

Provisions of the Disability Discrimination Act 2005

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THE PUBLIC SECTOR: PUBLIC FUNCTIONS, THE DISABILITY EQUALITY DUTY & LOCAL COUNCILLORS

IMPLEMENTATION DATE 4 DECEMBER 2006
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Note

The Disability Discrimination Act 2005 builds on and extends earlier disability discrimination legislation, principally the Disability Discrimination Act 1995. In this fact sheet, the earlier Act is referred to as the 'DDA', and the later Act as 'the DDA 2005'.

THE DISABILITY EQUALITY DUTY

Background

Despite the rights that exist under the DDA, ignorance, thoughtlessness and prejudice still result in institutional discrimination which adversely affects the lives of disabled people. Disadvantaged people are often unlikely to take legal action, which in any case only challenges the individual discrimination, not the outcomes across groups. Plus, those with duties under the DDA often only do the minimum required to avoid litigation, without looking at the outcomes of their policies.

The New Provisions

The DDA 2005 introduces a duty on all public bodies to promote equality of opportunity for disabled people. This means that they must take account of the needs of disabled people as an integral part of their policies, practices and procedures, and not as something separate or as a tag-on. They will have to have due regard to the need to:

- eliminate unlawful discrimination and disability-related harassment;
- promote equality of opportunity and positive attitudes to disabled people; and
- encourage disabled people to participate in public life.

These duties apply to anyone carrying out functions of a public nature. If a public body was perceived as failing to comply with these duties then anyone, including the DRC, could apply to the High Court for judicial review.

In addition to this, many public bodies, including Government departments and local councils, will be subject to specific duties, which will include having to produce a Disability Equality Scheme explaining how they intend to fulfil the duty to promote equality. This will mean that public bodies will have to think through the implications of the duty, and gather appropriate evidence to demonstrate the effectiveness of their schemes. They will also need to demonstrate that disabled people have been involved at the centre of planning their policies.

Compliance with these specific duties can be enforced by the Disability Rights Commission. If the DRC felt that a public body was failing to comply with one of these specific duties, it would be able to issue a compliance notice, followed by an application to a County Court for an order requiring the body to comply.

COVERAGE OF PUBLIC FUNCTIONS

Background

Public bodies, such as Government departments, local councils, and the police are currently covered by the DDA whenever they provide a service to the public (for example, a library or a sports centre) or in their capacity as an employer. But they are not currently covered whenever they carry out a function of government, such as assessing a benefit claim, issuing a licence, or carrying out an arrest.

The New Provisions

The DDA 2005 extends, as from 4 December 2006, the DDA to cover discrimination by public bodies when carrying out a function. This means that functions of government (with some exceptions listed below) will be covered. This means that, when carrying out their functions, public bodies:

- will not be able to treat disabled people less favourably,

which means that they will not be able to treat a disabled person differently simply because they have a disability; for example, a local council will not be able to refuse a trader's licence to a disabled person for a reason related to their disability ; and

- will have to make reasonable adjustments for disabled people.

For example this might mean the police having to make arrangements for a deaf person to have a BSL interpreter present to explain to the deaf person his rights.

This provision is similar to the duty to make reasonable adjustments that already exists for service providers and employers. For example, a tax-return form may have to be provided in Braille or large-print so that it can be used by a visually impaired person.

These provisions will apply to anyone carrying out functions of a public nature, even if they are in themselves a private company. For example, a private secure transport firm that is contracted by a prison to transport prisoners to and from court

Excluded Functions

None of the public authorities listed below are covered because to do so would either be inappropriate to their duties or compromise their ability to make laws or act independently.

Parliament

The Security Services

The Armed Forces when assisting GCHQ

The Courts or other bodies when carrying out judicial acts

Ministers carrying out legislative functions (includes members of the Scottish Executive and the National Assembly for Wales)

The Crown Prosecution Service when taking a decision whether to prosecute

LOCAL COUNCILLORS

The DDA 2005 also inserts a section into the DDA which makes it unlawful for a local authority (which includes the Greater London Authority) to discriminate against its disabled members when they are carrying out their official business. This new provision gives disabled local councillors similar rights not to be discriminated against for a reason related to their disability, and to have reasonable adjustments made for them, as do other disabled people who are covered by those parts of the DDA relating to employment - even though councillors are not employees of local authorities.

FURTHER INFORMATION

Directgov

The 'Disabled People' section of the Government website, Directgov, contains a variety of information for those with an interest in disability issues. From this site you can read more about the DDA and the DDA 2005, including some more information about the definition of disability, and there are links to the full texts of the DDA and the DDA 2005.

www.direct.gov.uk/disability

Advice and Guidance

The Government publishes statutory guidance, primarily to assist adjudicating bodies like courts and tribunals in deciding whether a person is a disabled person for the purposes of the DDA. This guidance will be updated to include the provisions described in this leaflet, but you can read the current guidance and the Disability Rights Commission's Codes of Practice on the DDA at:

<http://www.drc-gb.org/thelaw/practice.asp>

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