

EXPLANATORY MEMORANDUM TO
THE DISABILITY DISCRIMINATION (SERVICE PROVIDERS AND
PUBLIC AUTHORITIES CARRYING OUT FUNCTIONS) REGULATIONS
2005

2005 NO. 2901

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1 Sections 19-21 of the Disability Discrimination Act 1995 (“the 1995 Act”) prohibit discrimination by providers of services against disabled persons and sections 21B-21E of the 1995 Act (to be inserted by the Disability Discrimination Act 2005 - “the 2005 Act”) prohibit discrimination against disabled persons by public authorities carrying out public functions. The sections provide for justification of discrimination in particular circumstances and for a duty to make reasonable adjustments to physical features of premises where disabled persons are unreasonably disadvantaged by those features.

2.2 These Regulations, which apply both to service providers and to public authorities carrying out functions, provide further detail of particular circumstances in which discrimination may or may not be justified and of the circumstances in which a duty to adjust physical features applies.

3. Matters of special interest to the Joint Committee Statutory Instruments

3.1 We recognise that the Committee criticised regulation 3(a), (b) and (e) of S.I. 1999/1191 (in the Twenty First Report of Session 1998-99) which is revoked and substantially remade by regulation 9 of these regulations. However, we would draw the Committee’s attention to the definition of physical feature in new section 18D of the 1995 Act (inserted by S.I. 2003/1673, Regulations 3(1) and 18). After careful consideration it is thought important to retain consistency between the form of words used in the Act and any regulations made under it.

4. Legislative background

4.1 Section 2 of the 2005 Act will insert new sections 21B to 21E into the 1995 Act as of 4th December 2006. The effect of these new provisions is to prohibit discrimination by a public body in the exercise of its public functions (for example the arrest functions of the police, the functions of HM Revenue and Customs in searching for contraband at ports of entry to GB, the issue of a statutory licence for a taxi

service by a local authority and licences for street charitable collections) other than, (in broad terms) those of legislation, prosecution, judicial acts and state security. The definition of discrimination mirrors, in so far as it is possible to do so, the definition of discrimination already used in relation to providers of services to the public (“service providers”) in the 1995 Act.

4.2 These Regulations extend the regulatory regime that already exists for service providers under the 1995 Act to the new situation of public authorities carrying out public functions (that are not services). They also reduce the number of regulations in this area) by, revoking where possible, existing regulations and replacing them with regulations which cover both service providers and public authorities carrying out public functions

4.3 Other minor clarifications are also included. The principal one arises as a result of an Act of the Scottish Parliament. The Adults with Incapacity (Scotland) Act 2000 introduced a new regime for the representation of persons in Scotland who lack capacity to look after their own affairs. The draft Regulations therefore incorporate the new terminology now in use in Scotland in relation to persons appointed to look after the affairs of a person who lacks “capacity” to do so for themselves.

4.4 The intention is for similar provisions to be made in relation to private clubs in affirmative regulations - the draft Disability Discrimination (Private Clubs etc.) Regulations 2005.

5. **Extent**

5.1 This instrument extends to Great Britain.

6. **European Convention on Human Rights**

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. **Policy background**

7.1 The 2005 Act received Royal Assent on 7 April 2005 and made a number of amendments to the 1995 Act. The purpose behind the 2005 Act was to extend the rights of disabled people, and part of this extension of rights was the insertion of new sections 21B to 21E into the 1995 Act. These new provisions prohibit discrimination by public authorities in the carrying out of their public functions. This mirrors changes already made to the Race Relations Act 1976 by the Race Relations (Amendment) Act 2000. Prior to the enactment of the 2005 Act, discrimination by public authorities was only unlawful to the extent that the public authority in question was carrying out a function covered by the Act (such as acting as an employer or education provider, or in providing goods, facilities and services to the public or a section of the public). The effect of the 2005 Act means that all functions of public authorities will be covered (other than where exceptions exist) and covered consistently with the existing provisions relating to goods, facilities and services so far as these are relevant. The Regulations follow this same policy objective.

7.2 In particular, the objective of the regulations is to make provision to detail when a service provider or public authority can justify what would otherwise be unlawful discrimination against a disabled person. Also, the duty on service providers and public authorities to make reasonable adjustments to physical features to accommodate disabled persons is detailed, by defining what is to be treated as a physical feature, and what it is and is not reasonable to do in circumstances where the consent of a third party is required to an alteration to premises or where a building is built in conformity with specified design standards.

7.3 In the consultation document “Delivering Equality for Disabled People”; (Cm 6255), the Government sought views on the guidance that the Disability Rights Commission (DRC) should issue to support the implementation of the changes brought about by new section 2 of the DDA 2005. The consultation ran from 23rd July 2004 to 21st October 2004 (during the passage of the Disability Discrimination Bill). The written statement made on 21 July 2005 by the Minister for Disabled People, Anne McGuire, (Hansard Cols 170WS-172WS) confirmed that functions of public authorities, not already covered by the Disability Discrimination Act 1995, would be brought within its scope and that the Disability Rights Commission was in the process of consulting on a draft Code of Practice with additional guidance for public authorities on their new duties which would commence in December 2006.

8. Regulatory Impact and Impact on the Public Sector

8.1 An assessment of the impact of these draft Regulations on bodies exercising public functions was made in the Regulatory Impact Assessment for the 2005 Act (relevant sections attached at annex A). The RIA concluded that it is not possible to identify a typical public authority, and therefore costs, because of: the wide diversity of such authorities; the extent to which disabled people may or may not make use of different functions of different authorities; the fact that costs will depend upon the extent to which authorities may have to make adjustments; and the extent to which authorities are already following best practice in “mainstreaming” their policies. However, it should be borne in mind that public authorities will only be required to do what is reasonable and will already be required to apply the duties in the 1995 Act in respect of their services. Copies of this RIA have previously been placed in the Libraries of both Houses of Parliament. Copies can be obtained from the Disability Rights Division of the Department for Work and Pensions, Level 6, the Adelphi, 1-11 John Adam Street, London WC2N 6HT. No assessment was made in relation to the impact on service providers as these Regulations reproduce existing obligations on service providers.

9. Contact

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The Disability Discrimination (Service Providers and Public Authorities Carrying Out Functions) Regulations 2005

Paragraph 8.1 of the Explanatory Memorandum to The Disability Discrimination (Service Provider and Public Authorities Carrying Out Functions) Regulations 2005 refers to the fact that an assessment of the impact of these draft Regulations on bodies exercising public functions was made in the Regulatory Impact Assessment (RIA) for the Disability Discrimination Act 2005. This Assessment was published in July 2005 and signed by the Minister for Disabled People

The information below has been extracted from the Regulatory Impact Assessment that accompanied the Disability Discrimination Act 2005. Nothing in the Regulations alters the costs set out in the extract below.

EXTRACT (pages 25-30 and page 50 for Footnote 3)

DISABILITY DISCRIMINATION ACT 2005

Regulatory Impact Assessment (Revised following Royal Assent to the Disability Discrimination Bill on 7 April 2005) – July 2005

“2 Extending the scope of the DDA to "functions" of public bodies

2.1 The 2005 Act ensures that that the functions of public bodies are brought within scope of the Disability Discrimination Act 1995. This extension is based on broadly the same policy principles which led to the extension of the Race Relations Act 1976 to include the functions of public authorities (Race Relations (Amendment) Act 2000).

2.2 The extension of the Disability Discrimination Act 1995 in this way will bring new rights for disabled people and new responsibilities for the public sector not to discriminate against disabled people across the whole range of their public activities.

2.3 There will be some limited exclusions from this extension of scope. Any costs or benefits which would have arisen or accrued respectively to the public sector are not included in this RIA in respect of those exclusions.

2.4 It is impracticable to identify a typical public authority for the purposes of this Assessment. This is because:

- of the wide diversity of public authorities;
- the extent to which disabled people make use of particular functions will vary. For example, some functions might have a significant impact on disabled people, others less so, but all will be covered by the proposed legislation and may need to be subject to similar reasonable adjustment duties to those which apply under Part 3 of the Act; and
- costs will be dependent upon the extent to which authorities have to make adjustments, which in turn might depend upon e.g. the sorts of physical adjustments that they may have already made in order to comply with the delivery of service provisions; or how closely a particular function might be to a ‘service’ which is already being provided – in which case no additional costs should arise under this proposal, the costs having already been discounted in a previous Impact Assessment.

2.5 For the purposes of this Assessment, this RIA therefore identifies some actions and processes for which costs have already been calculated. These actions and processes represent functions of public authorities that will be covered under the proposals described above.

2.6 A lot of public authorities will not have to make adjustments as they will have already made adjustments due to their role as service providers (or simply out of good practice). Where they do have to make adjustments the nature of the adjustment will vary with the type of customer and with the extent of mainstreaming (i.e. the Government's voluntary policy to ensure that equal opportunities considerations are built into the planning and implementation of policies and practices). There will be some one-off set-up costs and some on-going costs.

2.7 Physical adjustments to premises might not be necessary, in any event, where there is a reasonable way of avoiding the difficulty such as using a different, accessible, entrance or where the function could be undertaken by a reasonable alternative means. The example of a license issuer illustrates this.

2.8 The mix and scale of these costs will vary with the type of function. Because of the wide range of functions undertaken by public bodies it is not possible to provide a definitive picture of the global costs.

Examples of functions, actions and processes with examples of possible costs and benefits arising from these proposals (though actual costs depend on reasonableness and on the type of disability for which different agencies and Departments might have to make adjustments).

Example: Issuing a licence

- staff time explaining the procedure perhaps negligible or perhaps to someone with learning difficulties it might take, say, 1 hour of staff time - for someone who is paid £12.00 per hour = £12.00
- making the application form available in large print (next to nothing if produced on a computer) additional cost of 30p per form if provided by a printer and produced in relative 'bulk'
- giving help in filling in the application form – say 40 minutes of staff time for someone who is paid £12.00 per hour = £8.00
- if the premises were inaccessible to wheelchair users, they would not necessarily have to be made accessible if there was, for instance, a reasonable alternative means of providing the service e.g. if the licence application was dealt with by post; or if a member of staff was able to conduct a home visit; or arrange to see the applicant in a more accessible part of the building.

Other adjustments, affecting physical features of premises - if reasonable and if there is no reasonable alternative (see above)

2.9 Painting, non-slip surfaces on all floors; improved lighting; changing the height of door handles/installing hand-rails; stair lift; structural alterations (e.g. widening doors – internal and external, installing automatic doors, ramps, installing disabled access toilets); fitting a permanent induction loop.

Examples of possible costs include:

- nil – for authorities that have already undertaken action in line with provisions under the Part 3 service provisions; and for example colour coding when undertaking normal repainting programme
- £54: refurbishing a light switch
- £316: providing a good specification free standing hand rail (4 meters)
- £100: supply of portable folding ramp
- £170-£450: enlarging door opening
- £5,230: door operated by touch key reader
- £960: large portable induction loop
- £3,960: excellent specification permanent induction loop for use in large halls
- £355: door entry intercom systems (with no CCTV camera)
- £312: excellent specification smoke, fire and call alarms

It should be noted that the exact scale of the cost would vary considerably with the exact specification of the change (**FOOTNOTE 3**).

The publication of some reports and statutory plans produced by an authority

2.10 It is expected that these costs have already been largely accounted for in relation to service provision. Public authorities supplying information in an accessible format would not normally be expected to make a distinction between supply in respect of services or functions.

Access to buildings and internal physical adjustments

2.11 Public authorities have already engaged in an extensive programme to make their buildings accessible and adjust internal features, so as to remove any obstacles to their use by disabled people in the run up to October 2004 when the existing duties of Part 3 of the Disability Discrimination Act 1995 in relation to physical features came into force (subject to the usual tests of reasonableness and the ability to make changes to listed buildings etc), and this process has continued since October 2004. It is not expected that the provisions in the 2005 Act, covered in this RIA, will lead to any additional costs beyond that planned for the progressive upgrading or replacement of the public estate to meet the needs of disabled people.

Policies, practices and procedures

2.12 Public authorities might expect to incur costs across some of their functions where hitherto they had made no provision for the needs of disabled people; either

because disabled people felt unable to participate or because of discrimination which meant that they could not participate. The provisions considered in this RIA will, of course, provide redress for individual disabled people in such circumstances and will also provide impetus for authorities to anticipate the needs of disabled people and meet

them. Authorities could incur costs in areas like:

- **Participation of disabled people** – by adding to the pool of available people involved in helping the authority with fulfilling its functions, for example as intermediaries or advisers in helping public bodies fulfil the function. Authorities might have to adjust how they provide information about participation and use large print, or other accessible formats.
- **Assessment /review of suitability** – authorities might have to adjust their policies, practices and procedures to ensure that disabled people can be involved on more equal terms with non-disabled people, and account can be taken of relevant experience. Where appropriate disabled people may need to be given the chance to write reports or complete application forms using computers, or dictate reports for subsequent transcription if writing or using a computer is a problem.

Benefits

2.13 There might be net benefits to authorities from increased access to willing participants to help carry out functions (not as employees, but as people affected by those functions); and there are longer term, and perhaps unquantifiable but real benefits arising out of building a more inclusive society in which the full potential of disabled people and their different experiences and talents are used to best effect.

Processes

Example: replying to correspondence

- Provide reply in large print – negligible if produced on computer;
- provide reply in Braille. Guide cost: £60 for a seven page document depending on length and complexity (prices are calculated on a case-by-case rather than page-by-page basis). (Only around 3% of people with visual impairments actually use Braille.)

Example: conducting consultation exercises

- Publishing consultation document on the Web and accepting replies by email – already common practice;
- holding a public meeting, including the provision of signers at £88 for two hours plus £5 travel expenses;

- making the consultation form available in large print (next to nothing if produced on a computer): additional cost of 30p per form if provided by a printer and produced in relative bulk.

Example of adjustments

Practices, policies, procedures and auxiliary aids

- Admitting guide dogs – negligible cost;
- installing a portable induction loop – cost £17.50;
- providing help taking no more than a few minutes of an employee's time - negligible cost;
- providing a sign language interpreter – cost from £88 for two hours plus £5 travel expenses.

Examples of alternative means of making a function available

- Allowing access via a staff entrance;
- meeting someone in a different, accessible, room.

Costs arising from complaints

2.14 It is difficult to judge at this stage the extent to which, on existing trends, the extension of the DDA 1995 to cover the functions of public authorities might increase the number of complaints. The Government expects public authorities to be exemplars when it comes to creating a society based on equality of opportunity, so it expects them to take action to ensure they are compliant with the new duties, so that they do not face complaints brought against them under the new provisions.

Footnote 3 - All of the building examples taken from the Access Audit Price Guide published by Building Cost Information Service Ltd ”