

EXPLANATORY MEMORANDUM TO
THE EQUALITY ACT 2010 (DISABILITY) REGULATIONS 2010

2010 No. 2128

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

2. Purpose of the instrument

This instrument supplements provisions in the Equality Act 2010 that provide protection from discrimination for disabled people. It makes provision on a range of technical issues that are not appropriate for inclusion in the Act itself. It supports the definition of disability in the Act by helping to define who is, and who is not, a disabled person for the purposes of gaining the protection of the Act. It also supplements provisions in the Act that require reasonable adjustments to premises to be made for disabled people in the fields of employment, education, access to goods, facilities, services and premises, the functions of public authorities carrying out public functions, and associations.

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

None

4. Legislative Context

4.1 This instrument replicates and consolidates provisions that previously supplemented the DDA, where those provisions have not been included in the Equality Act itself. These provisions are currently included in:

- the Disability Discrimination (Meaning of Disability) Regulations 1996¹ (S.I. 1996/1455);
- the Disability Discrimination (Providers of Services) (Adjustment of Premises) Regulations 2001² (S.I. 2001/3253);
- the Disability (Blind and Partially Sighted Persons) Regulations 2003 (S.I. 2003/712);
- the Disability Discrimination (Employment Field) (Leasehold Premises) Regulations 2004³ (S.I. 2004/153);
- the Disability Discrimination (Educational Institutions)(Alterations of Leasehold Premises) Regulations 2005⁴ (S.I. 2005/1070);

¹ Regulations 2 (in part) and 3 – 6.

² Regulations 2(in part) and 5 – 9 and Schedule 1.

³ Regulations 2(in part) and 5 – 9.

⁴ Regulations 3 - 6

- the Disability Discrimination (Service Providers and Public Authorities Carrying Out Functions) Regulations 2005⁵ (S.I. 2005/2901);
- the Disability Discrimination (Private Clubs etc.) Regulations 2005⁶ (S.I. 2005/3258); and
- the Disability Discrimination (Premises) Regulations 2006⁷ (S.I. 2006/887).

4.2 The instrument revokes the above Regulations with effect from 1 October 2010, when the main provisions of the Equality Act 2010 are brought into force.

5. Territorial Extent and Application

This instrument applies to Great Britain.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

7.1 The DDA provides protection for disabled people from discrimination in the field of employment, access to goods, facilities and services, in the disposal (i.e. the sale, rental and management) of premises, education, the functions of public authorities, larger private clubs, and the use of public transport. In general, the protection of the DDA has been carried forward to the disability provisions of the Equality Act, though the Equality Act also improves and harmonises the disability provisions. Where appropriate, provisions made under the DDA and which supplement the provisions in that Act have been carried forward to, and included in, the Equality Act. This instrument consolidates and applies various technical provisions relating to the definition of disability and the duties to make reasonable adjustments for disabled people, for the purposes of the Equality Act.

Definition of disability

7.2 The disability provisions of the Equality Act provide protection from discrimination on the basis of the protected characteristic of disability, and the Act defines a disabled person. In general, for the purposes of the Act, a person is a disabled person if they have, or had, “a physical or mental impairment and the impairment has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities”. This definition of disability is intended to reflect what would generally be regarded as a disability.

5 Regulations 2 (in part) and 11 and Schedule 1.

6 Regulations 2 (in part) and 12 and Schedule 1.

7 Regulation 5.

7.3 This instrument prescribes that addictions to non-prescribed substances, and certain other conditions, like a tendency to steal, are excluded from being impairments and, consequently, from providing protection under the Act. These are excluded for public policy reasons, for example to avoid providing protection for people where the effect of their condition may involve anti-social or criminal activity. Or they are excluded because they are not conditions that are generally recognised as disabilities.

7.4 The instrument makes special provision⁸ to enable small children to gain the protection of the disability provisions. This is because, for some disabled children under the age of six years, it may otherwise be difficult to demonstrate how their impairment meets the definition of a disability.

7.5 The instrument also provides for people with a high degree of visual impairment to be deemed to be disabled persons for the purposes of the Act. These provisions make it easier for these people to demonstrate that they are entitled to the protection of the Act.

Premises – auxiliary aids or services

7.6 The Equality Act places a duty on controllers (e.g. landlords or managers) of let premises, and commonhold associations, to provide, where it is reasonable to do so, auxiliary aids or services to avoid

- disabled tenants and or occupiers of let premises; or
- disabled commonhold unit owners or disabled occupiers of commonhold units

being placed at a substantial disadvantage, compared with non-disabled people, in making use of the premises or the associated benefits or facilities of the premises. The instrument assists interpretation of that duty, by prescribing what is, and what is not to be treated as an auxiliary aid or service in relation to let premises and commonhold units⁸, defining who has responsibility for providing the auxiliary aid or service and what constitutes a request for an auxiliary aid or service to be provided.

Premises - reasonable adjustments and design standards

7.7 The Equality Act places a duty on service providers, public authorities carrying out their functions and associations (larger private clubs) to make reasonable adjustments to avoid disabled people being placed at a substantial disadvantage, compared to non-disabled people, when accessing their services, functions and benefits. The duty extends to requiring reasonable adjustments to physical features (e.g. steps, doorways, checkouts) of the premises that the service provider, public authority or association occupies.

⁸ A provision carried forward from the Disability Discrimination (Premises) Regulations 2006

7.8 This instrument provides that, if certain physical features of a building have been built or installed in accordance with specified design standards, it is not reasonable for a service provider, public authority or association to have to remove or alter that feature⁹ within a period of 10 years from construction or installation. This avoids additional burdens on organisations that have ensured physical features comply with the required design standards. The 10-year period reflects likely refurbishment cycles.

Premises – consent to make alterations

7.9 Under the Equality Act, the duties for employers, providers of education, service providers, public authorities carrying out their functions, and associations to make reasonable adjustments for disabled people may require adaptations to premises that they occupy under a lease. Similarly, a controller of let premises is under a duty to make reasonable adjustments, which may require altering the terms of a tenancy agreement. In such cases, the consent of the landlord may be required for the adjustment to be made. Where consent is refused, or made subject to conditions, the duty holder, or the disabled person requiring the adjustment, may refer the matter to a county court (Sheriff court in Scotland). The court may determine whether the refusal or conditions are reasonable. Where it finds the refusal or condition unreasonable, the court can make a declaration, or make an order authorising the alteration.

7.10 This instrument supports the provisions in the Equality Act by prescribing the circumstances¹⁰ in which a landlord who has received a written application by, or on behalf of, the occupier of premises that have been let.

- is to be taken to have withheld consent;
- is to be taken to have withheld consent reasonably or unreasonably; or
- is to be taken as to have provided consent subject to reasonable conditions

7.11 It also prescribes how the provisions should to operate where premises are under a sub-lease and a superior landlord is involved.

Consolidation

7.12 This instrument consolidates provisions that are being carried forward from the DDA. It does not amend the Equality Act, but makes supplementary technical provisions which are not appropriate for inclusion in primary legislation.

9 A provision carried forward from the Disability Discrimination (Service Providers and Public Authorities Carrying Out Functions) Regulations 2005 and the Disability Discrimination (Private Clubs etc.) Regulations 2005

10 Provisions carried forward from the Disability Discrimination (Employment Field) (Leasehold Premises) Regulations 2004 and the Disability Discrimination (Providers of Services) (Adjustment of Premises) Regulations 2001

8. Consultation Outcome

8.1 No specific consultation was undertaken on this instrument as its provisions are not new, but have been carried forward from regulations that applied for the purposes of the DDA. However, a more general consultation was carried out in 2007 – “A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain”,¹¹ which proposed the harmonisation of existing equality legislation. A full response to the consultation was published in 2008 (The Equality Bill – Government Response to the Consultation).¹²

8.2 As paragraph 1.11 of the Response states :“Nearly all respondents agreed with the objective of streamlining the law and replacing, with a new single Equality Act, the current nine major pieces of discrimination legislation and around 100 statutory instruments setting out connected rules and regulations.”

9. Guidance

9.1 Statutory guidance to assist in determining whether a person is a disabled person for the purposes of anti-discrimination legislation is published by the Government.¹³ A revised draft of the guidance to be used for the purposes of the Equality Act is currently being consulted on. The existing guidance will apply pending the introduction of the revised guidance.

9.2 Guidance on provisions in this instrument will be reflected in general guidance on the Equality Act. The first summary guidance on the Equality Act was published on 5 July 2010 for employers, employees, the voluntary sector, individuals and public sector organisations.¹⁴ This will be followed by further “quick-start” guides which will focus on specific provisions. (e.g. disability; private clubs), again for different audiences. Comprehensive and detailed guidance will be produced by the Equality and Human Rights Commission, together with statutory codes which will reflect provisions in the Equality Act and its supporting legislation.

10. Impact

10.1 The impact of this instrument on business and civil society organisations is considered to be negligible as it replicates existing legislation.

10.2 The impact on the public sector is negligible.

¹¹ <http://www.communities.gov.uk/documents/corporate/pdf/325332.pdf>

¹² <http://www.equalities.gov.uk/PDF/EqBillGovResponse.pdf>

¹³

http://www.equalityhumanrights.com/uploaded_files/guidance_on_matters_to_be_taken_into_account_in_determining_questions_relating_to_the_definition_of_disability.pdf

¹⁴ http://www.equalities.gov.uk/equality_act_2010/equality_act_2010_what_do_i_n.aspx

10.3 A full impact assessment has not been prepared for this instrument as it replicates, and consolidates, existing provisions.

11. Regulating small business

The legislation applies to small business. However, this instrument imposes no new burdens as it carries forward existing provisions.

12. Monitoring & review

The Government Equalities Office is developing a project to establish an evaluation framework for the Act as a whole, including establishing a “before/after” baseline against which to measure change. This project will determine how relevant data is to be collected. It is intended to complete a full evaluation 4-5 years following enactment.

13. Contact

Peter Nokes at the Department for Work and Pensions (Tel: 0207 449 5057 or e-mail: Peter.Nokes@dwp.gsi.gov.uk) can answer any queries regarding the instrument.