

Employment Policy & Practice for People with Disabilities in Three International Jurisdictions

A Contemporary Developments in Disability Services Paper

This report comprises a review of employment policy and practice for people with disabilities in three international jurisdictions, the United Kingdom, the United States and Norway. Information is presented on statistics, legislation, benefits and rehabilitation programmes. This information is not exhaustive but rather aims to present general trends in policy and practice within each jurisdiction.

April 2009

1 EMPLOYMENT POLICY & PRACTICE FOR PEOPLE WITH DISABILITIES IN THREE INTERNATIONAL JURISDICTIONS

Executive Summary

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Recent legislative and policy changes have seen the merging of welfare and work services leading to the establishment of the Department of Work and Pensions in the UK, the introduction of the Workforce Investment Act in the US and the establishment of the Employment and Welfare (NAV) Administration in Norway. These changes reflect a move towards a mainstreamed approach where generic job seeking organisations provide supports to people with and without disabilities. The emphasis is clearly on transferring from benefits to employment and penalties can be incurred by those who do not participate in job seeking activities. Local one stop centres provide an array of vocational programmes either directly or through commissioned service providers. Recent changes in the commissioning of these services in the UK and the US have seen the introduction of 'outcome based' payments whereby service providers front load the cost of job seeking and are reimbursed by the public purse when employment is secured. The policy has implications for those with greater levels of need who experience specific challenges in securing employment. These initiatives are relatively new but have proved problematic in the US where an increase in interim payments to service providers has been agreed.

Of particular interest is the status of 'sheltered workshops'. These workshops are typically defined as a segregated work setting where most employees have a disability and where the business is owned and operated by a service provider. Throughout Europe EU Directives protect the awarding of contracts specifically to these facilities while in the US legislation permits the payment of a 'commensurate wage' based on productivity levels. The use of segregated settings does however conflict with principles of normalisation and integration embedded in legislation, policy and good practice. In addition, there is substantial evidence of the benefits, both socially and economically, of integrated employment options. The economic cost of these facilities has been a key driver in the UK's decision to commence the closure of state run facilities. The US and Norway continue with this form of provision but while in Norway it is perceived as a step towards employment, in the US it is a growing area of service alongside non-work community activity.

Acknowledgements

The assistance of the following contributors is gratefully acknowledged:
Dr Steve Beyer, Welsh Centre for Learning Disabilities Cardiff University
Prof Paul Wehman, Virginia Commonwealth University; Dr Robert Cimera, Kent State University; Dr Grant Revell, Virginia Commonwealth University.
Kathryn Stiles, KARE; Oystein Spjelkavik, Work Research Institute, Norway

1.1 An International Overview by OECD¹

Internationally, a variety of policy approaches have been employed to support people with disabilities in the workplace. These include rights-based anti-discrimination legislation, obligation-based quotas and incentive-based voluntary actions. Each approach has its own drawbacks: it is difficult for job applicants to establish that they are refused positions of employment on the basis of disability; quota systems do not incentivise employment; and by, definition, voluntary actions are voluntary.

OECD has classified countries according to their policy towards the integration of people with disabilities in employment. Two of the jurisdictions reviewed in this report, the United Kingdom and the United States are classified as 'Anglo-American' models characterised by dual benefit systems², very strict medical requirements and assessments for benefit entitlements, relatively low sickness and disability benefit (generally lower than unemployment benefits), large inconsistencies in coverage, significant developments in the area of supported employment and back to work incentives, and a weak rehabilitative programme. Norway, the third jurisdiction reviewed in this report, is classified under the Scandinavian model, which differs in a number of respects from the Anglo-American model. The Scandinavian model is characterised by full population coverage in the benefit scheme, an emphasis on partial benefits, strict criteria for full benefits, generous benefit levels, a strong rehabilitation programme and new possibilities to interrupt the benefit system. Examining the relationship between types of integration policy and employment levels, OECD note that the relationship is weak. The greater predictor of employment levels of persons with disabilities is variation within the general employment level. OECD thus conclude that policies that promote employment among the general population will also assist in promoting employment among those with disabilities.

OECD identify eight policy principles to reshape disability policy regarding employment:

1. Introduce a culture of mutual obligation whereby a person is obliged to 'cooperate' with rehabilitation and employment options and may be sanctioned for lack of cooperation. OECD note the sensitivities required to successfully implement such a policy
2. Separate disability status from work status - that is, functional capacity from work capacity - thereby allowing people with disabilities sample work without evidencing that they are now 'fit to work'.
3. Develop small scale individualised rehabilitative and employment programmes. In light of the fact that many countries are now mainstreaming employment options, special support for those with disabilities will be required.
4. Promote early intervention for those with acquired disabilities.
5. Involve employers through a combination of positive incentives and mandated obligations.

¹ OECD (2003) Transforming Disability into Ability: Policies to promote work and income security for disabled people. OECD, Paris (see page 129)

² Dual benefit system as defined by insurance benefits for the labour force and means tested disability benefits for those not qualifying for insurance.

6. Restructure benefit systems to remove disincentives to work. People with disabilities should not be disincentivised to work by fear of losing essential benefits.
7. Reform programme administration by providing an individualised approach whereby expert assistance is provided to navigate the myriad of benefit options available.
8. Improve the coordination of transfer schemes between disability and unemployment schemes and between disability and age-related schemes.

OECD note that in many countries, approximately 10% of disability benefit recipients participate in special employment programmes. Most OECD countries offer sheltered employment as a special employment option. Despite the prevailing view that segregated settings are deemed inappropriate for 'large numbers of people with disabilities' OECD observe that, empirically, there is no sign of any significant cutback in this service. Instead, OECD note that several countries have attempted to make the sheltered sector more business-like and competitive in an attempt to increase the likelihood of transition to the open sector. Wage levels among those in sheltered workshops vary considerably both within and among countries, ranging from programmes that offer token remuneration to those that provide wage and social security benefits.

OECD's concluding remark in their review of *Policies to Promote Work and Income Security for Disabled People* outlines their position on segregated approaches. They comment "All policy actors and concerned persons agree that more people with disabilities are able to work. That many of these people do not is more down to policy failure and policy choice than anything else. Societies have dealt with some groups of disabled people by hiding them out of the way on often generous benefits. Other groups were isolated on sheltered employment programmes, while programmes enabling work in the open labour market were often lacking or insufficient. To a varying degree, this conclusion holds for both moderately and more severely disabled people, and in particular for people over age 50, who represent the large majority of this group and who may have access to a whole range of transfer payments. This segregating approach is not good enough for disabled people, even if it may provide income security for many of them. This approach is also very expensive and therefore, ultimately, not good enough for the taxpayers as well (OECD, 2003, p.169).

1.2 UNITED KINGDOM

1.3 Current statistics

There are an estimated 9.8 million people with disabilities in Great Britain.³ In 2004, 50% of those with disabilities were in positions of employment. This compares to a figure of 75% of the overall working age population. Estimates for employment levels among those with intellectual disabilities range 5% - 17%.⁴

1.4 Legislation

In the UK, the most relevant legislation relating to the employment of persons with disabilities is:

- Disabled Persons (Employment Act) 1944
- National Assistance Act 1948
- Disability Discrimination Act 1995 (DDA) & Disability Discrimination Act 1995 (Amendment) Regulations 2003
- Raising Expectations and Increasing Support White Paper, CM 7505, 2008

The **Disabled Persons (Employment Act) 1944**⁵ legislated for the provision of rehabilitation services for people with disabilities. The Act permitted Government to fund sheltered workshops from the public finances. At the time, these facilities were mostly utilised by ex-war veterans. The legislation made provision for a register of persons with disabilities, assessment, rehabilitation, specialised employment placement services and a quota system for the employment of people with disabilities. It is interesting to note that the quota sections of the Act were repealed by the Disability Discrimination Act 1995.

Under the **National Assistance Act 1948**⁶ local authorities were mandated to support those who had a local connection with their area who were in need of accommodation and services by reason of age, disability or some other substantial reason. NAA is considered the core legislation of welfare benefit eligibility in the UK and has undergone several amendments since its inception. There is an underlying assumption within the Act that those who have a disability cannot work and that those who work cannot have a disability (Beyer, personal communication, 11 March 2009) and, despite revisions to the Act, difficulties remain for those who return to welfare in the event that their employment is unsustainable.

The **Disability Discrimination Act 1995** (DDA)⁷ prohibits discrimination against persons with disabilities across a number of domains including employment, education, transport, provision of goods and services etc., and legislated for the establishment of the National Disability Council. In the context of employment, the Act requires businesses (in excess of 15 employees) and authorities to make 'reasonable accommodations' to employ people with disabilities. Disability is defined

³ Department for Work and Pensions (2005) Gaining and retaining a job; the Department for Work and Pensions' support for disabled people. London; The Stationary Office.

⁴ Department of Health (2008). Valuing People Now: From Progress to Transformation. Department of Health.

⁵ http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1944/cukpga_19440010_en_1

⁶ http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1948/cukpga_19480029_en_1

⁷ http://www.opsi.gov.uk/acts/acts1995/ukpga_19950050_en_1

as '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'. The Act came fully into operation after 2004 and is monitored by the Equality and Human Rights Commission (formerly the Disability Rights Commission). These rights have been extended to meet the requirements of the EU Council Directive 2000/78/EC (Equal Treatment in Employment and Occupation Directive) Disability under the **Discrimination Act 1995 (Amendment) Regulations 2003**⁸. The Directive outlines a framework to prohibit discrimination across a range of activities including selection, work experience, vocational training, recruitment and employment.

In combination, the Disability Discrimination Act 1995, the amendment to this Act in 2003 and the Disabled Persons' (Employment) Act 1944 provide the legal framework within the UK for the employment of persons with disabilities in both open and segregated settings. Specific reference to facilities provided for those who are 'seriously disabled of employment' is cited in the Disabled Persons' (Employment) Act and is presented in Appendix A. Essentially, this legislation stated that these facilities may be provided 'such as the Minister may determine'.

1.5 Government Policy and Programmes

In 2008, the publication of a Green Paper '**No one written off: reforming welfare to reward responsibility**⁹' and a White Paper '**Raising expectations and increasing support: reforming welfare for the future**¹⁰' introduced major changes to the welfare benefit system in an attempt to increase the transfer of persons from 'welfare to work'. These papers outline the UK's strategy that 'maximises the numbers in employment, and minimises the numbers on benefits'. The Green Paper notes *'the most severely disabled people or others with full-time caring responsibilities would not be required to look for work. We will however, expect everyone else to take active steps towards employment and to take suitable jobs'*(p12).

The Government's disability employment strategy, as expressed in **Improving the Life Chances of Disabled People**¹¹ recommends greater emphasis on programmes to integrate people with disabilities into open employment by proposing that Government *'increase the flexibility of budgets within its current supported employment programmes away from programmes which fail to integrate disabled people in mainstream employment and into programmes which assist disabled people progress towards open employment'*(p.185).

While formerly quota legislation (3% of the workforce) and wage subsidies to employers (e.g. via Access to Work programmes and WORKSTEP) were used to increase the numbers of persons with disabilities in the workforce, the current Government approach is to offer a range of tailored programmes via Jobcentre Plus, the Government agency under the Department for Work and Pensions, which supports people of working age make the transfer from welfare to work. Jobcentre Plus is a division of the Department for Work and Pensions.

⁸ <http://www.opsi.gov.uk/si/si2003/20031673.htm>

⁹ <http://www.dwp.gov.uk/welfarereform/raisingexpectations/fullversion.pdf>

¹⁰ <http://www.dwp.gov.uk/welfarereform/raisingexpectations/fullversion.pdf>

¹¹ Prime Minister's Strategy Unit (2005) Improving the Life Changes of Disabled People. <http://www.cabinetoffice.gov.uk/media/cabinetoffice/strategy/assets/disability.pdf>

Valuing People Now¹², a follow up to the Government policy report on intellectual disabilities, identifies Jobcentre Plus as the preferred resource for people with intellectual disabilities seeking work, with specialist employment agencies providing additional resources. Valuing People¹³ states that a key government objective is “to enable more people with learning disabilities to participate in all forms of employment, wherever possible in paid work, and to make a valued contribution to the world of work”. (p.26)

1.6 Mainstream Employment Programmes

Depending on their level of ability, persons with disabilities presenting at Jobcentre Plus will be offered two service options, (1) Mainstream Active Labour Market Programmes (ALMPs) and (2) Specialist Employment Schemes (specific to people with disabilities). ALMPs serve a relatively small number of people with disabilities typically through ‘New Deal Programmes’ and Work Based Training Schemes. The New Deal Programmes are mandatory for the general population and failure to participate incurs penalties. New Deal programmes are currently provided for specific population groups such as young people, long-term unemployed and lone parents. The proportion of individuals with disabilities availing of these schemes is low at 14%, 22% and 4% respectively. The New Deal suite of programmes also includes a ‘New Deal for Disabled People’ which is outlined below as a disability specific programme.

From 2009, all New Deal programmes will merge into the ‘**Flexible New Deal**’ (FND) which will aim to find employment for 200,000 persons per annum. Under this deal, individuals who are unemployed over 12 months will be referred to private or third sector contractors who will be paid according to their success in sourcing employment. Government funding is therefore allocated on the ‘output’ of obtaining positions of employment, not the process of job seeking. This policy represents a radical shift in focus, with an estimated £2 billion of contracts to be allocated over the next five years. The economist David Freud has been highly influential in this policy shift arguing that private providers should ‘front end’ the cost of sourcing employment which is then recouped by Government who in turn, reclaim their costs from the benefits savings of those who have entered the workforce. The second option via Mainstream Active Labour Market Programmes (ALMPs) is Work Based Training Schemes. These schemes, for adults and young people provide back to work or apprenticeship training respectively. It is estimated that only 2% - 3% of people with disabilities access these schemes.

1.7 Disability Specific Employment Programmes

Those who are defined as having a disability in accordance with the Disability Discrimination Act 1995 are eligible to seek assistance in securing employment through disability specific schemes, primarily the Access to Work Scheme, WORKSTEP and the New Deal for Disabled People. Local government supported employment schemes are available via Social Services and eligibility is therefore based on social care as opposed to disability related criteria. Currently, the disability specific programmes are not mandatory for people with disabilities whose benefit status is such that they are economically inactive. The new Raising Expectations policy however is moving toward a global position where benefits will be lost if the individual does not participate in employment options. Following an assessment and

¹² http://www.dh.gov.uk/en/Consultations/LiveConsultations/DH_081014

¹³ <http://valuingpeople.gov.uk/dynamic/valuingpeople4.jsp>

the development of an action plan with a specialist Disability Employment Advisor (DEA) located at the Jobcentre Plus facility, people with disabilities have a number of schemes at their disposal; these are outlined below.

Work Preparation Scheme is a short 6-13 week programme, typically unpaid work experience that assists people prepare for the world of work through confidence building, skills training etc. It is often used as a stepping stone to the WORKSTEP programme. In 2004-2005 approximately 8,100 people with disabilities participated in this scheme to a cost of £12.8 million

The DEA assessment may recommend placement in **WORKSTEP**, an employment programme for those with more complex disabilities experiencing significant barriers to seeking and maintaining employment. While the DEA assessment is a common route towards WORKSTEP, more recently regulations have been introduced to permit service providers conduct assessment and receive direct referrals. In addition, the regulation that an individual must have a measured reduced percentage output compared to non-disabled colleagues is no longer required. WORKSTEP offers places in 145 local authority or voluntary body 'sheltered' factories. These factories, recently re-titled 'supported' factories, operate on a wage subsidy principle. Contracts awarded to supported factories are termed 'reserved contracts' and are protected by an EU Directive which states *'Member states may reserve the right to participate in public contract award procedures to sheltered workshops or provide for such contracts to be performed in the context of sheltered employment programmes where most of the employees concerned are handicapped persons who, by reason of the nature or the seriousness of their disabilities, cannot carry on occupations under normal conditions. The contract notice shall make reference to this provision'* (Office of Government Commerce, 2006¹⁴). Contract notification such as the OJEU notice must state that the contract is 'reserved for sheltered workshops under Article 19 of the Directive' thereby ensuring that only organisations with more than 50% of employees having disabilities may apply for the tender.

More recently, WORKSTEP is moving towards integrated employment options and now offers supported placements with local 'host' employers through approximately 200 local authorities and voluntary bodies. These schemes are currently being evaluated. In total, 4,200 individuals with disabilities participated in the scheme in 2004-2005, of which one third had intellectual disabilities, to a cost of £68.7 million.

REMPLOY Ltd is a publicly subsidised company which, in 2004-2005, comprised 83 sheltered factories throughout the UK and supported 9,400 individuals at a cost of £116 million. In 2001 the numbers of persons in REMPLOY factories was 6,684. Activities carried out in the factories include furniture making, packaging, library and print services etc. In addition to these supported factories a second, and developing strand entitled 'REMPLOY Interwork' provides community-based employment options where host companies receive wage subsidies based on productivity assessments. In 2001, 5,383 persons were supported by REMPLOY Interwork. The proportion of people with intellectual disabilities is higher in REMPLOY Interwork than REMPLOY factories.

In 2006, a five year funding envelop of £111 million per annum was agreed to enable REMPLOY support more individuals with disabilities into work. The strategy was triggered by three factors: (1) Government policy favouring inclusive employment options (2) a National Audit Office report which noted low levels of progression from REMPLOY factories into open employment and which recommended greater focus on the more cost-effective Interwork programme (3) the

¹⁴ Office of Government Commerce (2006) Supported Factories & Businesses. OGC guidance on reserved contracts in the new Procurement Regulations.

rising cost and recurrent financial losses of REMPLOY. Following an evaluation of REMPLOY in 2006 (PriceWaterhouseCooper, 2006)¹⁵ Government supported a programme of closure or merger, without compulsory redundancies, of REMPLOY factories. The closures have generated considerable debate with service providers typically supporting the closure of the factories, while unions are typically opposed. REMPLOY is seeking to place 20,000 persons with disabilities in mainstream employment by 2011. To date, a total of 29 factories have been either merged or closed without any compulsory redundancies which, according to REMPLOY's Annual Report, has '*significantly reduced the losses in our factory-based businesses*' (REMPLOY, p4)¹⁶

New Deal for Disabled People (NDDP) This programme is delivered through registration with a Job Broker accessed via Jobcentre Plus. Supports include sourcing and applying for jobs and ongoing support during the first six months of employment. Job Brokers work closely with employers to maximise the likelihood of job retention. As with other New Deal programmes, it is likely that these programmes will merge under the umbrella of the Flexible New Deal programme in 2009. In 2004-2005 57,800 individuals participated in this programme at a cost of £37.5 million.

Access to Work Schemes are managed via the Jobcentre Plus agencies and provide supports to individuals with disabilities who can work without financial subsidy but who require personal supports. If a community-based job is sourced via a Disability Employment Advisor, Access to Work funding to a maximum of £25,000 is available to provide supports to the employee. This funding may be used to undertake physical adaptations to the workplace, to provide personal aids (e.g. seating, reading machines) and for on the job supports (e.g. transport to & from work). 34,800 people were supported on this programme in 2004-2005 to a cost of £55.8 million.

Job Introduction Scheme offers 6 weeks of additional funding to employers and is typically used to finance a trial period prior to the offer of a contract of employment. In 2004-2005 approximately 2,300 people with disabilities participated in this scheme to a cost of £1 million.

Supported Employment Agencies do exist as a significant service in the UK but they are largely funded by local authority social service funding and not central Government mainstream funding, as is the case with programmes such as WORKSTEP and Access to Work. Estimates suggest that approximately 4,000 individuals may be engaged in supported employment.

IDEA Programme In November 2008, DWP published a consultation document on the reform and combination of a number of employment schemes. Improving Disability Employment Advisory Services (IDEAS) sees the merger of three existing programmes, WORKSTEP, the Job Introduction Scheme and Work Preparation into a new scheme based on three core modules:

Module 1 – replacing the Work Preparation scheme, this scheme will provide a three month training module with a 'plan of action' outcome.

Module 2 – a one year programme (scaled back from 24 months) to source jobs and provide initial onsite support.

Module 3 – long-term support for 3-5 years (scaled back from open ended) this module provides long-term maintenance, review and top-up support.

¹⁵ PriceWaterhouseCooper (2006) REMPLOY – Review of Future Business Options
<http://www.dwp.gov.uk/publications/dwp/2006/remploy/>

¹⁶ REMPLOY (2008) REMPLOY Review: Building on Success in 2008.
http://www.remploy.co.uk/_assets/downloads/pdfs/remployreview.pdf

This new programme will see the transfer of over 200 separate contracts currently delivering WORKSTEP programme to approximately 11 regional contracts. The proposed funding model is 50% for delivery and 50% for outcome (a job). There is concern that specialist service providers supporting those with more significant needs may be pushed out of the market as contracting arrangements are currently unclear.

1.8 A changing welfare system

The radical overhaul of the benefits system in the UK has resulted in the establishment of the **Department of Work and Pensions** (DWP). The DWP is a merger of two existing bodies in the UK, the Department of Social Security and the employment division of the Department of Education and Employment. The DWP aims 'to help individuals achieve their potential through employment'.

As of October 2008, DWP is phasing out a number of its traditional benefits to the new **Employment and Support Allowance** (ESA). These benefits include the four main disability related benefits; (1) Long-term Incapacity Benefit (IB), (2) Disability Living Allowance (DLA) (3) Severe Disability Allowance (SDA), and (4) Income Support Disability Subsidy (IS-DS). Since 2008, ESA will replace IB and over the next three years will steadily replace SDA, DLA and IS. These benefits are detailed in Appendix B. In addition to these 'disability specific' employment benefits, there are generic benefits which may also be accessed by people with disabilities. These include (1) Income Support, (2) Jobseekers Allowance (3) Working Tax Credit and (4) the newly established Employment and Support Allowance (ESA). These benefits are also detailed in Appendix B.

The reform of the benefits system will re-assess all existing beneficiaries of disability benefits for eligibility to the new Employment and Support Allowance. The Green paper emphasises that, for the vast majority, ESA is a temporary benefit prior to employment and reflects Government policy that '*Quite simply, we want everyone who can work to work*' (Green paper, p.5). Those who qualify for ESA will, from October 2008, be assessed via a new medical assessment termed the **Work Capability Assessment** (WCA). WCA is an 11 item checklist that focuses on a person's abilities rather than its predecessor which assessed a person's disability. The change in focus is underpinned by a strategy of employment as opposed to benefit receipt. Once deemed eligible for ESA, individuals are assigned to one of two categories; Work Related Activity Group or the Support Group. Those in the Work Related Activity Group are required, by law, to engage in a personalised back-to-work programme (formerly Pathways to Work) and are sanctioned if they fail to participate. Those in the Support Group are guaranteed a higher basic rate of benefit than they would receive if on Long-term Incapacity Benefit (IB) and may participate in the back-to-work programme on a voluntary basis. The Support Group is targeted at those with more severe levels of disability.

One of the most radical elements of the new welfare reforms currently rolling out across the United Kingdom is the commissioning of outcome-based contracts by Jobcentre Plus. 'Prime Contractors', large service providers with the resources to front load the cost of job seeking, compete by tender for these contracts. Sub-contractors, typically at local level, are then contracted by the Prime Contractor to deliver specific elements of service delivery. The focus on outcomes has led to concerns about the 'parking' of more challenging job applicants¹⁷. Parking refers to the allocation of minimal resources to those who are deemed least likely to be

¹⁷ Social Market Foundation (2008) Flexible New Deal: Making it work.
<http://www.smf.co.uk/assets/files/resources/Flexible-New-Deal.pdf>

successfully placed in positions of employment. The practice of 'creaming', assisting those closest to the labour market at the expense of others because they carry the greatest profit, is incentivised by a system that rewards outputs over processes. There is growing concern that the change in commissioning practice does not incentivise service providers to transfer the surplus obtained by sourcing employment for less challenging job applicants to subsidise those who require greater supports.

1.9 Key Points

- Anti-discrimination legislation provides protection for employees with disabilities but no longer includes reference to mandated 'quota' levels.
- Recent welfare reform merge welfare and work services for those with and without disabilities while ensuring that those with disabilities receive additional supports where required.
- Changes to the commissioning of services places the onus on service providers to front end the cost of job seeking and receive remuneration on securing positions of employment.
- The financial losses associated with Sheltered Workshops have resulted in a policy of closure in favour of integrated models of employment.
- Reform of the benefit system sees the introduction of a universal benefit which provides people with more severe disabilities the voluntary option of engaging in employment related programmes

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1.10 Current statistics

Census 2000 identified 33,153,211 people with disabilities resident in the United States who were aged between 16 years and 64 years, the traditional 'working age'. Of these, the total in employment was 18, 525,862. At the time of the census the proportion of working age persons with disabilities in the United States was 55.8%.¹⁸

1.11 Legislation

Some of the key relevant legislation relating to the employment of persons with disabilities in the United States includes:

- Social Security Act 1935
- Rehabilitation Act 1973
- Americans with Disabilities Act 1990
- Individuals with Disabilities Education Act 1990
- Workforce Investment Act 1998
- Ticket to Work and Incentive Improvement Act 1999

Federal legislation for integrating people with disabilities into the workforce initially focused on the provision of supports for war veterans. The **Social Security Act 1935** provided the first authorised funds for the vocational rehabilitation of civilians. The **Rehabilitation Act 1973**¹⁹ aimed to develop and implement vocational rehabilitation and independent living programmes for people with disabilities. The Act provides for the funding of rehabilitation centres designed to provide, among a range of services, vocational rehabilitation for people with disabilities. The Act states *"Congress finds that work is a valued activity – as a group, individuals with disabilities experience staggering levels of unemployment and poverty. Individuals with disabilities, including individuals with the most significant disabilities, have demonstrated their ability to achieve gainful employment in integrated settings if appropriate services and supports are provided."*

This early legislation led to a civil rights approach culminating in the **Americans with Disabilities Act 1990**²⁰ (ADA) which focuses on the removal of discriminatory practices against people with disabilities. ADA defines disability as *"a physical or mental impairment that substantially limits one or more major life activities of such individual or a record of such an impairment or being regarded as having such an impairment"*. ADA prohibits discrimination against employees working in entities of 15 or more employees. The provisions of the Act apply to private employers, state and local governments, employment agencies, labour organisations and labour management committees.

The **Individuals with Disabilities Education Act** (IDEA) was enacted in 1990 and has undergone a number of revisions. The Act protects the rights of students with disabilities by ensuring access to free and appropriate education services, regardless of ability. In addition to granting equal access to students with disabilities, the Act includes provision for transition services, amended in the 2004 version of the Act to comprise *"a coordinated set of activities for a child with a disability that is designed to be within a results-orientated process, that is focused on*

¹⁸ <http://www.dol.gov/odep/pubs/fact/stats.htm>

¹⁹ <http://www.ed.gov/policy/speced/leg/rehabact.doc>

²⁰ <http://www.ada.gov/pubs/adastatute08mark.htm>

improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment); continuing and adult education, adult services, independent living, or community participation".

The **Workforce Investment Act 1998** (WIA) aims to consolidate workforce preparation and employment services into a unified system. Title 1 of the Act provides a framework for the delivery of services at local and state level to all job seekers, including those with disabilities. All services are provided centrally via a One-Stop service (outlined below) of training and employment. To receive federal funding under WIA states are required to submit plans to the Department of Labor. An evaluation by the Rehabilitation and Research Training Centre (RRTC) identified significant variability across the policies and strategies outlined in these plans.

The Ticket to Work and Incentive Improvement Act (1999) (TWWIIA) was heralded as representing a significant opportunity for increasing the employment of people with disabilities. The legislation provided for two key measures; (1) the establishment of the Ticket to Work Program which aimed to modernise employment related services offered to people with disabilities (outlined below) and (2) a health care component aimed at expanding health care coverage so that people with disabilities may join the labour force without fear of losing medical care benefits. This legislation was revised in 2008.

1.12 Rehabilitation & Employment Programmes

Social Security Administration (SSA) is an independent federal agency that administers social security benefits. The two primary welfare benefits available to people with disabilities are Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI). SSI is eligible to those of low-income who have disabilities and whose earned income record is insufficient to have created a work history. These payments are derived from the federal treasury. SSDI is eligible to those who have a work history and is derived from a trust fund created by the worker's taxes. SSA offer special provision for those on SSI and SSDI who take up positions of employment. These provisions aim to reduce the impact of working status on SSI and SSDI benefits and provide for certain costs, such as transport or adaptations which can be offset against tax. Unfortunately the fear of losing benefits, and in particular medical insurance cover, is a persuasive argument for many to limit their earnings (Inge et al, in press). In 2006, for example, 7.6% of SSI recipients were in employment (Butterworth et al., 2008)²¹.

The Ticket to Work and Work Incentive Improvement Act 1999 aimed to provide all recipients of SSI and SSDI with greater choice in selecting services. The **Ticket to Work Program** gives people with disabilities the right to choose their job training, employment placement and other services from a list of SSA approved providers. These providers are termed Employment Network (EN) providers and can be approached by a person with a disability on presentation of a 'ticket'. ENs develop an Individual Work Plan (IWP) or Individual Plan for Employment (IPE) for each participant, the outcome of which is a secured position of employment. The ticket represents a payment between SSA and the EN based on this outcome, that is a position of employment. Once the beneficiary reaches remuneration for employment in line with expectation, the EN can request payment from SSA at an agreed

²¹ A recent commentary by the National Disability Council on the merits of Work Incentives is presented in Appendix C.

outcome or 'interim' outcome stage. Ticket to Work is a voluntary scheme and benefit recipients who choose not to avail of Ticket to Work are still eligible for services that are otherwise provided through their Vocational Rehabilitation agency (outlined below).

By 2008²², over 10 million Tickets were issued, of which almost 200,000 were assigned to state Vocational Rehabilitation agencies and 14,000 to private ENs. The participation rate, at below 2%, and the domination of Vocational Rehabilitation agencies were contributing factors to a revision of the scheme by the SSA in 2008. These revisions aim to encourage more providers to register as ENs, provide greater flexibility in funding mechanisms and improve the coordination of federal, state and local services. Most specifically, the revisions permit ENs to receive payments earlier in the employment process.

The Ticket to Work and Work Incentive Improvement Act 1999 also sought to provide those returning to work greater access to healthcare coverage, in particular Medicaid coverage. The possible loss of healthcare coverage is a major disincentive to those entering the work force. The **Medicaid Buy-in Program** offers Medicaid coverage to people with disabilities in employment whose earnings exceed the allowable limits for regular Medicaid. This programme removes the disincentive to work by protecting this much sought after health care coverage. In addition, for those who had stopped receiving benefits due to work earnings, but who then find themselves unable to work again due to disability, an **Expedited Reinstatement** incentive allows them to revert to benefits without having to complete a new application. Another Medicaid initiative emanating from the Ticket to Work and Work Incentive Improvement Act is the **Medicaid Infrastructure Grant** system which award grants of up to \$500,000 to states who introduce programmes which 'enhance employment options for people with disabilities'.

The Workforce Investment Act has mandated the establishment of **One-Stop Career Centres** in all US states. The centres provide training and employment services to all job seekers, including those with disabilities, and have been operating in most states since 2001. One-Stop centres are governed by state and local Workforce Investment Boards and consist of a number of mandated partners including disability specific employment services such as Vocational Rehabilitation agencies (outlined below). One-stop centres provide supports to many individuals with disabilities who do not qualify for VR services but who can benefit from core employment services. WIA regulations specifically state that individuals who reach the criteria for VR services may choose not to avail of these services but rather to use core services thereby making them eligible for a wider range of federal training and employment services outside of the VR system. In an attempt to increase the representation of people with disabilities in these programmes, the Department of Labor and the Social Security Administration jointly created the **Disability Program Navigator** (DPN). In 2008, a total of 450 Disability Navigators were employed in 30 states. Disability Navigators, who have training and expertise in the field of disabilities, are employed by the Workforce Investment Board of their state to assist One-Stop centres support people with disabilities. Despite these attempts to increase the participation of persons with disabilities in One-Stop Centre programmes, criticism remains that rigorous performance standards regarding the numbers of persons served and placed by these centres challenges participation by people with disabilities (Inge et al., in press).

The Rehabilitation Services Administration (RSA) division of the Office of Special Education and Rehabilitation Services (OSERS) is mandated to fund a **Vocational**

²² http://www.hdadvocates.org/_files/Ticket2Work/22

Rehabilitation (VR) agency within each state to support people with disabilities obtain employment and engage in independent living. As such, Vocational Rehabilitation agencies are the federal Government's key response to the employment of people with disabilities. Under the provisions of the Rehabilitation Act, each state's VR agency is obliged to develop a state plan of services to secure funding. Since the enactment of the Workforce Investment Act 1998 the role of state VR agencies has expanded and agencies are expected to liaise closely with many state and federal agencies (such as the Statewide Independent Living Councils) when designing, implementing and evaluating employment programmes. VR services include eligibility determination for services, assessment of vocational needs, development of an individual plan for employment, coordination of service and post-employment services. These services are provided to over one million persons with disabilities. Each year approximately 600,000 individuals complete VR programmes and are defined as 'closed cases'. Closures are defined as 'closure with or without employment outcome after receiving services' (these closures were formerly known as Status 26 and Status 28 respectively). Vocational Rehabilitation employment closures are typically signed off when an individual is employed for at least 90 days. It is important to note that in 2001 the Rehabilitation Service Administration withdrew 'sheltered employment' as a successful rehabilitation outcome.

The definition of those who qualify for VR supports is much narrower than the broad definition of disability used in ADA. Essentially, only those whose disability is considered to impact on their ability to obtain and maintain employment are eligible for VR services. Approximately 12% of those registered with VRs have intellectual or developmental disabilities (ID/DD). Given the fact that resources are typically insufficient to meet demand, an '*Order of Selection*' applies whereby those with the most significant disabilities are prioritised for services.

VR agencies frequently purchase services from **Community Rehabilitation Providers**²³ (CRPs) who are typically able to provide more intensive services than are provided by VR agencies. Those referred to CRPs from VRs should be offered a choice of providers and the opportunity to visit each one prior to agreeing arrangements to receive services. CRPs are the major source of employment and day services for people with intellectual and developmental disabilities in the US; a population group who are estimated to comprise approximately 80% of those availing of this service. Throughout the US 8,100 CRPs provide a broad range of services funded by both state and federal monies.

CRP services can be classified into four key categories: (1) integrated (supported) employment (2) facility-based (workshop) employment (3) facility-based non-work and (4) community-based non-work. These are variously defined but typically included:

(1) (Community-based) Integrated employment – competitive employment at an integrated job site *or* self employment *or* enclave/mobile crews (where groups of employees with disabilities work together on site or move to multiple work sites while receiving continual supports).

(2) Facility-based employment – employment in a facility where most people have disabilities with ongoing supports and supervision. Termed sheltered

²³ Metzel, DS, Boeltzig H, Butterworth J, Sulewski JS Gilmore DS (2007). Achieving community membership through community rehabilitation provider services: are we there yet? *Intellectual and Developmental Disabilities*, 45, 3, 149-160

work or extended employment. Typically the business is owned and operated by a service provider who supports and pays employees.

- (3) Facility-based non-work – typically this service includes day habilitation, medical day care and day care activity programmes. These services are provided in settings where most people have disabilities.
- (4) Community-based non-work - this service is largely recreational and is carried out in settings where most people do not have disabilities. Activities include general community activities, volunteer activities, recreation and leisure.

1.13 Current Trends in Service Provision

Integrated employment: The move towards integrated employment in the United States is supported by numerous pieces of legislation such as the Rehabilitation Act, the Americans with Disabilities Act, the Individuals with Disabilities Education Act and the Ticket to Work and Work Incentives Improvement Act. It is also supported by Medicaid Waiver funding, numerous evidenced-base research papers and statements of endorsement by organisations such the Arc of the United States.

Supported employment is a model of integrated employment whereby individuals with disabilities work in integrated settings with the support of a job coach. Within the typical supported employment model, the support of a job coach is gradually withdrawn until the person is engaged independently in employment. A considerable evidence-base now exists illustrating the cost efficiencies associated with supported employment²⁴ when compared with facility-based employment.²⁵ These studies reveal that, over time, supported employment generates fewer costs, primarily due to the nature of the service whereby support diminishes with time. In addition, studies have reported that regardless of the severity or number of disabilities, supported employment has been found to be cost-effective for all individuals. This finding supports the '*Order of Selection*' policy which mandates that individuals with the most severe disabilities are the first to receive services. An underlying assumption in many cost benefit studies is that the costs associated with sheltered employment remained stable over time. Cimera's (2008) review of twenty costings studies does not, however, support this claim. Rather findings indicate that cumulatively, while the costs of supported employment declined, the costs of sheltered workshops was not stable, as predicted, but rather increased with time. The author concludes that for every one person supported within a sheltered workshop setting, three supported employment places could be funded within the community.

Despite the policy support and ongoing evidence in favour of integrated employment, segregated services continue to outpace the growth of integrated options such as

²⁴ Supported employment was introduced as a federal programme with the authorisation of the Rehabilitation Act Amendments in 1986. The original target population for supported employment programmes was 'individuals with the most severe disabilities for whom competitive employment has not been an option and for whom ongoing support services are essential to perform competitive work (Federal Register June 24, 1992).

²⁵ Cimera RE (2008). The cost-trends of supported employment versus sheltered employment. *Journal of Vocational Rehabilitation*, 28, 15-20.

supported employment (Rusch & Braddock, 2004)²⁶. In fact, segregated employment services in the US receive four times the financial resources (488 million USD) than integrated employment services (108 million USD) and the trend, according to Rusch & Braddock (2004) is toward further growth in the segregated adult services. The authors comment *'despite the growth of supported employment we have underestimated the size and strength of sheltered workshops, adult work activities centres and adult day care programmes'* (p.240)

Facility-based or extended employment programmes emerged from the deinstitutionalisation of individuals with disabilities and are defined by VR regulations as *'work in a non-integrated or sheltered setting for a public or private nonprofit agency or organisation that provides compensation in accordance with the Fair Labor Standards Act'* (34 CFR 361.5(b)(19)). Inge et al.,(in press)²⁷ note that *'individuals with more significant support needs typically are referred to adult activity centres; while those with perceived potential for work are assigned to extended employment services. One of the most frequently cited reasons for why people with more significant disabilities are not referred to integrated competitive employment is that they are perceived as 'not ready' to leave extended employment/facility-based programs. The belief is that people with significant disabilities can learn work and social skills in segregated settings to prepare them for work in the competitive labor market'* (p.3).

Facility-based programmes essentially focus on the development of skills that are deemed to be required for an individual to enter the world of work. Individuals participating in these programmes can be paid wages based on their productivity via a mechanism of Special Wage Certificates. The **Fair Labor Standards Act Section 14 (c)** permits people with disabilities to be paid a 'commensurate wage', which is based on an individual's productivity, no matter how limited, to that of an experienced worker who does not have a disability. This special or commensurate wage can be less than the minimum wage. An employee, for example, who is deemed to achieve 25% productivity rates of a worker who does not have a disability, would receive 25% of the hourly rate. Section 14 (c) does not apply unless a person's disability actually impairs his/her earning capacity. As such, the fact that an employee has a disability is not, in and of itself, sufficient to warrant payment under the provision of a Special Wage Certificate.

Inge et al's (in press) survey of (n=700) CRPs identified reasons why individuals were maintained in facility-based settings. The overwhelming majority of respondents (87%) endorsed items relating to the fact that some individuals require the type of supports that can only be provided in segregated settings. Other reasons included the need for pre-work training, the preference of families, and transport difficulties associated with accessing integrated work sites. The authors comment that these findings reflect a belief that some individuals who are in Section 14 (c) programmes are unable to earn a minimum wage. Perhaps surprisingly, CRP respondents, when asked to endorse facilitators of community employment, did not strongly endorse the option of 'closure of facility-based workshop'. Rather, for these respondents, facilitators of community employment included the individual's preference for open employment and the provision of appropriate supports to staff

²⁶ Rusch FR, Braddock D (2004). Adult Day Programs versus Supported Employment (1988-2002): Spending and Service Practices of Mental Retardation and Developmental Disabilities State Agencies. *Research and Practice for Persons with Severe Disabilities*, 29, 4, 237-242.

²⁷ Inge KJ, Wehman P, Revell G, Erickson D, Butterworth J, Gilmore D (in press) Survey Results from a National Survey of Community Rehabilitation Providers Holding Special Wage Certificates (in press) *Journal of Vocational Rehabilitation*

and persons with disabilities transition from segregated to integrated work environments.

Facility-based non-work services include but are not limited to psychosocial skills training, activities of daily living, recreation, and/or professional therapies such as occupational therapy, physical and speech therapy. These services may be referred to as 'day habilitation', 'medical day care' and 'day activity programs'. There is no work component to these services.

Community-based non-work²⁸ services vary in definition but are defined by the Institute for Community Inclusion as non-job-related supports focusing on community involvement such as access to public resources (recreational/educational) or volunteer activities; typically identified as Community Integration or Community Participation Services. Community-based non-work includes all services that are located in the community, (rather than facility-based) and do not involve paid employment of the participant. These services are ill-defined in terms of standards such as the minimum number of hours to be spent in the community, the maximum group size, the minimum staff:individual ratio etc. A review of community-based non-work services identified the following activities: transportation to activities, volunteering, group exploration of the community, individual education programmes and community recreation programmes. While these programmes are open to those in employment, they are largely availed of by those who are not in employment.

1.13.1 National Trends in Integrated and Segregated Services

Butterworth et al (2008)²⁹ examined nationwide data collected over a twenty year period by the Institute of Community Inclusion, University of Massachusetts on day and employment services for people with intellectual and developmental disabilities. The data clearly illustrate that a greater number of individuals are supported in facility-based employment, earning sub-minimum wage, than in integrated employment. Those who are in employment are disproportionately represented in low wage settings when compared with persons who do not have disabilities. Specifically, the report highlights that while the numbers of those in integrated settings increases, the numbers participating in facility-based work and non-work options has increased at a greater pace over the last decade. The authors comment that the expansion of community-based non-work services now competes with supported employment options despite the poor defined role and aims of this service (Sulewski et al, 2006).

Data from 1996 identified 412,602 individuals in receipt of day or employment services from state ID/DD program agencies. This figure increased to 566, 895 in 2007. This increase is reflected in the figures for those in integrated employment which have risen from 98,829 to 115, 293 over the same time period. These figures, however, conceal a decline in those participating in employment. While 20.3% of individuals were supported in employment in 2007, this figure is below that recorded in 2001 when employment figures peaked at 24%.

The figures for those in facility-based settings reveal an overall decline from 72% in 1996 to 53.4% in 2007. Again, the figures should be interpreted with caution as they conceal a more than doubling of participation rates for those engaged in

²⁸ Sulewski JS, Butterworth J & Gilmore DS (2006) Community-based non-work services: Findings from the National Survey of Day and Employment Programs for People with Developmental Disabilities. *Research to Practice*, 42, 1-4

²⁹ Butterworth J, Smith FA, Cohen Hall A, Migliore A & Winsor J (2008). *StateData: The National Report on Employment Services and Outcomes*. Institute for Community Inclusion (UCEDD), University of Massachusetts, Boston.

community-based non-work, from 12.5% in 1996 to 31% in 2007. In fact, in 2007 community-based non-work services accounted for a total of 41.8% of state ID/DD agency funding. The growth in this service model is surprising given the limited data on the structure, activities and outcomes of this service (Sullivan et al., 2004)³⁰ Butterworth et al (2008) note considerable variation in the provision of services across states. They note that four states report less than 15% of persons in facility-based settings. In contrast, a further four states report serving more than 40% of individuals in integrated settings. The authors conclude *'data from these states suggest that individual states have the ability to institute policies and practices that support improved employment outcomes'*. This observation has resulted in the Institute for Community Inclusion identifying a number of states as 'high performing' models of best practice.

1.14 High performing states

New Hampshire, Colorado and Washington are identified by the Institute for Community Inclusion as 'high performing' states in relation to the high rate of individuals with ID/DD who participate in integrated employment. Clear goals push this agenda. New Hampshire, for example, ceased funding for new facility-based programmes in 1984 and received grant funding from their Vocational Rehabilitation agency in 1985 to begin the closure of existing sheltered facilities.

Evidence from Colorado³¹, a national leader in integrated employment in the 1990s illustrates how, in the absence of clear goals, momentum waned. By 1997, a number of contributing factors impacted negatively on the numbers of people with disabilities entering community-based employment. These factors included the loss of a number key staff who had promoted employment options, the abandonment of a moratorium on funding sheltered options and the withdrawal of funds for training. A key driver in this change however was a statewide systems change which eliminated previous financial incentives supporting integrated employment, while incentivising the growth of the new service option, community-based non-work. A strategic plan developed in 2002 aimed to reverse this trend and commenced with the development of a consensus definition on 'community employment'. The definition states that community employment is 'one-person, one-job arrangements within typical businesses with wages paid by the employer at a prevailing wage, and which includes regular meaningful interaction with non-disabled persons'.

Finally, Washington's³² progression in this field is largely attributed to the introduction of values based training emphasising the importance of employment. In addition, strong links with the university sector and consistent support from local stakeholders have resulted in locally based services which are employment focused and a perception of facility-based training as temporary options. Considerable investment is spent on ongoing employment related training.

³⁰ Sullivan J, Boeltzig H, Metzger DS, Butterworth J, Gilmore DS (2004) The National Survey of Community Rehabilitation Providers FY2002-2003 Report 2: Non-work services. Research to Practice, 10, 3, 1-6.

³¹ Winsor J, Butterworth J, Cohen A (2005) Innovations in Employment Supports; Colorado's State Division for Developmental Disabilities. Research to Practice, July 2005, Boston: Institute for Community Inclusion

³² Butterworth J & Cohen A (2003) Innovations in Employment Supports: Washington State's Division of Developmental Disabilities. Research to Practice, August 2003 Boston: Institute for Community Inclusion

In reviewing these 'high performing' states, the Institute for Community Inclusion has identified commonalities in their approach to employment. Clear goals and performance indicators regarding the number of people to be placed in integrated employment are present; there is strong leadership driving these goals; interagency collaboration is high; training and collaboration with the university sector are encouraged; there is devolution of authority to those at local level; there is an agreed ethos.

1.15 Key Points

- Anti-discrimination legislation provides protection for employees with disabilities and promotes integrative approaches.
- Welfare reforms mainstream employment services while providing specific supports to those with disabilities as required.
- People with disabilities are supported in their choice of service provider.
- An 'Order of Selection' policy prioritises services for those with more severe levels of disability.
- Service providers front end the cost of job seeking and receive remuneration at interim and final stages of securing positions of employment.
- Policies support the removal of disincentives to employment, such as the potential loss of medical insurance.
- Funding to segregated work settings exceeds that to integrated work settings fourfold.
- Legislation permits those in segregated settings to earn a commensurate wage which may be less than the minimum working wage.
- Community non-work programmes, while ill-defined, are a growing sector within day care services for adults with disabilities.

1.16 Current statistics

Among the OECD nations Norway has one of the highest percentages of the population outside the workforce due to illness or disability³³. The disability pension rate is among the highest in the OECD and while a significant proportion of individuals move into the benefits system every year, few on disability benefits return to work. As a consequence, the proportion of persons on disability benefits is high. The sharp growth in the numbers on benefits over the past twenty years, combined with an ageing population provides the backdrop for a number of policy reforms introduced in recent years.

The Labour Force Survey (2005) estimates that approximately 438,000 individuals with disabilities of working age (16 years – 66 years) reside in Norway. Of these, approximately 204,000 are estimated to be in employment. These estimates indicate that almost 47% of those with disabilities who are of working age are employed. This compares with an employment rate of 77% among the general population.

1.17 Legislation

It should be noted that the list of legislation cited below is minimal and reflects the constraints of sourcing legislative information in the English language:

- Rehabilitation White Paper 1991-1992
- Working Environment Act 2005
- Work, Welfare and Inclusion White Paper 2006

The **Rehabilitation White Paper** stated that traditional models of integrating people with disabilities into the workforce placed undue emphasis on the role of financial subsidies to employers. Models of open and integrated employment, such as supported employment, were promoted.

The **Working Environment Act**, amended in 2005, mandates the employer to provide a safe working environment. Failure to comply results in sanctions which may extend to the closure of a business. The Act has few obligations for employers regarding those with long term disabilities. There is no quota system for the employment of persons with disabilities and the employer is obliged only to provide financial support to an employee for the first 16 days of illness absence. Thereafter the public insurance scheme takes over. A general law to combat disability discrimination is in preparation and may be in operation in 2009³⁴.

The **Work, Welfare and Inclusion White Paper** 2006 reforms aim to increase the proportion of 'marginalised' persons within the labour market. Approved in 2007, the White Paper is currently being implemented. Key elements include the introduction of strategies to prevent workplace illness; improved coordination between vocational, medical and education programmes; a new rehabilitation allowance to replace a range of vocational, medical and disability benefits available from the National Insurance Scheme (NIS); and supplementary assistance to vulnerable groups such as those with 'reduced functional capacity'.

³³ Widding, S (2007). Assisting the Disadvantaged Groups. Peer Review.

³⁴ Tossebro, J (2007) <http://www.disability-europe.net/content/pdf/NO%20Employment%20report.pdf>

1.18 Disability, Rehabilitation & Medical Benefits³⁵

All persons who are either resident or working as employees in Norway are compulsorily insured under the National Insurance Scheme. Those so insured are entitled to a range of benefits including disability pension, rehabilitation benefits and medical benefits. Benefits are financed from a range of state, employee and employer sources.

Disability benefit comprises basic benefit, time-limited disability benefit and disability pension. An insured person with a disability is entitled to basic benefit (granted if the disability involves significant extra expenses) and attendance benefit (granted if the individual requires nursing type supports). Time-limited benefit is granted to those whose working capacity is permanently reduced by 50% due to disability and who were insured with entitlement to pension benefits for a period of at least three years. Disability pension consists of a basic and supplementary benefit. This benefit is available to those born with a disability or who acquired their disability prior to the age of 26. In the case of partial disability, the benefit is proportionally reduced. Recipients of disability benefit who reach 67 years of age automatically transfer to an 'old-age' pension. In 2007, an estimated 330,000 individuals were in receipt of disability benefit.

Rehabilitation benefit is available to those 18-67 years who have been insured for three years prior to making their claim. It is a requirement that the individuals in receipt of this benefit must present evidence that they are engaging in active treatment to increase their working ability. **Vocational rehabilitation allowance** refers to benefits that cover living expenses while an individual participates in vocational rehabilitation programmes. To qualify for this benefit, the individual must have his/her illness or disability certificated by a medical practitioner. In addition, the individual must be willing to engage in job seeking or a labour market programme. An estimated 180,000 persons were estimated to be in receipt of vocational rehabilitation benefits in 2007.

All insured persons are entitled to free accommodation and treatment in Norwegian hospitals. **Medical benefits** contribute to a share of costs for non-hospital health care such as visits to the general practitioner. Some groups are exempt from cost sharing such as those under 12 years of age.

1.19

1.20 Recent Reforms³⁶

The **Ministry of Labour and Social Inclusion** is responsible for the legal framework and the allocation of resources for labour market programmes operating in Norway. Implementation of the programmes is the responsibility of the **Directorate of Employment and Welfare Administration**. The day to day planning and delivery of programmes is undertaken at county level by NAVs (outlined below).

³⁵ The Norwegian Social Insurance Scheme (2009)
http://www.regjeringen.no/upload/AID/publikasjoner/veiledninger_og_brosjyrer/2009/Pensjons_systemet_eng.pdf

³⁶ Ministry of Labour and Social Inclusion (2008) Vocational Rehabilitation in Norway. Conference 15-16 September 2008 Vocational Rehabilitation and income security for people with work incapacities within the framework of integrated flexicurity approaches, Norway.

Current reforms aim to reduce the distinction between those with and without disabilities seeking work in terms of the allocation criteria for different labour market and rehabilitation programmes. A more inclusive workplace approach is a priority. There are four main areas of reform (1) inclusive workplaces (IWL) (2) Merged Employment and Welfare Administration (NAV) (3) Work, welfare and labour inclusion reforms and (4) pension reforms.

(1) In June 2006, **More Inclusive Work Life** (IWL), established via a tripartite agreement between Government and social partners, was extended for a second four year period. The IWL agreement identifies the workplace as the main arena for achieving integration and encourages cooperation between the employee, the employer, the medical physician and the NAV (outlined below) officer in securing permanent positions of employment. The main objectives of the original IWL agreement were to (1) reduce sickness absence (2) increase the proportion of persons with disabilities in the workforce and (3) increase the retirement age. Evaluations of the first four year period (2001-2004) indicated that most progress had been made on reducing sickness absences. The second four year period therefore concentrates on increasing the employment rate of those with disabilities. In general this agreement is perceived to have had minimal success at a macro level but some local success is apparent.

(2) From July 2006 a new Employment and Welfare Administration (**NAV**) was established by merging a number of existing public bodies, the Public Employment Services (PES), the National Insurance Administration (NIA) and the municipal Social Assistance Offices. NAV is responsible for implementing labour market policies and represents a merging of employment and welfare administration. These 'One Stop Shop' NAV services will, by 2010, be established in all 434 municipalities and 19 counties to provide coordinated services for the public. Those seeking to claim disability benefit must participate in a vocational rehabilitation scheme which assesses their ability to work.

(3) A series of ongoing reforms aim to improve the coordination and effectiveness of programmes. Currently four contracting mechanisms are in place: (1) public and private education and training institutions deliver assessment and labour market courses (outlined below) (2) educational courses provided under the vocational rehabilitation system are not reimbursed by NAV as Norway's public schools, colleges and universities do not charge fees (3) employers providing work experience in private enterprises are directly contracted by NAV and receive wage subsidies (4) sheltered enterprises are also directly contracted by NAV and receive a fixed rate per approved programme.

(4) A comprehensive reform of the pension system is in preparation. The reform aims to ensure that, in light of an ageing population, pensions for older persons are sustainable and transparent. The disability pension system is likely to be adjusted to incorporate these reforms.

1.21 Rehabilitation & Employment Programmes

The rehabilitation system in Norway is based on three broad approaches (1) inclusive workplaces (2) medical rehabilitation for people with long term disabilities (3) vocational rehabilitation for job seekers.

(1) **Inclusive workplaces** promote the prevention and early intervention of any health difficulties experienced by employees. The NAV Workplace Centres provide supports to employers by engaging with employees on sick leave absence and providing financial supports.

(2) **Medical rehabilitation** is a publicly financed benefit available to those who are on long term sickness absences and who require further medical and rehabilitation supports. Most supports are provided by health services with NAV providing a range of benefits including health service reimbursements and disability benefits. Recipients of medical rehabilitation benefits may also avail of vocational rehabilitation services.

(3) **Vocational rehabilitation** for job seekers is publicly financed by NAV. Typically the service is provided to those with a history of unemployment and/or sick leave and medical treatment. If the individual does not return to work following one year period on medical rehabilitation a second year may be granted. Typically vocational rehabilitation services commence approximately three years post sick leave.

At present there are two main categories of labour market programmes. Some programmes are used by all job seekers requiring assistance, while others are reserved for those with disabilities. In general programmes are temporary and aim to support the individual to secure employment through work experience, training or education. The main types of temporary programmes for vocational rehabilitation are:

Assessment programmes evaluate an individual's capacity to work and provide guidance on employment options. These courses are mainly operated in sheltered settings and run to a maximum three month duration. In 2007, approximately 2,000 individuals participated in this form of vocational rehabilitation. Providers are either sheltered enterprises (defined below) or other providers who are contracted by NAV.

Training schemes and educational courses aim to provide job seekers with the relevant skills for employment. Education and job training in open settings is prioritised. Those participating in training schemes typically receive benefits and allowances to cover living costs. Reimbursement for those providing the training varies according to the content and cost of the service provided. These vocational rehabilitation options can be classified into three main types:

(1) **Labour market courses** are provided in classroom settings by public or private educational and training suppliers and are of a ten month duration. In 2007, 1,600 individuals enrolled in these courses.

(2) A further 22,000 individuals enrolled in generic **educational courses** provided in schools and universities for a maximum of three year duration. Most of these courses are provided in college or university settings and, while the application procedure is essentially the same as any other candidate, participants on this scheme must be over 26 years to ensure they do not compete with those entering the system generically.

(3) **Sheltered work options** are typically delivered through approximately 100 Vocational Rehabilitation Enterprises (Arbeidsmarkedsbedrifter), or 230 Sheltered Enterprises (Vekstbedrifter) nationwide³⁷. The term sheltered enterprise is commonly used to refer to both services. Sheltered enterprises are established in the format of a company with shareholders.

³⁷ These service providers may also provide open employment options such as supported employment.

The main shareholder is the local municipality and local NGOs. These enterprises are non-profit and are eligible for certain tax exemptions. Sheltered Enterprises operate under legislation set down by the Ministry of Labour and Social Inclusion. NAV are the referral source for these services and are responsible for determining the number of places and price per place within these enterprises. In 2007, an estimated 9,300 individuals were employed in sheltered enterprises.

These workshops, also termed **Labour Market Companies (AMB)** typically operate a three phase system. Phase 1 (termed AMB 1) is an assessment service and is used to determine an individual's suitability for employment. Phase 2 (termed AMB 2) is a rehabilitative phase where training is provided. Some courses provide the opportunity to obtain specific qualifications. This phase may last up to two year duration. During this time trainees are paid a typical wage and may undertake work experience placements in the open market. At the conclusion of this phase employees are expected to progress into open employment with assistance of the AMB and NAV. There is an expectation that 50% of individuals participating in phase 2 will progress to either open employment or generic education courses. The final phase (AMB 3) is termed a sheltered phase and provides services for those who are deemed unlikely to gain employment in the open market. These trainees are likely to continue their employment in the AMB setting while possibilities for open employment must be continually assessed. A maximum of 50% of trainees can remain at phase 3.

The current AMB structure was developed in the 1990s and succeeded in increasing progression rates to employment from 5% to over 30%³⁸. AMBs' funding, in the form of rehabilitation grants and wage subsidies, are variable by year with the highest funding being allocated to those in phase 1 and the least to those in phase 3.

Work Experience options provide individually coached placements in either sheltered or open work settings. Those in sheltered settings receive intensive supervision in work training and social skills for a maximum of ten months, with an option of an additional 10 month extension. Those in open work settings perform 'regular tasks' under supervision for a maximum duration of three years. Participants in both schemes receive social security benefits and employers receive a subsidy. In 2007, 12,100 individuals participated in these courses in both sheltered and open settings.

Supported Employment (termed arbeid med bistand **AMB**) is offered in open work settings and provides job seeking, job coaching and follow up to the employee alongside guidance and supports for employers. The duration of this programme is three years but may be extended for an additional six months where the participant is transitioning from an education facility or from an institutional facility. Participants may receive a wage (with or without subsidy), a benefit or a subsistence allowance. Employers receive a subsidy to cover the wage of the job coach and other operating costs. Approximately 5,400 individuals participated in this programme in 2007. Norway has completed a number of evaluations of its supported employment scheme. These evaluations indicate that some 50% of participants have reverted to benefits following participation in the scheme. A recent set of

³⁸ Evans, M. (2000) History of Supported Employment and Vocational Rehabilitation Measures in Norway. Employment Disability Unit, Dundee.

quality standard for supported employment have been developed by the QUIP project. The proportion of labour market measures spent on supported employment in Norway, at 23%, is, according to OECD, higher than the EU average of 17%.

Wage subsidy programmes operate whereby the participant works in open employment, receiving an ordinary wage in a full time position of employment with working conditions comparable to other employees. The employer receives a subsidy for this programme. This programme typically runs over one year but may extend to three when an individual's capacity for work varies over time.

Participants in these training schemes may access more than one scheme and as such '**programme chains**' are common. The outcome of employment however is only met for a proportion of these participants. Those who do not succeed in finding employment, typically those with more significant disabilities, may be offered places at VTA workshops for indefinite duration with a caveat that possibilities for future employment should be continually assessed.

1.22

1.23 Key Points

- Anti-discrimination legislation provides protection for employees with disabilities.
- There is no mandatory quota for the employment of people with disabilities.
- The number of disability benefit recipients is high.
- Inclusive work life policies prioritise people with disabilities.
- Welfare and employment services have merged to establish local one stop shop centres.
- Rates of transfer from sheltered to integrated settings have risen and are high by international standards.
- Supported employment is available nationwide and has been extensively evaluated.

Appendix A

Disabled Person's (Employment) Act 1944 – Revised Version³⁹

Part 15: Provision for registered persons who are seriously disabled of employment, or work on their own account, under special conditions

(1) Facilities may be provided as specified in this section for enabling [F1disabled persons] who by reason of the nature or severity of [F2their disability] are unlikely either at any time or until after the lapse of a prolonged period to be able otherwise to obtain employment, or to undertake work on their own account (whether because employment or such work would not be available to them or because they would be unlikely to be able to compete therein on terms comparable as respects earnings and security with those enjoyed by persons engaged therein who [F3do not have a disability]), to obtain employment or to undertake such work under special conditions, and for the training of such persons for the employment or work in question.

(2)The nature of the facilities to be provided under this section shall be such as the Minister may determine, and the Minister may with the approval of the Treasury make arrangements for the provision thereof by [F4any company, association or body], which appears to the Minister to be able and willing to provide the requisite facilities in an efficient and proper manner.

[F5(2A)The only kind of company which the Minister himself may form in exercising his powers under this section is a company which is—

(a)required by its constitution to apply its profits, if any, or other income in promoting its objects; and

(b)prohibited by its constitution from paying any dividend to its members.]

(3)The objects of any company to be formed for the purposes of this section may include all such objects as appear to the Minister to be requisite for enabling it to act effectively for those purposes, and any such company shall be constituted so as to enable all or any of its operations to be controlled by the Minister or persons acting on his behalf as may appear to the Minister to be requisite.

(4)The Minister, or with his authorisation any such company association or body as aforesaid providing facilities under this section, may defray or contribute towards expenses incurred by persons for whom facilities are provided under this section in travelling to and from the place where they are employed or work or where training is provided, and may make payments to or in respect of such persons, up to such amounts as the Minister may with the approval of the Treasury determine and in such manner as he may determine.

(5)Payments may be made by the Minister—

(a)in respect of the expenses of the formation and incorporation of any such company as aforesaid

(b)to any such company association or body as aforesaid in respect of expenses incurred by them in providing facilities under this section, or of expenses incurred by them under the last preceding subsection, and

³⁹ http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1944/cukpga_19440010_en_1#pb2-l1g12

(c) to any local authority in respect of expenses incurred by them under any enactment conferring powers on them in that behalf in providing under arrangements made between the Minister and the authority facilities approved by him for any of the purposes mentioned in subsection (1) of this section, in defraying or contributing towards expenses incurred by persons for whom such facilities are so provided in travelling as mentioned in the last preceding subsection, or in making payments to or in respect of such persons,

up to such amounts as the Minister may with the approval of the Treasury determine.

[F6(5A) For the purposes of this section—

(a) a person is a disabled person if he is a disabled person for the purposes of the Disability Discrimination Act 1995; and

(b) "disability" has the same meaning as in that Act.]

(6) Expenses incurred by the Minister under this section shall be defrayed out of moneys provided by Parliament.

Appendix B

Main disability benefits in the UK:

- (1) Long-term Incapacity Benefit. Eligibility for Long-term Incapacity Benefit includes an assessment of ability (termed Personal Capability Assessment) and financial status. Recipients must have been unable to work for a period of at least 28 weeks and, when in receipt of IB, are defined as 'not economically active'. A number of pilot initiatives have been introduced following the establishment of the DWP in an attempt to increase the numbers of IB recipients returning to work. These pilots have evaluated the impact of: increased levels of support from Personal Advisors, who are charged with assisting recipients find work; greater collaboration with other Government bodies such as the NHS; greater return to work incentives such as a Work Credit for £40 per week over a one year period; and a financial subsidy of up to £300 for practical items such as clothing.
- (2) Disability Living Allowance is a non-contributory benefit available to 'people who are so severely disabled physically or mentally that they have either personal care needs or mobility needs or both'⁴⁰. The benefit has two components a 'care' and a 'mobility' component, for those who require personal care or assistance with mobility respectively. An important element of this allowance is that it can be carried forward into employment thus providing a financial incentive for recipients to seek employment.
- (3) Since 2001, Severe Disability Allowance has no longer been available to new claimants. Those in receipt of SDA prior to this date do however continue to receive this benefit.
- (4) Income Support (Disability Subsidy) – see Income Support below.

Generic Benefits that can be accessed by people with disabilities:

- (1) Income Support: those who are eligible for Income Support receive financial support without having to sign on the live register as being unemployed. Target groups include those with disabilities, those who are carers and lone parents. Recipients must work less than 16 hours per week and may be eligible for other benefits while in receipt of Income Support.

⁴⁰ http://www.dwp.gov.uk/advisers/hb5/dla/dla_1.asp

- (2) Jobseekers Allowance provides financial support to those who are regarded as being economically active and seeking work and therefore is not commonly accessed by those with more severe levels of disability. Recipients are expected to make independent efforts to find work and benefits are allocated on evidence of this effort. The new White Paper, Raising Expectations, specifically targets this group by introducing a specialist provider to assist the recipient after six months of job seeking.
- (3) Working Tax Credit is an additional tax benefit eligible to those who work 16 hours a week or more. The tax benefit can be claimed by any person on low income and has an enhanced element for people with disabilities.
- (4) Employment and Support Allowance (ESA) was introduced on 27th October 2008 and is targeted at those who would have qualified for Incapacity Benefit or Income Support on the grounds of disability. Those who qualify for ESE "will either be assigned to the Work Related Activity Group (and consequently will be expected to take steps to prepare for a return to employment) or the Support Group (where the most severely disabled people will receive a guarantee of a higher basic rate of benefit and can still volunteer for back-to-work support if they wish) (Green Paper, p.69).

Appendix C

Work Incentives – a call for their elimination

National Disability Council (2008)⁴¹ comment that work incentives have largely failed to encourage those with disabilities enter the workforce. Three issues are identified:

1. Work incentives are overly complex and therefore require considerable expertise to achieve full compliance. A lack of comprehension of these schemes has resulted in considerable variation in their implementation.
2. Even when appropriately implemented, these initiatives fail to meet the needs of beneficiaries. In some instances the reduction of cash benefits renders a salary below the minimum wage. The low take up for many of these initiatives reflects their failure to meet the needs of their target group.
3. While health insurance may be retained in the short-term, the failure to protect the long-term retention of health benefits is a significant deterrent for potential candidates.

In light of these barriers, the National Disability Council call for the elimination of work incentives on an experimental basis over a 5-10 year basis thereby enabling recipients to earn without fear of losing essential benefits.

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http://www.ncd.gov/newsroom/publications/2008/Revised_NationalDisabilityPolicy_ProgressReport.html#40