

## **The Disability Discrimination Act 1995**

### **A Guide for Everybody**

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## **The Disability Discrimination Act 1995**

The Disability Discrimination Act introduces new laws aimed at ending the discrimination which many disabled people face. The Act gives disabled people new rights in the areas of:

- ? access to goods, facilities and services;
- ? buying or renting land or property;
- ? employment.

Some of these rights are being introduced from 2 December 1996; others will be introduced over a period of time.

In addition the Act:

- ? requires schools, colleges and universities to provide information for disabled people;
- ? allows the Government to set minimum standards so that disabled people can use public transport easily;
- ? sets up the National Disability Council (in Northern Ireland, the Northern Ireland Disability Council) to advise the Government on discrimination against disabled people.

### **Northern Ireland**

The Act also applies to Northern Ireland.

This booklet gives general guidance only and should not be treated as a complete and authoritative statement of the law. Issued on behalf of the Minister for Disabled People.

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## **A guide for everyone**

From 2 December 1996 the Disability Discrimination Act makes treating disabled people less favourably than other people, without justification, unlawful in areas such as buying goods, using services, finding somewhere to live and getting a job. This booklet will help disabled people to get to know and use their new rights, and it will help everyone to understand their responsibilities so they can stay within the law.

## **1. Why have we got the Disability Discrimination Act?**

Disabled people can find that, for no good reason, they aren't given the same opportunities as others. Perhaps through prejudice or not discussing matters with a disabled person, it's assumed he or she can't carry out a task or use a service. For example, an employer might turn down someone who can't hear well for a job involving using the phone without consulting whether an adapted phone, for instance, would enable the applicant to do the job perfectly well.

This is an example of a disabled person being treated less well - not because they can't do something, but because someone happens to think they can't. The Disability Discrimination Act makes this kind of less favourable treatment, resulting from a person's disability, unlawful.

## **2. Who has rights and responsibilities because of the Disability Discrimination Act?**

Disabled people have new rights in the areas of:

- ? obtaining goods, services and facilities;
- ? buying or renting land or property;
- ? employment.

### **What is meant by disabled?**

The definition in the Act covers people who would generally be regarded as disabled.

Under the Act, disability is defined as a physical or mental impairment which has a substantial and long-term effect on a person's ability to carry out normal day-to-day activities. (For more detailed information about this please see section 8.)

### **Who has responsibilities?**

Many people have the duty not to discriminate against disabled people. They include:

- ? organisations (no matter how large or small) and everyone involved in providing any kind of goods, facilities or services to the public;
- ? those selling, renting or managing land or property;
- ? those involved in the area of employment (unless exempted - see section 5).

### **So what is discrimination?**

Under the Disability Discrimination Act, discrimination occurs when:

- ? a disabled person is treated less favourable than someone else;
- ? and the treatment is for a reason relating to the person's disability; and
- ? this treatment cannot be justified.

Discrimination also occurs where:

- ? there is a failure to make a reasonable adjustment for a disabled person; and
- ? that failure cannot be justified.

Making reasonable adjustments in the provision of services, or by trade associations, is not required from 2 December 1996. These duties will be introduced at a later date. See section 7.

### **3. Goods, facilities and services**

#### **What is covered?**

All organisations that provide goods, facilities or services to the public, whether paid for or free, are covered by the Disability Discrimination Act - no matter how large or small they are. Those affected include hotels, shops, pubs, mail order or telephone order businesses, government departments, courts, employment agencies, local council services, law firms, doctors' clinics, churches and amenities such as parks.

Transport vehicles and education are not covered by this part of the Act.

#### **When does discrimination take place?**

If a disabled person meets with any of the following kinds of treatment, they are facing discrimination: Service is refused or a customer is ignored because of a reason connected with a disability, whilst others are treated better.

For example:

A newsagent says people with learning disabilities from a nearby training centre can't use his shop to buy snacks at lunchtime because the attention they need delays service to other customers. He is discriminating against them because of their disability. This is unlawful.

A worse service is provided or the disabled person is served in an inferior way.

For example:

Martha has difficulty in managing to eat because of a disability. When she returns a second time to a restaurant, the waiter shows her to an out-of-the-way table, even though other customers are allowed to sit at unreserved tables with the sea view she enjoyed last time. The reason he is treating her less favourably is because of a disability and does not apply to the other customers. He is acting outside the law.

The terms of service are not as good as other people obtain. This includes charging more or imposing extra restrictions.

For example:

It would be unlawful to charge a disabled person a higher deposit because of an unfounded belief that they were more likely not to complete the purchase.

#### **Is it ever allowable to treat a disabled person less favourably?**

The Disability Discrimination Act recognises that in a limited number of circumstances it is not always possible to give disabled people exactly the same service as other people. Less favourable treatment may be possible if a service provider reasonably believes that one of the following circumstances applies:

Health or safety - No one is required to do anything that would endanger the health or safety of any person, including the disabled person.

For example:

Winston is ten years old and has cerebral palsy. He was about to use the local swimming pool, when the new manager stopped him because he believed Winston was unable to swim. In the absence of further information this might have been within the law. But when an attendant who had taught Winston in a swimming class explained he could swim, it would have been unlawful for the manager to continue to refuse him.

Making contracts - A trader could refuse to enter into a contract with someone who cannot understand the nature of the contract because of a disability. But this does not apply when someone is acting on behalf of the disabled person, for example, under power of attorney. Nor does it mean that a trader can refuse service simply on the assumption that the disabled person cannot understand any kind of contract. It may only be complex ones that cause a problem.

For example:

A shopkeeper could refuse to rent a camcorder to Rob, who has Alzheimer's Disease, if he reasonably believes Rob does not understand he has to return it at the end of the week. But the shop is no longer justified when Rob's brother, with power of attorney, offers to undertake the contract.

Providing a service to others - A disabled person could be refused a service if it would mean the service could not be provided to others.

For example:

Barry's disability causes him to shout frequently. Because he made a lot of noise during a recent performance at the local cinema, the manager refuses to let him in a second time, as this would disrupt other people's enjoyment. Excluding Barry may be within the law.

Charging more - A disabled person cannot be charged more for the same goods or services than anyone else. However, if a special service is provided or goods made which cost more in labour or materials, the disabled person can be charged more.

For example:

A person with a spinal injury may be charged more for a made-to-measure chair which has required more work than one straight from a showroom.

**Is there anything to stop a disabled person being given more favourable treatment?**

No. A theatre Manager can, for instance, offer people who are hard of hearing front stall seats at rear stall prices; football clubs can reserve pitch-side places for wheelchair users; and historic houses can offer concessionary prices for disabled people.



#### 4. Buying or renting land or property

It is against the law to treat a disabled person less favourably when they are buying or renting land or property such as a house, a flat or a place to run a business. This covers most people involved in selling, letting or managing land or property, including local councils, housing associations, private landlords, and estate agents.

Some landlords, such as those who let out rooms in their own homes to six or fewer people (not counting relatives) are not included. The Act does not apply to owner-occupiers who do not use estate agents or advertise their home "for sale".

Discrimination takes place when:

A disabled person is refused the opportunity to buy or rent because of their disability.

For example:

Bruce has seen a "to let" sign outside a ground floor flat without any steps which looks right for his wheelchair. When he arrives at the letting agent's office, the woman behind the counter takes one look and tells him the flat wouldn't be suitable. This is unlawful.

Worse terms are offered.

For example:

Sally has schizophrenia. When talking to other tenants in the block of flats she's recently moved into, she's surprised to find the landlord has asked her, without any justification, to pay three times the deposit he's charged others to cover breakages. This is unlawful.

Waiting lists are manipulated to a disabled person's disadvantage.

For example:

The Ratcliffe family, with a disabled daughter, were wondering why they've been waiting so long to be given a place to live by a letting agency. By chance they discover that the agency has an unwritten practice of keeping all disabled people at the bottom of its waiting list. This is unlawful.

Disabled people are prevented or restricted from using benefits and facilities such as shared areas for recreation.

For example:

Because of his severe facial disfigurement Ron has been asked not to use the small communal gym in a block of flats at busy times. This is unlawful.

A disabled person is evicted or placed at a disadvantage.

For example:

The O'Connell's eldest daughter can occasionally be noisy because of a disability. The landlord hands them an eviction notice, because he claims the other tenants in the block are being disturbed. The family has never had any objections from the other people and none of them has made a complaint. This is unlawful.

Consent is refused to sub-let to a disabled person.

For example:

Roy wants to sub-let a room in his rented house. He decides Mary is the most suitable tenant because she has a steady job. He knows she had a mental illness in the past, but has fully recovered. On hearing of this, Roy's landlord tells him to find someone else, as he thinks, because of Mary's disability, this would be asking for trouble. This is unlawful.

### **Is it ever allowable for a disabled person to be treated less favourably?**

There are a few circumstances when it is not possible to treat disabled people as favourably as others. They include:

- ? health or safety;
- ? where a person cannot understand the nature of a contract because of their disability;
- ? refusing a disabled person access to a benefit or facility such as shared kitchen, if otherwise it would mean others could not use it;
- ? offering a different way into a facility, if this is necessary for them or others to gain access.

### **Can disabled people expect alterations to be made to property to make it more accessible?**

No. People do not have to make alterations to permit access for those renting or buying their property.

### **Is there anything to stop disabled people being given more favourable treatment?**

No. For instance, a local authority or housing association is entitled to put disabled people ahead of others on their housing list.

## 5. Employment

Naturally employers want the best person for the job. The Disability Discrimination Act does not interfere with this. It makes it against the law for an employer with 20 or more employees to discriminate against disabled employees or job applicants. Trade associations, such as trade unions, and some professional bodies such as employment agencies also have a duty not to discriminate.

Prison officers, firefighters, members of the different types of police forces, employees who work wholly or mainly outside Great Britain, members of the Armed Forces and employees who work on board ships, aircraft or hovercraft are not covered by the employment provisions of the Act.

Every aspect of the job is covered - including selection, doing the work, promotion, career development and redundancy or dismissal.

For example:

An employer prefers all employees to have a certain level of educational qualification. Jo has a learning disability which has prevented her from obtaining the preferred qualification. She is turned down for a job because she does not have that qualification. If that qualification is not necessary in order to do the job and she is otherwise the best candidate, then the employer will have discriminated unlawfully against her.

### **Making reasonable adjustments**

It may be that the physical features of an employer's premises or the working arrangements put a disabled person at a substantial disadvantage compared with non-disabled people. If that is the case, the employer must take steps, as it is reasonable for him to have to take in the circumstances to prevent that disadvantage. This duty applies both to recruitment and to those currently employed. For example, if a reasonable adjustment results in the disabled person becoming the best person for the job, the employer has to have a justifiable reason for refusing to offer the job to that person. Without such a reason, the employer will have discriminated.

For example:

Ellen is an excellent word processor operator, but her arthritis means her typing is a little too slow to pass a local company's standard test. She suggested that a different design of keyboard would overcome the problem. The personnel manager agreed to appoint her and buy one. This was a reasonable adjustment.

**What sort of adjustments might a disabled person find helpful for an employer to make? Some examples follow.**

**Altering premises** - Painting parts of an interior in contrasting colours to help a visually impaired worker to find their way around.

**Transferring minor duties** - Arranging for a person with dyslexia not to have to write the occasional letter if this was not essential to the job and could be given to someone else.

**Transferring individuals** - Moving an employee who develops mobility problems from an outdoor to a desk job.

**Altering working hours** - Allowing someone to work different hours to fit in with the availability of a carer.

**Changing the place of work** - Moving the workstation of a wheelchair user from a difficult-to-reach third floor location to a much more accessible one on the ground floor.

**Arranging extra training** - Sending a visually impaired person to a course on using a computer with speech output.

**Equipment changes** - Providing a telephone with text display for use by a deaf person.

**Changing instructions or manuals** - Providing a braille version for a blind person or simplified instructions for someone with a learning disability.

When is it reasonable for an employer to have to make an adjustment? That depends on all the circumstances involved, such as the cost in relation to the resources of the organisation, how effective it would be and the availability of any outside funding or practical assistance. Often an adjustment costs little or nothing, as in fitting brighter lights or re-arranging a workplace layout.

## **From beginning to end**

### **5.1 Recruitment and selection**

It's unlawful to discriminate against a disabled person in the arrangements for deciding who should get the job, such as job descriptions and interviews. When drawing up a job description, employers should bear in mind that including requirements which have little to do with the actual work can lead to discrimination, as they may exclude people with certain disabilities who could do the job. For example, it would be discriminatory to ask for a driving licence as a qualification for an office job involving a small amount of travelling, which a disabled person with mobility problems could do by other means, such as taking a taxi or catching a bus.

It's also against the law to rule anyone out simply because an employer happens to believe that a particular disability might make them unable to meet one of the job's requirements.

For example:

The boss of a messenger firm believes that Paul cannot be relied upon to be punctual - a key part of the job - because he has a learning disability. He ignores Paul's excellent record of time-keeping in his last job and turns him down. As the boss has refused to properly consider Paul's application, he has treated Paul less favourably, for a reason related to his disability, than he would have treated someone without such a disability. The treatment cannot be justified and is therefore unlawful discrimination.

Because employers have a duty to make reasonable adjustments, when a disabled person is short-listed it's a good idea to discuss in advance any special arrangements that would help the candidate.

For example:

The personnel manager of an insurance company was well prepared for the arrival of Yasmin who had told him in her application about her hearing impairment. He made sure his face was well-lit and was careful to face Yasmin directly and speak clearly to assist lip-reading, and he was happy to repeat questions.

The Disability Discrimination Act doesn't stop employers asking disabled candidates about their disability, but only if it is, or may be, relevant to the person's ability to do the job. Of course, the employer must not use any information provided to discriminate against the disabled person. Asking questions could also help employers foresee what changes, if any, might need to be made to enable the disabled person to do the job.

## **5.2 Doing the work**

All aspects of doing a job come under the Act. These examples cover just some of them.

When they're starting a new job, people often need to have an induction course. Sometimes employers might need to tailor a course as a reasonable adjustment, for example, allowing a newcomer with a learning disability to take a longer time or have the support of a helper.

An employer has to make reasonable adjustments to reduce any substantial disadvantage caused by the physical features of premises or the employment arrangements. For example, fixing hand rails for someone who need them to help in getting about might be reasonable for a firm to have to do, depending on all the circumstances. There may also need to be some flexibility in any terms and conditions that could put a disabled person at a substantial disadvantage.

For example:

After treatment for mental illness, Shah was able to find work again as a local government officer. However, his disability was aggravated by the stress of travelling in the rush hour on the underground, and this had an adverse effect on his work. Starting and finishing times were not important to the job and agreeing alternative times with his Head of Department removed the stress, and Shah's work improved as a result. Therefore, the adjustment solved the problem.

If someone already working for a firm becomes disabled, or a disabled employee's condition deteriorates, an employer must make any necessary reasonable adjustments. It's useful to talk to individuals about their needs and seek any necessary specialist advice.

For example:

Jane has developed multiple sclerosis, so her employer has arranged for her to move from her job as a shop assistant to fill a less physically demanding vacancy in the back office and receive the necessary training. They agreed between them that as time goes on, Jane can work part-time in order to reduce fatigue and receive outside medical treatment.

Disabled members of staff are entitled to any benefits such as canteens, social clubs and health care offered by the employer. If it is significantly more difficult for a disabled person to take advantage of a particular benefit because of an employer's arrangements or premises, the employer should make any necessary reasonable adjustment, such as reserving a parking space close to the social club entrance for a wheelchair user.

The Act inserts into every occupational pension scheme a "non-discrimination" rule. This means that the trustees or managers of the scheme are prohibited from doing, or omitting to do, anything to members or non-members of the scheme that would be unlawful if done by an employer.

For example:

Trustees of a pension scheme would not be justified in excluding Sue simply because she had a visual impairment. That fact, in itself, would be no reason why she should not receive the same pension benefits as any other employee.

The duty to make a reasonable adjustment does not apply to occupational pension schemes or certain other benefits.

### **5.3 Career development**

Employers must not discriminate against disabled employees in relation to any aspect of career development, for example, promotion, transfer or training. If necessary, reasonable adjustments must be made to facilitate the career development of disabled people, for example, making a training venue more accessible for someone finding it difficult to move around.

The need to make reasonable adjustments also applies to providing opportunities for promotion, for example, giving someone with a visual or hearing impairment the opportunity to take a management course run by an appropriate voluntary organisation.

### **5.4 Ending employment**

Ending the employment of a disabled person for a reason related to their disability would need to be justified. This would include showing that the reason for dismissal could not be removed by any reasonable adjustment - for example, where a disability makes it impossible for an employee to continue to do the main part of the job.

For example:

Paula's eyesight, essential to her job as a graphic designer, has been steadily deteriorating. Although modifications to her workstation enabled her to continue for a while, she has become totally blind. As Paula can no longer perform the main function of her job and there are no alternative vacancies to which she can be transferred, her employer would be justified in offering her early retirement on medical grounds.



## **6. Any Complaints?**

### **What should a disabled person do if discriminated against?**

Firstly they may try and resolve the dispute with the person concerned. In doing this, they may wish to seek help, for example from their trade union or a local voluntary organisation, such as a local disability group or local advice centre.

If the complaint is about employment, the Advisory, Conciliation and Arbitration Service (ACAS) or in Northern Ireland the Labour Relations Agency (LRA), can make the services of a conciliation officer available at the request of either party. They will try to settle the dispute without the need for a complaint to go to an industrial tribunal.

A disabled person wishing to make a complaint to a tribunal should obtain application form IT1 from a Jobcentre or a Citizens Advice Bureau, and also a copy of leaflet IT1L, which explains about the procedure. A booklet titled The questions procedure is available, which an individual can use to ask an employer's reasons for the treatment, or failure to make reasonable adjustment.

If the complaint is about goods, facilities or services, or land or property, and it cannot be resolved informally, then a disabled person can take their case to the county court (in Scotland, the sheriff court). They may wish to seek advice before taking this action.

A disabled person may wish to contact a solicitor to help with their case. Some solicitors work in law centres or advice agencies and offer free advice. Help may also be available from a local advice centre.

The address and telephone number of the local county court or sheriff court in Scotland, can be found under 'Courts' in the telephone book.

### **Who is liable?**

Individual members of staff have responsibilities not to discriminate. Employers and service providers also need to be aware that they can be held responsible for what an employee does, unless they've taken all practicable steps to prevent discrimination. They can also be held responsible for anyone acting on their behalf, such as a agent or representative unless that person is acting outside their authority. It's a manager's responsibility to make sure all staff know what actions may be against the law.

## **7. Future developments**

Further measures will be phased in over a number of years so that people providing services will have to take reasonable steps to:

- ? change policies, practices or procedures that make it unreasonably difficult for an disabled person to use a service;
- ? provide additional help that will help disabled people to use their services;
- ? remove or alter a feature of their premises that make it unreasonably difficult or impossible for a disabled person to use a service, or else find another reasonable way to provide the service to disabled customers.

Trade organisations will have to make any reasonable adjustments for their disabled members or prospective members.

## **8. Additional information**

### **What does the Act mean by a disabled person?**

The thinking behind the Act is that it should protect people who would generally be regarded as disabled. This is why the Act says that someone has a disability if they have a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities. The main meaning of long-term is lasting, or being likely to last, at least 12 months. And there has to be an effect in one of a number of areas listed in the Act, including among others mobility, manual dexterity, speech, hearing or eyesight, memory or ability to concentrate, learn or understand.

People covered by this definition would obviously include anyone permanently unable to use a limb, see or hear. People with what are commonly known as learning disabilities or with long-lasting clinically well-recognised mental illnesses could clearly also fit within this definition (depending on the particular effects on each individual).

It may not be so immediately obvious, however, whether some other conditions fit into this main definition.

For example, people with some long-lasting or permanent conditions, such as arthritis, can experience periods without substantial effects.

And some long-lasting or permanent conditions, such as multiple sclerosis, are likely to deteriorate over time until they have substantial effects but may in the early stages only have very small effects.

And some long-lasting or permanent conditions, such as diabetes, can have their substantial effects greatly reduced or removed by medication or other treatment.

Severe disfigurements may have no effects at all.

The Act therefore includes provisions to ensure that these sort of conditions generally count as disabilities, although the position in any individual case will depend on the precise facts. Anyone who was registered disabled under the Disabled Persons (Employment) Act 1944 both on 12 January 1995 and on 2 December 1996 will be regarded as meeting the definition of disability for three years from the second date.

In addition, regulations made under the Act ensure that a number of conditions (such as alcoholism or nicotine dependency) do not count as disabilities.

And, finally, the rights under the Act in the fields of employment, provision of goods, facilities and services, and the management, sale and letting of premises also apply to people who have had a disability in the past.

To order more copies of this leaflet please telephone 08457 622 633 (or for people who prefer to communicate through text on 08457 622 644).

This leaflet is also available in Braille, audio cassette, signed and subtitled video and a pack for people with learning disabilities.

The Government has published the following publications, which give practical guidance to employers, service providers and people involved in selling, letting or managing property:

- ? Code of Practice - Rights of Access - Goods, Facilities, Services and Premises  
Price £6.00 ISBN 0/11/762432/2
- ? Code of Practice for the elimination of discrimination in the field of employment against disabled persons or persons who have had a disability  
Price £9.95 ISBN 0/11/270954/0
- ? Guidance on matters to be taken into account in determining questions relating to the definition of disability  
Price £7.50 ISBN 0/11/270955/9

These publications are available from Stationery Office bookshops. They can be ordered by telephoning or faxing on the numbers below:

**Telephone orders: 0171 873 9090**

**Fax orders: 0171 873 8200**