

UK legislation on disability

The Equality Act 2010 brought together a number of other pieces of legislation, applying them virtually unchanged from their original forms. In the case of disability issues, the former legislation included:

- The Disability Discrimination Act Part II (employment), Part III (goods and services), and Part IV - formerly known as the SEN and Disability Act [SENDA, 2001].
- The amendment to the Disability Discrimination Act (2006) which introduced the Disability Equality Duty.

The Disability Discrimination Act (DDA) imposes several requirements on educational institutions:

- An anticipatory duty to take into account the needs of disabled people in general (ie institutions must plan for those needs, not await applications from disabled people who have such needs).
- Institutions may not treat a disabled person less favourably than they would treat someone who has no disability unless this treatment can be justified (see below for the justifications).
- Institutions must make “reasonable adjustments” in order to meet the needs of an individual disabled person whether that person is a student or member of staff.

These requirements affect admissions, exclusions and the services provided (including all academic activities – see below for a full list) by the institution. If the institution fails to meet these obligations the disabled person affected may either request conciliation by the Equality and Human Rights Commission (EHRC), take a case to the county courts, or pursue both options. A complaint must be made within six months of the last incident of discrimination - this period can be extended if conciliation is attempted. A court case can result in substantial fines.

Colleagues may be interested to note that a review of the Australian case law under their Disability Discrimination Act (Adams and Brown, 2002) indicated that over 90% of cases were concerned with mainstream learning and teaching issues and not with physical access etc. Therefore academic and other staff may find themselves acting as witnesses in any court case which does arise.

Can less favourable treatment or not making a reasonable adjustment be justified?

There can be some justifications for either ‘less favourable treatment’ or for not making ‘reasonable adjustments’. These include (this is not a complete list):

- It would compromise academic standards.
- It would compromise other standards (requirements of certain professions).
- It would create a situation which is significantly detrimental to others.
- It would compromise health and safety requirements (requires specific situational assessment related to the individual disabled person).
- It is impracticable (due to building’s structure).
- The cost is too great (but the institution’s *entire* resources will be taken into account).

The adjustments made must take into account any request for confidentiality made by the disabled person, and it must meet their needs in the given situation. However the adjustment does not necessarily have to be in the form the disabled person would prefer (though of course that is desirable). A lesser adjustment may be acceptable, if the proposed adjustment would not be possible because the disabled person has asked for confidentiality.

Except where there has been a specific request for confidentiality, or for limited disclosure, the university is 'deemed to know' of a person's disability if it is either obvious, or if the person has told any member of staff or disclosed the information about their disability on any official documents (eg application forms, registration forms etc).

What services are covered by the DDA?

Services will vary from one provider to another. The examples following would all be covered under one or more sections of the DDA:

- Teaching, including classes, lectures, seminars, practical sessions, examinations and assessments.
- Field trips, arranging study abroad or work placements, outings and trips.
- Research degrees and research facilities.
- Informal/optional study skills sessions.
- Short courses, day or evening adult education courses, training courses, distance learning.
- Independent learning opportunities such as e-learning.
- Learning facilities such as classrooms, lecture theatres, laboratories, studios, dark rooms etc.
- Learning equipment and materials such as laboratory equipment, computer facilities, class handouts etc.
- Libraries, learning centres and information centres and their resources.
- Information and communication technology and resources.
- Placement-finding services, careers advice and training, careers libraries, job references.
- Job shops and employment-finding services.
- Graduation and certificate ceremonies.
- Leisure, recreation, entertainment and sports facilities.
- The physical environment and car parking.
- Chaplaincies and prayer areas, health services, counselling services, catering facilities, campus or college shops.
- Residential accommodation, accommodation finding services.
- Financial advice, welfare services.
- Commercial conference facilities.
- Commercial research or consultancy services.
- Services and facilities for staff.

The Disability Equality Duty for the Public Sector: What is it?

In December 2006 the Disability Discrimination Act (DDA) 1995 was amended to place a duty on all public bodies to promote disability equality. This affects all public bodies - from local councils to government departments, universities and hospitals. The Disability Equality Duty requires the public sector to actively promote disability equality and is similar to the duty to promote race equality under the Race Relations (Amendment) Act.

This is a positive duty which is intended to ensure that disability equality is built in at the beginning of a process, rather than adjustments being made at the end. It shifted the UK from having a legal framework which relies on individual disabled people complaining about discrimination to one in which the public sector becomes a proactive agent of change.

How does it operate?

The DDA sets out what is known as the General Duty. This means public services must have due regard to the need to eliminate unlawful discrimination and promote equal opportunities for disabled people. Public services must also work to eliminate harassment of disabled people, promote positive attitudes and encourage the participation of disabled people in public life. The key public bodies (government



departments, universities, colleges and many health and regulatory bodies) have a Specific Duty which provides a framework to use to meet the General Duty. The main element of this is the requirement to produce a Disability Equality Scheme. During the process key bodies must:

- Involve disabled people in producing the scheme and developing the action plan.
- Identify how they will gather and analyse evidence to inform their actions and track progress.
- Set out how they will assess the impact of their existing and proposed activities on disabled people.
- Produce an action plan for each three years, and review and make appropriate revisions to this scheme at least every three years. Institutions must report on their progress every year.

These key bodies must demonstrate that they have taken the actions they have committed themselves to, and achieved appropriate outcomes.

How is it enforced?

The Equality and Human Rights Commission has the power to issue compliance notices where it is satisfied that a public authority has failed to comply with its specific duties under the regulations. It can enforce the notices in the county or sheriff court.