognises a number of factors that get in the way, including: poor coordination between education, health and social care leading to gaps in support; shortfalls in the availability of childcare for children with disabilities; and difficulties in refocusing funding to support earlier intervention and too much bureaucracy.<sup>214</sup> The document looks for improved health, education and social services to be organised around the needs of children and their families, with better information sharing and assessments leading to early intervention. It seeks for teachers and early years staff to spend more time supporting early intervention and less time on “SEN-related paper work”.

*Every Child Matters* also puts forward a range of measures to improve support to families: by improving information-sharing between agencies, joining up assessment procedures, setting up multidisciplinary teams, co-locating services and making one professional responsible for ensuring that things work for individual families. This will include developing “Children’s Trusts”<sup>215</sup> in England and Wales, a proposed new structure bringing together services for children and young people in a more integrated partnership, to jointly commission services for children, particularly where children have a combination of health, educational and social care needs. Staff will work in multidisciplinary teams, co-located in schools and children’s centres. A pathfinder pilot scheme began in 2003, with 35 local authority areas, and all areas should adopt some form of unified children’s service model by 2008. It is hoped that Children’s Trusts will provide a better service for children with SEN and disabilities and their families.

The Government has also put forward a number of other initiatives to address early intervention for children and young people with disabilities:

- *Together from the Start*<sup>216</sup> (2003)

<sup>214</sup> Treasury, *Every Child Matters*.

<sup>215</sup> Further information on Children’s Trusts are available on “Every Child Matters” website, at <http://www.everychildmatters.gov.uk/childrens-trusts/> (accessed 10 January 2005).

<sup>216</sup> Department for Education and Skills and Department of Health, *Together from the Start: practical guidance for professional working with disabled children (birth to 2) and their families*, LEA/0184/2002, DfES and DOH, May 2003, available on the Teachernet website at <http://www.teachernet.gov.uk/sen> (accessed 10 January 2005).

- *National Service Framework for Children*<sup>217</sup> (2003)
- The “Early Support Pilot Programme” (ESPP) (2003)
- The “Sure Start Programme”<sup>218</sup>

The *Together from the Start*<sup>219</sup> guidance document establishes a national set of principles for promoting family-centred working by health, education and social services, in support of families with young children with disabilities. The *National Service Framework for Children* draws on the principles established in *Together from the Start*. It will set national standards for health and social care services for children, and the interface with education.

The “Early Support Pilot Programme” (ESPP) was launched in September 2002 and will see the investment of £13 million (or approximately €18.9 million) until 2006, to improve services for babies and very young children with disabilities and their families. Practical action is being taken forward through:

- single assessments across agencies;
- allocation of a named key worker to coordinate services to the family;
- clearer information about services and better service review and partnership working;
- “toolkits” for families and professionals giving guidance on quality services; and
- nine ESPP pathfinder areas, that were delivering all aspects of the programme in 2003, to test how the full model may work.

Throughout the UK, the “Sure Start Programme” sets out initiatives to overcome poor education in deprived groups and communities, and also makes early provision for children with intellectual disabilities as part of its general mission to serve disadvantaged children. These include:

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<sup>217</sup> Parts of the Framework have been published for health services (see: Department of Health, *Getting the right start: National Service Framework for Children: Standard for Hospital Services*, DOH, London, 2003). Development of the Framework is ongoing and further guidance in wider health and social care is expected soon. Further information is available on the DOH website at <http://www.doh.gov.uk/nsf/children/gettingtherightstart> (accessed 10 January 2005).

<sup>218</sup> The “Sure Start Programme” is a Government initiative which sets out to achieve better outcomes for children, parents and communities, by increasing availability of child care; improving their health and emotional development; and supporting parents towards employment. Further information is available on the Sure Start website at <http://www.surestart.gov.uk/> (accessed 10 January 2005).

<sup>219</sup> Also the related guidance for deaf children: Department for Education and Skills and the Royal National Institute for the Deaf, *Developing Early Intervention/Support Services for Deaf Children and their Families*, LEA/0068/2003, DfES and RNID, May 2003, available at [http://www.teachernet.gov.uk/\\_doc/3962/DfES-DevelopSupp-Deaf.pdf](http://www.teachernet.gov.uk/_doc/3962/DfES-DevelopSupp-Deaf.pdf) (last accessed April 2004).

- the development and extension of Portage services;<sup>220</sup>
- supporting the new Children's Trusts to develop services and disseminate best practice nationally;
- developing Children's Centres;<sup>221</sup>
- improving information on the availability of suitable local childcare;<sup>222</sup>
- helping families to meet the additional costs of a child's disabilities, by promoting take-up of the Working Families Tax Credit;<sup>223</sup>
- extending the "Home Childcarer Scheme";
- promoting the best use of "Early Years and Childcare Grants" to local authorities;<sup>224</sup>
- promoting the use of direct payments, for parents who want to organise their own childcare.

## 2. GOVERNMENT EDUCATION POLICY

*In the UK, a number of EU programmes (including Horizon, Leonardo and Employ) have provided innovative projects for people with intellectual disabilities in transition from school and colleges. Programmes of action aiming to improve the educational achievements of children with SEN have been implemented in England (from 1998) and Wales (from 1999). The goals of these programmes, including increasing the numbers of children with SEN integrated into mainstream schools, are highly relevant to children with intellectual disabilities.*

<sup>220</sup> Portage involves workers helping to establish early support for systematic home teaching by families.

<sup>221</sup> Children's centres were developed under the "Sure Start Initiative" and provide early years education; integrated with health and family support services; and childcare from 8am-6pm. It is likely that there will be 2,500 of these services across the UK by 2008. Further information on children's centres is available at <http://www.everychildmatters.gov.uk/childrens-trusts/integrated-frontline-delivery/childrens-centres> (accessed 10 January 2004).

<sup>222</sup> Through the new Children's Information Services and Childcare Link, and through the family and professional toolkits to be published under the "Early Support Pilot Programme".

<sup>223</sup> The Working Families Tax Credit is targeted at families on low or middle incomes who are responsible for at least one child.

<sup>224</sup> "Early Years and Childcare Grants" subsidise start-up costs for new specialist facilities and adjustments to buildings and the creation of equipment loan schemes for families.

## 2.1 The EU and Government education policy

In the UK, a number of Horizon, Leonardo and Employ EU programmes have provided innovative projects for people with intellectual disabilities in transition from school and colleges.<sup>225</sup> In addition to these programmes, in Northern Ireland European Peace (I & II) Funding available. A number of disability, voluntary and community organisations have developed and delivered very successful Transition Projects working in conjunction with special schools and mainstream schools. In Scotland, an International Relations Unit was set up within the Scottish Executive Education Department in 1990, and one of its roles was to maintain and develop links with EU institutions in the field of education and training.

There has been some comment by international institutions relating to the UK's work in the education of people with disabilities. The Parliamentary Special Rapporteur<sup>226</sup> noted the strong link made between education and employment evidenced by a single Ministry dealing with both – the (then) Department for Education and Employment. There was a clear commitment to enable people to become economically self-sufficient. It was also noted that the orientation of education towards enhancing individual competitiveness had resulted in competition between children and their schools. This was represented by the use of “league tables” showing mainstream school performance in gaining qualifications. The Rapporteur was concerned about the effects of competitiveness between schools (prompted by the school “league tables” system) on children with disabilities. The argument is that concern for league table performance may move schools away from including children who are likely to be poor exam performers. In the Rapporteur's opinion, inclusiveness required enhancing the adaptation of schooling to children with disabilities.

The Rapporteur also noted the introduction of citizenship education and that it provided an opportunity for building conceptual bridges between different forms of discrimination, their causes, effects and impact, and to develop comprehensive human rights education aimed at addressing and redressing everyday issues that learners can easily identify with.<sup>227</sup>

<sup>225</sup> S. Beyer, *Learning and Working Project: Accessing supported work experience*, 2004, Chester, West Cheshire College.

<sup>226</sup> UN Commission on Human Rights, *Report submitted by Katarina Tomaševski, Special Rapporteur, on the Right to Education. Addendum: Mission to the United Kingdom of Great Britain and Northern Ireland (England), 18-22 October 1999*, available at <http://www.right-to-education.org/content/unreports/unreport3prt1.html> (accessed 1 May 2005), (hereafter, Commission on Human Rights, *The right to education (UK)*)

<sup>227</sup> Commission on Human Rights, *The right to education (UK)*.



## 2.2 National programmes

There are separate national programmes of action for England and Wales. In 1998, the DfES consultation document, *Excellence for All Children*<sup>228</sup> (1997) set out some good practical strategies for breaking down barriers between existing special and mainstream schools:

- special schools sharing their specialist skills and knowledge to support inclusion in mainstream schools;
- greater staff movement across sectors, to share expertise and experience in working with children with higher levels of need;
- good multi-disciplinary team support;
- more pupils moving between the sectors, using annual reviews of children's statements to consider the scope for a dual placement or transition to a mainstream school;
- more federation, cluster and twinning arrangements between mainstream and special schools;
- co-location of special and mainstream schools closer together physically in future capital programmes.

Based on the *Excellence for All Children* document, the Government created a programme of action<sup>229</sup> setting out steps to improve the educational achievements of children with SEN in England, over the period 1998 to 2001. These steps included increasing the numbers of children in mainstream schools, wherever possible.<sup>230</sup> Other steps included promoting local, regional and national partnerships in SEN and providing better opportunities for professional development for teachers and others.

In 1997, the (then) Welsh Office (WO) produced a Green Paper, *The BEST for Special Education*,<sup>231</sup> setting out its proposals and strategy for the future development of SEN provision in Wales. As a result of the Green Paper consultation and further advice from the Welsh Advisory Group on Special Educational Needs (WAGSEN), a programme of action for meeting special educational needs was launched in 1999. The programme of action sets out the goals of the National Assembly for Wales (NAfW) for SEN education and identifies how the assembly intends to meet them. The programme's goals and process are similar to those identified in the English programme. The programme document states that, "Promoting inclusion within mainstream schools, where parents want it and where appropriate support can be provided, will remain the

<sup>228</sup> DfES, *Excellence for all*.

<sup>229</sup> Department for Education and Employment, *Meeting Special Educational Needs: A programme of Action*, 1998.

<sup>230</sup> DfES, *Excellence for all*, section 4.

<sup>231</sup> National Assembly for Wales, *The BEST for Special Education*, CM 3797, 1997.

cornerstone of our strategy.”<sup>232</sup> More recently, the debate on social inclusion in schools has been reopened by Baroness Warnock, its original architect, who in a recent paper has suggested the inclusion policy has not been a success.<sup>233</sup>

### 3. EDUCATION IN PRACTICE

*In England, Wales and Northern Ireland, the relevant National Curriculum is mandatory for all pupils in state-maintained schools, up to the age of 14. However, pupils with a statement of SEN can be exempted from the National Curriculum; or the National Curriculum (and its assessment arrangements) can be adjusted accordingly. Given the National Curriculum’s academic focus, there are different views among self-advocates and education experts, as to its effectiveness for teaching children with intellectual disabilities. However, there is consensus that this group of children must be given the support they need to achieve the greatest level of achievement both academically and in terms of acquiring vocational skills. In Scotland, schools are responsible for developing their own curriculum, but these must be adapted to the needs of individual pupils, including those with intellectual disabilities. Across the UK, Individualised Educational Programmes (IEPs) must be prepared for pupils with a statement of SEN (or Record of Needs); these are used as a basis for planning, setting targets and ensuring that pupils make progress. In most mainstream schools, a SEN Coordinator (SENCO) is responsible for developing the school’s SEN policy and for helping staff teach and support children with SEN. Teacher training for mainstream teachers includes elements on the teaching of children with SEN, but the extent to which children with intellectual disabilities are taught in mainstream classes, and the severity of intellectual disabilities the children included experience, varies between primary and secondary schools, and between LEAs. Learning support assistants (LSAs) or special needs assistants/teaching assistants provide extra support. Children with severe and complex forms of SEN (including many children with intellectual disabilities) are taught by SEN teachers, primarily in special units or in special schools.*

*Recent legislation and Government policy has clearly prioritised the education of children with SEN in a mainstream environment. However, at present, the majority of young people with intellectual disabilities are assessed as having learning disabilities of sufficient severity to be educated either in special schools or in segregated special units within mainstream schools. The inclusive education of children with intellectual disabilities has often only been applied to some children with mild intellectual disabilities. As an increasing number are integrated into mainstream education at the primary level, parents are now seeking their inclusion in secondary and further education. At present, though, most mainstream schools do not have sufficient skills, experience and resources to provide the support required for the inclusive education of children with intellectual disabilities; special schools are considered to have an important role in preparing mainstream schools for their inclusion. Nonetheless, although policy now recognises that children with mild and moderate intellectual*

<sup>232</sup> Welsh Office, *Shaping the Future for Special Education – An Action Programme for Wales. The BEST Programme, Building Excellent Schools Together*, section 3.1, 1999, available on the TSO website at <http://www.archive.official-documents.co.uk/document/cm37/3792/3792e.htm> (accessed 10 January 2005).

<sup>233</sup> M. Warnock, *Special educational needs: A new look*, No. 11 in a series of policy discussions, Philosophy of Education Society of Great Britain.

*disabilities should be educated in mainstream schools, there is wide variation in the extent to which young people with more severe intellectual disabilities are educated in mainstream or special schools.*

### 3.1 Resources and support

#### 3.1.1 Curricula and support

The National Curriculum was introduced in 1992 and makes mandatory the teaching of particular subjects. It covers the following six areas of development: personal, social and emotional development; communication, language and literacy; mathematical development; knowledge and understanding of the world; physical development; and creative development.

The Education Act 1996 requires all maintained schools, including special schools, to follow the National Curriculum until students reach the age of 14, although independent schools do not have to do so. The National Curriculum was also extended to younger children in 2000.<sup>234</sup> Where possible, children with SEN should follow the National Curriculum. However, for a child who has a statement of SEN, the Education Act 1996 allows changes to the National Curriculum and its assessment arrangements, or exemption from them.<sup>235</sup> Temporary exceptions from the National Curriculum can be allowed for individuals for up to six months, if the head teacher allows it. Parents can disagree with the arrangements and can appeal against the modification to the school's governing body. It is recommended that the National Curriculum should be followed by both non-maintained and independent special schools, but this is not compulsory for independent special schools.

The Qualifications and Curriculum Authority (QCA) publishes guidelines for delivering the National Curriculum to people with learning difficulties.<sup>236</sup> Their guidance relates to all pupils aged five to 16 who are unlikely to achieve above Level 2 of the National Curriculum's 8-level scale, by the time they reach Key Stage 4.

There is some concern about the effectiveness of the National Curriculum for children and young people with intellectual disabilities. School head teachers are required to teach young people with intellectual disabilities a broad interpretation of the National Curriculum. However, it has been suggested that the National Curriculum is not necessarily helpful for schools educating young people with intellectual disabilities for adult life.<sup>237</sup> Education experts and practitioners question whether this arrangement is serving people with intellectual disabilities well, or whether more creative use of a

<sup>234</sup> Qualifications and Curriculum Authority, *Designing a learning-centred curriculum for 16- to 24-year-olds with learning difficulties*, QCA, London, 2002.

<sup>235</sup> Education Act 1996, section 364.

<sup>236</sup> Qualifications and Curriculum Authority, *Designing a learning-centred curriculum for 16- to 24-year-olds with learning difficulties*, QCA, London, 2002.

<sup>237</sup> OSI roundtable comment.

functional curriculum (based on the skills needed for independent living), supported work experience and other practical and community based training, may better prepare them for an adult life in a job, without sacrificing their right to education.<sup>238</sup> Another minority view is that the National Curriculum is not restrictive and the fact that schools now prioritise teaching is an improvement on the previous situation, where the emphasis was on providing care. A self-advocate<sup>239</sup> has stated that she had been “bored” with her adjusted curriculum and “would have liked to do my GCSEs”.<sup>240</sup> The consensus view appears to be that each individual with intellectual disabilities must be given the opportunity and support they need for the greatest level of achievement, whether this be academic or vocationally related. The principle question should be, “what does each individual need to unfold their wings and fly?”<sup>241</sup>

## Variation within the UK

### Wales

The NAFW has power in areas such as the setting of the content of the National Curriculum and can vary content within Wales. Separate provision is made for teaching through the medium of Welsh language and there is a separate network of primary and secondary schools where all subjects are taught in Welsh. A Welsh Language Board was established in 1993 and advises the NAFW on Welsh language issues, including Welsh language schemes prepared by LEAs, school and college governing bodies and other public bodies involved in education in Wales.

The revised National Curriculum in Wales (August 2000) is aimed at providing teachers with greater flexibility to respond to the needs of pupils with SEN. The Qualifications, Curriculum and Assessment Authority for Wales (ACCAC) has published additional guidance on the curriculum for pupils with emotional and behavioural difficulties, which includes some children with intellectual disabilities.<sup>242</sup>

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<sup>238</sup> OSI roundtable comment.

<sup>239</sup> Self Advocate: in this case a person with an intellectual disability making their own views and wishes known, to get their equal rights. A person who expresses their own opinion, makes their own choices and exercises their own rights. Often a person who is part of a “self-advocacy” group where people with intellectual disabilities get together, sometimes with facilitation, to help each other speak out about what they want and about the issues that affect them. Self Advocacy is a right; most people ‘self advocate’ many times a day, other people have to fight for that right, from deciding what clothes to wear or what to have for breakfast, to deciding how to travel to work or how to live their life.

<sup>240</sup> OSI roundtable event.

<sup>241</sup> OSI roundtable comment.

<sup>242</sup> Qualifications, Curriculum and Assessment Authority for Wales (ACCAC), *Challenging Pupils: Enabling Access Meeting the Curriculum Needs of Pupils with Emotional and Behavioural Difficulties*, 2000.

## Scotland

In Scotland, unlike England and Wales, schools are responsible for constructing their own curriculum and timetable. In mainstream schools, the 5-14 National Guidelines give advice to teachers on how to adapt their teaching programmes to cater for the needs of individual pupils and groups of pupils. There is no specific curriculum for pupils with SEN in primary schools. However, the curriculum offered is supposed to take into account the nature and severity of their needs.<sup>243</sup> At secondary school level, students with learning difficulties have been encouraged to go forward for certification at Standard Grade. Provision has been made also by the Scottish Qualifications Authority (SQA) to enable all those with special educational needs to follow the framework of new National Qualifications in school and in further education colleges. This makes provision across the continuum of special educational needs for pupils (aged 14 and above) and adults.

No method is specifically laid down for teaching pupils with SEN. In many cases, pupils will receive individual attention and will work in small groups. Pupils with SEN or with a Record of Need will usually have Individualised Educational Programmes (IEPs), which, as in England and Wales, are used as a basis for planning, setting targets and ensuring that pupils make progress. In all cases the methods used will relate to the nature of the individual pupil's needs.

## Northern Ireland

Schools in Northern Ireland follow the Northern Ireland Curriculum. The curriculum guidelines list the following areas of learning as the basis for a balanced pre-school programme providing for the developmental needs of all children: personal, social and emotional development; physical development; creative/aesthetic development; language development; early mathematical experiences; early experiences in science and technology; and knowledge and appreciation of the environment.<sup>244</sup>

In accordance with the Education Reform (Northern Ireland) Order 1989, the special educational provision specified in a statement for any pupil may include modifying, or not applying, the Northern Ireland Curriculum.<sup>245</sup> There remain some differences between National Curriculum assessment arrangements in England and Wales, and

<sup>243</sup> The guidance document, Scottish Executive *Moving Forward! Additional Support For Learning* (2003), provides an interpretation of the 5-14 curriculum for pupils with special educational needs. Available at <http://www.scotland.gov.uk/library5/education/mfas-00.asp> (accessed 31 August 2005).

<sup>244</sup> See the website for the Qualifications and Curriculum Authority in Northern Ireland for detailed age related Curricula, available at <http://www.qca.org.uk/> (accessed 31 August 2005).

<sup>245</sup> Education Reform (Northern Ireland) Order 1989, Statutory Instrument 1989 No. 2406 (N.I. 20), available on the OPSI website at [http://www.legislation.opsi.gov.uk/si/si1989/Uksi\\_19892406\\_en\\_1.htm](http://www.legislation.opsi.gov.uk/si/si1989/Uksi_19892406_en_1.htm) (accessed 10 January 2005), section 16.

those in Northern Ireland. For example, in Northern Ireland, pupils who have statements of SEN and have been assessed as having severe learning difficulties are exempt from statutory key stage assessment in Key Stages 1, 2 and 3.

A review of the Common Curriculum Post-Primary Northern Ireland Curriculum for key stages 3 and 4 was initiated by the (Northern Ireland) Council for the Curriculum Examinations and Assessment (CCEA), on behalf of the Department of Education, in June 2000 and is now near completion. This review will have an impact on students with intellectual disabilities attending mainstream or special schools. It examined Stage 3 and Stage 4 of the Northern Ireland Curriculum and aimed to,

provide a curriculum and assessment framework that is capable of meeting the changing needs of pupils, society and the economy; which had the confidence of teachers, pupils, parents, employers and the wider public; and which widens educational opportunity and improves learner motivation and achievement.<sup>246</sup>

The objectives of the review were to clarify the aims and values of the school curriculum; to improve progression in skill development; to improve curriculum relevance and enjoyment for all learners; to provide greater balance, coherence and flexibility at each key stage; to develop an assessment mechanism which could better serve curriculum aims; and to develop strategies for managing future change. Consultation has been carried out and proposed recommendations are currently under consideration by the Department of Education and the Minister responsible for Education. In 2002, the CCEA published proposals for a revised primary curriculum.<sup>247</sup> Proposed changes include that the head of any grant-aided school may, for a period of not more than six months, modify or set aside the curriculum for individual children. Parents must be informed of the proposals and future actions, and may appeal to the Board of Governors against the head's decision.

### 3.1.2 Teacher training

Depending on the type of children being supported, staffing for special schools comprises: teachers; learning support assistants (LSAs); and care staff and support staff.

In mainstream schools, there should normally be a Special Educational Needs Coordinator (SENCO) who is responsible for that school's SEN policy, as well as for helping other staff to develop their skills in catering for children with SEN. The Teacher Training Agency (TTA) provides national standards for SENCOs in England and Wales, and national SEN standards that non-specialist teachers can follow in

<sup>246</sup> Northern Ireland Council for the Curriculum Examinations and Assessment, *Developing the Northern Ireland Curriculum to meet the needs of young people, society and the economy in the 21st century*, CCEA, Belfast, 1999.

<sup>247</sup> Northern Ireland Council for the Curriculum Examinations and Assessment, *Review of the Northern Ireland Post Primary Curriculum and its assessment arrangements*, CCEA, Belfast, 1999.

supporting children with SEN in their classes.<sup>248</sup> This may include children with *mild* intellectual disabilities.

In England and Wales, the requirements for initial training for all mainstream teachers, through a Post Graduate Certificate of Education (PGCE) or a Bachelor of Education (BED) course, must provide new teachers with basic knowledge and skills in the field of SEN. In both England and Wales, newly qualified teachers must know the *SEN Code of Practice* and be able to implement and keep records on Individual Education Plans (IEPs) for children with SEN. However, this would not necessarily be enough to equip teachers to teach children with significant intellectual disabilities.

There are requirements for some teachers of children with disabilities (notably teachers of classes of hearing-impaired or visually-impaired children) wherever they are taught, to acquire a relevant, additional, approved qualification within three years of appointment.<sup>249</sup> Skills in the area of intellectual disabilities are largely obtained through continuing professional development while in employment. This is provided by a range of organisations, including LEAs (in England and Wales), ELBs (in Northern Ireland), universities and NGOs. Schools do have funding for in-service staff development, and the Government has made additional funding for SEN training available in recent years.<sup>250</sup>

Revised National Standards for SEN Specialist Teachers, who mainly work in special schools, were published in 1999.<sup>251</sup> These standards are directed towards those teachers currently working with children with more severe forms of SEN (which would include many children with intellectual disabilities), and for other teachers thinking of specialising in this area. They lay out the knowledge, understanding, skills and attributes required by those who teach this group of pupils.

LSAs (or special needs assistants/teaching assistants) provide the extra help needed by children with SEN to be educated within mainstream schools. There are no national requirements for training or qualifications, although some LSAs may take training within a vocational training framework, although we understand this is under review.

The policy document *Every Child Matters* (2003) sets out steps for the future, in terms of preparation of wider support staff.<sup>252</sup> The aim will be to produce consistent, nationally

<sup>248</sup> Teacher Training Agency, *National Special Education Needs Specialist Standards*, Teacher Training Agency, London, December 1999, available on the TTA website at <http://www.tta.gov.uk/php/read.php?sectionid=100&articleid=510> (accessed 10 January 2005), (hereafter, TTA, *National Special Education Needs Specialist Standards*).

<sup>249</sup> Education (Teachers) Regulations 1993, Statutory Instrument 1993 No. 543.

<sup>250</sup> The Standards Fund in England; and the Grants for Education Support and Training Programme in Wales. The Department of Education in Northern Ireland also provide grants to schools for this purpose.

<sup>251</sup> TTA, *National Special Education Needs Specialist Standards*.

<sup>252</sup> Treasury, *Every Child Matters*.

recognised training, provided to staff in all settings. Through the *Sure Start Programme*, training modules for childcare workers are being produced that include a module on early child development, for child-minders and play-workers.<sup>253</sup> A comprehensive pack of training materials has been developed for Early Years SENCOs, to help with identifying children with SEN in the foundation (preschool) stage.

In terms of disability awareness, an organisation called Disability Equality in Education provides training to help schools and colleges provide an appropriate education to disabled children within the mainstream.

## Variations within the UK

### Scotland

Teachers in Scotland must have undergone initial training and must hold a teaching qualification in order to be registered with the General Teaching Council for Scotland. Registration is a requirement before a teacher can be employed by an Education Authority (EA). A teaching qualification can be obtained by taking a Bachelor of Education degree at one of five teacher education institutions; a combined degree which includes subject study, study of education and school experience; or, for those with a university degree, a one-year course for a post-graduate Certificate in Education.

Teachers working with pupils with SEN are employed in both mainstream and special schools. All teachers must be qualified initially to teach in mainstream primary or secondary schools and their registration with the General Teaching Council will be as primary or secondary teachers. They can gain further specialist qualifications after completing their probationary period, although they can be employed in teaching pupils with SEN without these additional qualifications. The major qualifications are the Diploma, the Certificate in Special Educational Needs, and the Master of Education. Specific courses are provided for teachers of children and young people with visual and hearing impairments.

The Scottish Executive supports in-service staff development and training for school staff working with children with SEN. This is offered through SEED seminars, or courses delivered by teacher education institutions, education authorities and locally in consortia of schools or individual educational establishments.

Teachers with diplomas in SEN are qualified to work either with pupils with significant learning difficulties or with pupils who have difficulties arising from the curriculum. Guidelines have been produced on training these teachers, which are also designed to preserve a form of highly specialised training, as these teachers will be expected to act as consultants and to work with pupils who have complex special educational needs.

<sup>253</sup> Information on the *Sure Start programme* is available on the Sure Start website at <http://www.surestart.gov.uk/> (accessed 10 January 2005).



Class teachers in mainstream schools generally have the assistance of visiting or full-time learning support teachers – who may have, or be working towards, a Diploma in SEN. Learning support teachers are attached to primary schools specifically to offer advice and training to other members of staff and to give additional tuition, often on a one-to-one basis, to children and young people experiencing learning difficulties. Learning support teachers assess the learning difficulties of pupils, and offer advice to class teachers on the assistance needed. They also teach alongside colleagues in classrooms, offering help specifically to children who are experiencing difficulties. There is an increase in the number of children with specific needs who are being provided for in mainstream primary schools.

## Northern Ireland

Initial teacher training at both degree and postgraduate certificate level has a minimal input on special educational needs, amounting to no more than four hours. However, Queen's University, Belfast offers a voluntary module of up to 24 hours on SEN, and a Masters in SEN aimed mainly at SEN coordinators in mainstream schools and consisting of six modules. In addition, the five ELBs, in conjunction with this university, provide a diploma in SEN for a similar target group. There is no formal programme of mandatory in-service training in SEN. Each school identifies and meets its own needs, by sending staff on short courses or arranging for school-based training. According to a recent review on behalf of the Equality Commission for Northern Ireland, anti-discriminatory practice is not well covered in schools in Northern Ireland. However people with disabilities probably fare better than other minority groups, such as immigrants.<sup>254</sup>

## 3.2 Inclusive Education

### 3.2.1 Mainstreaming

In the UK, recent legislation and policy has the clear goal of increasing the inclusion of children with special educational needs, including those with intellectual disabilities, into mainstream education options. The Education Act 1996 for England and Wales and the Education (Northern Ireland) Order 1996 for Northern Ireland place the emphasis on educating children with SEN alongside their peers in mainstream schools, wherever possible. The 1997 Green Paper *Excellence For All Children*<sup>255</sup> showed the

<sup>254</sup> Elwood et al. *Equality Awareness in Teacher Education and Training in Northern Ireland*. (Belfast: Equality Commission for Northern Ireland (2004) available at <http://www.dhsspsni.gov.uk/publications/2005/EHR-Introduction.doc> (accessed 31 August 2005).

<sup>255</sup> Department for Education and Skills, *Excellence for all Children: Meeting Special Educational Needs*, 1997, available on the DfES website at <http://www.dfes.gov.uk/sengp> (accessed 10 January 2005), (hereafter, DfES, *Excellence for all*).

Government's commitment to the principle of inclusion in education. The SENDA 2001 extended the right to mainstream education, making it clear that where parents want a mainstream place for their child, everything possible should be done to provide it. It also strengthened the rights of children with SEN to be mainstreamed, where all parties agree and other children are not disadvantaged. LEAs are expected to take into account the wishes of parents in the type of school the children go to, whether mainstream or special. The disability discrimination legislation is beginning to have an impact, notably in the area of physical access to buildings, with such legislation acting as a lever to get action. Parents are able to identify cases where the courts told a school that they must enrol a student with disabilities.

Clearly, legislation is not enough on its own and people must also be informed about their rights.<sup>256</sup> In addition, mainstream schools still do not generally have sufficient skills and experience to cater for young people with intellectual disabilities, and do not see this group of children as a priority.<sup>257</sup> Equally, parents often feel that children with complex physical needs could go further in their development through mainstream and special schools, but are not able to because of their technological dependency (such as, on a wheelchair or aspirator). The numbers of children in special schools is falling, as parents increasingly seek an inclusive education for their son or daughter with intellectual disabilities. Nonetheless, some parents still want special schools for their children with intellectual disabilities.<sup>258</sup>

The new SEN policy recognises the need to bring specialist services together, working in multi-disciplinary teams, to focus on the needs of the child. There has been much investment in expanding the accessibility and capacity of mainstream schools to work with young people with SEN, and the National Curriculum has been adapted for the wider needs of children with intellectual disabilities. Emphasis has also been placed on improving the skills of the teaching workforce, in line with the standards defined in the *SEN Code of Practice*<sup>259</sup> concerning IEPs and the provision of statements. However, while inclusion is clearly the goal of recent legislation and policy, the reality does not always match up to this. Schools and early years settings still vary enormously in their experience in working with children with SEN and in the specialist expertise and resources available to them (for example, from other schools, LEAs, social services, health and voluntary organisations). The complex system of SEN provision has been

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<sup>256</sup> OSI roundtable comment.

<sup>257</sup> OSI roundtable comment.

<sup>258</sup> OSI roundtable comment.

<sup>259</sup> Department for Education and Skills, *Special Educational Needs Code of Practice*, DfES/581/2001, November 2001, available on the Teachernet website at [http://www.teachernet.gov.uk/\\_doc/3724/SENCodeOfPractice.pdf](http://www.teachernet.gov.uk/_doc/3724/SENCodeOfPractice.pdf) (accessed 10 January 2005), (hereafter, DfES, *Code of Practice 2001*).

evaluated at a number of levels over the years and several Government sponsored studies are available.<sup>260</sup>

Nonetheless, the fact remains that the majority of young people with intellectual disabilities are assessed as having as having severe, or profound and multiple learning difficulties and are mainly to be found in special schools or in segregated special units within mainstream schools. Parents of children and young people with intellectual disabilities are safeguarded a place in the assessment, statementing and placement procedures, as are the children themselves. As inclusion of children with disabilities into the mainstream in junior schools increases, a new generation of parents is seeking greater inclusion in secondary and further education for their son or daughter with intellectual disabilities.

There remains dissatisfaction with the ability of schools to cater for people with greater special educational needs in a mainstream setting. The Government has recognised this fact itself and the more recent policy document *Every Child Matters* (2003) looks to move further away from special schools to mainstream options.<sup>261</sup> This policy rethinks the relationship between special schools and mainstream schools, in the context of moving more practically to inclusion for more young people with SEN. The Government sees LEAs as having an important strategic role to play in planning a continuum of provision needed for meeting the full range of children's needs. The policy goal is for the proportion of children educated in special schools to fall over time as mainstream schools grow in their skills and capacity to meet a wider range of needs.

Children with less significant needs, including those with *mild* and *moderate* intellectual disabilities are seen in some Local Authority areas as being able to have their needs met in a mainstream school. Special schools are still regarded as having an important contribution to make in preparing mainstream schools to support the inclusion of this group. It is regarded as critical that high quality provision is available locally before special school places are reduced. The idea of co-locating special and mainstream schools, the development of special units in mainstream schools, and dual registration of children in special and mainstream schools for part of their weeks, is seen as helping children to move between special and mainstream schools and support transition to mainstream education.

However, it is still suggested in policy that a small number of children have such severe and complex needs that they will continue to require special provision.<sup>262</sup> This will inevitably include pupils with more severe intellectual disabilities who may continue to be a segregated group even within the new model.

<sup>260</sup> A search on "Special School", "SEN" at the website <http://www.dfes.gov.uk/research> (last accessed April 2004) will provide an overview of recent research projects.

<sup>261</sup> Treasury, *Every Child Matters*.

<sup>262</sup> Department for Education and Skills, *Removing barriers to achievement: The government's strategy for SEN*, DfES, January 2005.

In 2002 the Government's own Audit Commission reviewed SEN provision and highlighted a number of continuing problems,<sup>263</sup> particularly in the ability of mainstream schools to cope with a range of special needs and disabilities.

### 3.2.2 Special schools

There is no official data on the types of schools children with intellectual disabilities attend in the UK, as data is only available on children with special educational needs (in general). In future, though, data on pupils with the different types of learning difficulties will be collected under the Pupil Level Annual Schools Census (PLASC).<sup>264</sup> In 2002, of the 292,400 children and young people with statements of SEN in the UK (representing just over one per cent of all children in school), almost 32 per cent attended special schools.

Figures on the numbers of children attending special schools are only available for children with SEN, rather than specifically for children with intellectual disabilities. In 2002, of the 292,400 children and young people with statements of SEN in the UK, almost 94,000 (32 per cent) attended special schools. Of these, 2,000 were dual registered and spent part of their time in a mainstream school; 6,224 were boarders at maintained and non-maintained special schools; and a further 2,766 boarded at approved independent special schools.<sup>265</sup> This means that about 1.1 per cent of all children in school in the UK, including many with intellectual disabilities, were assessed as needing more help than a mainstream school could provide without additional staff or equipment, or adaptation of school buildings. As shown below in Table 4, there are nearly 1,500 special schools in the UK. Those serving children and young people with *moderate, severe, profound* and multiple learning difficulties make up around 40 per cent of special schools.<sup>266</sup>

<sup>263</sup> Audit Commission, *Special Educational Needs – a mainstream issue*, Audit Commission, London, 29 November 2002, available on the Audit Commission website at <http://www.audit-commission.gov.uk/reports> (accessed 10 January 2004).

<sup>264</sup> DfES, *Data collection by type of SEN*.

<sup>265</sup> DfES *Special Educational Needs in England: January 2002 (Provisional)* Table 1, 2002, available at <http://www.dfes.gov.uk/rsgateway/DB/SFR/s000332/index.shtml> (accessed August 2005).

<sup>266</sup> Department for Education and Skills, *Pupil Level Annual Schools Census*, DfES, January 2003.

**Table 4. Special schools in the UK (2002)**

	Number of special schools	
	Public sector	Private
England	1,098	63
Wales	44	–
Scotland	197	33
Northern Ireland	48	–
Total (UK)	1,387	96

Source: DfES<sup>267</sup>

Special schools cater for children and young people from age two to 16+ (sometimes up to age 19). In accordance with the Education Act 1944, LEAs in England and Wales have the power to create their own special schools and to approve special schools run by charities or charitable trusts. Special schools may be day or residential schools and some are both. They can cater for a wide range of special educational needs including blind pupils; pupils with speech and language impairments; pupils with hearing impairment; and pupils with emotional or moderate behavioural difficulties. Special schools are also provided for children with *severe* or specific intellectual disabilities.

Changes introduced under the Education Act 1996 and the SENDA 2001 represents a major updating of the original special school and SEN system.<sup>268</sup> Nonetheless, some problems remain to be tackled. For example, students with intellectual disabilities who need the most support (those with *severe* or *profound* intellectual disabilities, autism and, particularly, with behavioural difficulties) often get turned down for placement even in special schools, and are sent for residential schooling because no other schools will take them.<sup>269,270</sup>

Another problem that has been highlighted is that of “consensual exclusion”, whereby young people who exhibit difficult behaviour (sometimes, young people with intellectual disabilities) are excluded from mainstream school.<sup>271</sup> It is important to try to understand why this happens and look at the reasons for the exclusion. For example,

<sup>267</sup> DfES, *Special Educational Needs In England: January 2000*, Table 1, available at <http://www.dfes.gov.uk/rsgateway/DB/SBU/b000367/index.shtml> (accessed 28 August 2005).

<sup>268</sup> The system is extensive and has undergone many evaluative studies over the years. A full review is not possible here, but many of the studies can be found on Government websites. See, for example: <http://www.dwp.gov.uk/research>; <http://www.teachernet.gov.uk/sen> (last accessed April 2004).

<sup>269</sup> OSI roundtable comment.

<sup>270</sup> Foundation for People with Learning Disabilities, *Count Us In Enquiry*. Evidence of pupils in residential placement.

<sup>271</sup> OSI roundtable comment.

consensual exclusion is also often related to housing problems which are not brought forward to be resolved. There needs to be a recognition by parents, teachers and the student's peers that behavioural problems can be managed, often by peers themselves. Suggested positive approaches for the successful integration of people with behavioural problems include the use of buddies and mentors, and using students with intellectual disabilities as mentors for other students with intellectual disabilities.<sup>272</sup>

### *Residential special schools*

In the UK, currently, some many thousands of young people with disabilities who are placed in residential special schools, including young people with intellectual disabilities, which are largely provided by NGOs.<sup>273</sup> This kind of provision can be problematic.<sup>274</sup> Many of these young people have to move considerable distances out of their local areas to attend. There is strong feeling that these out-of-area placements remove these young people with significant disabilities from their locality, from their peers and from their families. This can cause social distancing from the young person's home community, making it difficult for them to integrate successfully on their return. These placements are also costly to the local authority, and divert resources from local solutions for these young people with significant disabilities. When large, fee-based placements end (usually when young people reach age 18), it is difficult for local services to again provide the support they have come to rely upon, and it is sometimes difficult to plan adequately for young people's transitional needs.<sup>275</sup>

## Variations across the UK

### Scotland

In Scotland there is also a commitment to increase the proportion of children with SEN in mainstream schools. Special schools provide for a smaller number of children, whose needs are considered too great for most ordinary schools to meet, such as those with profound and multiple disabilities. However, the Scottish Executive shares the findings of the *Riddell Report* (1999), that in future more children with severe low

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<sup>272</sup> OSI roundtable comment.

<sup>273</sup> Recent research showed that in a sample of LEAs, between 0.2 and 8 children with disabilities per 100 pupils with a statement of special educational needs were placed at a residential school by the education authority. David Abbott, Jenny Morris and Linda Ward, *Disabled children and residential schools: A survey of local authority policy and practice*, Bristol university, Norah fry research centre, 2000. For a summary, see also [www.jrf.org.uk/knowledge/findings/foundations/n90.asp](http://www.jrf.org.uk/knowledge/findings/foundations/n90.asp) (accessed 31 August 2005).

<sup>274</sup> OSI roundtable comment.

<sup>275</sup> OSI roundtable comment.

incidence disabilities (which includes children with severe and profound learning difficulties) should be included within mainstream schools close to home.<sup>276</sup>

In order to monitor progress, the proportion of pupils with a Record of Needs in special and mainstream schools has been recorded. While this has not been an exact measure, it has provided a picture of progress. While the numbers of children with SEN in mainstream schools are increasing, these figures should be treated with caution. In some instances, mainstream schools include special units for children with SEN that allow children to be classified as attending a “mainstream school”, however, some of these units operate autonomously with children rarely mixing. In other cases, children may have a “split placement”, spending some time at a special school and some time in a mainstream setting. At any time, a small number of children will be at home and not receiving any education.

There is a growing expectation amongst parents, teachers, young people with disabilities and their siblings that all children should be taught in mainstream schools, wherever possible. However, a representative from the Scottish Human Services has claimed that, “there is no understanding of, or commitment to, inclusive education as an issue of citizenship, human rights, and system competence”.

In line with the Education (Additional Support for Learning) (Scotland) Bill 2002, class teachers in mainstream schools will in future be supported by a Principle Teacher of Support for Learning, and may have a classroom assistant or a SEN auxiliary. However, resources for training auxiliaries are limited. In Scotland, where the average age of teachers is relatively high, many experienced staff trained at a time when disability was not on the teacher-training curriculum. While there has been ample opportunity for addressing this, some teachers feel that asking for staff development can be seen as an admission of failure, and that it can reflect badly on an individual. Other impediments to staff training include lack of time, resources and interest amongst some secondary teachers, who are more interested in their subject area and do not see dealing with disabled pupils as their role.

Problems for pupils with disabilities, including intellectual disabilities, in mainstream schools also include a lack of access to support from other disciplines, such as speech and language therapy. The staff in special schools has easier access to a range of colleagues working in other disciplines, whereas in mainstream schools progress often relies on one person’s expertise or personal interest. Nonetheless, expectations in some special schools remain low. Statistics on exam results, school leaver destinations, and absence figures are not published for special schools. However, there are mixed feelings

<sup>276</sup> Scottish Executive, *Riddell Report*, Recommendation 3.

amongst representatives of some voluntary organisations about the suitability of mainstream placements of all young people with disabilities.<sup>277</sup>

## Northern Ireland

The arrangements are very similar for Northern Ireland as for the remainder of the UK. However, education of pupils with severe learning disabilities only became the responsibility of the Department of Education in 1987, some 16 years after England and Wales. Previously it was the responsibility of Health and Social Services. Parents initially resisted this move, with some fearing that the Department of Education would not make these young people a priority, potentially leading to a reduced number of days that their child attended school. It was also feared that the move would make it more difficult to access therapeutic and nursing services. Although both concerns still persist, the major investment in school rebuilding programmes and increased staffing levels that resulted from the transfer have won over most parents.

The Education (Northern Ireland) Order 1996 requires governors of mainstream schools to report annually to parents on any special arrangements for the admission of pupils who have SEN, but for whom no statement is maintained. Governors must also report on steps taken to prevent children with SEN from being treated less favourably than other children, and on the facilities provided for physical and curriculum access to the school for children with SEN. Information about school staffing policies and partnerships with other bodies related to the school's provision for children with SEN needs to be reported in school prospectuses, to make them accountable to parents.

There are proportionately more children attending special schools and units in Northern Ireland than in most LEAs in England. Moreover, children tend to move from mainstream to special schools or units rather than the other way round.<sup>278</sup> The selection of pupils on the basis of academic ability for secondary schooling has made it more difficult to achieve the fuller inclusion of pupils with SEN into a mainstream setting. In part this legacy may also account for the lower provision of these students within further education. However, according to a recent survey, parents are broadly satisfied with their child's school placement, seeing advantages and disadvantages in both mainstream and special schools. Some special schools have made great efforts to forge links with mainstream schools, further education colleges and community organisations such as arts and culture, businesses and public transport providers.

<sup>277</sup> Strathclyde Centre for Disability Research, *The Education or Training Needs and Opportunities for Members of Multi-disciplinary Teams Working with Families which Include a Disabled Child or Children*, Strathclyde Centre for Disability Research, University of Glasgow, (forthcoming).

<sup>278</sup> R. McConkey, et al, "Parental views on inclusive education for children with special educational needs" in *Education in the North*, 12, 21-29, 2004.



## 4. TRANSITION FROM EDUCATION TO EMPLOYMENT

*At present, most young people with intellectual disabilities do not leave school with marketable skills and, in particular, do not gain work experience, although some special schools are now offering “job tasters” and a few have arranged for students to find part-time jobs outside of school. The preferred post-school option is a place at a college, either on a special course or in a special unit within the college. However, there is still only limited awareness of the needs of people with intellectual disabilities in further education. Among the barriers they encounter are lack of curriculum flexibility and adequate support staff; courses geared towards success in achieving a qualification, rather than in developing students’ abilities; and a lack of orientation towards employment as an end goal. Many young people with intellectual disabilities are therefore not able to use the skills they learn.*

*This limited transition from further education to real employment is surprising, given that transition planning is well developed in the UK. Based on the Transition plan, in England Connexions are currently responsible for identifying the needs of young people with SEN, and the Learning and Skills Councils (LSCs) have a statutory duty to ensure that appropriate funding and support for the recommended options are made available. (Careers Wales, Careers Scotland the Northern Ireland Careers Service play a similar role to Connexions). Nonetheless, there are concerns that people with intellectual disabilities are too often passed on to various different courses and “non-work” options, rather than being successfully orientated towards a path leading to employment. All too often, they and their parents are not sufficiently informed of available options and are left confused by the transition from known services to the new adult services. Unlike school, college placements are often not full-time, placing an additional strain on parents. In addition, those who move straight into employment may find a lack of sufficient support. Several reasons have been identified for this, including a lack of clear overall responsibility for transition planning among the many agencies involved. As mentioned above, there are plans to disband, the Connexions service in England, and move their responsibilities back to Local Authorities.*

*As an alternative to college courses, there are also some work-based vocational training programmes available for people with special educational needs, in which young people spend most of their time on placement in a company. The “Entry to Employment (E2E)” programme, in particular, is useful for those with mild intellectual disabilities. There is also a well-developed system of adult education in the UK, and people with intellectual disabilities are able to benefit from the wide range of part-time courses available at adult education centres.*

### 4.1 Vocational education and training

#### *Vocational training options in schools*

In mainstream schools, people with intellectual disabilities follow the National Curriculum and are prepared for employment to the extent that their course choices are vocationally orientated; for example, Business and Technology Education Council (BTEC) courses.<sup>279</sup> All children have a two-week period of work experience at age 16,

<sup>279</sup> In the UK, a distinction is made between “higher” education (which consists of university degrees and high level diplomas) and “further” education, offered through more vocational courses, such as Business Technician Education Council (BTEC) courses. BTEC is a national body that issues National Diplomas and GNVQs. Like A levels, these courses are two years in duration, up to age 18, but are more vocationally orientated than the academically focused A levels.

as part of their school course. In reality, however, very few people with intellectual disabilities gain directly marketable skills in mainstream schools.

Young people with *moderate* and *severe* intellectual disabilities in special schools often do not leave school with marketable skills. There is some controversy over whether a modified National Curriculum is useful to these students, who may benefit more from more direct basic skills training and vocational training. Indeed, some head teachers believe that they have a more positive impact on marketable skills by keeping young people in special school after age 19, where they can work more according to a functional curriculum, the National Curriculum ending at 16. There are arrangements in some areas for help to undertake supported work experience before leaving school, sometimes using a supported employment<sup>280</sup> approach.<sup>281</sup>

Special schools have begun to include work experience and vocational awareness courses in the later phases of their education,<sup>282</sup> to enable students to become vocationally aware on the basis of realistic experiences in paid jobs. In the best-case scenario these are being undertaken in integrated (non-sheltered) workplaces. This information on the vocational preferences and abilities of the young people can be passed on to the special needs careers advisors and to local supported employment agencies. Some special schools have also begun to use “job tasters” supported by job coaches trained in the techniques of supported employment. These enable the student to develop informed choices based upon a variety of work experiences. They also provide the school and supported employment services with an assessment of the student’s vocational abilities, based upon observed performance in different workplaces.

In the most advanced special schools, where they have made progress on this issue (only a few in number<sup>283</sup>) this is being complemented by supporting part-time paid jobs, out of school hours. The jobs obtained are those typically undertaken by teenage students aged 16-19. They enable students, and their parents, to develop an expectation that they can obtain and hold down a paid job when they leave school. In some cases, this approach is being complimented by the use of peer supporters (teenagers attending mainstream schools who are the same age as the children with

<sup>280</sup> Supported employment is often known as the “Place, Train, Maintain” approach. An agency creates a vocational profile detailing the person’s aspirations, talents and needs, and carries out professional job finding to find the right job for them. The employer is an equal customer whose standards must be met and any concerns overcome. Training takes place in that specific job, not through pre-vocational training and the agency may provide a job coach to teach the person effectively. Supported employment was designed for people with intellectual disabilities but now serves people with all disabilities around the world. See section: III.3.2.

<sup>281</sup> EU funded projects, such as Horizon and Leonardo de Vinci, have enabled some special schools to pursue this form of support in transition to employment.

<sup>282</sup> Often this is approached in the two years prior to leaving, after the National Curriculum is no longer a requirement.

<sup>283</sup> M. Kilsby, J. Allan and S. Beyer, *The Youth Supported Employment Project: Final Report*, Welsh Centre for Learning Disabilities, Cardiff, 2001.

disabilities and who act as job coaches). This often leads to friendships forming between the disabled teenager and non-disabled peers.

Another emerging area of good practice is that people with intellectual disabilities are themselves taking part in raising public awareness of the issues involved in having intellectual disabilities. Adult self-advocacy organisations go into schools to talk to pupils, often discussing the options that might be available to them in adult life.<sup>284</sup> This is a useful contribution to transition planning.

Schools and colleges are beginning to develop Personal Centred Planning (PCP) approaches within their transitioning procedures. The initial starting point for a PCP is a concentration on how the person wants to live. Then capacities and gifts that the person possesses are addressed which might help them realise their lifestyle aspirations. Subsequently, the support from family, friends, community and professionals which might be required to help the person overcome any difficulties they may face due to their disability is specified. In keeping with the aim of developing an ordinary life, emphasis is placed on deriving support from the informal family-based and community networks that the person might currently or potentially have. Procedures have been developed to structure this discussion of developing and supporting a desirable lifestyle.<sup>285</sup> The PCP approach may help to strengthen the links between the special schools and the colleges, by allowing the students their own preferences to determine whether they go to college or get a paid job. It also provides continuity for college leavers with intellectual disabilities, by determining their short-term vocational aims and, over time, determining their career paths and long term educational plans.

### *Further education*

In recent years, the preferred route for young people with intellectual disabilities after leaving school has been a college place, where five-day provision is the norm. This appears to be a more general trend among young people with a wide range of disabilities.<sup>286</sup> For young people with intellectual disabilities, some colleges may organise special courses or have special units within the college. It is also possible for young people with disabilities who have particular needs to be placed in residential specialist colleges, sometimes outside their area.

<sup>284</sup> OSI roundtable comment.

<sup>285</sup> B. Mount, *Person-centred Planning - Finding directions for change using Personal Futures Planning*, Graphic Futures Inc. B., New York, 1992; M. Forest and J. Pearpoint, "Common sense tools: MAPS and circles", in J. Pearpoint and J. Snow (eds.), *The inclusion papers: Strategies for making inclusion work*, Inclusion Press, Toronto, 1992, pp. 52–57; J. O'Brien, "A guide to lifestyle planning", in B. Wilcox and T. Bellamy (eds), *A Comprehensive guide to the activities catalogue*, Paul Brookes Publishing Ltd, Baltimore, 1987; and H. Sanderson, J. Kennedy, P. Ritchie, and G. Goodwin, *People, Plans and Possibilities: Exploring Person Centred Planning*, SHS Ltd., Edinburgh, 1997.

<sup>286</sup> Barnardo's, *Transition to Adulthood*, Barnardo's Policy Development Unit, Ilford, 1996, (hereafter, Barnardo's, *Transition to Adulthood*).

However, inclusion is not generally being practiced in colleges, and there is limited awareness of the needs of people with intellectual disabilities within the sector.<sup>287</sup>

Funding goes to the course, not to the student, and there is a need for LSCs to look critically at how funding is delivered and how it can be used to affect cultural change. In particular, LSCs should take more of a lead in raising awareness of the need for inclusion of people with intellectual disabilities in college courses, and of good practice measures that could assist colleges to achieve this.<sup>288</sup>

Issues of detail will continue to undermine the rights of individuals with intellectual disabilities to further education if not addressed. In particular, there is a lack of flexibility and effectiveness in the teaching approach. Students with intellectual disabilities may need curriculum modification, and possibly more powerful systematic instruction, to help them fulfil their potential. However, colleges can be unresponsive to these needs and there is often a lack of personal support to deliver the above. In addition, measures of success for colleges (and other training providers) are often qualification based, which may act as a barrier for course providers and colleges to enrol people with intellectual disabilities into practical vocational courses. For this to change, it is important to find a way of acknowledging “distance travelled” as well as the achievement of national targets and qualifications. Not all learners, especially those with intellectual difficulties, are able to reach NVQ level 2,<sup>289</sup> but this does not mean that they have not succeeded.<sup>290</sup> However, people with intellectual disabilities are finding it difficult to access college places that seriously help them obtain relevant qualification for employment.<sup>291</sup>

Another issue is that many colleges still fail to provide clear teaching geared towards employment.<sup>292</sup> There is a lack of a successful match, between the skills and courses taught and the jobs people are successful at getting on the local jobs market, and also inadequate feedback from job placement to course providers. In addition, there is a lack of adequately supported “job tasters” during further education (despite this being a major educational activity for many college students without disabilities on vocational courses), and job finding and work-based support to help people graduate into jobs.

People with intellectual disabilities often attend college for some years, only to end up in a segregated day centre.<sup>293</sup> Their training is therefore often ineffective or wasted

<sup>287</sup> OSI roundtable comment.

<sup>288</sup> OSI roundtable comment.

<sup>289</sup> National Vocational Qualifications (NVQs) are work-based qualifications, which can be taken at four levels; levels 1 to level 4 (the most demanding level).

<sup>290</sup> SKILL, *Successful participation for all: Widening adult participation strategy*, policy consultation on the new Disability Discrimination Act 2005, (hereafter, SKILL, *Successful participation for all*).

<sup>291</sup> M. Angele, R. Heard and I. Kennedy, “Lifelong learning – what a sham(e)”, in *Education Journal*, September 1996.

<sup>292</sup> Comments at the EUMAP roundtable; research cited previously.

<sup>293</sup> For further information on day centres, see section: IV.3.4

through lack of transitional support. The above issues also affect the access of people with intellectual disabilities to mainstream government employment training schemes, such as the “Work Based Training for Adults”,<sup>294</sup> which remain unresponsive to their needs.

### *Transition planning*

In most cases, transition planning for young people with special needs leads to a transition from school to a college place.<sup>295</sup> Employment is often not pursued within transition planning as an area in its own right, with very few young people with disabilities, particularly intellectual disabilities, entering supported employment schemes at age 16-19.<sup>296</sup>

Legislation requires that education authorities arrange, and attend reviews of, students with a statement of SEN, thus providing a framework for transition planning.<sup>297</sup> The student with disabilities, and his or her family, are expected to play a central role in the transition process, which should be holistic in its coverage of life issues, and include residential placements; wider activities in life; health services; and prepare the young person for the full range of activities in adult life, including employment. All aspects should be intertwined effectively to help the young person take-up a complete ordinary life.

In England and Wales, and Northern Ireland, the first annual review of a statement of SEN is after the child's 13th birthday, and any subsequent annual reviews until the child leaves school, should include a Transition Plan<sup>298</sup> which draws together information to plan for the child's transition to adult life. LEAs (ELBs in NI) are required to involve Social Services Departments, to see whether the child is disabled in their terms and may require services from the local authority when leaving school. LEAs are also expected to consult child health services and any other relevant professionals. The LEA also have a duty to fund a “Parent Partnership” which will support parents of children and young people through the statementing process and, if there are enough resources, through until their son or daughter is 19. However the latter requirement does not apply to Northern Ireland.

In accordance with Learning and Skills Act 2000, the Connexions service has responsibilities for career planning for all children in England and, in particular, for drawing up Transition Plans. Connexions is also responsible for further assessing the

<sup>294</sup> See Section IV.2.2, for further details.

<sup>295</sup> Barnardo's, *Transition to Adulthood*.

<sup>296</sup> S. Beyer, L. Goodere, and M. Kilsby, *The costs and benefits of supported employment in Britain: Findings from a National Survey*, Employment Service Research Studies 37, DfEE, HMSO, London, 1996, (hereafter, Beyer et al, *Costs and Benefits (1996)*).

<sup>297</sup> Education Act 1996, sections 321 and 323; Also: HM Inspectorate, *Transition from School to Further Education for Students with Learning Difficulties*, Report 24/91/NS, HMSO, London, 1991.

<sup>298</sup> See also: section III.1.3.2

needs of young people with SEN (with or without statements of SEN) and to identify suitable provision for further education or training. All of these processes will apply to people with intellectual disabilities if they have a statement, particularly if they are in special schools. The Learning and Skills Council (LSC) has a statutory duty to take into account the assessments that are made by the Connexions service of the intellectual (and any other) disabilities young people experience. Local LSCs monitor the arrangements that are in place in their areas to meet the needs of these young people. Close cooperation between local LSCs and the Connexions service (also drawing in post-16 providers, schools and LEAs as required) should ensure that appropriate funding and support are in place for the provisions set out in Transition Plans. These arrangements are not in place in Northern Ireland or Scotland.

However, despite these arrangements, transition is currently often represented as a “pass the parcel” situation, with schools passing the young person with intellectual disabilities to colleges of further education, who in turn pass the young person on to “non-work options”.<sup>299</sup> Parents and authorities feel that there is no shortage of money, but that programmes, particularly college places, must fit into the NVQ level 2 basic skills agenda.<sup>300</sup> This means that developing pre-vocational skills through National Vocational Qualifications is the priority approach in the country to developing the basic skills of the workforce. This is not an effective approach for many people with intellectual disabilities, leading to their going through the system without gaining qualifications and without finding a job.

The various service organisations (LEAs, LSCs, Connexions services, Careers Wales, Careers Scotland and Social Services) all have well defined responsibilities and roles in the UK system. However, a number of research and review organisations have identified shortcomings in the way current systems are being operated. There remains much to be done if practical systems are to be successfully developed and implemented to ensure that the aspirations of young people with disabilities are fulfilled. A movement from school to work or from college to work is still taken by very few people with intellectual disabilities, and is a particular problem.

Main factors appear to be confusion and complexity among the various responsible agencies, and a failure to identify who should drive the partnership process forward.<sup>301</sup> Another aspect is the problem with sharing information among the various service organisations. For example, assessments made by Connexions services are not used regularly by colleges receiving young people. Similarly, school assessments are commonly not made available to receiving adult social services and there is a perception that agencies often fall back on the crutch of confidentiality.<sup>302</sup>

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<sup>299</sup> OSI roundtable comment.

<sup>300</sup> OSI roundtable comment.

<sup>301</sup> OSI roundtable comment.

<sup>302</sup> OSI roundtable comment.

The role of Connexions (and the equivalent careers services in Scotland, Wales and Northern Ireland) needed to be emphasised more.<sup>303</sup> As originally conceived, the Connexions service was thought to have been a good model (especially the Personal Advisor and advocate role), which had the potential to drive transition forwards for people with intellectual disabilities. However, this independent advocate role has become diluted over time.<sup>304</sup> There are still some flagship Connexions services providing good leadership, but Connexions do not have the resources to fulfil their early potential. Their future is now unclear, as their role is under review and there are plans in England to disband Connexions.

Research carried out by the Government and by a range of universities and provider organisations has provided consistent messages on what is going wrong in the transition system.<sup>305</sup> It appears that many of the problems with school transition highlighted by this research, particularly the lack of employment support, are also relevant to people with intellectual disabilities making the transition from colleges of further education.<sup>306</sup> These messages may be summarised as follows:

- The transition planning system is primarily aimed at young people who have a statement of SEN. However, there are many more young people who have SEN but who are not served by the transition process, often young people with *mild* or *borderline* intellectual disabilities, who may not have been statemented.
- Not all the young people who are entitled to a Transition Plan (who have a statement of SEN) actually receive one.
- Parents and young people often remain poorly informed about the options that may be available to them at the transition stage, which hampers good decision-making. Young people are sometimes not involved in their transition planning meetings, although the *SEN Code of Practice* guidance states clearly that their involvement is essential.
- Transition still often means a move into adult service placements that do not necessarily offer a five-day entitlement. This puts new pressure on young people with intellectual disabilities and their parents, when moving from five-day activity in school.

<sup>303</sup> OSI roundtable comment.

<sup>304</sup> OSI roundtable comment.

<sup>305</sup> Barnardo's, *Transition to Adulthood*; B. Grove, *Connecting with Connexions: Early findings from the Lewisham Learning Disability pilot*, Institute for Applied Health and Social Policy, King's College, London, 2001; P. Heslop, R. Mellot, K. Simons, and L. Ward, *Bridging the Divide: The experiences of Young People with Learning Disabilities and their Families at Transition*, Norah Fry Research Centre, University of Bristol, 2001; and Department of Health, *Growing Up and Moving On: Report of an SSI project on transition services for disabled young people*. Social Services Inspectorate, DOH, London, 1995.

<sup>306</sup> Barnardo's, *Transition to Adulthood*; and Y. Jacobson and G. Everett, *Making the jump*, NIACE, London, 2003.

- Often the preferred route for families is a college place where five-day provision is the norm. However, some young people, particularly people with intellectual disabilities, continue to find it difficult to access college places through transition planning.
- Transition from school often means moving from a known and often long-standing set of health care arrangements, provided through paediatric or child health services, to adult health care systems. Lack of continuity of care and lack of specialist knowledge of young people's conditions are common concerns for families, particularly where young people have complex needs.
- Employment is often not pursued as an area of opportunity within transition planning, or in parallel adult social care planning. Still, very few young people with intellectual disabilities enter employment straight from school.
- Where people pursue employment, many still find that there is a lack of personal support available; poor transport to work; and welfare benefit regulations that hinder, rather than help, people move with confidence into work.
- Moving into housing away from parents is also seldom addressed in transition planning, partly because of a lack of accessible housing with support, partly because of inadequate coordination between housing and social services departments. Poor knowledge of housing issues among social services staff has been highlighted as a contributing factor.
- The availability of personal assistance is key for many if they are to leave their parents' home and be independent. Such assistance is costly and many have found that this was a barrier to their becoming employed, as they would not be able to afford help on a wage rather than benefit.

Inadequate preparation for employment, particularly in the area of work experience and work preparation, and the lack of a lead agency with overall responsibility for developing plans and resources, is seen as disadvantaging young people with intellectual disabilities.<sup>307</sup> In the area of employment, there is a need for work experience to be provided for young people early in the process. "Education" should be defined broadly, and it should be recognised that education can be provided in a range of settings. In particular, this should include work experience, organised by schools. However, one problem is that schools are not releasing, or not able to release, staff to support young people in workplaces.<sup>308</sup>

The conclusions from research and also from discussions at a roundtable meeting held to discuss the present report in its draft stage would suggest that even more emphasis is needed in the transition process in the following areas:

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<sup>307</sup> OSI roundtable comment.

<sup>308</sup> OSI roundtable comment.



- Families must be equal and collaborative partners.
- The aim of transition planning should be to identify clear outcomes for the future and specific supports to achieve them.
- Transition plans should be person centred, participatory, and should be controlled or determined as much as possible by the persons themselves.
- While many agencies have responsibilities in transition, none is driving forward the improvement of the process.
- In transition years, adult services need to become progressively involved before people leave school.
- The teaching of skills and knowledge progressively needs to take place in the location where skills are used.

## Variations within the UK

### Scotland

In terms of transition planning, the aim of review is to provide appropriate education for each pupil and to meet particular needs; assessment is usually continuous and formative. The Future Needs Assessment (FNA), which is carried out at age 14, is currently an important outcome of assessment for certain pupils.<sup>309</sup> However, the FNAs will cease to exist when new act comes into force. Education Authorities will be required to obtain information about provision that other agencies will make for the young person once he or she has left school, and take account of this when planning support to be provided in the period prior to the young person leaving school. Formal assessments will only be carried out where necessary – for example, for all those with a Coordinated Support Plan and all others with continuing additional support needs.

In Scotland the transition from school to adult services continues to pose problems for young people with disabilities. Lack of inter-agency planning and communication means that often they may find themselves missing out on vital services. In conjunction with Careers Scotland, services such as ENABLE are designed to help young people with special educational needs access employment more effectively.<sup>310</sup>

<sup>309</sup> See section: III.1.3. The FNA is equivalent to the Transition Plan in England and Wales and is also carried out on a multi-disciplinary basis, with advice from psychological, medical and social services and employers, and looks to the future of the child beyond the school.

<sup>310</sup> Further information on ENABLE is available at <http://www.enable.org.uk> (accessed 10 January 2005).

## Northern Ireland

The arrangements for the transition from schools to adult life are similar to elsewhere in the UK. To date, however, in Northern Ireland there has been a perceived lack of alternatives for pupils with *severe* intellectual disabilities, other than attendance at day services provided by Health and Social Service Trusts.<sup>311</sup><sup>312</sup> A consultation conducted by a group of young people with disabilities concluded that the low expectations of teachers and often parents within special school contexts had left them unprepared for life after school.<sup>313</sup> They identified the need for independence training to be more practical and to be started earlier in life; for more informal education opportunities to promote confidence building, self-esteem and assertiveness; and for non-academic learning to be accredited in national awards.

Career advice to students with disabilities in Northern Ireland is provided by the Careers Service, which is part of the Northern Ireland Civil Service, under the Department for Employment and Learning in the Skills and Industry Division. Unlike the Connexions Service, which has significant responsibilities for 13-19 year olds (up to 25 if people have special needs), the Careers Services in Northern Ireland is an all-age Careers Guidance Service, and is part of the Civil Service, unlike the private company basis for Connexions. Until recently, the Careers Service has Special Needs Careers Officers who have responsibility for people with disabilities but also have a generic career responsibility.

The Careers Service in Northern Ireland has recently been restructured. As a result of an Interdepartmental Group on Transition Planning, established by the Minister of Education, there will be new posts within the Careers Service called Specialist Careers Advisors, who will work within "Special Education" and Specific Learning Disabilities (SLD) schools.<sup>314</sup> The generic Careers Officer will have responsibility for students with disabilities in mainstream schools and can refer students to a Specialist Career Advisor if necessary. It is also planned that the Careers Service will develop specialism in certain areas, such as autism or Asperger's Syndrome. The Special Needs Careers Service is very similar to the "Key Worker" in Scotland.

<sup>311</sup> M. Smyth and R. McConkey, "Future aspirations of parents and students with severe learning difficulties on leaving special schooling" in *British Journal of Learning Disabilities*, 2003, 31, pp. 54–59.

<sup>312</sup> These trusts provide social work and social care services offered by Local Authority Social Services Departments, and community and hospital based health services provided by the NHS, in England.

<sup>313</sup> Save the Children (UK), *No Choice: No Chance: The Educational Experiences of Young People with Disabilities*, SCF (UK), Belfast, 2000.

<sup>314</sup> All Careers Officers are required to have a qualification. The three main qualifications are: postgraduate diploma in Career Guidance Part I & Part II (which are no longer offered); NVQ Level 4 Advice & Guidance; and postgraduate diploma in Careers Guidance. A new course which has been developed in a partnership between the Careers Service and the University of Ulster; the Institute of Career Guidance is the awarding body.

In Northern Ireland, a number of Transition Projects have also been established by disability, voluntary and community organisations, in conjunction with special needs schools and some mainstream schools. Although projects have been very successful there are a number of issues regarding sustainability of projects (funding), consistency of delivery, and availability of service throughout Northern Ireland. Government Departments, in conjunction with community and voluntary sector need to a strategic approach to transition planning, to ensure that all young people with disabilities are given the same opportunities regardless of the area they live in.

## 4.2 Adult and life-long education

The LSCs are responsible for both college and mainstream training courses. One programme funded by the LSCs is “Entry to Employment (E2E)”,<sup>315</sup> which was developed as an alternative for young people deemed not to be ready for NVQ Level 2 courses or Modern Apprenticeships.<sup>316</sup> The programme was piloted in a number of areas in 2002 and became available throughout the country from August 2003. It has a number of strengths; it is centrally funded, work-based, pre-qualifications are not required, and it is targeted at people who are “disadvantaged and disengaged”. It represents a significant investment and is seen by Government as a significant contribution to foundation learning (acquiring the very basic skills for employment) including for some people with intellectual disabilities. The E2E programme should, in particular be useful for people with *mild* intellectual disabilities, because it offers flexibility in terms of the time people can spend on the programme.<sup>317</sup> However, courses across the country are of variable quality.

In addition, college trainees with SEN can make use of training programmes where they are taught at a work based training organisation, but spend a substantial amount of time on “placement”. It has been argued that these trainees should already fall under the remit of the extended DDA<sup>318</sup> and the Government has seen through its commitment by including these specifically in the Disability Discrimination Act 2005 (DDA 2005). It is certainly essential that such courses be covered by the DDA, as so much of their training programme is delivered in the work place.<sup>319</sup> As the LSCs are

<sup>315</sup> Learning and Skills Development Agency, *A summary of the E2E learning framework*, available on the LSDA website at <http://www.lsd.org.uk/pubs/dbaseout/download.asp?code=ISBN1853388548> (accessed 10 January 2005)

<sup>316</sup> Modern Apprenticeships offer people in the UK above the age of 16 the chance of paid employment linked with the opportunity to train for jobs at craft, technician and management level.

<sup>317</sup> OSI roundtable comment.

<sup>318</sup> DDA 1995, as amended by the SENDA 2001, Part 2.

<sup>319</sup> SKILL, *Successful participation for all*.

responsible for these training courses, they have significant responsibility for addressing these issues.

In accordance with the Further and Higher Education Act 1992, adult education centres (sometimes known as adult education institutions or community colleges) provide largely part-time further education courses for adults in a wide range of recreation, leisure, literacy and personal development skills.<sup>320</sup> Most centres are run by LEAs.<sup>321</sup> They cater for people with intellectual disabilities and have been a source of personal development, basic education and activity for particular individuals and sometimes for groups. The number of people with intellectual disabilities who are going into further education is increasing.<sup>322</sup> This is thought to be due to the implementation of disability discrimination legislation, as well as funding from the LSCs (in England) for special needs provision.

Education for adults, provided through a network of full-time centres and part-time courses in other venues such as schools and colleges, has provided training in self-advocacy for people with intellectual disabilities; run courses for people wishing to become citizen advocates for people with more significant disabilities; and run courses with tutors tailored for the learning needs of groups of people with intellectual disabilities, some with a view to moving on to integrated classes.

## Variations within the UK

### Scotland

In Scotland, non-vocational education in the form of community learning (adult education) and development is provided by local authorities, voluntary organizations and other educational bodies. The Workers' Educational Association (WEA) has played a significant part historically in the development of broad forms of adult education. University extra-mural departments have also been involved in supporting non-vocational adult learning. In addition, local authorities have become significant providers of outreach adult learning, community development and youth services since the Second World War.

<sup>320</sup> In accordance with the Learning and Skills Act 2000, provision made by LEAs for those aged over 16 is now funded by the Learning and Skills Council (LSCs), in England, and the National Council for Education and Training for Wales (ELWa).

<sup>321</sup> LEAs are permitted, but not obliged, to set up schemes for the local management of these institutions, delegating the management of the budget and staff to the institution. Day-to-day management is delegated to the principal or director of the centre. The centres may be organised along departmental lines, similar to those of further education institutions. They usually have one administrative centre with teaching spread across a number of sites, some of which may be on school premises that remain open in the evening. These centres have a small number of full-time staff who coordinate the work of a large number of part-time staff. However, the organisation of adult education may vary between LEAs.

<sup>322</sup> OSI roundtable comment.

Adult literacy provision increased during the 1970s. In 1998, the Scottish Office reviewed community education and issued SO Circular 4/99<sup>323</sup> to promote the development of joint community learning strategies and local planning arrangements between the public and voluntary sectors.

In June 2002, the Scottish Executive published *Community Learning and Development: The Way Forward*,<sup>324</sup> which outlines current Scottish Executive policy in this area. All Scottish local authorities provide community learning and development support, and this is increasingly targeted at the more disadvantaged communities. Additional Scottish Executive funding has been made available for adult literacy and numeracy work to community learning partnerships. The system therefore provides a significant resource for people with intellectual disabilities in terms of recreation and learning.

Lifelong learning is important to people's development and provides opportunities for people to feel more included. The Higher Still Programme provides a framework for people of all abilities, from those with profound learning disabilities to those sitting the Advanced Higher Examination. Many people with learning disabilities take part in educational activities in day centres and further education colleges.

The Beattie Committee recently reviewed post-school education and training for young people in Scotland who experience barriers to participation in post-school learning and employment because of physical disabilities, learning disabilities, mental health problems, low educational attainment, poor basic skills, and social, emotional and behavioural difficulties. The Committee published its report, *Implementing Inclusiveness: Realising Potential*, in September 1999.<sup>325</sup> The Beattie Report recommended that post school education should aim to include more people of all abilities.<sup>326</sup> It also found that there is a need in some instances for education to have a goal (for example, employment), as too often people with learning disabilities move from one course to another without ever achieving a job. Other main recommendations included:

- the establishment of an 'Implementing Inclusiveness' network both at national and local levels;
- improvements in guidance and support arrangements during transition to post-school learning or employment;
- the development of 'inclusiveness' policies in further education (FE) colleges and by training providers; and

<sup>323</sup> Scottish Office Industry and Education Department, *Community Education*, Circular 4/99.

<sup>324</sup> Scottish Executive *Scottish Executive Community Learning And Development: The Way Forward*, 2002, available at <http://www.communityplanning.org.uk/documents/CLDWayForwarddocMay30FINALAPPROVED.pdf> (accessed 31 August 2005).

<sup>325</sup> The Beattie Committee Report, *Implementing Inclusiveness: Realising Potential*, 1999.

<sup>326</sup> The Beattie Committee Report, *Implementing Inclusiveness: Realising Potential*, 1999.

- the introduction of disability statements in FE colleges and improvements in accessibility and supply of equipment for young people with disabilities.

The Scottish Executive has established a National Action Group (NAG) to implement action in response to the Beattie Report.

## Northern Ireland

A recent review of further education provision in Northern Ireland for students with intellectual disabilities, found significant variations across colleges in the number of these students enrolled, as a proportion of the student body (from 0.4 to 18.5 per cent).<sup>327</sup> However, the average level of enrolments (4.1 per cent) appeared to be lower than the mapped incidence for England (5.7 per cent). The selection of pupils on the basis of academic ability for secondary schooling has made it more difficult to achieve the fuller inclusion of pupils with SEN into mainstream schools. This may also account for the lower provision of these students within further education. The difference in full-time enrolments was even more marked: 11 per cent of all students with learning disabilities in Northern Ireland were enrolled in full-time courses, whereas in England the comparable percentage was 45 per cent. The report concluded that “a formal and coherent approach to the principles of [...] inclusiveness is underdeveloped in the FE Sector in terms of policy, planning, management, resourcing and identification of unmet need.”<sup>328</sup>

Opportunities for vocational training leading to supported employment and paid work are also limited, although voluntary organisations, with support from EU Funds, are providing and delivering a number of vocational training and supported employment services. However, these need to be further developed, in order to ensure that provision is provided across Northern Ireland and also consistency of service delivery.

A recent review of day opportunities for people with learning disabilities in Northern Ireland identified 31 vocational training and employment related schemes and projects, with upwards of 1,000 persons involved on a part-time as well as a full-time basis.<sup>329</sup> The main improvements that managers of these services wanted were: more long-term funding; more opportunities for work/work placements; improvements to the benefit system to take away the disincentives to obtaining paid employment; more staff and better staff training.

<sup>327</sup> Department of Higher and Further Education and Training, *Participation and provision for students with learning difficulties and/or learning disabilities (SLDD) in the further education sector in Northern Ireland*, (Belfast: 2000).

<sup>328</sup> Department of Higher and Further Education and Training, *Participation and provision for students with learning difficulties and/or learning disabilities (SLDD) in the further education sector in Northern Ireland*, (Belfast: 2000).

<sup>329</sup> R. McConkey, *Pressures, Possibilities and Proposals: Northern Ireland Review of Day Services for People with Learning Disabilities*, University of Ulster, Jordanstown, 2004, p. ii.

However few of the trainees in these schemes had made the transition from training placement to paid work. Among the possible reasons are a reluctance by family carers to move off benefits, the type of placements selected not leading to paid work; the employer's unwillingness to make payments and the longer time required by these clients to make the transition from training to work. Consultations with people who had experienced work highlighted how much they valued having a job and the benefits it brought not just financially but in terms of social inclusion, self-esteem and the opportunity to become a valued member of the workforce.<sup>330</sup>

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<sup>330</sup> NIUSE, *A response by people with a learning disabilities to the Employment Support Programme – A consultation on future developments, conducted by NIUSE on behalf of the Department for Employment and Learning*, Northern Ireland Union of Supported Employment, Londonderry, 2003.





## C. Access to Employment

### 1. LEGAL AND ADMINISTRATIVE FRAMEWORK

*The UK has a comprehensive framework of employment legislation and has transposed most of the provisions of the EU Employment Directive into national legislation, mainly through amendments to the DDA. When it enters into force, the DDA 2005 should bring UK legislation fully in line with the directive. People with disabilities who wish to pursue complaints about discrimination in employment can be assisted by the Disability Rights Commission (DRC) framework in England, Wales and Scotland, and the Equality Commission in Northern Ireland.*

*Most people with intellectual disabilities in the UK are reliant on State welfare benefits. The main welfare benefit which people with intellectual disabilities receive is Income Support (IS), including a premium for people with disabilities. This is basically a benefit for people who are not in “remunerative work.” Many also receive the Disability Living Allowance (DLA), as well as other non-disability specific benefits. People with intellectual disabilities usually have the status of “economically inactive” and can continue to receive their benefits without regular review. The social welfare system is designed to facilitate the transition from benefits to employment. On moving into full-time employment, loss of benefits such as the IS can be offset by “top-up” benefits, including the Working Tax Credit. Nonetheless, for people with intellectual disabilities in staffed accommodation, the potential loss of Housing Benefit can still act as a disincentive to moving into full-time employment. Usually, for people with intellectual disabilities, the move to part-time employment while retaining benefits is the preferred option. Under the “Supported Permitted Work” rules, people with disabilities can work up to 16 hours a week in supported work indefinitely, if they receive recognised forms of support. This is a particularly important way for people with intellectual disabilities to join the mainstream workforce, although existing regulations mean that, in practice, they may be even more restricted in the hours they can work, and only receive limited additional income from their work as a result.*

*The two main areas of assessment for adults with intellectual disabilities are for eligibility for welfare benefits and for Government employment schemes. An individual with disabilities can be referred to specialised Government employment schemes, such as “Access to Work,” WORKSTEP and Employment Support in Northern Ireland, following an assessment carried out by a Disability Employment Advisor (DEA) of the DWP’s Disability Services Teams, or their national equivalents. The DEA develops an action plan that orientates the individual towards suitable opportunities.*

#### 1.1 Domestic legislation

In the UK, the most relevant legislation relating to the employment of people with disabilities (listed chronologically) is:

- The National Assistance Act 1948
- The Disability Discrimination Act 1995 (DDA)

- The Disability Discrimination Act 1995 (Amendment) Regulations 2003 (hereafter, DDA Regulations 2003)
- Disability Discrimination Act 2005 (DDA 2005) (*not yet in force*)

The UK has a comprehensive framework of employment legislation generally making provision for fair treatment in recruitment, health and safety at work, against unfair dismissal, hours and conditions of service, redundancy compensation, trade union rights, and national minimum wage levels for adults and young people.

The UK has had legislation to provide rehabilitation services to people with disabilities since the introduction of the Disabled Persons (Employment Act) 1944. This act allowed for the Government to finance sheltered workshops from public funds, targeted at injured ex-war veterans. Programmes included a register of people with disabilities; assessment, rehabilitation and training centres; a specialised employment placement service; a quota scheme, which placed a disability symbol “Double-Tick” for companies that were equal opportunity employers;<sup>331</sup> and a more comprehensive package of support for people with disabilities entering the open labour market.<sup>332</sup>

The National Assistance Act 1948 sets out the conditions under which welfare benefits can be paid to those who cannot work. The act has since been added to and extended by a complex array of other acts, but remains the fountainhead of welfare benefit eligibility. It is also at the heart of tensions between the concepts of being disabled and being employed. The act has, at its core, the notion that if a person has disabilities, he or she is not capable of working and, conversely, if a person works, he or she cannot be disabled. While there have been extensions to the system, to ensure people can return to welfare if work fails under some circumstances, there remain difficulties in maintaining benefits to overcome additional costs and barriers while being employed.

The DDA addresses discrimination on the basis of disability, including in the area of employment. The act makes it unlawful for employers to discriminate against people with disabilities either by treating him or her less favourably (without justification) than other employees or job applicants because of his or her disabilities, or by not making reasonable adjustments (without justification).<sup>333</sup> The DDA requires authorities and businesses with over 20 employees, modified to 15 by the Secretary of State, to make “reasonable accommodations” to enable people with disabilities to obtain paid jobs. Since 1 October 2004, this duty was extended to companies having fewer than 15 employees. The Disability Rights Commission (DRC) ensures that this is done and applies penalties to those who do not apply the act.<sup>334</sup>

<sup>331</sup> This change was discussed in the consultation document: Department of Employment (1990) *Employment and Training for People with Disabilities: Consultative Document*, Department of Employment, London.

<sup>332</sup> See: Access to Work programme, in sections 1.2.2 and 2.2.

<sup>333</sup> DDA, Part II, sections 4-6.

<sup>334</sup> This was phased in up until 2004.

The DDA Regulations 2003 (which entered into force on 1 October 2004) extend the DDA, in line with the provisions of the EU Employment Directive. The Employment Directive establishes a general framework for non-discrimination in employment and occupation, including equality for people with disabilities. It covers access to employment, selection criteria, recruitment, and promotion; vocational guidance, training, and retraining including practical work experience; and working conditions, including dismissals and pay.<sup>335</sup> The directive sets out the need for “reasonable accommodation” in allowing employment or training and has been substantially transposed into national legislation. The directive has proved to be a central plank of employment legislation for people with disabilities in the UK.<sup>336</sup>

The DDA, with the Secretary of State’s modification, limited employment discrimination to employers having over 15 employees.<sup>337</sup> The DDA Regulations 2003 withdraw this exemption,<sup>338</sup> along with some occupational exemptions for police, prison services, barristers and business partnerships. The DDA Regulations 2003 further define discrimination and harassment, and outlaw the harassment of people with disabilities. The scope of unlawful employment discrimination, on the part of the employer towards an employee, is further defined as,

in the terms of employment which he affords him; in the opportunities which he affords him for promotion, a transfer, training or receiving any other benefit; by refusing to afford him, or deliberately not affording him, any such opportunity; or by dismissing him, or subjecting him to any other detriment.<sup>339</sup>

The regulations also further define the “reasonable accommodation” to be applied to prevent discrimination as,

a provision, criterion or practice applied by or on behalf of an employer, or any physical feature of premises occupied by the employer, that places the disabled person concerned at a substantial disadvantage in comparison with persons who are not disabled.<sup>340</sup>

The DDA Regulations 2003 also extend the DDA to cover advertising for jobs, and contract workers not directly on the employer’s payroll. They make it unlawful for a placement provider to discriminate against a person with disabilities seeking or undertaking a work placement. The DDA 1995 included provision of services, stating that people with disabilities cannot be discriminated against when shopping, banking

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<sup>335</sup> Employment Directive, art. 3.

<sup>336</sup> Employment Directive, art. 5.

<sup>337</sup> DDA, section 7.

<sup>338</sup> DDA Regulations 2003, section 7.

<sup>339</sup> DDA Regulations 2003, section 4.

<sup>340</sup> DDA Regulations 2003, section 6.

or receiving Government services. Making transport and buildings accessible will be subsequently implemented through the DDA 2005 (sections 5-9).

The DDA and the DDA Regulations 2003, together with the Disabled Persons (Employment Act) 1944, are the mainstays of integrated and sheltered employment for people with disabilities in the UK. With respect to work on the open market, the DDA is designed to provide legal protection for people with disabilities; the principle of “reasonable accommodation” applies once the person with disabilities is in employment, as well as in modifying any recruitment and application process that may discriminate against people with disabilities obtaining work.

The Disabled Persons (Employment Act) 1944 was the only legislation dealing directly with the employment of disabled people until the DDA in 1995. The 1994 Act provided for: a disabled persons employment register; assessment, rehabilitation and training facilities; a specialised employment placement service; setting-up sheltered workshops for disabled workers; and protection against unfair dismissal. It also established a quota for the employment of people with disabilities, requiring firms of 20 workers or more to draw three per cent of its workforce from the disabled persons employment register. This requirement was rarely enforced, however, with only three prosecutions until 1974 when the quota was abolished. Most of the 1944 Act has now been repealed.

A further extension of the DDA, the Disability Discrimination Act 2005 (DDA 2005), was passed on 7 April 2005, and relevant parts will enter into force in December 2006. The act provides additional guidance, allowing for the Government to redefine disability, make discriminatory advertising unlawful.<sup>341</sup> It extends the DDA to cover public authorities, and the services they offer,<sup>342</sup> and private clubs and associations.<sup>343</sup> This act will further revise legislation, to bring it fully in line with the Employment Directive.<sup>344</sup>

### *Specialised bodies*

Where an individual alleges that discrimination has occurred, informal conciliation is recommended. Advice is available through the Advisory, Conciliation and Arbitration Service (ACAS), which offers a nationwide network of Public Enquiry Points to answer queries on employment law and related issues. ACAS can arrange for a conciliation officer to try to help resolve any potential conflicts. After this, the person with

<sup>341</sup> DDA, as amended by DDA Regulations 2003 and DDA Pensions Regulations 2003, Parts 1, 2 and 3, also relevant aspects of other parts and schedules.

<sup>342</sup> DDA, as amended by DDA Regulations 2003 and DDA Pensions Regulations 2003, section 24A and Part 5A.

<sup>343</sup> DDA, as amended by DDA Regulations 2003 and DDA Pensions Regulations 2003, section 24E.

<sup>344</sup> In the UK, specialist employment programmes, such as WORKSTEP, do already meet with the aspirations of the Employment Directive.

disabilities can pursue a claim through the Employment Tribunal Service route, with the assistance of the Disability Rights Commission (DRC) Casework Service.<sup>345</sup> The process begins with a questions procedure, where a questionnaire is sent by the applicant to the employer to get more information about the incident of discrimination. A “directions hearing” might be needed before the main Employment Tribunal hearing to decide how cases might be best run. An Employment Tribunal consists of a panel of three members, including a legally qualified Chairman who hears general employment law cases, including disability discrimination cases. There is also an Employment Appeal Tribunal that can hear an appeal against any decision made by an employment tribunal in England, Scotland or Wales.

## Variations within the UK

### Wales

The Disability Rights Commission (DRC) for Wales operates in the same way as in England and Scotland. In general terms, the primary legislation cited for England is the same as for Wales.<sup>346</sup>

### Scotland

The DDA and primary employment legislation are some of the policy areas reserved to the UK Westminster Parliament, even though there are special arrangements for their implementation in the various constituent parts of the UK. In Scotland, the Scottish Executive Equalities Unit promotes equality issues across all areas of activity. The DRC established an office in Scotland in 2001 and has been closely involved in policy development at both the Scottish and UK levels.<sup>347</sup> It has been actively engaged in alerting people with disabilities and employers to the forthcoming changes in the DDA.

### Northern Ireland

Disability legislation in Northern Ireland is, in the main, the same as in the rest of Great Britain, but there are certain devolved and jurisdictional differences.

The Disabled Person (Employment) Act (N. Ireland) 1945 (amended in 1960) has similar regulations to the Disabled Person (Employment Act) 1944, such as a quota scheme, designated employment, and Sheltered Employment (now known as

<sup>345</sup> The Disability Rights Commission Helpline: [enquiry@drc-gb.org](mailto:enquiry@drc-gb.org).

<sup>346</sup> See section II.1.2

<sup>347</sup> S. Riddell, P. Banks, and T. Tinklin, *Disability and Employment in Scotland: A Review of the Evidence Base*, Scottish Executive, 2005, available at <http://www.scotland.gov.uk/Publications/2005/01/20511/49760> (accessed 25 Aug. 2005).

Employment Support), but it does not have the “Double Tick” symbol for companies promoting equal opportunities.

The Northern Ireland Employment and Training Act (1950) governs the provision of vocational training and employment in Northern Ireland, including for people with disabilities. Therefore, vocational training and employment policy is a devolved matter, which means that the Northern Ireland Government has the flexibility to develop their own policies and practices. In practice, however, national UK programmes are usually replicated in Northern Ireland with, perhaps a few modifications to reflect the local situation – as in the New Deal for Disabled People, for example.

While the DDA 1995 extends to the whole of the UK, separate secondary legislation, Orders and Codes of Practice are required to implement general legislation in Northern Ireland,<sup>348</sup> as disability discrimination and transport are “transferred matters” under the Northern Ireland Act 1998.<sup>349</sup>

The DDA 2005 also does not apply in Northern Ireland, because it primarily deals with these transferred matters. However, the Disability Discrimination Act 1995 (Amendment) Regulations (Northern Ireland) 2004, which entered into force on 1 October 2004,<sup>350</sup> provides similar legislation to the DDA Regulations 2003 introduced in Great Britain. It also removed the small employer exemption from “reasonable adjustment,” and provided for the inclusion of previously exempt occupations – such as police officers, fire-fighters, prison officers and those employed on ships, hovercrafts or aircraft. The public consultation period for the Draft Disability Discrimination (Northern Ireland) Order 2005 ran until 28 March 2005.<sup>351</sup>

The Northern Ireland (1998) Act establishes the Equality Commission for Northern Ireland (ECNI) as the independent public body with power to oversee its implementation, and to monitor the effectiveness of Section 75. From 1 October 1999, the Equality Commission took over the functions previously exercised by the Commission for Racial Equality for Northern Ireland; the Equality Commission for Northern Ireland; the Fair Employment Commission; and the Northern Ireland

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<sup>348</sup> Schedule 8 of the DDA sets out the modifications that apply to its application in Northern Ireland. See: Information from the Equality Commission for Northern Ireland website, available at [http://www.equalityni.org/yourrights/equality\\_law.htm#Disability1](http://www.equalityni.org/yourrights/equality_law.htm#Disability1) (accessed 4 August 2005).

<sup>349</sup> DTI, *Disability Discrimination Bill Explanatory notes*, point 10.

<sup>350</sup> The Disability Discrimination Act 1995 (Amendment) Regulations (Northern Ireland) 2004, Statutory Rule of Northern Ireland, Statutory Rule 2004, No. 55, available on the OPSI website at <http://www.opsi.gov.uk/sr/sr2004/20040055.htm> (accessed 1 May 2005).

<sup>351</sup> Draft Disability Discrimination (Northern Ireland) Order 2005, available at <http://www.ofmdfmi.gov.uk/disabilitydiscrimination/disability/order.pdf> (accessed 4 August 2005).

Disability Council. The Equality (Disability, etc.) (Northern Ireland) Order 2000<sup>352</sup> expanded the duties and powers of the Equality Commission to enable it to oversee matters relating to disability, including the implementation of equality legislation and the DDA.

In Northern Ireland, legislation in support of a more equal society is further advanced than anywhere else in the UK. Additional provisions exist under the Northern Ireland (1998) Act.<sup>353</sup> Section 75 states that public authorities must promote equality of opportunity between “persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation; men and women generally; persons with a disability<sup>354</sup> and persons without; and persons with dependants and persons without”. There are presently 175 designated public authorities in Northern Ireland, including all Government organizations – for example, Government departments, local councils, education boards, health trusts and housing executives. For people with disabilities, the introduction of the Northern Ireland (1998) Act means that they have a say in any changes to policy made by public authorities.<sup>355</sup> Public Authorities must ensure that people with disabilities (and all the nine Categories) are given the same opportunities, and ensure that the policies do not have an adverse impact on them – this also includes their recruitment and selection policies, which would obviously have an impact on people with disabilities.

## 1.2 Assessments for employment purposes

The two main areas of assessment relevant to people with disabilities entering employment, are for eligibility for welfare benefits – disability based benefits and general benefits – and for eligibility for specialised Government employment schemes. In addition to these assessments, social assessments, such as vocational profiling, are carried out by employment specialists – these are used in supported employment (see section IV.3.2). A reorganisation of Government departments in 2001 led to the

<sup>352</sup> The Equality (Disability, etc.) (Northern Ireland) Order 2000, Statutory Instrument 2000/1110 (N.I. 2), available on the OPSI website at <http://www.legislation.opsi.gov.uk/si/si2000/20001110.htm> (accessed 1 May 2005).

<sup>353</sup> Northern Ireland (1998) Act, available on the OPSI website at <http://www.legislation.opsi.gov.uk/acts/acts1998/19980047.htm> (accessed 10 January 2005), (hereafter, Northern Ireland Act 1998).

<sup>354</sup> Disability is defined as per the DDA 1995.

<sup>355</sup> For example, if the Department for Employment and Learning decided to discontinue the Access to Work Programme, they would have to consult with the nine categories listed under Section 75 – including people with disabilities – to see if this would have an adverse impact on them.

creation of the Department for Work and Pensions (DWP),<sup>356</sup> which links the administration of welfare benefits more closely with aid to search for work.

### 1.2.1 Eligibility for disability based welfare benefits

There are four main disability based welfare benefits for people who cannot work:

- Long-term Incapacity Benefit (IB);
- Severe Disability Allowance (SDA) – this has recently been withdrawn for new claimants;
- Disability Living Allowance (DLA); and
- Income Support (IS) (with an additional premium for disability).

The main welfare benefit which people with intellectual disabilities receive is Income Support (IS),<sup>357</sup> commonly along with the Disability Living Allowance (DLA).<sup>358</sup> The IS has premiums that raise allowances if people have disabilities. A person with intellectual disabilities would prove eligibility for this premium through already receiving a recognised disability benefit, or by having been assessed as “incapable of work”, through an application form and a doctor’s statement. People with severe “mental health difficulties”, which in this case would include people with intellectual disabilities, would normally not take part in a “Personal Capability Assessment” which would normally look at whether a person can carry out a range of work-related activities.<sup>359</sup> People with *mild* intellectual disabilities can be eligible, as well as people with more severe levels of intellectual disabilities, depending on the specific problems they experience, and IS may be paid in addition to non-means tested disability related benefits.

The Disability Living Allowance (DLA) is a benefit for adults and children with disabilities. It is for people who need help looking after themselves and those who find it difficult to walk or get around. The person with disabilities does not need to have someone looking after them to qualify. The DLA is untaxed, not means tested and no

<sup>356</sup> As of 8 June 2001, the Department for Work and Pensions (DWP) was created from a merger of the then Department of Social Security and the employment divisions of the then Department for Education and Employment (DfEE), which was renamed the Department for Education and Skills (DfES).

<sup>357</sup> The level of Income Support (IS) which an individual receives is calculated according to a number of factors, including age; family size; and disability. Further information on the IS and on other UK social benefits is available on the Jobcentre Plus website at <http://www.jobcentreplus.gov.uk> (accessed 10 January 2005).

<sup>358</sup> OSI roundtable comment, London, May 2004.

<sup>359</sup> Information from the Jobcentreplus website, available at <http://www.jobcentreplus.gov.uk/cms.asp?Page=/Home/Partners/AllowancesandBenefits/2078> (accessed 28 August 2005).



national insurance contributions have to be paid on it. It is paid on top of people's earnings or any other income they may have. It is almost always paid in full, in addition to social security benefits or tax credits. The DLA is divided into two parts: (1) Care Component – for help with personal care needs paid at three different levels (higher, middle or lower); and (2) Mobility Component – for help with walking difficulties, paid at two levels (higher and lower). A person can be paid either the care component or the mobility component on it's own, or both components at the same time.

Incapacity Benefit (IB) is for people who cannot work because of an illness or disability. Before April 2001, only applicants who had to have paid enough National Insurance contributions while in a job could get IB. In addition, after April 2001, those aged under 20 (in the case of people who have been in education since the age of 20, this can be extended to 25) and incapacitated could claim IB regardless of their national insurance contributions. Eligibility for the IB is usually based on an assessment in which the claimant must complete a form, along with a financial statement. Applications must initially pass the "own occupation test", that is, they can't do the job they *usually* do. After that, they are assessed as "incapable of work" only if they pass the "personal capability assessment", that is, if they cannot do *any* kind of work. People granted the benefit are regarded as not economically active and are not required to work, and IB is not means-tested, and people's income and savings are not taken into account. However, people with intellectual disabilities do not have to fill in the questionnaire, or undergo regular reviews, but do have to get medical evidence, usually from their GP, stating that they have a learning disability. IB remains a minor benefit for people with learning disabilities, as since April 2001 it only became applicable to those aged under 20.

Within the framework of the recent reorganisation of Government departments, changes are ongoing, in particular in relation to the IBs.<sup>360</sup> These include the provision of a better framework of support for IB benefit claimants, through actions such as providing: better contact with personal advisors (PAs) and a flexible budget for PAs of up to £300 to help with practical items such as clothing; direct access to a wider range of help, such as a joint project with the National Health Service (NHS); and better financial incentives to return to work, such as a Return to Work Credit of £40 for a year. These are collectively provided through a programme known as "Job Broker schemes" (and early pilots called "Pathway projects").

In relation to the review of the IB and the provision of "Job Broker" schemes, NGOs have raised ongoing concerns about those people with intellectual disabilities who may

<sup>360</sup> Department of Work and Pensions, *Pathways to work: Helping people into employment*, CMND 5690, DWP, London, 2002, available on the DWP website at <http://www.dwp.gov.uk/consultations/consult/2002/pathways/index.htm> (accessed 10 January 2005).

be receiving an IB.<sup>361</sup> These include the need for work-focused interviews to reflect the needs of people with intellectual disabilities (and for PAs to be equipped to deal with this), and for greater working partnerships across the different sectors, such as health, education and employment services, including supported employment agencies. NGOs have also highlighted the need to avoid global exclusion from entry to programmes such as “Job Brokers” based on disability definitions, such as “severe intellectual disability.” Situations differ within a broad definition of disability, and exclusion needs to work along the lines of “those for whom work is not currently a reality” rather than purely being defined by disability.

In addition to these disability based benefits, there are also other welfare benefits for people who are not in work that are for the general population, but for which people with disabilities may be eligible.

The Jobseekers Allowance is for people who are regarded by the Government as economically active and looking for work. The UK welfare disability system has historically been built on the idea that people who are disabled cannot work, and people who work cannot be disabled. People with intellectual disabilities who have been on long-term welfare benefits are still commonly not regarded as employable, and so only very few (mainly people with *mild* intellectual disabilities) are likely to claim Jobseekers Allowance. In addition, those on this benefit would normally be expected to make significant efforts to find a job independently; continued receipt of the benefit is partly based on evidencing this effort. People with significant levels of intellectual disabilities can work, but cannot do so independently, and so would be at a disadvantage being on Jobseeker Allowance. People who are deemed eligible for Job Seeker’s Allowance are subject to regular review of their activities to find work and receive help to pursue work through a personal advisor.

The Working Tax Credit is an additional tax benefit which, from April 2003, replaced some specific top up benefits for people with disabilities who work, such as the Disabled Persons’ Tax Credit. Anyone working on low income can claim this credit, but the rate includes a basic element with an enhanced disabled adult element.

### 1.2.2 Assessment for Government schemes

Those people who are defined as disabled under the DDA are eligible to seek assistance to find employment through a number of specialised Government employment schemes, such as “Access to Work”, WORKSTEP and the “New Deal for Disabled People” (see section 2.3.2).

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<sup>361</sup> See, for example, the response of the National Association for Continuing Adult Education’s (NIACE) to the consultation, available on the NIACE website at <http://www.niace.org.uk/Organisation/advocacy/DWP/pathways.htm> (accessed 10 January 2005).

People with disabilities who need additional help are referred on to a Disability Employment Advisor (DEA) who works for the DWP's Disability Services Teams accessible through Jobcentre Plus offices. The DEA carries out an interview assessment, in which they determine the type of work the person wants; their experience; and the basics of the problems they face through disability. The DEA will then create an action plan, which may move straight to helping the person to access a job. This may include a suitable job; a training place; additional assessment by professionals, such as a work psychologist or physiotherapist; or periods of work experience with a specialist provider organisation in a workshop or in a community job. The DEA action plan may also recommend placement in one of the Government's specialised schemes for people with disabilities. Teams of DEAs can call on regional experts (such as physiotherapists, work psychologists, computer systems technicians, and aids and adaptation specialists) to carry out additional assessments. Those who develop an action plan with the DEA have a number of schemes at their disposal.

The DEAs are generally responsible for determining eligibility for WORKSTEP and "Access to Work" programmes. For example, the DEA action plan may recommend placement on the WORKSTEP supported workshop or supported placement option.<sup>362</sup> However, regulations are changing to allow providers of WORKSTEP to carry out eligibility assessments themselves, as well as receiving referrals directly, without people having to go through a DEA first. The criteria for entry to WORKSTEP<sup>363</sup> are that people meet the DDA criteria for being disabled; that there is evidence that WORKSTEP is the most appropriate option after considering all other options; and that the person with disabilities has been receiving an IB or Jobseekers Allowance for six months or more. There is no longer any requirement to have any particular percentage reduction in working capacity compared to any non-disabled worker.

### 1.3 The role of the social welfare system

If people with recognised disabilities are not in work, or workers become disabled and leave work, then they are normally moved onto IB or IS that commonly bring with them the status of "economically inactive". This relieves them of the mandatory requirement to independently seek employment, which is required for unemployment benefits such as the Job Seeker Allowance. People with disabilities, including

<sup>362</sup> Prior to the introduction of the WORKSTEP reform (when it was called the "Supported Employment Programme"), an additional assessment stage operated through specialist professional assessment (such as a psychologist's psychometric testing) or through work sample testing, to establish the individual's degree of disabilities, expressed as a percentage. Individuals had to be 20 to 80 per cent disabled, to be able to enter the scheme and be eligible for a wage subsidy or a sheltered workshop placement. However, this requirement has now been withdrawn and the work sample route is no longer used. It has been replaced by the DEA, and professional and other work placement assessments.

<sup>363</sup> Also for the Remploy programmes (see section IV.3.3)

intellectual disabilities, can remain on these benefits indefinitely, although the Government has recently introduced more regular reviews of their status. Organisations such as Mencap have raised concerns that people with intellectual disabilities should be excluded from these reviews, given the pervasive and long-standing nature of their disabilities.<sup>364</sup>

In general, if people with disabilities receive means-tested benefits such as IS, their benefit will decrease or be withdrawn when they enter employment. However, people with disabilities are now able to claim Working Tax Credit, which can top up their earnings and counter any losses through withdrawal of other benefits. Nonetheless, there are additional concerns for those individuals whose benefit is also a “passport” to other non-disability benefits.<sup>365</sup> Loss of these additional benefits can lead to substantial income reduction on obtaining a paid job. This is particularly true for people with *moderate* and *severe* intellectual disabilities who live in staffed accommodation. In such cases, Housing Benefit is a key income that largely offsets the cost of staff input; if a person enters work and loses the Housing Benefit this can lead to a massive charge. With such a complex welfare benefit system, it is crucial that people obtain individual advice, taking into account the job on offer and their particular situation.

There is another set of rules related to part-time work. People with disabilities are allowed to retain their welfare benefits and earn a little more income. This was once called “Therapeutic Work” and is now called “Permitted Work” and “Supported Permitted Work”. These are particularly relevant to people with intellectual disabilities, as there are many using this route to explore paid employment.<sup>366</sup>

The new “Permitted Work” (PW) rules allow any person claiming a benefit, based on incapacity, to do some paid work for less than 16 hours per week, indefinitely, without the need for approval from a doctor, which was necessary under the old “Therapeutic Work” rules, as long as they do not exceed £20 earned income (Lower Limit PW). People are able to carry on receiving an IB or Severe Disability Allowance (SDA) while doing permitted work and earn up to £78 (or approximately €114.6) per week, without it affecting the level of their benefit (Higher Limit PW). They may do this for up to one year, after which they must leave a gap of one year before working under

<sup>364</sup> The Parliamentary Under-Secretary of State, Department of Social Security (Baroness Hollis of Heigham). In Great Britain: Parliament, House of Commons, Official Reports, Parliamentary Debates (Hansard), 2000. Social Security (Work-focused Interviews) Regulations 2000, 17 March 2000, Column 1911, London, HMSO, available at <http://www.publications.parliament.uk/pa/ld199900/ldhansrd/vo000317/text/00317-12.htm> (accessed 22 August 2005).

<sup>365</sup> These include: Housing Benefit (to help with the cost of housing rental); and Council Tax Benefit (to help offset the charges made by local authorities to pay for services such as refuse collection, libraries, social services and education).

<sup>366</sup> S. Beyer, L. Goodere and M. Kilsby, *The costs and benefits of supported employment agencies*, Employment Services Research Report 45, DfEE, Sheffield, 1997, (hereafter, Beyer et al, *Costs and benefits*).

Higher Limit PW arrangements. A Job Broker, Personal Advisor or Disability Employment Advisor (DEA) must support all subsequent periods of permitted work from the outset. People receiving IS, including many people with intellectual disabilities, can only earn up to £20 (or €29.1) a week from paid employment while retaining their welfare benefit, because of the rules applying to this benefit.

Under the “Supported Permitted Work” rules, there are special arrangements for people with disabilities who are receiving support to work, from a recognised agency. These are particularly relevant to people with intellectual disabilities, whose condition is unlikely to improve over time but who will continue indefinitely to combine some work while receiving their IBs. Under the new rules, people who work in the community with ongoing support, or supervision from a professional caseworker (employed or engaged by a public body or voluntary organisation), are *not* subject to time limits. Supported work includes people who are employed by social firms via support centres; are in touch with a care coordinator, employment development officer or a supported employment agency; or have had a Social Services Assessment. This route is intended to help people with disabilities who are limited to working less than 16 hours a week, but who want to work for more hours than that covered by the £20 per week option (under Lower Limit PW rules).

In “Supported Permitted Work”, people can earn up to £78 (or approximately €114.6) a week for an unlimited period. Again, if they receive IS, they can only keep £20, any additional earned income being subtracted from their IS.

A recent report has outlined the problems faced by people with intellectual disabilities, and others, in using the welfare benefit system.<sup>367</sup> This report notes that there remains a concern that any form of work may threaten people’s benefit status. The Permitted Work rules have reduced some of the insecurities around part-time employment and provided a set of stepping-stones for people to move towards employment in the short-term. Nonetheless, there remain rigidities that follow the distinction between “permitted” and “remunerative” work. The divide at 16 hours, which has to be met to enter the Tax Credit system, acts to limit choice, and effectively devalues the contribution made by people for whom part-time work is the most appropriate arrangement.

The report also highlighted that the uncertainty of the links back onto IBs act as a barrier for people wishing to enter paid work. In particular, people on welfare benefits are likely to find themselves facing reductions in other forms of financial assistance when they enter work and have their benefits reduced or withdrawn. This includes the steep taper on Housing Benefit, which, coupled with Council Tax Benefit, can leave

<sup>367</sup> Some of the proposals build on the analysis contained in: A. O’Byrne, K. Simons, S. Beyer and B.A. Grove, *Framework for supported employment*, Joseph Rowntree Foundation, York, 2000, (hereafter, O’Byrne et al, *Framework for Supported Employment*). Also: EASPD LABOr Knowledge Centre, National Analyses, available on the EASPD/LABOr website at <http://www.start-labor.org/> (accessed 10 January 2005).

some individuals with a marginal tax rate of well over 90 per cent if they enter paid work. Also important are policies on charging for community care services, which are very important for people with more severe intellectual disabilities. Although this varies from area to area, in some instances this can create a very acute “personal assistance” trap, where people become responsible for their own care charges on entering employment. These overlapping “withdrawal” rates can leave some individuals little better off, no matter how much they earn. This is particularly the case for most people in residential care, where the charging system effectively ensures any gains through earnings are limited to £20, no matter how many hours they work. Although local authorities have the discretion to leave individuals under 65 who work with a higher personal allowance, few exercise it.

The report also notes that the welfare benefit and tax credit systems around employment remain complex and lead to uncertainty. Although the system has some measures designed to protect vulnerable people, its impact is limited by other aspects of the system.

Finally, the introduction of the National Minimum Wage (NMW) on 1 April 1999, which led to a pay rise for some users of supported employment, has had an interaction with IS regulations, leading to some people giving up work.<sup>368 369</sup> This is because the hours they were working would, at NMW levels, take their earnings over those allowable under welfare benefit regulations. The Permitted Work regulations have eased the situation, but this interaction is the focus of continuing debate.<sup>370</sup>

## 2. GOVERNMENT EMPLOYMENT POLICY

*In the UK, EU funds – in particular from the European Social Fund (ESF) – have been directed towards programmes encouraging the employment of people with disabilities, including intellectual disabilities. In particular, in the past they have provided a significant source of development funding for supported employment agencies, although due to a shift in priorities the level of funding has now fallen and moved to other scheme types.*

<sup>368</sup> A. O'Bryan, K. Simons, S. Beyer, and R. Grove, *For the Policy Consortium on Supported Employment*, national Development Team, Manchester, 2000, available at <http://www.ndt.org.uk/docsN/support.pdf> (accessed 22 August 2005).

<sup>369</sup> J. Schneider, K. Simons and G. Everatt, “Impact of the National Minimum Wage on Disabled People”, in *Disability and Society*, no. 16, pp. 723–747, 2001, available at <http://www.nottingham.ac.uk/sociology/staff-schneider.php> (accessed 22 August 2005).

<sup>370</sup> Department of Trade and Industry (2000), *The national minimum wage and ‘therapeutic’ work: Information note*, DTI, London, 2000, available at <http://www.dti.gov.uk/er/nmw/therapeutic.pdf> (accessed 22nd August 2005).

## 2.1 The EU and Government employment policy

Unemployment has been identified as a significant barrier to social inclusion, and the main aim in the UK has been to integrate people with disabilities into open employment. Programmes funded by the European Social Funds (ESF) have been the main programmes associated with the employment of people with disabilities, in particular the Horizon programme<sup>371</sup> and Youthstart programme<sup>372</sup> (these are two of the four strands of the EU's EMPLOYMENT Community Initiative).

There has been a significant increase in the use of ESF funding over the last decade. Many areas have made use of this funding stream to enhance the services offered in employment support, or innovative employment schemes for people with disabilities, including people with intellectual disabilities. In the UK there has been significant use of Objective 1 and Objective 3 ESF funding in the same area.<sup>373</sup> In the past, Objective 3 funding was a significant funding source for the development of supported employment services. However, recently, new arrangements have been introduced around co-financing – Objective 3 funding only pays for a proportion of total project funding, while the UK Government, Local Authorities or other public bodies often provide the rest. As a result of Government priorities, significant amounts of money has left supported employment agencies and gone over to services that are thought to be less effective in delivering jobs, such as work preparation schemes, some linked to the “Entry to Employment” programme.<sup>374</sup>

<sup>371</sup> The Horizon programme has been used to facilitate the employability and job prospects of people with disabilities by: matching training and work experience with information and support measures; improving the delivery of services based on the individual needs of people with disabilities and strengthening cooperation between the professionals and actors in the field; changing attitudes amongst employers, trade unions and other local actors in pursuit of more holistic approaches; and involving people with disabilities as actors in their own progress towards open employment.

<sup>372</sup> The Youthstart programme was used to support the better integration of young people under the age of 20 into the labour market, particularly those without basic qualifications or training, such as young people with intellectual disabilities. It specifically supported: the development of improved training and employment opportunities for young people, especially those at risk because of low levels of formal qualifications; those who are unemployed for a long time; and the development of innovative training, guidance and employment programmes for young people.

<sup>373</sup> DG Employment and Social Affairs, *Conclusions of the ESF final evaluations*, DG Employment and Social Affairs, EMPL/G.5, Brussels, 2001, (hereafter, DG Employment and Social Affairs, *ESF Conclusions*).

<sup>374</sup> OSI roundtable comment, London, May 2004. E2E is a work-based learning programme, which was officially established across England on 1 August 2003. It is designed for those young people who are not yet ready or able to enter an Apprenticeship, and succeeds arrangements for pre-employment and other provision below NVQ level 2 (including preparatory training, Lifeskills and “Other Training” at Level 1. Further information available at <http://www.lsc.gov.uk/National/Documents/SubjectListing/LearningCultures/Engagingemployer/EntrytoEmployment/E2E+Background.htm> (accessed 22 August 2005).

In the UK, surveys have revealed that the most effective activities eligible for ESF funding were employment grants and job-search assistance. Surveys of the fate of clients who had taken part in integrated projects showed that ESF projects most improved older men's chances of finding work (net effects). Integrated projects, where training is linked to other job placement activities, also had a more positive impact on the least employable, which would include people with intellectual disabilities. The higher costs of the integrated approach are considered to be justified by the fact that they are more effective.<sup>375</sup> The general conclusions were that there should be better targeting of the major problems on the labour market and better identification of clients' individual problems. There should also be a more focused approach to raise the profile of the ESF, to ensure that it provides added value, and a wider use of integrated programmes taking the local dimension into account and bringing in businesses and private funds.

The EQUAL programme has been the most recent addition to EU funding in the UK. EQUAL is part of the EU's strategy for more and better jobs, and for ensuring that no one is denied access to them. Funded by the European Social Fund (ESF), EQUAL tests new ways of tackling discrimination and inequality experienced by those in work or looking for a job. These new ideas could change future policy and practice in employment and training. EQUAL operates by bringing together the key players in a geographical area or sector, with a view to using these results to influence the design of future policy and practice.

## 2.2 Government employment policy

The Government's approach to providing new opportunities specifically for people with intellectual disabilities is set out in the 2001 White Paper *Valuing People*.<sup>376</sup> The policy established in *Valuing People* priorities the need to modernise services for people with intellectual disabilities. In particular, it recognises that paid, community-based employment can be a positive and valuable part of the lives of people with intellectual disabilities. *Valuing People* echoes the overall Government agenda on the centrality of employment, and its aspiration to achieve greater social inclusion for people with disabilities.

A guidance document has been issued under the *Valuing People* strategy, which explores how links can be made between day centres and mainstream Government

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<sup>375</sup> DG Employment and Social Affairs (2000) *Conclusions of the ESF Final Evaluations*, available at [http://europa.eu.int/comm/employment\\_social/evaluation/evaluation\\_en.htm](http://europa.eu.int/comm/employment_social/evaluation/evaluation_en.htm) (accessed 22 August 2005).

<sup>376</sup> Department of Health, *Valuing People: A New Strategy for Learning Disabilities for the 21<sup>st</sup> Century*, CM 5086, DOH, London, 2001, available at <http://www.archive.official-documents.co.uk/document/cm50/5086/5086.htm> (accessed 10 January 2005), (hereafter, Department of Health, *Valuing People*).



disability employment programmes.<sup>377</sup> Local authorities are required to prepare plans on how they will pursue employment opportunities for people with intellectual disabilities, particularly those placed in local authority day centres, linking to mainstream and specialist Government programmes and agencies.

Nonetheless, there are concerns about a continuing lack of coordination between programmes addressing benefits and specialist employment programmes, such as “Access to Work”, and that these programmes are not delivered consistently, across the UK.<sup>378</sup> Very little about employment has come out of the *Valuing People* strategy. There has also been a lack of follow-up to *Valuing People*. There are also areas of the country where no employment strategy has been written, and areas where there is only one person instead of a team of people working on the employment strategy. This has resulted in services’ employment strategies becoming “tokenistic”.

The Government has recently launched a new policy document, *Improving the Life Chances of Disabled People*,<sup>379</sup> which proposes that, in the area of transition from school to adult life:

- Individualised budgets should be introduced to give young people with disabilities and their families increased choice and control.
- Individual budget plans should be formulated in childhood and carried into adulthood, and reviewed in response to changes in need, not age.

In the shorter-term, this policy document suggests that child and adult services should overlap, to remove the “cliff-edge” in provision experienced by many young people with disabilities. It identifies young people with intellectual disabilities as one group that might potentially benefit from receiving children’s services well beyond the current age cut-offs for those services. It recommends that Children’s Trusts should move to include all people with disabilities up to the age of 25, and should support young people with disabilities who are living at home or moving into independent living.

In the area of employment, the policy document seeks to ensure that in 20 years time, any person with disabilities who wants a job and needs support to get and keep a job, anywhere in the country, should, wherever possible, be able to do so. It recommends the following:

- A strategy for work-focused rehabilitation: building on the framework for vocational rehabilitation, should engage employers and health professionals, identifying best practice and making sure that the most effective use is made of the resources available

<sup>377</sup> Department of Health, *Framework for Developing an Employment Strategy*, DOH, London, 2002.

<sup>378</sup> OSI roundtable comment, London, May 2004.

<sup>379</sup> Prime Minister’s Strategy Unit, *Improving the Life Chances of Disabled People*, available at [http://www.strategy.gov.uk/work\\_areas/disability/index.asp](http://www.strategy.gov.uk/work_areas/disability/index.asp) (accessed July 2005).

- Assessments for IB entitlement: building on Pathways to Work,<sup>380</sup> assessments should be moved closer to the start of the claim, and should be used as much to assess what support is needed to enable someone to return to work, as to assess their benefit entitlement.
- Provision of compulsory education: needs to make sure that people have the skills that employers need, more effective training, and access to “lifelong learning” for people with disabilities.
- Access to the personal support in order to work: requiring further improvements to the already successful Access to Work programme. All employers should be able to access the effective advice and financial support to make the necessary workplace adjustments.
- People should be able to access support from a range of choices, focusing their own package of support on their own personal needs.

### 2.3 Government employment programmes

In the past there was a quota system in the UK that obliged private sector employers to make a percentage of their work force people with disabilities,<sup>381</sup> but these obligations were withdrawn under the DDA. Today, people with disabilities can access either mainstream Active Labour Market Programmes (ALMPs) or specialist employment schemes for people with disabilities. Table 5 shows the statistics on these programmes in 2001. However, at present, few people with intellectual disabilities access the mainstream programmes.

<sup>380</sup> *Pathways to Work* was a Government initiative to target and assist people receiving IB to move into paid employment, by offering skilled adviser support and help to return to work, combined with action planning during the early stages of a claim; and easier access to the existing range of specialist employment programmes, plus new work-focused rehabilitation programmes, offered jointly by Jobcentre Plus and local NHS providers. New financial incentives were also offered to help people move back to work. Information from the DWP website, available at <http://www.dwp.gov.uk/mediacentre/pressreleases/2005/jan/pathways250105.asp> (accessed 22 August 2005).

<sup>381</sup> The quota was three per cent of the workforce, with some jobs (such as lift and car park attendants) being reserved occupations. Disabled Persons (Employment Act) 1944, section 6 and 8.

**Table 5. Participation of people with disabilities in mainstream and specialist active labour market programmes (ALMPs) in the UK (2001)**

		Participants		
		Total	People with disabilities	
			Total	Share of all participants (per cent)
Mainstream ALMPs	New Deal for Young People	98,000	12,700	13
	New Deal – 25 Plus	62,200	13,800	22
	New Deal for Lone Parents	105,550	3,800	4
	Work-based Learning for Adults	108,300	22,700	21
	Work-based Training for Young People	247,600	8,200	3
Specialist ALMPs (all participants have disabilities)	Employment rehabilitation (Work Preparation)	11,000		
	Job Introduction Scheme	2,500		
	Disabled Persons' Tax Credit	27,296		
	WORKSTEP (then called "the Supported Employment Programme")	22,844		
	Access to Work	25,000		
	New Deal for Disabled People – pilots	N.A.		
	New Deal for Disabled People, national extension	N.A.		

### 2.3.1 Mainstream Active Labour Market Programmes (ALMPs)

In this first route, people with disabilities can access the same programmes as the general population, based on their age and status. A number of mainstream ALMPs programmes serve a relatively small number of people with disabilities.

#### *"New Deal Programmes"*

The "New Deal Programmes" are mandatory for the unemployed general population, with an element of welfare benefit penalty if people do not participate, but they are open to people with disabilities on a voluntary basis.<sup>382</sup> The two main programmes are

<sup>382</sup> Nigel Meager, *Active labour market programmes for people with disabilities, Country Profile: United Kingdom, Institute for Employment Studies*, 2002, Institute for Employment Studies, Brighton.

the “New Deal for Young People” and the “New Deal for Long-term Unemployed People”.<sup>383</sup> Although a significant number of people with disabilities do participate in these programmes, few of these have intellectual disabilities.

The “New Deal for Young People” (age 18-24) offers those young people without a job four options, the choice depending on an assessment of their skills and needs: a subsidised job with an employer in the open labour market (or self employment) for six months, with financial support; six months work as part of an “environment task force” (with a recognised environmental organisation), or with an employer in the voluntary (charitable) sector; or full-time education and training for up to 12 months without loss of benefit. People with disabilities falling within the DDA definition can enter the “New Deal for Young People” from their first day of unemployment, rather than having to wait for six months as is the case for any person without disabilities. In Great Britain, around 15 per cent of people using the scheme were people with disabilities.<sup>384</sup>

The “New Deal for Long-term Unemployed People” (aged 25 and over) is aimed at people who have been out of the labour market for a long time; eligible people must have been receiving “Job Seekers Allowance” for two or more years. People with disabilities can have early access to the scheme and in March 2001 around 30 per cent of people on the programme were people with disabilities.<sup>385</sup> However, it is very difficult to identify the numbers of people with intellectual disabilities participating in these schemes; anecdotally, the numbers appear to be low, as few people with intellectual disabilities receive the “Job Seekers Allowance”, with most being ineligible. The programme consists of three main elements: a series of regular advisory interviews with New Deal personal advisors (which may last for up to six months); access to a subsidised job option with an employer; and access to a college-based education and training option for up to 12 months. People can enter subsidised employment or a college scheme after six weeks on the programme. In addition, they have access to the full range of general training and job search support provisions run through Jobcentre Plus for the long-term unemployed.

<sup>383</sup> Also relevant is the “New Deal for Lone Parents”, which is designed to help lone parents return to work. Participation is not mandatory, but parents of children aged three and over are invited to meet a personal advisor and ask to go on the scheme. All lone parents claiming Income Support, including people with disabilities, are eligible to use the scheme, and in October 2001 around five per cent of lone parents on the scheme had disabilities. DWP, New Deal for Lone Parents, Table 1a, Cumulative percentage of caseload starts, up until March 2005, available at <http://www.dwp.gov.uk/asd/ndlp.asp> (accessed 22 August 2005).

<sup>384</sup> DWP, New Deal for Young People, Table 1: Summary of New Deal for Young People and New Deal 25 plus, up until March 2005, available at <http://www.dwp.gov.uk/asd/ndyp.asp> (accessed 22 August 2005), (hereafter, DWP, *NDYP Table*).

<sup>385</sup> DWP, *NDYP Table*.

*“Work based Learning” programmes*

The “Work Based Learning” programmes (for young people; and for adults) are only used by a small percentage of people with disabilities, and the numbers of people with intellectual disabilities will again be very low.

The “Work-Based Learning for Adults” provides for people who become unemployed and need to be re-trained. It is normally open to people who have been unemployed for six months or more. It is delivered locally through the DWP, via a network of accredited providers. Although people with disabilities who become unemployed can enter this programme from the beginning of their unemployment; in 2005 around 11 per cent of users had disabilities.<sup>386</sup> It is rarely used by people with intellectual disabilities, other than when combined with supported employment and used by agencies to subsidise the first few weeks of on-the-job training.

The “Work Based Training for Young People” programme is delivered through local Learning and Skills Councils (LSCs) and offers young people leaving full time education at the end of their compulsory schooling a work-based route to skills and qualifications. It also offers 18-24 year olds who can complete an “apprenticeship” within a company by age 25, an alternative route to achieving qualifications which will help them progress in the open labour market. The scheme is also open to people with disabilities, but in 2001 these comprised only three per cent of participants, again with very few of these likely to be people with intellectual disabilities.

### 2.3.2 Specialist employment programmes

People with disabilities can also follow a second route in seeking employment by entering specialist ALMPs for people with disabilities. Specialist programmes are not mandatory for people with disabilities whose benefit status is such that they are considered economically inactive. They are part of a general “welfare to work” policy that seeks to engage more of those who are economically inactive in the labour market.<sup>387</sup> Within the framework of this policy, people with disabilities are referred to a specialist Disability Employment Advisor (DEA), who helps them develop an action plan (see section 1.2.2).

The most relevant specialist programmes for people with intellectual disabilities are:

- “Access to Work”
- WORKSTEP

<sup>386</sup> DWP, Work-Based Learning for Adults, Statistics up to March 2005, Table 1, Jan-Mar 2005, available at <http://www.dwp.gov.uk/asd/wbla.asp> (accessed 22 Aug. 2005).

<sup>387</sup> Other groups include single parent mothers.

- Remploy Ltd.<sup>388</sup>
- Supported Employment Agencies

### *Access to Work*

The “Access to Work” scheme” is targeted at people with disabilities who are able to work without subsidy, but who may need personal support, such as a job coach or, for blind people, a personal reader; personal aids and workplace adaptations; or help with transport to work. The “Access to Work” programme works with people with disabilities who have been referred from Jobcentre Plus mainstream services for unemployed people. They are seen by a DEA who develops a plan with them.

If a job can be found in the community, the “Access to Work” programme allows funding of up to £25,000 (or approximately €36,375) per year, paid to providers. This can cover the physical adaptation of workplaces; personal aids (such as seats or reading machines); and support on the job (such as readers for blind people; job coaches; or money for transport). The “Access to Work” fund is creative and will consider individual needs. However, job coach support is paid for face-to-face training on the job only, not for job finding or vocational profiling, and commonly only pays for short-term transitional support at low hourly rates. The programme is, therefore, not yet fully adapted to the specific needs of people with intellectual disabilities.

### *WORKSTEP*

The expectation is that people using the “Access to Work” programme will need less help than those using WORKSTEP. People with intellectual disabilities therefore access WORKSTEP proportionately more than “Access to Work”. People with intellectual disabilities were thought to represent only five per cent of users of the “Access to Work” scheme in 2001.<sup>389</sup> By contrast, in 2003, people with intellectual disabilities represented 38 per cent of the WORKSTEP scheme.<sup>390</sup>

WORKSTEP is funded by the central Government and aims to provide jobs for people with more complex disabilities, who might later progress to open (unsupported)

<sup>388</sup> Remploy Ltd. is a publicly subsidised company limited by guarantee. Remploy Interwork provides a wage subsidy agreed with employers based on a productivity assessment. Employees largely move from a welfare benefit (excluding top-up benefits) and work over 16 hours per week to be eligible for each programme.

<sup>389</sup> P. Thornton, M. Hirst, H. Arksey, and N. Tremlett, *Users' views of Access to Work: Final report of a study for the Employment Service*, Research & Development Report ESR72, Employment Service, Sheffield, 2001; P. Thornton and A. Corden, *Evaluating the Impact of Access to Work: A Case Study Approach*, Research and Development Report WAE138, Claimant Unemployment and Disadvantage Analysis Division, DWP, Sheffield, 2002.

<sup>390</sup> S. Beyer, J. Thomas and P. Thornton, *The Net Costs and Individual Benefits of the Supported Employment Programme*, Report WAE 152, Department of Work and Pensions Research management, Sheffield, 2003, Table A2.3, p 74, (hereafter, Beyer et al, *The Net Costs*).

employment. This programme offers places in sheltered factories and offers supported placements (see section IV.3.3).

In 2000–2001, the programme offered places in 145 local authority (LA) or voluntary body (VB) “sheltered” factories<sup>391</sup> providing services. WORKSTEP also offers supported placements through around 200 LA and VB providers, where people are placed in jobs with ordinary company “hosts”. In the past, this was achieved predominantly by paying an employer a wage subsidy to employ the person with disabilities, the level being set according to the person’s productivity. For new WORKSTEP clients, funding is related to outcome, depending on key milestones such as creation of a Development Plan – £500 (or approximately €727.5); starting a job – £250 (€363.8); payment for monthly support – £320 (€465.6); progression to an unsupported mainstream job – £500 (€727.5); and sustained progression after six months – £500. For existing jobs the same payments for progression and sustained progression are made, but in addition a monthly support payment is paid.<sup>392</sup>

WORKSTEP funding now extends to providing other support in search of longer-term progression to open employment, including funding job coaches and company based training and mentoring. It is still early in the new WORKSTEP scheme and evaluation is currently underway to see how much job coach supported employment is being offered through the scheme.

### *Supported Employment Agencies*

Supported Employment Agencies do exist as a significant type of service in the UK, but agencies are largely funded by local authority social services money, rather than through central Government WORKSTEP or “Access to Work” funding. In 1996, it was estimated that there were 2,000 people employed in “supported employment”, placed through the support of 200 provider services.<sup>393</sup> This provision is over and above the WORKSTEP local authority and voluntary sector supported placements.

Unions of supported employment exist in each UK country and there are estimates that the total number of people using supported employment agencies is now nearer 4,000.<sup>394</sup> Surveys would suggest about two-thirds of these people would have intellectual disabilities (so around 2,700 people) and that a significant number of those with intellectual disabilities work under “Permitted Work” or “Supported Permitted Work” rules, for around four hours per week. It is not possible to produce a total figure for people with intellectual disabilities in the various forms of WORKSTEP or “job coach” supported employment, as there is inevitably some overlap between the two models, particularly as local authorities can offer both types of provision.

<sup>391</sup> When the programme changed from the Supported Employment Programme to WORKSTEP, factories accordingly changed their name from “sheltered” to “supported” factories.

<sup>392</sup> Beyer et al, *The Net Costs*.

<sup>393</sup> Beyer et al, *Costs and Benefits*.

<sup>394</sup> FPLD, *Fundamental Facts*.

*Other specialist programmes*

The “Work Preparation Scheme” is a short programme (six to 13 weeks) specifically for people with disabilities. It usually provides unpaid work experience placements and personal development activities through a support provider agency. Its main purpose is to assess people’s best placement options and to help them build skills. Similarly, the “Job Introduction Scheme” offers a short period (six weeks) of additional funding for employers and is usually used to underpin a short induction and trial period, before a full contract of employment is signed.

Under the “New Deal For Disabled People (NDDP) – Job Brokers”, people with disabilities can also approach the NDDP Job Broker service directly. This scheme is provided by a range of voluntary sector and public and private organisations under contract to Jobcentre Plus. This programme is primarily aimed at people claiming Incapacity Benefits (IB) and so relatively few people with ID would access this programme. It provides intensive planning and problem solving support to help people find and get a job.

## 2.3.3 Public consultation

In the UK, consultations are usually held on legislation changes and major changes in policy. The Department for Education and Employment (DfEE) ran an extensive consultation on changes to the Supported Employment Programme offering employment services to people with disabilities, which then became the WORKSTEP programme. The Government will also publish Green Papers which offer consultation on major policy development prior to the issue of White Papers which are debated through Parliament. The old “Supported Employment Programme”, and the current WORKSTEP programmes have been evaluated, and there is currently work in progress.<sup>395</sup> “Access to Work”, “Work Preparation” and wider schemes have been evaluated over the years.<sup>396 397</sup> The various “New Deals” have also been extensively evaluated and are available on the web.<sup>398</sup>

<sup>395</sup> Beyer et al, *The Net Costs*.

<sup>396</sup> P. Thornton, M. Hirst, H. Arksey and N. Tremlett, *Users' views of Access to Work: Final report of a study for the Employment Service*, Research & Development Report ESR72, Employment Service (Sheffield: 2001); P. Thornton and A. Corden, *Evaluating the Impact of Access to Work: A Case Study Approach*, Research & Development Report WAE138, Claimant Unemployment and Disadvantage Analysis Division, Department for Work and Pensions (Sheffield: 2002).

<sup>397</sup> P. Banks, S. Riddell and P. Thornton, *Good Practice in Work Preparation: Lessons from Research*, Research & Development Report WAE135, Working Age Evaluation Division, Department for Work and Pensions (Sheffield: 2002); S. Riddell, *Work Preparation and Vocational Rehabilitation: A Literature Review*, Research & Development Report WAE136, Working Age Evaluation Division, Department for Work and Pensions (Sheffield: 2002).

<sup>398</sup> The DWP website provides an index of research, including New Deal research, which can be accessed by year of publication, available at <http://www.dwp.gov.uk/asd/asd5/index.asp> (accessed 24 August 2005).



## Variations within the UK

### Wales

In Wales the “Work-Based Training for Young People” is also called Skill Seekers and is operated by Education and Learning Wales (ELWa). All New Deal programmes including “Job Brokers”, WORKSTEP, “Work Preparation”, “Job Introduction Scheme”, and “Access to Work” programmes operate in Wales.

### Scotland

Although employment and welfare benefits are reserved to the Westminster Parliament, the Scottish Executive is in a position to influence the provision of services for people with intellectual disabilities. Unemployment is much higher amongst people with disabilities than people without disabilities, and many people with disabilities and their families rely on State benefits as their main source of income.<sup>399</sup> In August 2003, 11 per cent of the population in Scotland received State benefits due to illness or disability, but the proportion of these who were people with intellectual disabilities is not known.

In 1999, the Scottish Executive document, *Social Inclusion – Opening the Doors to a Better Scotland*, set out the strategy for tackling social exclusion. This included the goal of “a Scotland where everyone enjoys the benefits of prosperity and where everyone has chances to work and to learn.”<sup>400</sup> Following a review of services for people with intellectual disabilities, the Scottish Learning Disabilities Strategy, *The Same as You?* (2000), recommended that local authorities should give a greater priority to developing a range of employment opportunities for people with intellectual disabilities.<sup>401</sup> In May 2001, the Scottish Executive set up a short-life working group, the National Implementation Group, to oversee the implementation of the review’s recommendations.

<sup>399</sup> Disability Agenda Scotland, *Disability Agenda Scotland: For All Scotland's People*, 2003, available on the Capability Scotland website at [http://62.8.97.14/capabilityscotland.org\\_uk/information\\_campaigns.asp?curPage=2](http://62.8.97.14/capabilityscotland.org_uk/information_campaigns.asp?curPage=2) (accessed 10 January 2005). This report was a manifesto produced by a consortium of Scottish NGOs for the Scottish Elections in 2003.

<sup>400</sup> Scottish Office, *Social Inclusion – Opening the Doors to a Better Scotland*, Scottish Office, Edinburgh, 1999, available at <http://www.scotland.gov.uk/library/documents-w7/sima-00.htm> (accessed 10 January 2005).

<sup>401</sup> Two recommendations focus specifically on employment. Recommendation 15 states that that local authorities and health boards should examine what they provide and develop more modern, flexible and responsive services which support people in the community through employment, lifelong learning and getting them involved socially. Recommendation 16 states that local authorities need to give much greater priority to developing a range of employment opportunities for people with learning disabilities and, with health boards, that those authorities should lead by example in employing more people with intellectual disabilities. Scottish Executive, *The same as you*, Recommendations 15 and 16.

The group's final report, *Working for a change?* (2003), focused on employment, defined as "proper paid work doing a job that needs doing, with equal rights and the same pay as other workers doing the same job."<sup>402</sup> Estimates in the report suggested that only five per cent of adults with intellectual disabilities have any form of paid work and one of the principles underpinning the work of the group was that "no one who wants to work is unemployable."

The main barriers to employment identified by the National Implementation Group were difficulty with the "benefits trap"; expectations and aspirations; discrimination and human resource management; lack of awareness; poor coordination of employment services; and the fact that supported employment is not a mainstream funded service. Recommendations to overcome these difficulties were grouped into four areas: a fairer and simpler tax and benefits system; promotion of non-discrimination and equality; inclusive employment practices; and individualised, person-centred support.

### *Government employment programmes*

The Scottish Executive has an influence on local authorities (LAs) in terms of what they do about employment. LAs and voluntary organisations throughout Scotland organise a range of projects to support people with intellectual disabilities.

Careers Scotland is a key agency focusing on employability.<sup>403</sup> Following its inception in 2002, Careers Scotland took over the management of two initiatives – the "All Age Guidance" project and the "Inclusiveness" project. These projects were funded as a result of the *Beattie Report*<sup>404</sup> and aimed to: improve the skills and employability of Scotland's most disadvantaged young people; raise awareness of, and access to, advice and guidance services focusing on facilitating entry and re-entry to the labour market; and improve access and opportunities to raise skill levels and achieve full potential of people of all ages in the Scottish labour force. People with intellectual disabilities were a potential client group for these initiatives. The "Inclusiveness" projects<sup>405</sup> were established in response to recommendations of the Beattie Committee, which identified a lack of a provision to meet the transitional needs of young people with SEN, including people with intellectual disabilities. Funding for these Inclusiveness

<sup>402</sup> Scottish Executive, *Working for a change?*, Scottish Executive, *The same as you* National Implementation Group, 2003, available on the Scottish Executive website <http://www.scotland.gov.uk/library5/health/wcsy.pdf> (accessed 10 January 2005).

<sup>403</sup> See also section: III.4.1

<sup>404</sup> Scottish Executive, *Implementing Inclusiveness: Realising Potential*, the Beattie Committee Report, Scottish Executive, 1999, available on the Scottish Executive website at <http://www.scotland.gov.uk/library2/doc04/bere-00.htm> (accessed 10 January 2005).

<sup>405</sup> Further information on the Beattie "Inclusiveness" projects is available on the Scottish Executive website at <http://www.scotland.gov.uk/library5/lifelong/bicl-00.asp> (accessed 10 January 2005). They include the "All Age Guidance" projects, implemented through Careers Scotland, which that take up the post-Beattie agenda in careers guidance.

projects, provided by the Scottish Executive Enterprise and Lifelong Learning Department, led to the establishment of “Key Worker” teams across Scotland.<sup>406</sup>

In Scotland, local enterprise companies (LECs) have responsibility for the management and delivery of training programmes, including “Training for Work for adults”, “Skillseekers” and “Modern Apprenticeships for school-leavers”. People with disabilities are able to access these programmes although, as in England, these mainstream ALMPs are used by only relatively small numbers of people with intellectual disabilities. The “WORKSTEP”, “Work Preparation”, “Job Introduction Scheme”, “New Deal Job Brokers” and “Access to Work” programmes also operate in Scotland.

The Scottish Enterprise Network is responsible for key aspects of training and guidance and has supported a number of employment-focused programmes for adults experiencing multiple disadvantage. These include the “Get Ready for Work” programme, which is targeted at young people with special education needs<sup>407</sup>, and the “New Futures Fund” (NFF). The NFF, which is managed by the Scottish Enterprise Network, was launched in May 1998 with a budget of £15 million (or approximately €21,800). It aims to promote the employability of unemployed people on a range of benefits other than Job Seekers Allowance. The programme was intended to complement the work of Jobcentre Plus, by making provision for people with multiple disadvantages whose needs were unlikely to be met by other programmes. It differs from others in that while it is a labour market programme, it does not expect or require job outcomes; the emphasis is on moving *closer* to employment. In order to do this, NFF works through other organisations that perhaps deal with clients on a different basis, and encourages them to adopt an employment-oriented approach.

Results of early evaluation<sup>408</sup> of the NFF (in January 2002) revealed that while only a small proportion of clients had entered employment, new partnerships and networks had been developed. There was evidence that the “social” end of the support spectrum has come closer to the “economic” end, suggesting that the NFF was succeeding in creating an infrastructure to support people who were a long way from the labour market.

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<sup>406</sup> Key workers are staff members who take particular interest and responsibility for one or more clients, and act as a focus for communication and planning around that individual.

<sup>407</sup> The “Get Ready for Work” programme is managed by Careers Scotland and has replaced the “Special Skill Seekers” programme.

<sup>408</sup> Scottish Enterprise, *New Futures Fund Initiative Evaluation Of Management And Operation*, Final Report, Volume I, LRDP Ltd, in association with the Policy Research Institute and David Smart Consultancy Services, 2002, available at [http://www.scottish-enterprise.com/sedotcom\\_home/stp/extra-support/newfuturesfund1.htm](http://www.scottish-enterprise.com/sedotcom_home/stp/extra-support/newfuturesfund1.htm) (accessed 22 August 2005).

However, a subsequent evaluation<sup>409</sup> found that although clients did improve their employability, they did not continue to build on this progress at the end of the project. The third phase of funding for NFF projects runs until May 2005, when projects will be required to have secured mainstream funding. Some projects have received longer-term commitment from local authorities, but questions remain about costs.

### *Evaluation of Government programmes and initiatives*

The findings of a study focusing on employment rates and the experiences of people without work in Glasgow, indicated that Social Work Services in Scotland spent about £8 million (or approximately €11.6) per annum on training and employment initiatives aimed at people with multiple barriers to employment (including people with intellectual disabilities and/or mental health problems).<sup>410</sup> However, this report concluded that these projects, (mainly funded under Section 10 grants,<sup>411</sup> were not planned in a strategic manner and did not encourage progression into mainstream employment.

A large number of employment projects are delivered by voluntary organisations across Scotland. In some cases, the organisations may have a contract with Jobcentre Plus or a LA, but in other instances may work independently. However, the proliferation of these projects, in conjunction with a lack of clarity on major issues, has made it difficult to compare projects or indeed measure outcomes in a meaningful way. For example, there is no consensus amongst many voluntary providers about what constitutes a “job”<sup>412</sup> or good practice. Projects are funded by the European Social Fund (ESF); the Change Fund;<sup>413</sup> and mainstream funding from LAs and health boards. One supported employment provider reported that lack of money was not the problem,<sup>414</sup> but rather lack of standards, rules, regulation, or guidelines. This means

<sup>409</sup> A. McGregor, L. Macdougall, K. Taylor, A. Hirst, S. Rinne and S. Clark, *Evaluation Of The New Futures Fund Initiative*, Training and Employment Research Unit, Cambridge Policy Consultants/Simon Clark Associates Limited, 2005, available at [http://www.scottish-enterprise.com/sedotcom\\_home/stp/extra-support/newfuturesfund1.htm](http://www.scottish-enterprise.com/sedotcom_home/stp/extra-support/newfuturesfund1.htm) (accessed 22 August 2005).

<sup>410</sup> L. Macdougall, A. Glass, K. Higgins, A. Hirst, A. McGregor and V. Sutherland, *The Glasgow Challenge: Realising The Potential Of Glasgow's Hidden Unemployed*, University of Glasgow, Training and Employment Research Unit (TERU), Glasgow, 2003.

<sup>411</sup> Financial assistance to voluntary organisations was available under Section 10 (1) of the Social Work (Scotland) Act 1968. The aim of the grant scheme was to assist voluntary organisations in developing social work services and promoting social welfare in Scotland.

<sup>412</sup> For Government programmes, it is clear that a “job” is at least 16 hours per week and enables people come off welfare benefit.

<sup>413</sup> A fund recommended in the Learning Disability Services Review to help authorities pursue reform under the new policy.

<sup>414</sup> Peter Ritchie, Scottish Human Services (SHS), available at <http://www.shstrust.org.uk/> (accessed 1 September 2005).

that different organisations are providing uncoordinated services and thus it is difficult to administer or measure success.

## Northern Ireland

Similar to Scotland, Welfare Benefits are reserved to the Westminster Parliament, although employment and vocational training is a devolved issue for the Northern Ireland Government under the Employment and Training (NI) Act 1950. However, Northern Ireland has traditionally replicated and modified National UK Programmes.

### *Mainstream Government programmes*

In terms of mainstream vocational training, programmes in Northern Ireland are different in name, and, for some, in form. The “Jobskills” programme, which only operates in Northern Ireland, was introduced in 1995 to ensure the Government’s guarantee of training opportunity for all young people aged 16-17. “Jobskills” addresses the needs of three particular groups of trainees through the Access, Traineeship and Modern Apprenticeships programmes.

“Access” is open to disadvantaged young people under the age of 18 years old,<sup>415</sup> including people with disabilities, and offers customised training leading to approval qualifications up to National Vocational Qualification (NVQ) Level 1. “Access” trainees receive a training allowance of £40 (€58.2) per week and incentive bonuses of £50 (€123) and £100 (€146) after 13 weeks and 52 weeks of participation, respectively. A range of other allowances, such as for travel and lodging, is also available to meet costs incurred as a result of participation. While Jobskills has a duration of 52 weeks for people without disabilities (or up to the person’s 18th birthday if this is longer) for people with disabilities they can remain on the scheme for up to 156 weeks.

“Traineeship” is open to unemployed young people aged 18. Trainees follow a training framework, approved for delivery under the programme and developed in conjunction with relevant industry, which includes achievement at NVQ Level 2 and specific key skills awards. Where necessary, additional funding support is available for a trainee with disabilities and the period of support training may also be extended.

“Modern Apprenticeships” is open to young people aged 16-24 years old who are entering employment for the first time and who meet specific criteria for existing employees. Apprentices follow a training framework, approved for delivery under the programme and developed in conjunction with the relevant industry, which includes achievement at NVQ Level 3 and specific key skills awards.

Young people with intellectual disabilities mainly participate in Jobskills Access Programme. Additional support is provided for trainee with disabilities for example, Disability Action (a pan-disability NGO) Training Support Service have provided

<sup>415</sup> A young person with disabilities can enter “Jobskills” up until their 22nd birthday.

support to 294 trainees with *moderate* intellectual disabilities and 41 trainees with *severe* intellectual disabilities up until April 2004. This figure is not an accurate reflection of people with intellectual disabilities in Jobskills, however, as not all trainees with intellectual disabilities are identified as needing additional support or want additional support. Trainees with intellectual disabilities can enter Jobskills “Access” and “Traineeship” up to their 22nd birthday. Trainees with disabilities can attract enhanced funding in all strands of the programme and can benefit from an increased training period of up to three years. The Department for Employment & Learning funds specialist support services provided by Disability Action; The Cedar Foundation, for people with physical disabilities; and the Sensory Learning Support Service, for people with sensory disabilities.

### *Specialist Government Programmes*

In terms of specialist employment programmes, there are again some differences between Northern Ireland and the rest of the UK.

The Disablement Advisory Service (DAS) provides advice, guidance; training and a placement service for people with disabilities and health issues. DAS is part of the Department for Employment and Learning and services are provided by Disablement Employment Advisors who are based in local Jobs and Benefit Offices throughout Northern Ireland (Jobs and Benefit Centres are equivalent to Job Centre Plus in the UK). The options provided by DAS are very similar to services provided by the Disability Services Teams in the rest of the UK and include the “Job Introduction Scheme”, “Access to Work”, the “New Deal for Disabled People” programmes, employment support and occupational assessment and occupational psychology service.<sup>416</sup> However, there are differences in how services are delivered.

For example, in Northern Ireland, the DAS administers a programme called “Employment Support”, which assists people with severe disabilities to access employment by providing a wage subsidy. (The programme is similar to the “Supported Employment Programme”, offered in the rest of the UK until it changed to WORKSTEP, which provided a mixture of support instead of only a wage subsidy). “Employment Support” provides people with severe disabilities the opportunity to access open employment in a wide variety of jobs. It enables people who cannot reach standard output levels because of their disabilities, to work in real jobs and earn the full rate of pay for the job. The employer or “host company” provides the work, workplace, equipment and training, responsible for day-to-day supervision and contributes an amount towards the full wage, which relates to the level of output. The employer is supported by a “sponsor” who is responsible for the drawing up of contracts, the support needs of the employee in the workplace and the overall administration of the

<sup>416</sup> The Occupational Assessment and Occupational Psychology Service assists people with disabilities to identify abilities and strengths, studies how disability or health condition can affect employment and plans the steps needed to obtain or retain suitable employment.

scheme. There are three sponsor organisations in Northern Ireland: Ulster Supported Employment Limited, Disability Action and Action Mental Health. At present there are 850 places available on the programme and approximately 50% of participants are people with learning disabilities.

Northern Ireland's "Employment Support" programme" has recently undergone a review and it has been recommended that a new programme, which has yet to be launched, should also provide a mixture of support mechanisms. In Northern Ireland the "Access to Work" programme, referrals must be made through the DEA while in the rest of the UK referrals can be made directly to "Access to Work" Advisors.

In Northern Ireland "New Deal for Disabled People" is provided by DEA Personal Advisor and contracted out to New Deal Job Brokers. This means that there is a two-way mechanism delivering the programme. New Deal Job Brokers in Northern Ireland are ACET, USEL, MENCAP and Action Mental Health, Network Personnel Ltd., Fermanagh Training Ltd and Omagh New Deal Consortium. In the rest of the UK, New Deal for Disabled People is contracted out to private organisations and NGOs. In addition, the NDDP in Northern Ireland has two extra elements that reflect options offered under non-disabled person's New Deals elsewhere in the UK: employment subsidies (£15 per week for up to 18 weeks), and an employment and training option.

The "Work Preparation Programme", which already operates in the rest of the UK, has now been piloted in the Targeted Initiative areas<sup>417</sup> in Northern Ireland and is been delivered by Disability Action in Derry and Strabane, and USEL in North and West Belfast. The scheme will operate in a similar way to the rest of the UK.

### *Consultation*

The Department for Employment and Learning has carried out a number of consultations and evaluations on Government employment programmes for people with disabilities.

In October 2002, the Disablement Advisory Service (DAS) carried out a consultation on the modernisation of the Employment Support Programme. The consultation was entitled "Employment Support Programme – A Consultation on Future Developments". The DAS received a number of consultation responses, but mainly from disability organisations. The DAS also funded two consultations with people with disabilities. For example, the Northern Ireland Union of Supported Employment, in conjunction with its member organisations, carried out a consultation with people with learning disabilities – called "My Job, My Support". Over 100 individuals with learning disabilities contributed to the consultation, attending four consultation events

<sup>417</sup> Department for Employment and Learning, *Report of the Taskforce on Employability and Long-Term Unemployment*, DfEL, Belfast, 2002, available at <http://www.delni.gov.uk/publications/index.cfm/page/atoz> and navigate to Taskforce Report V.pdf (accessed 22 August 2005), (hereafter, Department for Employment and Learning, *Report of the Taskforce*).

held across Northern Ireland. A Consultation Report was produced and submitted to the DAS. One of the main recommendations put forward by people with learning disabilities was that they wanted to work in their local community, but recognised that they needed support to assist them find and keep a job. One participant said that: “If you go on your own for a job, the employer looks on the outside and not on the inside, if you have support it helps you get the chance. The employment support worker breaks down barriers and knock on doors until you get the right job.” A Summary of Responses was produced, and one of the main recommendations put forward in the consultation was that Employment Support should provide a mixture of support mechanisms – for example, job coach support, on the job support, on the job training, Disability Awareness Training for employers – rather than only wage subsidy support.

The new Employment Supported Programme has included many of the recommendations put forward in the consultation. In particular, it provides a mixture of support mechanisms, and will be open to other organisations to deliver programmes. At present, there are only three sponsor organisations providing Employment Support in Northern Ireland: Disability Action, Action Mental Health and USEL. It is planned that the new Employment Support Programme will be open for tender in summer 2005.

In 2004, the DAS commissioned an “Evaluation on the New Deal for Disabled People”. The evaluation was completed in early 2005, and recommended that the programme should continue, but with a number of changes. One of the main changes was that the New Deal for Disabled People should be delivered solely by the New Deal Brokers, instead of a two-way delivery mechanism (i.e. New Deal Personal Advisors – Disablement Employment Advisors, and New Deal Brokers). The New Deal For Disabled People is planned to be open for tender in autumn 2005.

Under the leadership of the Minister for Employment and Learning, an Interdepartmental Taskforce on Employability and the Long-Term Unemployed (hereafter, Taskforce) was established to tackle the barriers to employment. The Taskforce’s terms of reference included identifying the factors and barriers that make individuals and groups disadvantaged in the workforce; to engage with others who have a close interest in employability to seek their views on how obstacles to employment might be overcome; and to report and make recommendations. The Taskforce produced a report on its findings, which was published in December 2002.<sup>418</sup> The report included an Action Plan which would have an integrated approach to employment policy, including job creation; welfare benefit disincentives to employment; use of personal advisors; intermediate labour markets; employability skills and career advancement centres; adult training; literacy and numeracy; childcare; transport; learning from best practice; university-community partnerships; and targeted initiatives. People with disabilities were included in the report, as a group that was furthest removed from the labour market.

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<sup>418</sup> Department for Employment and Learning, *Report of the Taskforce*.



People with disabilities, including people with learning disabilities, have benefited from a number of actions to assist people in getting into employment. For example, through the Targeted Initiatives Programme, the DAS has accessed funding to provide additional Employment Support places and Access to Work funding in the targeted initiative areas,<sup>419</sup> as well as providing funding to pilot the “Work Preparation Programme” in these areas.

As stated previously, under Section 75 of the Northern Ireland Act (1995) all public bodies must promote equality of opportunity between “persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation; men and women generally; persons with a disability<sup>420</sup> and persons without; and persons with dependants and persons without.” This means that if any public authority wants to make changes to their policies they must consult with all the above nine categories, to ensure that their changes do not have any adverse affect on them. The policies of the public authorities also include their recruitment and selection policies, which means that if they make any changes, they must ensure that people with disabilities are given the same opportunities, and ensure that the change in policy does not have an adverse impact on them. This legislation is unique to Northern Ireland.

### 3. EMPLOYMENT PRACTICE AND POLICY IMPLEMENTATION

*The Government has a clear policy on providing new employment opportunities specifically for people with intellectual disabilities, as set out in the 2001 White Paper Valuing People. In the UK, there are a number of routes for people with disabilities seeking to enter the job market, including via Jobcentre Plus, where all go to seek work and access welfare benefits as job seekers. The UK no longer has a quota system to encourage the employment of people with disabilities, so their two main options, depending on their level of disability, are mainstream Active Labour Market Programmes (ALMPs) or specialist employment schemes for people with disabilities – provided through central Government and through local authority-run programmes. At present, few people with intellectual disabilities access the mainstream programmes, such as “New Deal” and “Work based Training”.*

*In the UK, the majority of people with intellectual disabilities are unable to access employment. Estimates vary, but the most recent statement from the Valuing People strategy estimates the number of people with intellectual disabilities in paid employment at only 11 per cent, compared to 49 per cent for people with disabilities in general. Over seventy-five thousand people are estimated to be attending day centres run by local authorities across the UK, which vary considerably in their emphasis on employment preparation. Although exact figures are not available, it can be estimated that around 16,000 people with intellectual disabilities access specialist Government employment programmes for people with disabilities.*

<sup>419</sup> North and West Belfast, Derry and Strabane have been identified as the worst areas for unemployment and social deprivation in Northern Ireland.

<sup>420</sup> Disability is defined as per the DDA 1995.

*Supported employment is one of the most effective ways for people with intellectual disabilities to access employment on the open market. In the UK, NGOs, including Mencap, are heavily involved in the provision of supported employment. It is very difficult to obtain estimates of the number of services offering supported employment, and how many people have jobs through this model. There are over 400 agencies operating in the UK. A significant number are NGOs, but there is no data on exactly how many. People with intellectual disabilities benefit when they have access to a full model of supported employment. The Government offers a number of specialist employment programmes (at one time regarded as sheltered provision) that are relevant to people with intellectual disabilities. The WORKSTEP programme offers jobs through a network of supported factories and of community placements – historically these have provided help through offering employers a wage subsidy, but more recently through more flexible on-the-job staff support and financial assistance packages. WORKSTEP factory and community placements are supplemented by opportunities offered by Remploy Ltd, the biggest Government-funded national provider. The Government also provides help to people seeking open employment through the “Access to Work programme”, which offers financial help with on-the-job support, transport, work aids and workplace adaptations.*

*The specialist WORKSTEP and “Access to Work” programmes do now allow for payments for a job coach – a very important element important for people with intellectual disabilities – although in the case of the “Access to Work” programme, this is time-limited. Nonetheless, these programmes do not pay for the full model, from Vocational Profiling through to workplace support and follow-up services. Supported employment agencies are largely funded by local authority social services, but there are increasing calls for central Government mainstream funding to be made available. At present, access to supported employment services is uneven across the UK.*

### 3.1 Statistical data

In the UK, it can be estimated that there are around 800,000 adults with intellectual disabilities.<sup>421</sup> Estimates of the number of people with intellectual disabilities in work vary and are also dependent on definition.

The *Labour Force Survey* estimates that, in 2001, 25 per cent of people with “a learning difficulty”<sup>422</sup> in Great Britain were employed on the open market or in employment programme jobs. However, as this figure may also include people with specific learning difficulties other than “intellectual disability”, such as dyslexia, it is therefore likely that the number of people meeting the definition of intellectual disabilities used in this report who are in work is actually much lower than this. Even though this employment figure is larger than intellectual disability alone, it is still significantly lower than for the

<sup>421</sup> See Section II. 2.4

<sup>422</sup> From spring 1997, the LFS asks all its working age respondents the following questions: “Do you have any health problems or disabilities that you expect will last more than a year?” If the respondent answers yes to this question, they are also asked to say what kind(s) of health problem or disability(ies) they have, based on a list read to them by the interviewer, and “Does this (do these) health problem(s) or disability(ies) (when taken singly or together) substantially limit your ability to carry out normal day to-day activities?”

population as a whole (74 per cent in employment)<sup>423</sup> and is also lower than that of the population of people with disabilities in general (49 per cent in work).<sup>424</sup>

This is borne out by the Department of Health policy document, *Valuing People* (2000). One of the targets for this policy is to bring the level of employment for people with intellectual disabilities up to that of the population of people with disabilities in general.<sup>425</sup> *Valuing People* estimates the number of people with intellectual disabilities in paid employment at only ten per cent, which has recently been updated to 11 per cent by the Director of the Valuing People Support Team,<sup>426</sup> and a further 75,000 may be attending day centres run by local authorities.<sup>427</sup>

As well as some people with intellectual disabilities attending day centres and others being in paid employment, yet other people with intellectual disabilities participate in a number of Government employment schemes. Table 5, above, provides a breakdown of the total number of people with disabilities (in general) who access the main mainstream and specialist Government programmes or initiatives in the UK.<sup>428</sup>

While statistics are available for people with disabilities in general, there are few figures specifically on people with intellectual disabilities in these Government programmes. Anecdotally, few people with intellectual disabilities take part in mainstream programmes. However, it can be roughly estimated that at least 16,000 people with intellectual disabilities are included on three of the specialist Government programmes for people with disabilities.

People with intellectual disabilities represented about 38 per cent of those in the WORKSTEP programme in 2001 (or approximately 8,400 people), working in

<sup>423</sup> 74 per cent in 2001 (see: <http://www.statistics.gov.uk/cci/nugget.asp?id=694> (accessed 23 August 2005) and now around 75 per cent (<http://www.statistics.gov.uk/cci/nugget.asp?id=12> (accessed 23 August 2005)).

<sup>424</sup> Economic activity status of disabled people: by gender, Spring 2001: Social Trends 32, Table 4.8, available at <http://www.statistics.gov.uk/STATBASE/ssdataset.asp?vlnk=5094> (accessed 22 August 2005).

<sup>425</sup> Department of Health, *Valuing People*, Section 7.54.

<sup>426</sup> Valuing People Support Team, *The Story So Far*, 2005, available at [http://www.dh.gov.uk/PublicationsAndStatistics/Publications/PublicationsPolicyAndGuidance/PublicationsPolicyAndGuidanceArticle/fs/en?CONTENT\\_ID=4107054&chk=i8aSgl](http://www.dh.gov.uk/PublicationsAndStatistics/Publications/PublicationsPolicyAndGuidance/PublicationsPolicyAndGuidanceArticle/fs/en?CONTENT_ID=4107054&chk=i8aSgl) (accessed 28 Aug. 2005).

<sup>427</sup> S. Beyer, R. Grove, J. Schneider, K. Simons, V. Williams, A. Heyman, P. Swift and E. Krijnen-Kemp, *Working lives: The role of day centres in supporting people with learning disabilities into employment*, Social Research Division, Research Report 203, Department of Work and Pensions, London, 2004, (hereafter, Beyer et al., *Working lives*).

<sup>428</sup> M. van Lin, R. Prins and J. de Kok, *Active Labour Market Programmes for People with Disabilities: Fact and figures on use and impact*, EIM Business and Policy Research, Zoetermeer, the Netherlands, 2002, available at [http://europa.eu.int/comm/employment\\_social/publications/2004/cev503001\\_en.html](http://europa.eu.int/comm/employment_social/publications/2004/cev503001_en.html) (accessed 29 Aug 2005).

supported factories and a network of community jobs.<sup>429</sup> The “Access to Work” programme supported 36,606 people with disabilities in 2002-03, of which around two per cent (about 730 people) were people with intellectual disabilities.<sup>430</sup> Local Government funded supported employment programmes provide around 7-10,000 additional jobs,<sup>431</sup> of which the majority of participants are people with intellectual disabilities.<sup>432</sup>

## Variations across the UK

### Scotland

A Statistics release presenting the first national figures for services provided by local authorities in Scotland for adults with intellectual disabilities provides interesting information.<sup>433</sup> For the week ending 18 May 2002, there were an estimated 18,066 adults (of which, 10,002 males) with intellectual disabilities known to local authorities throughout Scotland.<sup>434</sup> As shown below in Table 6, of this total 2,493 people had an employment opportunity (5.4 per cent were employed in open employment and 4.3 per cent in non-open employment, while 4.1 per cent participated in voluntary work).<sup>435</sup>

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<sup>429</sup> Beyer et al, *Net Costs*.

<sup>430</sup> Disability Employment Coalition (2004) *Access to Work*, RNIB, London, p 9, available at <http://www.disabilityalliance.org/access.pdf> (accessed 28 Aug. 2005)

<sup>431</sup> FPLD, *Fundamental Facts*.

<sup>432</sup> However, many employed in this way work part-time and earn only small amounts within Income Support disregard limits and the “Permitted Work” regulations. Beyer et al, *Costs and Benefits* (1996).

<sup>433</sup> Scottish Executive, Adults with Learning Disabilities. Implementation of ‘The Same As You?’, Scotland, 2003, available at <http://www.scotland.gov.uk/stats/bulletins/00326-00.asp> (accessed 28 Aug. 2005), (hereafter, Scottish Executive, *Statistics Release 2004*).

<sup>434</sup> Of these, nine per cent were age 16-20 and had left school; 81 per cent were age 21-64; while the remaining ten per cent were over age 65. Scottish Executive, *Statistics Release 2004*.

<sup>435</sup> Although an equal number of males and females participated in voluntary work, a higher proportion of those in open and non-open employment were male. Levels of participation varied between local authorities, with Argyll, Bute and North Lanarkshire having the highest number of adults with intellectual disabilities in open employment, Aberdeenshire had the highest number in non-open employment, and Dumfries and Galloway had the highest number involved in voluntary work. Scottish Executive, *Statistics Release 2004*.

**Table 6. Adults with intellectual disabilities with employment opportunities  
– Scotland (2002)**

Employment type	Gender		Total
	Male	Female	
Voluntary work	487	492	979
Non-open employment	455	319	774
Open employment	467	273	740
<b>Total</b>	–		<b>2,493</b>

Source: Scottish Executive<sup>436</sup>

The number of hours spent in open, non-open and voluntary work varied. More than 40 per cent of those adults with intellectual disabilities working in open employment worked four or more days per week, an equal number worked between one and three days. Of those in non-open employment, just over a quarter worked four or more days per week, and two-thirds worked between one and three days. The majority of people involved in voluntary work worked between one and three days per week, only around five per cent worked four or more days. However, it should be borne in mind that this leaves more than ten per cent of those people in open employment and non-open employment, respectively, and around 40 per cent of those involved in voluntary work, working for less than one day per week.

An estimated 4,161 adults with intellectual disabilities (or 23.0 per cent of all adults with intellectual disabilities known to local authorities in Scotland) participated in some form of further education; and 1,603 (8.9 per cent) were engaged in some form of employment training. Table 7, below, shows the amount of time that adults who participated in further education or training spent per week doing so; only a small proportion of these attended further education or training for half the week or more.

<sup>436</sup> Scottish Executive, *Statistics Release 2004*.

**Table 7. Adults with intellectual disabilities in further education or employment training in Scotland (2002)**

		Further education	Employment training
Total number of participants		4,161	1,603
Breakdown by number of days in training or education – share of total participants (per cent)	5	6	7
	4	5	3
	3	10	6
	2	19	10
	1	38	39
	0.5	22	35

Source: Scottish Executive<sup>437</sup>

## Northern Ireland

There are no available figures for people with intellectual disabilities employed in Northern Ireland. Organisations usually record the number of people with disabilities (in general), but this information is not available disaggregated by type of disability. The *Labour Force Survey* (2001) estimates that about 20 per cent of people of working age in Northern Ireland have a current long-term disability and that only 36 per cent of these are in employment. Northern Ireland has both the highest incidence of disability in the UK and the lowest regional employment rate (at 67 per cent, as compared to the highest, 80.4 per cent, in the South East of England). People with disabilities are three times more likely to be economically inactive than those who are do not have disabilities.

## 3.2 Supported employment

Data is lacking on how many people are involved in supported employment and who they are. Supported employment is one of the most effective ways for people with intellectual disabilities to access employment in the open market. In the UK, NGOs, including Mencap, are heavily involved in the provision of supported employment. It is very difficult to obtain estimates of the number of services offering supported employment and how many people have jobs through this model. There are over 400 agencies operating in the UK.<sup>438</sup> A significant number are NGOs, but there are no data

<sup>437</sup> Scottish Executive, *Statistics Release 2004*.

<sup>438</sup> Based on memberships of: the British Association for Supported Employment ([www.afse.org.uk](http://www.afse.org.uk)); Scottish Union of Supported Employment ([www.suse.org.uk](http://www.suse.org.uk)); the Northern Ireland Association for Supported Employment ([www.niuse.org.uk](http://www.niuse.org.uk)); the Association for Supported Employment (Wales) (Personal communication); (all accessed 14 August 2005).

on exactly how many. People with intellectual disabilities benefit when they have access to a full model of supported employment.

In 1996, it was estimated that there were 2,000 people with disabilities employed in ordinary jobs with ordinary companies in England, Scotland and Wales, placed through the support of 200 provider services (some as small as having only one or two staff). At this time, 96 per cent of people in jobs with the help of a supported employment agency were people with intellectual disabilities; 50 per cent were working for less than 16 hours per week, many retaining their benefits and having small amounts of low pay.<sup>439</sup> As people in supported employment must now be paid at the minimum wage of £4.60 per hour (or approximately €6.69), this must have reduced the average number of hours worked for this in-benefit group to around four to five hours per week.

NGOs, including Mencap, are heavily involved in the provision of supported employment. These services usually include vocational profiling, to establish client interests and abilities; job analysis, to understand the job well and create a good match with a client; on-the-job support and training (often using a job coach); and follow-on review, problem solving and career development. The main aim of vocational profiling, which is carried out by employment specialists, is to collect enough information for each person with disabilities to establish their work preferences and their skills, so that staff can look for jobs that match the person.<sup>440</sup> The ideal result of the vocational profiling process should be a description of the type of job required and of the identified support needs and additional learning or personal development needs. It should also establish the action that will be required to obtain the job and who will do what to move the search forward. More recently, guidance has been provided within the WORKSTEP programme to encourage Government sponsored providers to also use the vocational profiling method to advance the community based employment placement.

Supported employment agencies are largely funded by local authority social services, rather than central Government mainstream funding, through the WORKSTEP and “Access to Work” programmes. The WORKSTEP programme is now flexible enough to allow payments to a job coach. “Access to Work” schemes can also be used for on-the-job support, but for limited periods only. However, neither scheme pays for all the

<sup>439</sup> Beyer et al, *Net Costs*.

<sup>440</sup> Vocational profile formats vary but should cover the following broad areas: why the person wants a job; what type of job they want; things the person does in their non-working life that give clues about skills and aspirations; the work skills people have; the work environment and situation preferences people have; what aspects of their work lives will people need support in, and how much; How people’s welfare benefits may be affected; educational information/academic skills; information on potential barriers to work, support needed and design solutions; and information on the person’s disability, to determine likely support needs on, or around, the job. C.S. McCloughlin, J. B. Garner, and M.J. Callahan, *Getting Employed, Staying Employed*, Paul H. Brookes, Baltimore, 1987.

elements required for good practice in supported employment, a model that is particularly suited to the needs of people with intellectual disabilities. Supported employment continues to be available in too few areas and is resourced at very different levels. There is ongoing lobbying for its full availability through central Government sources.<sup>441</sup>

The eligibility requirements for supported employment services provided through local authority funding are complex. In many cases, individuals must meet criteria for registration as a client for social services provision. These increasingly vary, from authority to authority, and concentrate on people with more severe levels of disability. This means that people with milder intellectual disabilities can be excluded from a service that may suit them because, ironically, they are not considered “disabled enough”. At the same time, people with intellectual disabilities cannot get the same model of supported employment through central Government funded schemes, as programmes such as WORKSTEP and “Access to Work” only fund part of the supported employment model. There may be additional eligibility hurdles where supported employment services have other forms of funding, such as EU funding, and overlapping eligibility criteria, depending on the programme funding source. Often, people with intellectual disabilities can fall between the criteria and therefore do not receive a service.

There may be problems in some supported employment provision core-funded by local authorities. These services commonly lack any sort of quality assurance processes and can be of very variable quality. For example, as of early 2004 some of these core-funded services are still supporting people with intellectual disabilities in “working” in a voluntary capacity within commercial firms. Nonetheless, caution is required in viewing one particular sector as the answer to the future development of supported employment.<sup>442</sup> It is important that employers demand improved standards and quality assurance, regardless of whether supported employment is delivered by specific local authority agencies or by WORKSTEP providers.<sup>443</sup>

A number of alternative funding sources have been suggested, for schemes to assist people with intellectual disabilities into a job.<sup>444</sup> For example, the Community Fund – a funding stream of the Big Lottery<sup>445</sup> for community based schemes of all types, including for people with disabilities – has been funding some innovative employment

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<sup>441</sup> O'Bryan et al, *Framework for Supported Employment*.

<sup>442</sup> OSI roundtable comment, London, May 2004.

<sup>443</sup> OSI roundtable comment, London, May 2004.

<sup>444</sup> OSI roundtable comment, London, May 2004.

<sup>445</sup> Previously called the “National lottery.”



schemes. The Neighbourhood Fund<sup>446</sup> has also been used to fund employment schemes for people with intellectual disabilities.

## Variations within the UK

### Northern Ireland

Similarly to the rest of the UK, supported employment is delivered alongside mainstream Government programmes. Supported Employment assists people with significant disabilities to access, and stay in, employment by providing ongoing support. The individual model of supported employment is the most widely used in Northern Ireland, as it focuses on the individual's capabilities and matches them to a job. There are some examples in Northern Ireland of enclaves and mobile work crews, but these are very limited.

Although supported employment in Northern Ireland delivered pan-disability-wide (i.e. to people with physical, learning, mental health, sensory and hidden disabilities) the majority of individuals accessing supported employment is people with learning disabilities. The supported employment model is mainly delivered by NGOs. Supported employment has developed and expanded over the last 10 to 15 years; however, there are still areas across Northern Ireland where there is no provision of services. This means that the only options available to people with significant disabilities in that area is day care.

Supported employment in Northern Ireland faces similar difficulties to those highlighted in the rest of the UK, in both the delivery of the model (such as problems of moving smoothly from welfare benefit to paid work, and with respect to employers' attitudes) and how the model is funded. Supported employment in Northern Ireland is not a mainstream funded programme. It is mainly funded by a mixture of funding sources, including EU funding (ESF – Building Sustainable Prosperity), PEACE funding, health and social service trust funding and from the Disablement Advisory Service. Furthermore, many of the criteria for funding programmes do not meet the needs of supported employment to provide ongoing support, a key element of supported employment. As EU Funding decreases, there is a real urgency for the Department for Employment and Learning to mainstream the supported employment model, including the ongoing support element. The Northern Ireland Union of Supported Employment (NIUSE) is an umbrella group representing organisations and individuals providing employment for people with disabilities through supported employment, whose main aim is to “mainstream” the model of Supported Employment.

<sup>446</sup> The Neighbourhood Fund (NF) was formerly known as Neighbourhood Learning in deprived Communities. Administered by the Learning and Skills Council (LSC), this fund builds upon 88 Local Authority Districts previously eligible for Neighbourhood Renewal Fund (NRF). The scope has now widened to include other areas that fall outside NRF.

The model of supported employment has been recognised by the Government as a model which can successfully assist people with disabilities to access employment and stay in employment. For example, the Department for Employment and Learning, in the review and modernisation of the Employment Support programme, has adopted the key elements of supported employment – such as using vocational profiling and job coaching – into the new Employment Support Programme. Similarly, the “Review of Day Services for people with learning disabilities” and “Northern Ireland Review of Mental Health and Learning Disability” have both recommended the model of supported employment as a positive way forward.

Accompanying the supported employment sector in Northern Ireland, there is also a large sector providing vocational training for people with disabilities to provide the work skills and vocational skills to access employment. The vocational training is both accredited and non-accredited, as well as providing support for people with disabilities to access mainstream training, such as NVQs. While vocational training for people with disabilities is provided mainly by NGO’s, there have been many partnerships developed between further and higher education colleges as well as community based training organisations. It is important to ensure that the vocational training is specific, time limited and with a specific focus and outcome on employment.

## Scotland

There has been a considerable expansion in the number of organisations providing supported employment in Scotland and an increase in the number of social firms. A number of organisations also provide overlapping services. In addition to the problem of overlapping projects, there is confusion about how decisions should be made on future funding priorities. This hinges on the issue of how project outcomes should be measured and interpreted. Lack of clear guidelines from the Scottish Executive has led to many agencies delivering supported employment, all working in different ways. Lack of clarity regarding what “work” means has resulted in difficulty in measuring outcomes, such as the number of hours and whether voluntary work counts as “employment”.

The UK has a well-developed system of day centre provision. Local authority day centres can play an important role in enabling people with intellectual disabilities to access employment. In some cases, day centres provide all aspects of employment support, while in others, they provide aspects of work preparation, but refer people on to specialist employment agencies. However, *Valuing People*, *Fulfilling the Promises*, and *The same as You* are all critical of the opportunities offered by day centres, and promote a modernisation policy based on employment and more individualised community-based options as an alternative (see section 3.4).

### 3.3 Sheltered employment

In the UK, the most important provision of sheltered employment opportunities is through segregated workshops funded through the WORKSTEP programme.<sup>447</sup>

In the financial year 2000–2001, an average of 23,018 people with disabilities were using the WORKSTEP programme, which was then called the “Supported Employment” programme. This comprised 10,423 people working through Remploy Ltd. (including Remploy Interwork); 7,008 working through local authorities; and 5,587 working through voluntary bodies. In terms of placement type, Remploy supported factories served 6,020 people; Remploy Interwork, 4,403 people; voluntary and local authority “Supported Placement Scheme” (SPS), 8,636 people; and voluntary body and local authority supported factories, 3,962 people.<sup>448</sup> By 2002–2003, these figures had changed to 9,543 Remploy and 12,133 non-Remploy places, a total of 21,676 places.<sup>449</sup>

#### 3.3.1 Remploy Ltd.

Remploy Ltd. receives an annual block grant from the DWP to cover its operating deficits, and loans to cover the purchase of assets.

People with intellectual disabilities made up 20 per cent of people across all their supported workshops; and 50 per cent of the people in Remploy Interwork, their community-based placement service which started in 1998. In 2001, Remploy developed a learning strategy for its businesses and established a central learning resources support team to see through strategy. As part of the strategy, learning centres have been set up across all Remploy’s sites, offering skills for life learning opportunities, mainly through a network of local providers.

#### *Sheltered workshops (now renamed supported workshops)*

Remploy Ltd. is a long-standing provider of supported workshop places and provides placements in its network of factories for people with a wide range of disabilities. In 2001, Remploy Ltd. provided 90 sheltered factories, serving 6,684 people.<sup>450</sup> The factories carry out a wide range of functions, from furniture manufacture, producing healthcare products, textiles, library and print services, household/toiletry items, packaging and contract services.

<sup>447</sup> In the past, community jobs, with a wage subsidy paid to host employers, were also regarded as “sheltered employment”, but this aspect of Government provision has changed within the WORKSTEP programme and is no longer regarded as “sheltered”.

<sup>448</sup> Beyer et al. *Net Costs*.

<sup>449</sup> The UK Parliament, The Workstep Programme, available at <http://www.parliament.the-stationery-office.co.uk/pa/cm200304/cmhansrd/vo040212/text/40212w16.htm> (accessed 28 August 2005)

<sup>450</sup> Beyer et al., *Net Costs*, Table A2.2.

### *Remploy Interwork*

Remploy Ltd. also provides help to find jobs in ordinary companies, through provision of a wage subsidy or, increasingly, under new arrangements, flexible funding on a short-term basis to assist the employer to take on the person. This is offered through Remploy's community jobs arm, called "Remploy Interwork", which is funded through Remploy's block grant. Interwork also provides employment-related support to people with disabilities through the New Deal for Disabled People and Work Preparation contracts.

In 2000–2001, the Remploy Interwork service provided for 5,383 people all with some form of disability, through the work of a network of employment officers.<sup>451</sup> There is a higher proportion of people with intellectual disabilities in the Remploy Interwork programme than in Remploy supported factories.

### 3.3.2 Local authority and voluntary body sponsors

Around 200 local authority and voluntary body sponsors provide the WORKSTEP scheme. This has recently been extended as part of a modernisation programme, through the introduction of new providers, with new money, as part of the innovation of the programme. The scheme is offered through a network of supported factories, which are in addition to the Remploy Ltd. factories, and through placements in ordinary companies. The supported factories produce a wide variety of products including packing, assembly, printing and light fitting manufacture. People with intellectual disabilities made up 50 per cent of those in the local authority, and voluntary body, supported factory schemes.<sup>452</sup>

In the pre-WORKSTEP funding model, local authorities received a grant from the Department of Works and Pensions (DWP) to cover revenue and capital expenditure, based on agreed numbers of people with disabilities placed in jobs in factories.<sup>453</sup> In factories, the WORKSTEP grant now pays for the costs of production, administration and overheads, and subsidises worker wages, with special capital grants being separately available through a bidding round for factories to offset investment.

Many of the people in WORKSTEP currently have jobs in ordinary companies (on the open market), rather than in supported factories. In the past, the employer received a wage subsidy based on assessed productivity. The worker receives a full wage, now set at a National Minimum Wage or above. Generally, people work over 16 hours per week and most are full-time workers. Under new arrangements, however, since April 2001, for new community-based placements WORKSTEP makes payments based on results to local authority and voluntary bodies, for finding and supporting the job.

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<sup>451</sup> Beyer et al., *Net Costs*.

<sup>452</sup> Beyer et al., *Net Costs*.

<sup>453</sup> This was limited to 75 per cent of expenditure or a per capita ceiling, whichever was the lower figure. The additional 25 per cent of expenditure was assumed to come from the Rate Support Grant paid to local authorities and through council tax income.

Where wage subsidies are still used, the Government's aim is to phase them out if possible.<sup>454</sup> WORKSTEP is trying to 'progress' those people in ordinary companies who still receive a long-term wage subsidy, from the subsidy to being in open employment (e.g. in a job with no wage subsidy). Progressive targets have been set for the proportion of existing and new placements, as well as for financial incentives for providers to achieve this.

## Variations within the UK

### Northern Ireland

In Northern Ireland, there is only one Government subsidised sheltered workshop which is similar to Remploy – the Ulster Supported Employment Limited (USEL), which recently changed its name from Ulster Sheltered Employment Limited, is the only Government subsidised sheltered workshop in Northern Ireland. USEL was established in 1962, to provide sheltered paid employment for people with disabilities within the Belfast manufacturing base. In 1980, USEL incorporated the Workshop for the Blind, thereby becoming the largest employer of people with disabilities within Northern Ireland. As of April 2004, USEL employ 80 people with disabilities in their manufacturing and contract services factory in total.

### 3.4 Day centres

The roots of what are now referred to as day centres lay in the Mental Deficiency Act 1913, which enabled "Occupation Centres" to be established with the aim of training, occupying and supervising those people covered by the act. After the Second World War, the number of such centres increased to cater for wider client groups, through the Mental Health Act 1959. These day centres had a predominantly industrial and commercial outlook, providing sheltered places of work, with clients involved in production assembly, simple manufacture and craft work. In 1968, a review established the primary role of centres as training people for outside employment, and renamed them Adult Training Centres (ATCs).<sup>455</sup> A further Government review sought to broaden the function of ATCs, to include the assessment of people's needs and the provision of permanent daily occupation where no alternative form of sheltered employment was available. This review led to a considerable expansion of places.<sup>456</sup>

Today, many people with intellectual disabilities attend local authority day centres and take part in a wide variety of activities, depending on the interests and background of

<sup>454</sup> OSI roundtable comment, London, May 2004.

<sup>455</sup> Department of Health and Social Security, *Local Authority Adult Training Centres: Model of Good Practice*, DHSS, London, HMSO, 1968.

<sup>456</sup> Department of Health and Social Security, *Better Services for the Mentally Handicapped*, DHSS, London, HMSO, 1971.

the day centre.<sup>457</sup> Although still undergoing change, day centres represent one of the main placements for people with intellectual disabilities. The extent to which day centres work with other partners can be broadly modelled on three types:

- hands-on services: where day centres provide all aspects of employment support through their own specialist teams or staff;
- hands-on partnerships: where day centres provide aspects of work preparation, but refer people on to specialist employment agencies for job-finding, placement and support; and
- hands-off partnerships: where day centres provide little or no employment-related activity, and refer individuals on to specialist employment agencies for all aspects of work preparation, experience and placement.

A recent report commissioned by the DWP and the Department of Health looked specifically at the role of day centres in assisting people with intellectual disabilities to find employment.<sup>458</sup> This report showed that people with intellectual disabilities liked (and disliked) work for much the same reasons as everybody else. They liked paid work best of all. The advantages they identified included money, social contact, making a contribution to other people, and having something to do. Comments from people with intellectual disabilities on why they enjoyed work included: "Independence. It gives me something to do. I'd hate to sit around all day doing nothing it would drive me potty. It makes me use my brain and that is important for people with learning difficulties."<sup>459</sup> Also: "It makes you feel happy inside, because you've got people to talk to."<sup>460</sup>

The report also found that people wanted to work even if they were not working at present, and mainly wanted paid work. Those in employment wanted to stay in their job or seek a better job. The main reason people left work was because of company closure or because they didn't like the work they did, rather than because of negative attitudes or bullying from an employer. Bullying or harassment in work was reported, but it was rare in this sample of 150 people: "I'd like help with my manager when he is not being fair with me."<sup>461</sup>

The report found that most people worked for less than five hours per week; some worked 5-15 hours; but only a small minority worked more than 16 hours. Only a few respondents felt that four to five hours was all that they could manage. However, most people in work believed that working more hours would affect their benefit income. The Income Support disregard means that people can only earn £20 (or approximately €29.1) per week before losing some benefit. This means that if the national minimum

<sup>457</sup> S. Beyer, M. Kilsby and K. Lowe, "What do ATCs Offer? A Survey of Welsh Day Services", in *Mental Handicap Research*, 7, 1994, pp. 16-40, (hereafter, Beyer et al, *What do ATCs Offer?*).

<sup>458</sup> Beyer et al, *Working lives*.

<sup>459</sup> Woman age 34, Locality H. Beyer et al, *Working lives*.

<sup>460</sup> Woman age 33, Locality H. Beyer et al, *Working lives*.

<sup>461</sup> Man, age 49, Locality H. Beyer et al, *Working lives*.

wage is paid, people cannot work for more than four to five hours per week without losing some IS. For those not able to work full time, or whose work is likely to be low paid, retaining IS is necessary if they are not to be worse off financially.

People interviewed had received help from a number of sources, but supported employment was part of this support. They reported that day centres were good at helping them to consider the possibility of employment and also provided practical support: in particular, they organised visits to workplaces and provided work experience. Specialist employment officers in agencies were mentioned frequently as providing help, particularly with job applications and job trials: “employment advisor comes around now and then to check that everything is OK.”<sup>462</sup> Although college attendance was common, few people reported receiving active support from colleges to think about or get a job. Once a job was found, employers and work colleagues were mentioned as good sources of support, with day centres remaining a source of support in problem solving.

Some of the conclusions of the report highlight good practice in the area of supporting people with intellectual disabilities in community jobs. These include developing partnerships between local authorities (including day centres), specialist teams and agencies and mainstream services, which was found to be an effective means of providing support to people with intellectual disabilities and of providing the comprehensive provision of support they need. Also, investing in partnerships, by bringing in mainstream and specialist organisations to work with day centres on vocational profiling and to help them align their in-house programmes with the requirements of local employers. Another important conclusion reached by the report was that it is easier for people to find and stay in work if they receive specifically targeted support, in which employment of their choice is assumed to be a goal. This needs to begin at school, to create a climate of expectation and aspiration of paid employment. At the transition stage, local authorities should ensure that a direct route into employment is available after school and college.

## Variations within the UK

### Northern Ireland

Similar findings have been identified in Northern Ireland through the Review of Day Services for People with Learning Disability (NI) (2003) and the Northern Ireland Review of Mental Health and Learning Disability (ongoing). Both reviews identified that people with learning disabilities want to have the opportunity to work and recommended the model of Supported Employment to assist people with learning disabilities to access employment.<sup>463</sup>

<sup>462</sup> Man, age 31, Locality H. Beyer *et al*, *Working lives*.

<sup>463</sup> Further details of the review are available at <http://www.rmhdni.gov.uk/> (accessed 29 August 2005).





## D. Conclusions

### 1. CONCLUSIONS ON ACCESS TO EDUCATION

#### *Legislation and policy*

The UK has an impressive body of law and practice in educating children with intellectual disabilities going back many years. The SENDA 2001, with its extension of anti-discrimination legislation to schools and further and higher education, reflects a strong move towards a human rights approach to education law and to SEN provision. The human rights approach opens up the opportunity for adaptation in schools to diversity and to an emphasis on mutual respect and recognition of human value among both teachers and the young citizens of the future. The UK has to a great extent reacted positively to its UN and EU obligations.

The Government is trying to improve general SEN provision in mainstream schools to help parents move away from relying on statements of special educational needs to gain services. On the one hand, this is a helpful strategy as it reinforces the general rights of the child to receive an education integrated with their peers. However, parents fear that the expected move away from Statements of SEN (in England and Wales) and Records of Needs (in Scotland) will lead to less entitlement to support than before. There remains an inconsistency in the Government which, on the one hand, uses exam achievement league tables as a tool to increase mainstream school performance, while on the other encourages schools to cater for more children with special needs, who may struggle to attain high scores in qualifications. This tension must be reconciled, if the former is not to undermine the latter.

The SENDA 2001, and its equivalents in Scotland and Northern Ireland, still maintains a role for special school provision in serving young people with severe disabilities. The reality is that as others feel the benefit of accessibility measures in mainstream schools, children and young people with severe or profound intellectual disabilities, or people with intellectual disabilities and behavioural problems, will be channelled down the special school route. This thinking is undoubtedly based on notions that special resources, special environments and special methods are the best way to provide education and security for these young people. It is also based on the idea that people with significant intellectual disabilities who share classes with age peers will be disruptive and damaging to the education of others. However, this still leaves the prospect of non-disabled generations being deprived of knowing their peers with intellectual disabilities, and vice versa, and of carrying this lack of knowledge, fear and suspicion into adult life. In employment, employers are needed who are aware of, and responsive to, the needs of people with intellectual disabilities; employers who have been at school with their peers with intellectual disabilities, and so recognise their potential and are keen to make “reasonable adjustments” to help them enter work.

The Government's policy statement *Every Child Matters*<sup>464</sup> (2003) is an excellent document, which recognises that inclusion for a child with disabilities "is about the quality of their experience, how they are helped to learn, achieve and participate fully in the life of the school" rather than the type of school they attend. It does set out some good practical strategies for breaking down barriers between existing special and mainstream schools, all of which are to be applauded. Nonetheless, there remains a contradiction between a tendency towards segregation and the need to reinforce entitlement to inclusion, which is a recognised human right.<sup>465</sup>

To promote the education of children and young people with intellectual disabilities in mainstream schools, it is important to train teachers in these schools to themselves be more inclusive. At the same time, more specialist teachers are required who can help everyone cope with the needs of this group. There is a need for greater flexibility in terms of curriculum and teaching arrangements in schools if people with intellectual disabilities are to be well provided for, and further work is required to understand how to best deliver specialist education in mainstream schools. Without a strong follow-through on this policy directive for specialist support to be brought into mainstream schools, as well as adequate resources, it is likely that segregation for people with intellectual disabilities will intensify, as children with other types of disabilities are increasingly integrated, while young people with intellectual disabilities are not. Reliance on special residential schools, often outside the young person's home area, is a particular problem. These placements remove these young people with significant intellectual disabilities from their locality, their peers and families. When large fee-based placements end, usually when people reach age 18, it is difficult for local services to provide the support required, and it is sometimes difficult to plan adequately for these young people's transitional needs. The Government should ensure that all children are adequately catered for in their own communities, to avoid the undermining of mainstreaming for some young people with more significant needs.

## 2. CONCLUSIONS ON THE TRANSITION FROM EDUCATION TO EMPLOYMENT

In a human rights context that is generally favourable, a serious concern with the UK situation is the arrangement for transition from school to adult working life for people with intellectual disabilities. Although the UK has a well-developed and mature legal transition planning process, the system nonetheless works far from smoothly. In the UK, the transition from school is under researched and more action research is required to experiment and demonstrate what can be achieved practically in schools and communities. However, the research that has been carried out by a range of

<sup>464</sup> Treasury, *Every Child Matters*.

<sup>465</sup> OSI roundtable comment, London, May 2004.

universities, provider organisations and the Government has provided a consistent messages on what is going wrong in the transition system. Apart from any other considerations, it should be remembered that, if transitioning is properly supported, more people will ultimately be less reliant on welfare benefits and, as a result, there is a potential cost-benefit case for the Government.<sup>466</sup>

### *The link between education and employment*

The link between education and employment – once the pillar of the Government's policy with the DfEE structure – has been weakened at the centre with the formation of two Departments, the DWP and the DfES.<sup>467</sup> A similar situation exists in Northern Ireland in the formation of a Department of Education and Department for Employment and Learning. People with intellectual disabilities are a good example of where education and employment fail to connect. Under various conventions, people with intellectual disabilities have a right to choose employment as an option when leaving school, but the throughput from school – usually special school – to paid employment is weak, and few young people with intellectual disabilities are enabled to make this transition into paid employment. This is not a failure of legislation, or of the setting of responsibilities; LEAs, LSCs, Connexions services/Careers Wales/Careers Service Northern Ireland, and Social Services all have specific responsibilities and defined roles. However, the movement from school to employment, and from college to employment, is still taken by very few people with intellectual disabilities. The main problem appears to be confusion and complexity among the responsible agencies, and a failure in identifying who should drive the partnership process forward.

### *Transition planning*

Several problems with the transition planning process can be highlighted. For example, there is no strategic or consistent approach to delivering transition plans or services. There is no monitoring of services or quality standards developed for transition planning. Parents and young people themselves are still not always involved in transition planning and are ill-informed of their options. Continuity of health provision is often not maintained in transition, leading to anxiety among families. Employment is often not put forward as an option, and personal support and supported employment technology are not generally made available in sufficient quantity to make employment possible, either directly from school or from college.

In addition, there are many people with intellectual disabilities who do not have a Statement of Special Educational Needs and who therefore do not receive the level of transition planning they require. The transition planning system is primarily aimed at

<sup>466</sup> OSI roundtable comment, London, May 2004.

<sup>467</sup> As of 8 June 2001, the employment division of the (then) Department for Education and Employment (DfEE) was merged with the (then) Department of Social Security, to create the Department for Work and Pensions (DWP). The DfEE was subsequently renamed the Department for Education and Skills (DfES).

young people who have received a statement of special educational need. This does not include all people with intellectual disabilities and some, particularly those in units attached to mainstream schools serving young people with *mild* or *borderline* intellectual disabilities, may not be included in the Transition Plans and reviews.<sup>468</sup> If they are reviewed, social services departments may not agree that the person is disabled enough to be eligible for the services they provide, which may again reduce the support available to this vulnerable group in transition.

In recent years, the preferred route stemming from transition planning has been a college place, where five-day provision is the norm. However, people with intellectual disabilities are finding it difficult to access college places that seriously help them obtain relevant qualifications for employment. Employment is often not pursued within transition planning as an area in its own right, with very few young people with disabilities, particularly intellectual disabilities, entering supported employment schemes at 16-19 years old. This appears to be a more general trend among young people with a wide range of disabilities.

In another linked problem, the time at school for many young people with intellectual disabilities does not appear to equip them emotionally, or with the skills to meet the challenges of a paid job. This is not a fundamental problem of intellectual disability, as many people with intellectual disabilities are able to get a job in adult life, with the help of supported employment or through other forms of intervention. In the name of equality, school heads and teachers are limited to delivering a broad interpretation of the National Curriculum. However, it is questionable whether this arrangement is serving people with intellectual disabilities well, or whether more creative use of a functional curriculum, combined with supported work experience and other practical and community based training, may not better prepare them for an adult life in a job, without sacrificing their right to education.

In this respect, students in further education with special educational needs can make use of training programmes where they are taught at a work-based training organisation, but spend a substantial amount of time on “placement”. Trainees are covered under the DDA Parts 2 (Employment: it is unlawful for any employer to refuse you employment or a paid work placement because a person is disabled); Parts 3 (Goods and services: if attending unpaid work experience or work based learning with a training provider, they have a duty not to discriminate against the person because they are disabled); and Parts 4 (Education: if a paid or unpaid placement as part of a course, the school or education institution must ensure that employers are providing accessible placements and adapting to the person’s needs and that they receive the support they need). It is important for people with intellectual disabilities that the Government follows through its commitment to equal work placements in the DDA.

<sup>468</sup> M. Florentino and A. Leigh, “Leaving paediatrics: The experience of service transition for young disabled people and their family carers”, in *Health and Social Care in the Community*, 6(4), 260–270, 1998.

### *Further Education*

How successful further education has been for people with intellectual disabilities is controversial. The extension of the DDA to further education institutions with the SENDA 2001 is welcome, and will undoubtedly assist these Colleges in meeting their needs. However, many colleges still fail to provide clear teaching towards an employment goal, and many people attend college for some years and then end up in a segregated day centre, their training often ineffective or wasted through lack of transitional support.

There can also be a lack of flexibility and effectiveness in the teaching approach in colleges of FE. Students may need curriculum modification, and possibly more powerful systematic instruction to help them fulfil their potential. However, colleges can be unresponsive to these needs and there is also a lack of adequate personal support. In addition, measures of success are often qualification based, which may act as a barrier for course providers and colleges to take people with intellectual disabilities into practical vocational courses. It is important to find a way of acknowledging distance travelled as well as the achievement of national targets and qualifications. Not all learners, especially those with intellectual difficulties, reach NVQ level 2, but this does not mean that they have not succeeded.<sup>469</sup>

There is also a lack of a successful match between the skills and courses taught and the jobs people are successful at getting in the local jobs market, and lack of feedback from job placement to course providers. Lack of adequately supported work tasters during further education (despite this being a major educational activity for many non-disabled college students on vocational courses) and job finding and work-based support to help people graduate into jobs. The quality of Entry to Employment courses are variable, as is the extent to which they meet the needs of people with intellectual disabilities.

Issues of detail will continue to undermine the rights of individuals with intellectual disabilities to further education if they are not addressed. These issues also affect the access of people with intellectual disabilities to mainstream Government employment training schemes, such as the “Work Based Training for Adults”, which at present remain unresponsive to their needs. The Learning and Skills Councils (LSCs)/ElWa and Scottish and Northern Ireland equivalents, are responsible for both areas of training at present and have significant responsibility to address these issues.

At the same time, there have been well-publicised threats to leisure-type courses currently provided in Colleges of Further Education.<sup>470</sup> It has been suggested that courses taken by people with intellectual disabilities may be a casualty of financial cuts and a move to fee paying. The LSC's director of resources, David Russell, has said that, “The numbers of adults doing basic skills and ‘first full level 2’ courses will increase,

<sup>469</sup> SKILL, *Successful participation for all*.

<sup>470</sup> John Crace, “Pleasure Breach”, in *Guardian*, 21 June 2005.

but overall, adult learner numbers funded by the LSC are expected to decrease by up to ten per cent.” Also, “The cuts will not be confined to so-called leisure learning, whatever has been suggested in the media [...] they will hit adults wanting to do courses to improve their skills and employability, both at the most basic level, which is not included in the Government's skills for life initiative, and at the technician level. They will also hit training in the workplace – for instance, first aid instruction provided by the Red Cross – and courses for people with severe learning disabilities.” At a time when we are looking for increased effectiveness and enhanced support from colleges, this does not represent a conducive environment.

#### *Further conclusions regarding Scotland and Northern Ireland*

In Scotland the transition from school to adult services continues to pose problems for young people with disabilities. Lack of interagency planning and communication means that young people may find themselves missing out on vital services. ENABLE, in conjunction with Careers Scotland, have developed a service designed to help young people with additional support needs to access employment.

All the same issues arise in Northern Ireland. However, due to the prolonged period of civil unrest and the associated costs, the investment in education has been less than elsewhere in the UK. In addition, the selection of pupils on the basis of academic ability for secondary schooling has made it more difficult to achieve the fuller inclusion of pupils with SEN into the mainstream. In part this legacy may also account for the lower provision of these students within further education. EU funding initiatives have helped to create new vocational training and employment opportunities but there is a concern that these will not be maintained to the same level after 2006 when this funding ends. More positively, legislation in support of a more equal society is further advanced in Northern Ireland than anywhere else in the UK. It remains to be seen how effective it is in support of equality of access to education and life-long learning for people with learning disabilities.

### **3. CONCLUSIONS ON ACCESS TO EMPLOYMENT**

#### *Legislation*

The UK has implemented a great deal of the relevant human rights legislation in recent years and has an impressive body of legislation relating to disability and employment. The DDA, with its recent extensions to meet the EU Employment Directive, provides an excellent starting base for including people with disabilities into the mainstream workforce. This is to be commended and, in general, provides a positive context for moving forward the rights of people with intellectual disabilities. However, the UK has not ratified ILO Convention C159 on Vocational Rehabilitation and Employment (Disabled Persons), 1983. In order to strengthen the legislative framework for the

employment of people with disabilities, the UK Government should ratify this Convention without delay.

### *From welfare to work*

A comprehensive, but complex set of welfare benefit entitlements provides a safety net for people who cannot work in the UK.<sup>471</sup> There may be detailed criticisms of its operation, but here we are concerned with current problems that restrict the easy movement from benefits to part-time and full-time paid employment of people with disabilities in general, and people with intellectual disabilities in particular. There remains a particular concern that any form of work may threaten people's benefit status. The inherent tension between being seen as "incapable" of work and any subsequent steps towards employment, which demonstrates some capacity, is at the heart of many of the problems faced by potential workers.

The main social benefit received by people with intellectual disabilities is Income Support (IS), which is the benefit likely to be used by most people who have never previously worked. However, the IS regulations still remain largely unreformed. The combination of an income disregard amount that has been devalued over time, and a 100 per cent taper for people entering employment, makes IS a particularly problematic benefit. Similarly, for those who might enter paid work, the uncertainty of the links back onto incapacity benefits act as a barrier to employment. Although there have been positive changes to link people back on to incapacity benefits, in cases where paid employment has not been successful, these are both uncertain and remain poorly advertised.

The "Permitted Work" rules have reduced some of the insecurities surrounding part-time employment and provided a set of stepping stones for people to move towards employment in the short term. They have also recognised the status of support agencies, by creating the "Supported Permitted Work" category, which is particularly relevant for people with intellectual disabilities. Nonetheless, there have been examples where simply applying for the "Permitted Work" concession triggered an automatic review of an individual's eligibility for incapacity benefits. This creates uncertainty and increases reluctance to move into employment, in case the "safety net" is removed forever. In addition, there remain rigidities that follow the distinction between "permitted" and "remunerative" work. The divide at 16 hours, which has to be met to enter the "Tax Credit" system, acts to limit choice and effectively devalues the contribution made by people for whom part-time work is the most appropriate arrangement.

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<sup>471</sup> The authors are grateful to Ken Simons for some of this analysis, which draws on the paper: A. O'Bryan, K. Simons, S. Beyer, and B. Grove, *Economic Security and Supported Employment*, Policy Consortium for Supported Employment, National Development Team, Manchester, 2000.

Another factor restricting the move to employment is that, once income goes above a minimal level, workers with intellectual disabilities are likely to find themselves facing reductions in other forms of financial assistance, such as Housing Benefit. For people with intellectual disabilities who are in staffed accommodation, this can lead to significant increases in the care charges they must pay. In many cases, people with intellectual disabilities who enter part-time employment are therefore left little better off, than if they did not work. These problems are also compounded by innovations that might otherwise be very helpful. For example, although the National Minimum Wage has led to a pay rise for some users of supported employment, the lack of accommodation for people with low levels of productivity, plus its interaction with IS, have minimised its impact. Indeed there is some evidence that it is not being fully implemented.<sup>472</sup>

The welfare benefit and tax credit systems around employment remain complex and lead to uncertainty. Although the system has some measures designed to protect vulnerable people, its impact is limited by other aspects of the system. This lack of security acts to ensure that many potential workers, and their families and the professionals who guide them, are understandably reluctant to take *any* risks, even if there are positive reasons for accepting some change in benefit status. These generalised fears about the system are probably more important in shaping behaviour than any single aspect of it. They are correspondingly more difficult to overcome.

### *Mainstream employment programmes*

Over recent years there has been a huge investment in mandatory and voluntary mainstream Government schemes – such as the “New Deal” programmes – which have been accessed by small numbers of people with disabilities. However, so far these have not generally served people with intellectual disabilities. If inclusion is a major theme in current education thinking, then it must, as a right, also come into training and employment thinking. At present, the mainstream schemes are not effective at structuring employment training and placement opportunities for people with intellectual disabilities, and are not geared up to providing effective teaching and work place support. In order to truly mainstream, then it is important that, ultimately, mainstream programmes should cater effectively for *all* people with disabilities. Such a change would require significant reform of the way agencies such as Jobcentre Plus see their role; a “large volume” provider, but also an inclusive one. In the current models, the links between supported employment agencies and the emerging Personal Advisor (PA) system need to be enhanced, ensuring that the supported employment model of service is readily accessed through whichever form emerges as the main gateway to employment related supports.

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<sup>472</sup> J. Schneider, K. Simons and G. Everatt, “Impact of the national minimum wage on disabled people”, in *Disability and Society*, 16, 5, 2001, pp. 723–747.



### *Specialist employment programmes*

Specialist programmes such as WORKSTEP deliver stable and, in the case of Remploy, well paid jobs. Although recent research shows that there is some criticism on the part of workers with disabilities, there is nonetheless a high level of satisfaction with, and support for, these programmes, which provide employment for a significant number of people with intellectual disabilities. Nonetheless, there remain problems in terms of the coverage for this client group and the intensity of available support.

In particular, people with intellectual disabilities benefit from access to a full model of supported employment. However, while some WORKSTEP providers have taken on board this model,<sup>473</sup> WORKSTEP and “Access to Work” schemes do not pay for the full process, from Vocational Profiling through to workplace support and follow-up services. In order for such programmes to fully include people with intellectual disabilities, there is still a need for a source of central Government funding to cover all elements of the supported employment model. To ensure that specialist programmes are more responsive to the needs of people with intellectual disabilities wishing to enter employment, it is also important to strengthen links between these programmes and the many people with intellectual disabilities using local authority day services. Finally, the link between the specialist supported employment sector, in particular, supported employment agencies with experience in supporting people with intellectual disabilities, and the modernised WORKSTEP programme should be consolidated and expanded, with the latter playing a much greater role in funding the former.

It is worth being explicit about the kind of positive outcomes that should be aimed for, if specialist programmes are to ensure that they deliver inclusive rights for people with disabilities. In particular, they should enable more people with intellectual disabilities to successfully access decent paid work – and enjoy the social benefits of such work – in all parts of the UK. They should also provide more opportunities for people with intellectual disabilities to progress to better jobs and so move up the career ladder. Another important goal should be to increase the disposable income of people in supported employment. Finally, particular attention needs to be paid to those with high support needs, to ensure that they receive the additional support they require. At present, the system actually discriminates against people with *severe* and *profound* intellectual disabilities, and existing employment support systems are not geared up to helping this group take their place in the mainstream of society.<sup>474</sup> Additional thought needs to be given to the demonstrated ability of people with high support needs to work, if appropriate support is provided.

For specialist employment programmes to better serve people with all levels of intellectual disabilities, changes in funding will be required, moving towards a more long-term approach. At present, there is no statutory requirement for social services departments to fund employment provision, and there are very different levels of

<sup>473</sup> Beyer and Thomas, *SCOPE TO WORK*.

<sup>474</sup> OSI Roundtable Event, London, May 2004.

funding across the country. There can be differences in eligibility, with people who need employment help not being seen as needing social services help generally and therefore being ineligible for any other support from the social services fund. The European Social Fund (ESF), and other similar forms of project funding, are short-term and their purposes are not to mainstream fund services. As a result many services have used these to develop and expand provision, but then struggle to find long-term, mainstream funding.

## ANNEX 1. List of legislation cited in the report

All UK legislation is available on the Office of Public Sector Information (OPSI) website at <http://www.legislation.hmso.gov.uk>

### Acts

#### UK

Carers and Disabled Children Act of 2000  
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 Disability Discrimination Act 1995 (Amendment) Regulations 2003  
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 Disability Rights Commission Act 1999 (DRCA)  
 Disabled Persons (Employment Act) 1944  
 Education (Handicapped Children) Act 1970  
 Education Act 1944  
 Education Act 1993 (superseded by the Education Act 1996)  
 Education Act 1996  
 Education Act 2002  
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 Further and Higher Education Act 1992  
 Government of Wales Act 1998  
 Human Rights Act 1998  
 Learning and Skills Act 2000  
 National Assistance Act 1948  
 School Standards and Framework Act of 1998  
 Special Educational Needs and Disability Act 2001 (SENDA)

#### Scotland

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Education Act (Northern Ireland) 1947

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