



# Disability Discrimination Act 2005

## 2005 CHAPTER 13

### *Public authorities*

#### **1 Councillors and members of the Greater London Authority**

In the 1995 Act, after section 14D there is inserted—

*“Relationships between locally-electable authorities and their members*

#### **15A Interpretation of sections 15B and 15C**

- (1) Sections 15B and 15C apply to the following authorities—
- (a) the Greater London Authority;
  - (b) a county council (in England or Wales);
  - (c) a county borough council (in Wales);
  - (d) a district council (in England);
  - (e) a London borough council;
  - (f) the Common Council of the City of London;
  - (g) the Council of the Isles of Scilly;
  - (h) a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994;
  - (i) a parish council (in England); and
  - (j) a community council (in Wales or Scotland).
- (2) In relation to a member of an authority to which sections 15B and 15C apply, a reference in those sections to his carrying-out of official business is to his doing of anything—
- (a) as member of the authority;
  - (b) as member of any body to which he is appointed by, or is appointed following nomination by, the authority or a group of bodies that includes the authority; or
  - (c) as member of any other body if it is a public body.

- (3) In this section and sections 15B and 15C “member”, in relation to the Greater London Authority, means Mayor of London or member of the London Assembly.

### **15B Authorities and their members: discrimination and harassment**

- (1) It is unlawful for an authority to which this section applies to discriminate against a disabled person who is a member of the authority—
- (a) in the opportunities which it affords the disabled person to receive training, or any other facility, for his carrying-out of official business;
  - (b) by refusing to afford, or deliberately not affording, the disabled person any such opportunities; or
  - (c) by subjecting the disabled person to any other detriment in connection with his carrying-out of official business.
- (2) It is unlawful for an authority to which this section applies to subject a disabled person who is a member of the authority to harassment in connection with his carrying-out of official business.
- (3) A member of an authority to which this section applies is not subjected to a detriment for the purposes of subsection (1)(c) by reason of—
- (a) his not being appointed or elected to an office of the authority;
  - (b) his not being appointed or elected to, or to an office of, a committee or sub-committee of the authority; or
  - (c) his not being appointed or nominated in exercise of any power of the authority, or of a group of bodies that includes the authority, to appoint, or nominate for appointment, to any body.
- (4) Regulations may make provision as to the circumstances in which treatment is to be taken to be justified, or is to be taken not to be justified, for the purposes of section 3A(1)(b) as it has effect for the interpretation of “discriminate” in subsection (1).
- (5) Regulations under subsection (4) may (in particular) provide for section 3A(3) to apply with prescribed modifications, or not to apply, for those purposes; but treatment of a disabled person cannot be justified under subsection (4) if it amounts to direct discrimination falling within section 3A(5).
- (6) If, in a case falling within section 3A(1) as it has effect for the interpretation of “discriminate” in subsection (1), an authority to which this section applies is under a duty imposed by section 15C in relation to a disabled person but fails to comply with that duty, its treatment of that person cannot be justified under subsection (4) unless it would have been justified even if it had complied with that duty.

### **15C Authorities and their members: duty to make adjustments**

- (1) Subsection (2) applies where—
- (a) a provision, criterion or practice applied by or on behalf of an authority to which this section applies, or
  - (b) any physical feature of premises occupied by, or under the control of, such an authority,

places a disabled person who is a member of the authority at a substantial disadvantage, in comparison with members of the authority who are not disabled persons, in connection with his carrying-out of official business.

- (2) It is the duty of the authority to take such steps as it is reasonable, in all the circumstances of the case, for it to have to take in order to prevent the provision, criterion or practice, or feature, having that effect.
- (3) Subsection (2) does not impose any duty on an authority to which this section applies in relation to a member of the authority who is a disabled person if the authority does not know, and could not reasonably be expected to know, that the member—
  - (a) has a disability; and
  - (b) is likely to be affected in the way mentioned in subsection (1).
- (4) Regulations may make provision, for purposes of this section—
  - (a) as to circumstances in which a provision, criterion or practice, or physical feature, is to be taken to have the effect mentioned in subsection (1);
  - (b) as to circumstances in which a provision, criterion or practice, or physical feature, is to be taken not to have the effect mentioned in subsection (1);
  - (c) as to circumstances in which it is, or as to circumstances in which it is not, reasonable for an authority to have to take steps of a prescribed description;
  - (d) as to steps which it is always, or as to steps which it is never, reasonable for an authority to have to take;
  - (e) as to things which are, or as to things which are not, to be treated as physical features.”

## **2 Discrimination by public authorities**

In the 1995 Act, after section 21A there is inserted—

### *“Public authorities*

#### **21B Discrimination by public authorities**

- (1) It is unlawful for a public authority to discriminate against a disabled person in carrying out its functions.
- (2) In this section, and sections 21D and 21E, “public authority”—
  - (a) includes any person certain of whose functions are functions of a public nature; but
  - (b) does not include any person mentioned in subsection (3).
- (3) The persons are—
  - (a) either House of Parliament;
  - (b) a person exercising functions in connection with proceedings in Parliament;
  - (c) the Security Service;

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- (d) the Secret Intelligence Service;
  - (e) the Government Communications Headquarters; and
  - (f) a unit, or part of a unit, of any of the naval, military or air forces of the Crown which is for the time being required by the Secretary of State to assist the Government Communications Headquarters in carrying out its functions.
- (4) In relation to a particular act, a person is not a public authority by virtue only of subsection (2)(a) if the nature of the act is private.
- (5) Regulations may provide for a person of a prescribed description to be treated as not being a public authority for purposes of this section and sections 21D and 21E.
- (6) In the case of an act which constitutes discrimination by virtue of section 55, subsection (1) of this section also applies to discrimination against a person who is not disabled.
- (7) Subsection (1)—
- (a) does not apply to anything which is unlawful under any provision of this Act other than subsection (1); and
  - (b) does not, subject to subsections (8) and (9), apply to anything which would be unlawful under any such provision but for the operation of any provision in or made under this Act.
- (8) Subsection (1) does apply in relation to a public authority's function of appointing a person to, and in relation to a public authority's functions with respect to a person as holder of, an office or post if—
- (a) none of the conditions specified in section 4C(3) is satisfied in relation to the office or post; and
  - (b) sections 4D and 4E would apply in relation to an appointment to the office or post if any of those conditions was satisfied.
- (9) Subsection (1) does apply in relation to a public authority's functions with respect to a person as candidate or prospective candidate for election to, and in relation to a public authority's functions with respect to a person as elected holder of, an office or post if—
- (a) the office or post is not membership of a House of Parliament, the Scottish Parliament, the National Assembly for Wales or an authority mentioned in section 15A(1);
  - (b) none of the conditions specified in section 4C(3) is satisfied in relation to the office or post; and
  - (c) sections 4D and 4E would apply in relation to an appointment to the office or post if—
    - (i) any of those conditions was satisfied, and
    - (ii) section 4F(1) (but not section 4C(5)) was omitted.
- (10) Subsections (8) and (9)—
- (a) shall not be taken to prejudice the generality of subsection (1); but
  - (b) are subject to section 21C(5).

### **21C Exceptions from section 21B(1)**

- (1) Section 21B(1) does not apply to—
  - (a) a judicial act (whether done by a court, tribunal or other person); or
  - (b) an act done on the instructions, or on behalf, of a person acting in a judicial capacity.
- (2) Section 21B(1) does not apply to any act of, or relating to, making, confirming or approving—
  - (a) an Act, an Act of the Scottish Parliament or an Order in Council; or
  - (b) an instrument made under an Act, or under an Act of the Scottish Parliament, by—
    - (i) a Minister of the Crown;
    - (ii) a member of the Scottish Executive; or
    - (iii) the National Assembly for Wales.
- (3) Section 21B(1) does not apply to any act of, or relating to, imposing conditions or requirements of a kind falling within section 59(1)(c).
- (4) Section 21B(1) does not apply to—
  - (a) a decision not to institute criminal proceedings;
  - (b) where such a decision is made, an act done for the purpose of enabling the decision to be made;
  - (c) a decision not to continue criminal proceedings; or
  - (d) where such a decision is made—
    - (i) an act done for the purpose of enabling the decision to be made; or
    - (ii) an act done for the purpose of securing that the proceedings are not continued.
- (5) Section 21B(1) does not apply to an act of a prescribed description.

### **21D Meaning of “discrimination” in section 21B**

- (1) For the purposes of section 21B(1), a public authority discriminates against a disabled person if—
  - (a) for a reason which relates to the disabled person’s disability, it treats him less favourably than it treats or would treat others to whom that reason does not or would not apply; and
  - (b) it cannot show that the treatment in question is justified under subsection (3), (5) or (7)(c).
- (2) For the purposes of section 21B(1), a public authority also discriminates against a disabled person if—
  - (a) it fails to comply with a duty imposed on it by section 21E in circumstances in which the effect of that failure is to make it—
    - (i) impossible or unreasonably difficult for the disabled person to receive any benefit that is or may be conferred, or

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- (ii) unreasonably adverse for the disabled person to experience being subjected to any detriment to which a person is or may be subjected,
  - by the carrying-out of a function by the authority; and
  - (b) it cannot show that its failure to comply with that duty is justified under subsection (3), (5) or (7)(c).
- (3) Treatment, or a failure to comply with a duty, is justified under this subsection if—
  - (a) in the opinion of the public authority, one or more of the conditions specified in subsection (4) are satisfied; and
  - (b) it is reasonable, in all the circumstances of the case, for it to hold that opinion.
- (4) The conditions are—
  - (a) that the treatment, or non-compliance with the duty, is necessary in order not to endanger the health or safety of any person (which may include that of the disabled person);
  - (b) that the disabled person is incapable of entering into an enforceable agreement, or of giving an informed consent, and for that reason the treatment, or non-compliance with the duty, is reasonable in the particular case;
  - (c) that, in the case of treatment mentioned in subsection (1), treating the disabled person equally favourably would in the particular case involve substantial extra costs and, having regard to resources, the extra costs in that particular case would be too great;
  - (d) that the treatment, or non-compliance with the duty, is necessary for the protection of rights and freedoms of other persons.
- (5) Treatment, or a failure to comply with a duty, is justified under this subsection if the acts of the public authority which give rise to the treatment or failure are a proportionate means of achieving a legitimate aim.
- (6) Regulations may make provision, for purposes of this section, as to circumstances in which it is, or as to circumstances in which it is not, reasonable for a public authority to hold the opinion mentioned in subsection (3)(a).
- (7) Regulations may—
  - (a) amend or omit a condition specified in subsection (4) or make provision for it not to apply in prescribed circumstances;
  - (b) amend or omit subsection (5) or make provision for it not to apply in prescribed circumstances;
  - (c) make provision for purposes of this section (in addition to any provision for the time being made by subsections (3) to (5)) as to circumstances in which treatment, or a failure to comply with a duty, is to be taken to be justified.

### **21E Duties for purposes of section 21D(2) to make adjustments**

- (1) Subsection (2) applies where a public authority has a practice, policy or procedure which makes it—

- (a) impossible or unreasonably difficult for disabled persons to receive any benefit that is or may be conferred, or
  - (b) unreasonably adverse for disabled persons to experience being subjected to any detriment to which a person is or may be subjected, by the carrying-out of a function by the authority.
- (2) It is the duty of the authority to take such steps as it is reasonable, in all the circumstances of the case, for the authority to have to take in order to change that practice, policy or procedure so that it no longer has that effect.
- (3) Subsection (4) applies where a physical feature makes it—
  - (a) impossible or unreasonably difficult for disabled persons to receive any benefit that is or may be conferred, or
  - (b) unreasonably adverse for disabled persons to experience being subjected to any detriment to which a person is or may be subjected, by the carrying-out of a function by a public authority.
- (4) It is the duty of the authority to take such steps as it is reasonable, in all the circumstances of the case, for the authority to have to take in order to—
  - (a) remove the feature;
  - (b) alter it so that it no longer has that effect;
  - (c) provide a reasonable means of avoiding the feature; or
  - (d) adopt a reasonable alternative method of carrying out the function.
- (5) Regulations may prescribe—
  - (a) matters which are to be taken into account in determining whether any provision of a kind mentioned in subsection (4)(c) or (d) is reasonable;
  - (b) categories of public authorities to whom subsection (4) does not apply.
- (6) Subsection (7) applies where an auxiliary aid or service would—
  - (a) enable disabled persons to receive, or facilitate the receiving by disabled persons of, any benefit that is or may be conferred, or
  - (b) reduce the extent to which it is adverse for disabled persons to experience being subjected to any detriment to which a person is or may be subjected, by the carrying-out of a function by a public authority.
- (7) It is the duty of the authority to take such steps as it is reasonable, in all the circumstances of the case, for the authority to have to take in order to provide that auxiliary aid or service.
- (8) Regulations may make provision, for purposes of this section—
  - (a) as to circumstances in which it is, or as to circumstances in which it is not, reasonable for a public authority to have to take steps of a prescribed description;
  - (b) as to steps which it is always, or as to steps which it is never, reasonable for a public authority to have to take;
  - (c) as to what is, or as to what is not, to be included within the meaning of “practice, policy or procedure”;
  - (d) as to things which are, or as to things which are not, to be treated as physical features;

(e) as to things which are, or as to things which are not, to be treated as auxiliary aids or services.

(9) Nothing in this section requires a public authority to take any steps which, apart from this section, it has no power to take.

(10) This section imposes duties only for the purposes of determining whether a public authority has, for the purposes of section 21B(1), discriminated against a disabled person; and accordingly a breach of any such duty is not actionable as such.”

### 3 Duties of public authorities

In the 1995 Act, after section 49 there is inserted—

#### “PART 5A

##### PUBLIC AUTHORITIES

#### 49A General duty

- (1) Every public authority shall in carrying out its functions have due regard to—
- (a) the need to eliminate discrimination that is unlawful under this Act;
  - (b) the need to eliminate harassment of disabled persons that is related to their disabilities;
  - (c) the need to promote equality of opportunity between disabled persons and other persons;
  - (d) the need to take steps to take account of disabled persons' disabilities, even where that involves treating disabled persons more favourably than other persons;
  - (e) the need to promote positive attitudes towards disabled persons; and
  - (f) the need to encourage participation by disabled persons in public life.
- (2) Subsection (1) is without prejudice to any obligation of a public authority to comply with any other provision of this Act.

#### 49B Meaning of “public authority” in Part 5A

- (1) In this Part “public authority”—
- (a) includes any person certain of whose functions are functions of a public nature; but
  - (b) does not include—
    - (i) any person mentioned in section 21B(3);
    - (ii) the Scottish Parliament; or
    - (iii) a person, other than the Scottish Parliamentary Corporate Body, exercising functions in connection with proceedings in the Scottish Parliament.
- (2) In relation to a particular act, a person is not a public authority by virtue only of subsection (1)(a) if the nature of the act is private.



- (3) Regulations may provide for a person of a prescribed description to be treated as not being a public authority for the purposes of this Part.

#### **49C Exceptions from section 49A(1)**

- (1) Section 49A(1) does not apply to—
- (a) a judicial act (whether done by a court, tribunal or other person); or
  - (b) an act done on the instructions, or on behalf, of a person acting in a judicial capacity.
- (2) Section 49A(1) does not apply to any act of, or relating to, making or approving an Act of Parliament, an Act of the Scottish Parliament or an Order in Council.
- (3) Section 49A(1)(c) and (d) do not apply to—
- (a) an act done in connection with recruitment to any of the naval, military or air forces of the Crown; or
  - (b) an act done in relation to a person in connection with service by him as a member of any of those forces.
- (4) Regulations may provide for section 49A(1)(a), (b), (c) or (d) not to apply to an act of a prescribed description.

#### **49D Power to impose specific duties**

- (1) The Secretary of State may by regulations impose on a public authority, other than a relevant Scottish authority or a cross-border authority, such duties as the Secretary of State considers appropriate for the purpose of ensuring the better performance by that authority of its duty under section 49A(1).
- (2) The Secretary of State may by regulations impose on a cross-border authority such duties as the Secretary of State considers appropriate for the purpose of ensuring the better performance by that authority of its duty under section 49A(1) so far as relating to such of its functions as are not Scottish functions.
- (3) The Scottish Ministers may by regulations impose on a relevant Scottish authority such duties as the Scottish Ministers consider appropriate for the purpose of ensuring the better performance by that authority of its duty under section 49A(1).
- (4) The Scottish Ministers may by regulations impose on a cross-border authority such duties as the Scottish Ministers consider appropriate for the purpose of ensuring the better performance by that authority of its duty under section 49A(1) so far as relating to its Scottish functions.
- (5) Before making regulations under any of subsections (1) to (4), the person making the regulations shall consult the Disability Rights Commission.
- (6) Before making regulations under subsection (1) or (2) in relation to functions exercisable in relation to Wales by a public authority that is not a relevant Welsh authority, the Secretary of State shall consult the National Assembly for Wales.

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- (7) The Secretary of State shall not make regulations under subsection (1) or (2) in relation to a relevant Welsh authority except with the consent of the National Assembly for Wales.
- (8) Before making regulations under subsection (2), the Secretary of State shall consult the Scottish Ministers.
- (9) Before making regulations under subsection (4), the Scottish Ministers shall consult the Secretary of State.
- (10) In this section—
- “relevant Scottish authority” means—
- (a) a member of the Scottish executive or a junior Scottish Minister;
  - (b) the Registrar General of Births, Deaths and Marriages for Scotland, the Keeper of the Registers of Scotland or the Keeper of the Records of Scotland;
  - (c) any office of a description specified in an Order in Council under section 126(8)(b) of the Scotland Act 1998 (other non-ministerial office in the Scottish Administration); or
  - (d) a public body, public office or holder of a public office—
    - (i) which (or who) is not a cross-border authority or the Scottish Parliamentary Corporate Body;
    - (ii) whose functions are exercisable only in or as regards Scotland; and
    - (iii) some at least of whose functions do not (within the meaning of the Scotland Act 1998) relate to reserved matters;
- “cross-border authority” means a cross-border public authority within the meaning given by section 88(5) of the Scotland Act 1998;
- “Scottish functions” means functions which are exercisable in or as regards Scotland and which do not (within the meaning of the Scotland Act 1998) relate to reserved matters;
- “relevant Welsh authority” means—
- (a) the National Assembly for Wales; or
  - (b) a public authority whose functions are exercisable only in relation to Wales.

#### **49E Duties under section 49D: compliance notices**

- (1) Where the Disability Rights Commission is satisfied that a public authority has failed to comply with, or is failing to comply with, a duty imposed on it by regulations under section 49D, the Commission may serve a notice on it.
- (2) The following provisions of this section apply to a notice served on an authority under subsection (1).
- (3) The notice shall require the authority—
  - (a) to comply with the duty concerned; and
  - (b) to furnish the Commission, by the end of the period of 28 days beginning with the day on which the notice is served, with details of the steps that it has taken, or is taking, to comply with the duty.

- (4) The notice may also require the authority to furnish the Commission with other information specified in the notice if the Commission reasonably requires the information in order to verify that the duty has been complied with.
- (5) The notice shall specify the time by which the authority is to furnish information which it is required to furnish under subsection (4).
- (6) A time specified under subsection (5) shall not be later than the end of the three months beginning with the day on which the notice is served.
- (7) The notice may specify the manner and form in which the authority is to furnish information which the notice requires it to furnish to the Commission.
- (8) The notice shall not require the authority—
  - (a) to furnish information which it could not be compelled to furnish in evidence in civil proceedings before the High Court; or
  - (b) to furnish information which it could not be compelled to furnish in evidence in civil proceedings before the Court of Session.

#### **49F Enforcement of compliance notices**

- (1) If—
  - (a) a public authority on which a notice has been served under section 49E fails to furnish the Disability Rights Commission, in accordance with the notice, with any information required by the notice, or
  - (b) the Commission has reasonable cause to believe that a public authority on which a notice has been served under section 49E does not intend to furnish the information required by the notice,the Commission may apply to a county court or, in Scotland, the sheriff for an order requiring the authority to furnish any information required by the notice.
- (2) If on an application under subsection (1) the court is satisfied that either of the conditions specified in paragraphs (a) and (b) of that subsection is met, the court may grant the order in the terms applied for or in more limited terms.
- (3) If—
  - (a) the period of three months beginning with the day on which a notice is served on a public authority under section 49E has ended,
  - (b) the notice required the authority to comply with a duty imposed on it by regulations under section 49D, and
  - (c) the Commission considers that the authority has not complied with the duty,the Commission may apply to a county court or, in Scotland, the sheriff for an order requiring the authority to comply with the duty.
- (4) If on an application under subsection (3) the court is satisfied—
  - (a) that the conditions specified in paragraphs (a) and (b) of that subsection are met, and
  - (b) that the authority has not complied with the duty,the court may grant the order in the terms applied for or in more limited terms.

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- (5) The sanctions in section 49E and this section shall be the only sanctions for breach of any duty imposed by regulations under section 49D, but without prejudice to the enforcement of any other provision of this Act (where the breach is also a contravention of that provision).”

#### **4 Police**

- (1) Section 64A of the 1995 Act (police) shall have effect with the following amendments.
- (2) In subsections (3) to (5) (the bringing of, and compensation and costs in, proceedings against the police under Part 2), after “Part 2” (in each place) there is inserted “or 3”.
- (3) In subsection (4) (bringing of proceedings under Part 2 which, by virtue of subsection (1), are to be brought against chief officer of police), for “subsection (1)” there is substituted “this section”.