



The Disability Discrimination Act 1995

Rights of Access; Goods, Facilities, Services and Premises

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PLASA Standards Office
www.plasa.org/standards

1 Introduction

There have been instances of uncertainty and confusion regarding the application of the Disability Discrimination Act 1995 (DDA) and how it affects PLASA members, not only in their own business, but also in providing services to clients who are applying the DDA to their own or other premises. To assist in the interpretation of the provisions of the Act these notes form a brief guide to Part III of the Act, which is concerned with rights of access to services.

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2 The Disability Discrimination Act 1995

2.1 Overview

The Disability Discrimination Act 1995 brought in measures to prevent less favourable treatment of disabled people on 2 December 1996. Further requirements to make reasonable adjustments in assisting disabled people came into force in 1999 and the remaining provisions requiring reasonable adjustments to physical features of premises will come into force on 1 October 2004.

The Act itself is laid out in eight parts:

Part 1. The meaning of disability

Part 2. Employment

Discrimination against employers

Enforcement

Discrimination by others

Premises occupied under lease

Occupational pension schemes and insurance services

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Part 3. Discrimination in other areas

Goods facilities and services

Premises

Enforcement etc

Part 4. Education

Part 5. Transport

Taxis

Public service vehicles

Rail Vehicles

Supplemental

Part 6. The National Disability Council

Part 7. Supplemental

Part 8. Miscellaneous

Backing up the eight parts are eight schedules giving further clarification on specific terms contained within the regulations.

To fully understand the DDA and how to apply its provisions it is vitally important to understand what is meant by the terms 'Disability' and 'Discrimination'. Who is classed as a disabled person and what constitutes discrimination?

2.2 Definitions

2.2.1 Disability

Part I of the DDA describes disability:

Subject to the provisions of Schedule 1, a person has a disability for the purposes of this Act if he has 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.

Schedule 1 breaks down this paragraph and explains in detail some of the meanings of this section of the Act.

Mental impairment is defined as that resulting from or consisting of mental illness, but only if the illness is a clinically well-recognised illness.

Long-term adverse effects are those where:

- the impairment has lasted at least 12 months
- the period for which the impairment lasts is likely to be at least 12 months; or
- the impairment is likely to last for the rest of the life of the person affected.

Impairment is to be taken to affect the ability of the person concerned to carry out **normal day-to-day activities** only if it affects one of the following:

- Mobility
- Manual dexterity
- Physical co-ordination
- Continence
- Ability to lift, carry or otherwise move everyday objects
- Speech, hearing or eyesight
- Memory or ability to concentrate, learn or understand

- Perception of the risk of physical danger
- Severe disfigurement

Other persons who will also be classified as disabled would be those receiving medical treatment that would have a substantial effect on that person's ability to carry out normal day-to-day activities, along with those who are known to have progressive conditions such as Cancer, Multiple Sclerosis, Muscular Dystrophy or infection by the Human Immunodeficiency Virus (HIV).

2.2.2 Discrimination

Part III of the Act describes the meaning of discrimination:

- ... a provider of services discriminates against a disabled person if –*
- (a) for a reason which relates to the disabled person's disability, he treats him less favourably than he treats or would treat others to whom that reason does not or would not apply; and*
- (b) he/she cannot show that the treatment in question is justified.*

3 Rights of Access; Goods, Facilities, Services and Premises

3.1 General

Part III of the Act applies to any person or any organisation or entity that is concerned with the provision in the United Kingdom of services (including goods and facilities) to the public or a section of the public. Similarly, the Act applies to disabled people who use, or seek to use, the services so provided, whether as customers, buyers, shoppers, consumers, clients, patrons or service users. The Act says it is unlawful for a service provider to discriminate against a disabled person by:

- refusing to provide (or deliberately not providing) any service which it offers or provides to members of the public;
- providing service of a lower standard or in a worse manner;
- providing service on worse terms; or
- failing to comply with a duty to make reasonable adjustments if that failure has the effect of making it impossible or unreasonably difficult for the disabled person to make use of any such service.

Among the services which are covered are those provided to the public by local councils, government departments and agencies, the emergency services, charities, hotels, restaurants, pubs, banks, solicitors, accountants, public utilities, sports stadia, leisure centres, theatres, cinemas, shops, petrol stations, places of worship, courts and hospitals. This is a selection of some of the most obvious public service providers but is by no means exhaustive and there will be other areas that will fall under the Act.

There are exemptions to Part III, notably education establishments such as primary and secondary schools, youth services and further and higher educational establishments. Not exempt however are private educational facilities for adult education and other services supplied by schools beyond their educational role (such as hiring school premises for outside events, conferences, etc.) Services not available to the public, such as those provided by a private club for example, will not be covered by Part III. However, should the club offer any services to non-members then the Act would apply.

3.2 Duty to Make Reasonable Adjustments

Service providers are already required to make 'reasonable adjustments' to:

- **practice, policy or procedure** which makes it difficult for disabled people to make use of its services;
- provide an **auxiliary aid or service** if it would enable (or make it easier for) disabled people to make use of its services; or
- provide a **reasonable alternative** method of making its services available to disabled people where a physical feature makes it impossible or unreasonably difficult for disabled people to make use of the services.

And from 1 October 2004, where any physical feature makes it difficult or impossible for the disabled to use the service, the service provider will have to take reasonable steps to either:

- remove the feature; or
- alter it so that it no longer has that effect; or
- provide a reasonable means of avoiding it; or
- provide a reasonable alternative method of making the services available.

3.3 Adjustments to Practice, Policy and Procedure

The way in which a service provider allocates and provides his service will be seen as the policy and practice of establishing and delivering that service to the customer.

- What a service provider actually does (**practice**).
- What a service provider intends to do (**policy**).
- How a service provider plans to go about it (**procedure**).

Example:

*Following a refurbishment of a number of rooms that made the rooms fully available for use by the disabled, a hotel's reservation policy and procedure needed to be changed. The normal **practice** was to allocate the rooms to guests on a first come first served basis. This however could see the non-disabled guests occupying the rooms equipped for the disabled and the disabled having to struggle with rooms that were not suited to their needs. The obvious course of action was to alter this **policy** and introduce a **procedure** that allocates the rooms according to needs or keeping a number of rooms free for the disabled. This is likely to be seen as a reasonable step for the hotel to make.*

3.4 Duty to Provide Auxiliary Aids or Services

The Act requires that service providers take reasonable steps to provide auxiliary aids or services if this would enable or make it easier for a disabled person to access the service that is being offered to the non-disabled.

Again the Act does not list what constitutes auxiliary aids, but guidance on the Act has given some indication regarding auxiliary aids. Anything employed to give the disabled assistance in accessing the service can be described as auxiliary aids or services. This might include:

- signs that will be easier to read;
- assistance from the staff;
- voice enhancement systems;
- induction loop system;
- infrared system;
- documents in large or clear print, Moon or Braille;

- information on audiotape;
- telephone services to supplement other information;
- accessible websites;
- subtitles;
- videos with BSL (British Sign Language) interpretation;
- text phones, telephone amplifiers and inductive couplers; and
- audio-visual fire alarms.

This is not an exhaustive list but offers some indication of what constitutes an auxiliary aids or service.

What is an appropriate auxiliary aid or service will vary according to the type of service provider, the nature of the services being provided, and the requirements of the disabled customers or potential disabled customers wanting to use the service.

Example:

To ensure that the service offered by a Building Society met the requirements of the DDA, the Society installed a hearing aid induction loop system in the main lobby area to assist those customers who wore hearing aids. Larger signage and voice announcements augmented the queuing system for the cashiers desks and Braille information leaflets are made available.

3.5 Duty to Provide a Reasonable Alternative

The Act includes a duty to provide a *reasonable alternative* method of making its services available to disabled people where a physical feature makes it impossible or unreasonably difficult for disabled people to make use of the services.

If a physical feature makes it impossible or difficult for the disabled to use any service that is offered to the public, a service provider must take reasonable steps to:

- remove the feature;
- make alterations to remove the effect;
- provide a reasonable means of avoiding the feature; or
- provide a reasonable alternative method of making the service available to disabled people.

(A physical feature is defined as any feature arising from the design or construction of a building occupied by the service provider; any feature on the premises or any approach to, exit from or access to such a building; any fixtures, fittings, furnishings, furniture, equipment or materials in or on such premises; and any other physical element or quality of land comprised in the premises occupied by the service provider.)

Physical features will include kerbs, exterior surfaces and paved areas, car parking areas, steps, building entrances and exits emergency exits, internal and external doors, gates, toilets, public facilities, lifts and escalators, floor coverings, signs, furnishings, and temporary or movable items such as equipment and display racks.

Example:

The ability to access goods sold in a shop is severely hampered by the positioning of shelves by the entrance door. To enable unimpeded access to wheelchair and sight impaired customers the shopkeeper re-located the shelves allowing improved access. However, due to the age design and differing floor levels of the shop not all areas were accessible so the shopkeeper introduced a practice of assisting the disabled by locating and bringing the requested goods to the disabled shopper, therefore employing an alternative service to overcome the restriction.

Service providers will have to have made *reasonable adjustments* to the physical features of their premises by 1 October 2004, when the DDA comes into force fully. Unlike Part II of the Act, which only applies to undertakings with 20 or more employees, Part III will apply to all service providers regardless of size.

4 Hearing Enhancement Systems

4.1 Disability Discrimination Act

One particular area causing confusion and misunderstanding among PLASA members is whether there is a requirement to install hearing enhancement systems, induction loop systems in particular. There is no explicit requirement in the Disability Discrimination Act 1995 to install hearing enhancement systems.

4.2 Building Regulations

Approved Document M to the Building Regulations includes the following note:

Disability Discrimination Act 1995 and the Disability Discrimination (Employment) Regulations 1996

Following the guidance in this Approved Document is not a requirement for satisfying duties under Sections 6 and 21 of the Disability Discrimination Act 1995, to make adjustments to premises. It should be noted, however, that under Regulation 8 of the Disability Discrimination (Employment) Regulations 1996 an employer will not be required to alter any physical characteristic included within a building which was adopted with a view to satisfying the requirement of Part M of the Building Regulations and met those requirements at the time the building works were carried out and continues to substantially meet those requirements.

Paragraphs 3.12 to 3.17 deal with Aids to Communication:

Aids to Communication

Design Considerations

- 3.12 *In order to have the full benefit of attending a public performance or playing a proper part in discussions, a person with impaired hearing needs to receive a signal some 20dB above that received by a person with 'normal' hearing. Whichever system is selected it should also be able to suppress reverberation, and audience and other environmental noise.*
- 3.13 *The two systems most commonly used are loop induction and infra-red systems. The former depends on a signal from a microphone being passed to an amplifier which directs a current through a loop around the relevant space. A magnetic field which is generated is picked up by a listener's hearing aid and is converted into familiar sound. The infra-red system radiates invisible light which is picked up by a personal receiver, demodulated and converted into familiar sound.*

- 3.14 *A loop induction system may allow sound to spill beyond the boundary of the loop, and therefore, for those that need it, confidentiality is more difficult to achieve. That possibility is far more remote with the infra-red system, but the listener is required to wear a stethoscope for reception.*

Provisions

- 3.15 *Requirement M2 will be satisfied if aids to communication are provided at booking and ticket offices where the customer is separated from the vendor by a glazed screen and in large reception areas, in auditoria and meeting rooms in excess of 100m² in area.*
- 3.16 *Such systems should incorporate features which afford to a person wearing a hearing aid, the benefit of receiving sound without loss or distortion through bad acoustics or extraneous noise.*
- 3.17 *It is for the building owner to decide which system better suits the layout and use of the building and to plan accordingly.*

4.3 British Standards

There is a British Standard code of practice on the *Design of buildings and their approaches to meet the needs of the disabled people* (BS 8300:2001), which provides guidance on good practice in the design of buildings so that they are convenient to use by disabled people. The standard applies to transport and industrial buildings, commercial premises, healthcare facilities, entertainment and recreation buildings, religious buildings, educational buildings, hotels and many similar premises.

Clause 9.3 deals with audible communication systems. In particular, 9.3.2 states:

A hearing enhancement system, using induction loop, infrared or radio transmission, should be installed in rooms and spaces used for meetings, lectures, classes, performances, spectator sport or films, and at service or reception counters where the background noise level is high or where glazed screens are used.

The clause goes on to describe the technologies briefly and the circumstances in which each type of enhancement system should be used, bearing in mind economy, interference, confidentiality and spill. There are also recommendations for signage.

4.4 Summary

The Disability Discrimination Act requires reasonable adjustments to be made to premises by 1 October 2004, but does not explicitly require hearing enhancement systems to be installed. Approved Document M to the Building Regulations does require aids to communication in ticket offices, reception areas and larger meeting rooms. Any building that is specified to meet the recommendations of BS 8300:2001 should incorporate particular kinds of hearing enhancement system in many areas.

5 References

The Disability Discrimination Act 1995, ISBN 0105450952, is available free on the HMSO website at www.legislation.hmso.gov.uk/acts/acts1995/Ukpga_19950050_en_1.htm or to purchase on paper from the Stationery Office for £9.55 - tel: +44 20 7873 9090; fax: +44 20 7873 8200; web: www.clicktso.com.

The Disability Rights Commission (DRC) is an independent body set up by the Government to help secure civil rights for disabled people. The DRC publishes *Code of Practice: Rights of Access; Goods, Facilities, Services and Premises* and a range of practical information and case studies. These are all available in a number of formats on the DRC website at www.drc.org.uk, or from: DRC Helpline, Freepost MID 02164, Stratford-upon-Avon, CV37 9BR; tel: 08457 622 633; fax: 08457 778 878; textphone: 08457 622 644; e-mail ddahelp@stra.sitel.co.uk.

BS 8300:2001 *Design of buildings and their approaches to meet the needs of disabled people. Code of practice* is published by the British Standards Institution for £154. PLASA members can buy through the PLASA Standards Office to get a 25% discount off this list price. Otherwise contact BSI, 389 Chiswick High Road, London, W4 4AL, UK; tel: +44 20 8996 9001; fax: +44 20 8996 7400; email: info@bsi-global.com; web: www.bsi-global.com.