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**the disability foundation**

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# **Disability Discrimination Act (1995)**

**Factsheet No. 8**

The Disability Foundation is a Registered Charity Number 1076761

This factsheet gives an outline of the main components of the Disability Discrimination Act (DDA). The DDA is divided into five parts:

- Definition of a disabled person
- Employment
- Access to Goods and Services
- Education
- Transport

## **Part I: Definition**

To enable people to remove barriers they need to have an idea of who is covered under the DDA and what constitutes a disabled person. Under the Act a disabled person is defined as:

'someone with a physical or mental impairment which has a substantial and long term effect on his/her ability to carry out normal day-to-day activities'.

A 'substantial and long term effect' is not a minor or trivial effect but is something that goes beyond the normal differences of ability that exist between humans. To fit into this category you must have a disability that is likely to last at least 12 months. This is to exclude things like broken limbs or infections that do not have a lasting effect. If you have a recurring disability, for example relapsing and remitting Multiple Sclerosis or cancer, to fit into the long-term category the duration of remission should usually be less than 12 months.

## **Part II: Employment**

This deals with employment provision for disabled people and came into force in December 1996. There are some professions that are exempt from the Act for obvious reasons. These are Prison Officers, Firemen, the Armed Forces, members of some types of police forces, employees who work outside Great Britain and those who work on ships, aircraft or hovercrafts. This means that they can refuse to employ a person because they have a disability.

The Act covers many aspects of employment including:

- Applying for jobs
- Transfer to new appointments
- Promotion
- Training courses
- Redundancy
- Dismissal
- Access in the workplace

An employer is seen to have discriminated against an employee if:

- They have treated him/her less favourably without justification than other employees or applicants because of his/her disability.
- By not making reasonable adjustments without justification.

The Disability Discrimination Act does not stop employers asking about a person's disability but only if it is relevant to a person's ability to do the job or to find out what adjustments must be made.

### Part III: Access to Goods/Services

This deals with access to goods and services that are offered to the general public. It aims to give disabled people the right to access everyday services others take for granted. The final stage of the duties that services providers must adhere to came into force in October 2004.

The phrase 'reasonable adjustments' comprises of a series of duties:

- changing practices, policies and procedures
- providing auxiliary aids and services
- overcoming a physical feature by removing the feature, altering it, avoiding it, providing services by alternative methods.

#### Employee Training

Some form of training must be provided to employees in how to deal with requests for a reasonable

#### What is Discrimination?

A disabled person can make a claim against a service provider if:

the service provider fails to do what is required under the act

the service provider makes it impossible or unreasonably difficult for that disabled person to access the service

the service provider cannot show that the discrimination is justified in relation to the disabled person

#### **Please note!**

Before going ahead with a claim you should complain to the service provider. It may be possible to overcome any discrimination or access issues as sometimes it is due to ignorance rather than purposeful acts.

### **Examples of Discrimination**

A guest house has installed an audio-visual fire alarm in one of its guest bedrooms to accommodate visitors who have a sensory impairment. To recover the costs of this, the landlady charges disabled guests a higher daily charge for that room, although it is otherwise identical to other bedrooms. This is unlikely to be within the law.

A wine merchant has a shop which is inaccessible to disabled people with mobility impairments. The shop runs its own delivery service to customers for an extra charge. In these circumstances home delivery might be a reasonable adjustment to make for disabled customers. The wine merchant could not then charge such customers for home delivery, even though it charges other customers for home delivery.

adjustment by disabled people. They should know how to use any auxiliary aids that are offered and be encouraged to acquire additional skills in serving disabled people, e.g. talking to hearing impaired people.

Other forms of training include making staff aware of the DDA and its provisions, creating a policy for dealing with disabled customers, ensuring staff follow this policy, having a customer complaints service and regularly evaluating the effectiveness of any policies.

Under the Act an employer is responsible for their employee's actions and so employers must be aware of how well staff are both trained and how well they are putting this training into practice. This can be done by regularly evaluating and monitoring staff and service provision.

### **Auxiliary Aids**

A service provider must take reasonable steps to provide auxiliary aids or services if this would enable (or make it easier for) disabled people to make use of any services which it offers to the public.

The duty to provide auxiliary aids/services requires the service provider to take steps that are reasonable to make them accessible. However, what might be reasonable for a large service provider (or one with substantial resources) might not be reasonable for a smaller service provider. The size of the service provider, the resources available to it and the cost of the auxiliary service are all factors to be considered.

### **Physical Features**

It is in the interests of both service providers and disabled people to overcome physical features that prevent or limit disabled people from using services. Although the Act does not suggest different options for overcoming a physical feature, it is recognised as good practice for a service provider to consider first whether a physical feature, which creates a barrier for disabled people, can be removed or altered before finding alternative methods for providing a service. This is because removing or altering the barriers

created by a physical feature is an "inclusive" approach to adjustments. It is also preferable to any alternative arrangements from the standpoint of the dignity of disabled people as it makes the services available to everyone in an equal way. In addition, an alternative method of service offers disabled people a different form of service than is provided for non-disabled people and is less inclusive.

### **Selling, Letting, Managing**

Those who are selling, letting or managing premises do not have to make adjustments to premises to make them more suitable for disabled people. However, persons managing or disposing of premises may also be service providers (for example, estate agencies, letting agencies). In that respect they will have to ensure that the services which they provide are accessible to disabled people.

A person providing this kind of service (e.g. landlord, letting agency) still cannot discriminate against a disabled person who is interested in a property. This includes the payment agreement; you cannot charge a disabled person higher rent than you would a non-disabled person, and you cannot refuse to let or sell a property to a person because of their disability. It is also not possible to evict someone solely on the basis of their disability.

It is unlawful for a person managing any premises to discriminate against a disabled person occupying those premises by subjecting them to any other unfavourable treatment covered under the Act.

Private homes are exempt under the Act, which means that non-disabled people do not have to adapt their homes to make them accessible to disabled people.

### **Victimisation**

Victimisation is a special form of discrimination covered by the Act. It applies whether or not the person victimised is a disabled person. In Part III of the Act, victimisation is treated as discrimination. Victimisation is unlawful if it occurs in relation to the provision of services or in relation to the selling, letting or

### **Examples of 'Physical Features'**

Display units at the entrance of a small shop restrict the ability of wheelchair users to enter. The owner decides that, without any significant loss of selling space, the display units can be repositioned elsewhere in the shop. This is likely to be a reasonable step for the shop to take.

A small self-service shop has goods on high shelving separated by narrow aisles. It is not practicable to alter this arrangement. The goods are not accessible to many disabled people. The shop decides to provide a customer assistance service. On request, staff locate goods and bring them to the cash till for a disabled customer. This is the provision of service by an alternative method, making the service accessible. This is likely to be a reasonable step for the shop to take.

## The Disability Rights Commission (DRC)

The DRC now does not exist and the new organisation that has taken over the DRC's responsibilities is the Equality and Human Rights Commission. They are now the contact if you think you have been discriminated against.

The Commission may be contacted at:

Freepost, MIDO  
2164, Stratford upon Avon, CV37  
9BR

Tel: **08457 622 633**

Fax: **08457 778 878**

Textphone:

**08457 622 644**

Website:

[www.equalityhumanrights.com](http://www.equalityhumanrights.com)

The Commission also deals with discrimination on the grounds of a person's race, sex, age, sexual orientation, religion and belief and human rights.

management of premises.

The Act says that a person is discriminating against another person (the victim) if he/she treats the victim less favourably than he/she would treat other people in the same circumstances because the victim has:

- brought proceedings under the Act (whether or not proceedings are later withdrawn)
- given evidence or information in connection with such proceedings
- done anything else under the Act
- alleged someone has contravened the Act (whether or not the allegation is later dropped)

This qualifies as discrimination under the Act regardless of whether the victim has a disability or not.

## Part IV: Education

This part of the Act requires educational services to provide information on access to prospective students who are disabled. It works alongside the Special Educational Needs (SEN) Code of Practice, the Education Act (1996) and The Disability Act (2001). All obligations under this Act came into force in September 2002 and all aspects of education and associated services, school trips and extra-curricular activities, are covered.

Schools cannot wait for a disabled pupil to actually start at the school before making some reasonable adjustments. They should be putting things in place anyway so they are ready if a disabled pupil wants to attend. They should also keep all their policies under review and be willing to adapt policies to the needs of disabled children. There is a clear expectation under the Education Act that pupils with statements of SEN should attend mainstream schools rather than special schools.

The main points of the legislation covering schools under Part IV of the Act are:

- no school can refuse admitting a disabled child because of their disability
- no school can prohibit a disabled child from doing

any class at school, this includes classes like P.E. The school must make reasonable adjustments to enable the child to join in unless it breaches health and safety

- no school can exclude a disabled child from any associated educational services like school trips because of their disability. The school has to make reasonable adjustments, for instance, on a residential trip an accessible hotel should be used
- no school can expel a disabled child because of their disability

A pupil is being discriminated against by the school if:

- the child is treated less favourably because of their disability
- the school has failed in their duty to make reasonable adjustments and so puts the pupil at a disadvantage

What is reasonable depends upon each individual case but when making adjustments the school can take into account the:

- money available to them
- need to maintain certain academic and other standards
- practicalities of the adjustment
- interests of the other pupils at the school
- health and safety of all pupils at the school, including that of the disabled pupil

### Planning Duties

There is nothing under the DDA that relates to school buildings and so the government has put in place some planning duties. This means that schools must have plans in place to ease access for disabled pupils by adjusting physical features of the school as well as make other adjustments. These duties cover all aspects of education and include all parts of the curriculum, extra-curricular activities, break and lunch times and school sports. There are actually three distinct elements that fall under the governments planning duties:

- improved access to the curriculum

### Disabled Children Entering Mainstream Schooling

There must be a mainstream school in each area that is accessible to disabled children.

Parents are able to choose which school, in the maintained sector, they would prefer their child to attend. The LEA should endeavour to make the necessary steps to enable the child to go to their chosen school unless:

the school is completely unsuitable for the child's age, ability, aptitude or SEN, or the placement would have a detrimental effect on the education of the other pupils,

or

the placement would affect the efficient use of resources at the school.

### Assistance at the School

There must be provision, from the Local Education Authority (LEA), of support and aids to enable a disabled child to attend the school if the school has been assessed as suitable.

There should be a Special Educational Needs Co-ordinator (SENCO) present to make sure all the child's needs are met.

The Local Education Authority (LEA) can also supply Learning Support Assistants (LSA) who will help the child directly throughout the school day.

As well as this, the teachers at the school should all be aware of a disabled child's needs.

- physical improvements to schools to increase access to education and associated services
- improved information in a range of formats to cater for disabled pupils

By 1 April 2004 all schools should have put forward a plan of improvements that would be done over the next three years. In 2007 they should submit to the LEA another three year improvement plan. This should continue until the school is accessible to all children, disabled or not.

## Part V: Transport

Bus stations, railway stations and other public transport infrastructure are already covered by Part III of the DDA. This means they have a duty to avoid discriminating against disabled people and make reasonable adjustments in matters such as timetables, booking facilities, waiting rooms and at airports, ferry terminals, coach and rail stations.

Part V covers technical standards for vehicle accessibility, i.e. bus, train, aircraft. It aims to bring vehicles within the civil rights framework of the Act and will extend the scope of the DDA in a number of other areas.

### **Buses**

All buses and coaches have needed to be accessible to disabled people since January 2005, although this excludes wheelchairs. The deadline for accessibility for wheelchair users is 2008.

There still seems to be problems with some peoples' attitudes towards disabled people. An example of this is, many bus drivers do not pull up close enough to the kerb for the electric ramp to detect the ground and so the ramp will not work. This may be due to a lack of understanding of the access needs of disabled people. Under Part III of the Act all drivers should have had some form of training to enable them to create an accessible and friendly attitude when dealing with disabled passengers. If anyone has any difficulty with a driver they should report them to the appropriate bus

depot, e.g. Arriva, First etc.

It is likely that in many areas the 2008 deadline will not be met and many say that it may be as late as 2020 before all bus services in the UK are accessible.

### **Trains**

Since January 1999 the rail system has had access standards that need to be applied. They only need to be applied to new trains entering the system with a view to it gradually becoming more accessible over time. It is hoped that by 2020 all old trains will have been replaced by the new accessible trains.

### **Trams**

All trams should be accessible to all disabled people because they are new. The trams and tram stops should have adaptations in place for people with a sensory, physical or learning difficulty. This includes the trams in Sheffield, Manchester, Leeds and London Docklands.

### **London Underground**

There is no time deadline for the underground to be accessible, except for the trains (see above). This is mainly because the service is 100 years old and some of the lines are extremely deep so putting lifts in safely is fairly difficult. Some of the stations though are accessible, especially on the Jubilee and Greenwich lines. Many of the stations in tourist areas of London, e.g. Covent Garden and Oxford Circus, are not accessible which makes it difficult for wheelchair users to get to these areas.

There are many adaptations for other disabilities already in place. All trains now have audible and visual information in stations and on trains. There are also induction loops at many ticket offices, colour contrast handrails, tactile strips and the staff have been trained to help anyone who needs their assistance around the station.

### **Taxis**

It has been unlawful for licensed taxi drivers in England and Wales to refuse to carry or make any extra charge for disabled people. The law as far as accessible taxis started with new taxis having to be wheelchair accessible from January 2002. It is hoped that all taxis will be accessible by January 2020. Most London Hackney Cabs are now accessible to wheelchair users and most of the drivers are very helpful. It is though still quite difficult for people in electric wheelchairs as they are often too large for a taxi.

Private hire cab companies are not covered by this part of the Act although many will have wheelchair accessible vehicles should anyone need it.

There are several duties that taxi drivers must adhere to under the Act:

### Insurance

Insurance companies have special rules under the act on how they treat disabled people.

They are able to treat a disabled person less favourably if they satisfy ALL of the following:

it is in connection with insurance business undertaken by the service provider,

it is based on information relevant to assessment of risk,

the information comes from a reliable source,

the less favourable treatment is reasonable after assessing the information and other relevant factors

- to carry disabled passengers, in their chairs if necessary, at no extra charge
- to carry a wheelchair at no extra cost
- to ensure a person travels safely and is reasonably comfortable
- to give assistance if required
- to help a person in and out of the taxi (not lifting)
- to load and unload any baggage and wheelchair

### **Aeroplanes**

All buildings associated with airports and the booking of tickets are covered under Part III of this Act. When you book your tickets it is imperative that you tell either the booking agency you are using or the airline directly about your disability and needs as it will make your trip smoother and more enjoyable.

The airport and airline staff should provide various services including help points to call for assistance, manual wheelchair users should be able to remain in their chairs until boarding the plane, wheelchairs should be available for use at the airport and assistance should be given in getting to their seat on the aeroplane.

If your medical condition means that you can only sit in certain areas of the plane, e.g. if more leg room is required, then you can pre-book a seat. Most airlines will ask for some supporting evidence before they will agree to it.

### **Justified Discrimination**

Treating a disabled person less favourably or failing to comply with the duty of reasonable adjustments can be justified in some instances:

- on health and safety grounds
- if the disabled person is incapable of entering into any kind of contract, whether it is a purchase agreement, finance agreement or opening a bank account (usually specific to learning disabilities)
- if the service provider would otherwise be unable to provide the service to the public
- in order to enable the disabled person to use the

service

- if there is a the greater cost of providing a tailor made service

### Health and Safety

A service provider must look to make reasonable adjustments with its health and safety policy. For example, if an evacuation procedure means disabled people are unable to access the property then a service provider must seek to change this procedure rather than just stating that for reasons of health and safety they are unable to deal with disabled people.

There must be a balance in the health and safety of a person so as not to completely restrict the movements or choices a disabled person can make. They are just as entitled to make the same choices and take the same risks as anyone else and within the same limits.

### Disabled Person Understanding Contracts

A trader is able to refuse to enter a contract with a disabled person if they feel that that person does not understand the terms because of their disability. This is mainly relevant to people with a learning disability or who have mental health problems. If the disabled person has another person acting on their behalf who can understand the terms then this does not apply.

### Service Provider Otherwise Unable to Provide Service

All disabled people must admit that there are some things that would be extremely difficult or impossible for them to do. An example of this is if you have mobility problems and go on a tour of a city; included in the tour is a walk along the city walls which involves climbing along narrow walkways. A tour guide may be justified in refusing to allow the disabled person on that part of the tour because all the extra assistance needed would prevent them from completing the tour.

### Providing a Lower Standard of Service

A service provider could be justified in providing a lower standard of service to enable a disabled person to use the service. A hotel makes the ground floor rooms accessible to disabled people as they are unable to put a lift in due to the structure and layout of

## Guarantees

There are also some special rules for guarantees under the DDA. This is due to that fact that some material goods can be damaged by disabled people above the level of damage expected by a provider.

Less favourable treatment is justified if ALL of the following are satisfied:

the service provider has provided a guarantee and damage has occurred for a reason relating to their disability,

the service provider has found damage above the level at which the guarantee would normally be made,

the refusal is reasonable in all situations of the case.

### Deposits for Goods and Services

Less favourable treatment is justified under the DDA for deposits for goods and services if ALL of the following conditions are satisfied:

the service provider provides goods or facilities requiring a refundable deposit if they are undamaged,

damage has occurred to goods for reasons relating to a person's disability,

the service provider refuses to refund some or all of the deposit because the damage is above the level that is normally allowed,

the refusal is reasonable in all circumstances of the case.

the building. These rooms though tend to be noisier and do not have the views but it is likely to be justified under the Act. This is because if they did not have accessible ground floor rooms many disabled people would be unable to use the service.

This though cannot be used as an excuse in providing an inferior service to disabled people and is only justifiable if all avenues have already been pursued.

### **Cost to Provide Service is Too Great**

It is possible to charge a disabled person more than another person for a service due to the fact that a tailor made service is more expensive. If a higher charge reflects the expense of meeting a disabled person's needs then it is likely to be justified under the Act. For example, a disabled person orders a bed that is specifically made to meet their needs of having a pressure relieving mattress. There is a higher charge for this bed because it is more expensive to make than a standard bed so the higher charge is justified.

## Part M

Since 1985 building regulations in England and Wales have required reasonable provisions to be made for disabled people to gain access to and use new buildings including extensions. Approved Document Part M of the Building Regulations (Access and Facilities for Disabled People), was extended in 1992 and again in 1999. It now applies to:

- New buildings
- Ground floor extensions to existing buildings but not to the existing buildings themselves

The aim of Part M is to ensure all people regardless of disability, age or gender are able to:

- Gain access to buildings and to gain access within buildings to use the facilities both as visitors and as people who live and work in them
- Use sanitary conveniences (bathrooms) in the principal storey of a new building or dwelling.

There are four parts to the document and they are as follows:

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- M1 - deals with the access and use of buildings and facilities
  - M2 - deals with access to extensions in buildings other than dwellings
  - M3 - deals with sanitary conveniences in extensions to buildings other than dwellings
  - M4 - deals with sanitary conveniences in dwellings
- M2 does not apply if the building complies with M1. M3 does not apply if there are already accessible sanitary conveniences in the building.

The requirements apply more specifically to:

- a non-domestic building or dwelling that is newly erected
- an existing non-domestic building which is extended or which undergoes a material alteration
- an existing building or part of an existing building which undergoes a material change of use to a hotel, boarding house, institution, public building or shop

As with the DDA a private dwelling is exempt although any changes must not make the building less accessible than it was. Where an extension has its own entrance it is treated as a new building but if its access is through the existing building the extension need not be any more accessible than the existing building.

### Lifetime Homes Standards

There are now some guidelines that architects should abide to, where possible, when planning new residential buildings. They mainly only affect the approach and ground floor of the building and aim to enable disabled people to access them.

The guidelines include, amongst others:

- inclines to the front door should be 1:20
- there should be a gap of at least 900mm to get to the front door
- door widths should be at least 750mm
- all switches and sockets must be between 450-1200mm from the floor
- ground floor bathrooms should be big enough to accommodate a wheelchair

For more information on Part M or general access queries you can contact:

### Centre for Accessible Environments

70 South Lambeth Road, London SW8 1RL

Tel/textphone:

**020 7840 0125**

Fax: **020 7840 5811**

Email:

[info@cae.org.uk](mailto:info@cae.org.uk)

You can also view it on the website of the Office of the Deputy Prime Minister:  
[www.odpm.gov.uk](http://www.odpm.gov.uk)

Your local [council planning department](#) should also have information on this document and Lifetime Homes Standards

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