

# Disability Discrimination Act

## Information sheet



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### DDA IMPLICATIONS TO SERVICE PROVIDERS PART III

#### Introduction

The purpose of this summary is to explain the new and existing duties imposed on businesses which are “service providers” under Part III of the Disability Discrimination Act 1995 (“**DDA**”), particularly as they affect small and medium sized businesses. Unlike the employment provisions contained in Part II (which are already fully in force), no exemptions are made for service providers based on the size of their business.

#### What is the Disability Discrimination Act? (DDA)

The Disability Discrimination Act 1995 is considered to end discrimination suffered by disabled people. Part II of the DDA has already given disabled employees rights against their employers. **Now Part III of the DDA gives disabled members of the public rights of access to goods, facilities and services.** It makes it unlawful for people who provide goods, facilities or services to the public to discriminate against disabled people.

#### When does Part III of the Act come into force?

It is already unlawful for service providers to treat disabled people less favourably than other people for a reason related to their disability. Service providers must make **reasonable adjustments** for disabled people, such as providing extra help or making changes to the way they provide their services.

From **October 2004** service providers will also have to consider making **reasonable adjustments** to the **physical features** of their premises in order to overcome physical barriers to access.

#### When does unlawful discrimination occur?

Unlawful discrimination occurs when a service provider treats a disabled person less favourably than a person who is not disabled where: the treatment relates to the fact that they are disabled; and the treatment cannot be justified. Failure to change the way in which a service is offered or to make alterations to a facility used in providing the service which makes it impossible, or unreasonably difficult, for a disabled person to use these could amount to unlawful discrimination.

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### Who has rights under the Act?

The Act protects the rights of a wide range of people with sensory, mental or physical disabilities. This includes people who use wheelchairs, blind and partially sighted people, deaf people, people with arthritis, people with long-term illnesses and people with learning disabilities. The Act also covers people with severe disfigurements and, in certain circumstances, people who have had a disability in the past, e.g. someone who had severe depression, but has since recovered.

## A summary of the Disability Discrimination Act 1995 for service providers

### What is a service provider?

This is anyone providing goods or facilities in the United Kingdom to the public, or to a section of the public, whether in the private or in the voluntary sectors. It does not matter if the services are provided free of charge. The Act sets out a list of examples of services, which include the following:-

- access to and use of any place which members of the public are permitted to enter
- access to and use of communications
- access to and use of information services
- accommodation in hotels and boarding houses
- banking and insurance facilities
- facilities for entertainment, recreation or refreshment
- employment agencies
- the services of any trade or profession or any local or public authority.

There seems no doubt that any property within Class A1 (shops), A2 (financial or professional service) or A3 (food and drink) of the Town and Country Planning (Use Classes Order) 1987 will fall within the category of premises affected by these provisions. Accordingly these may require alteration to allow access for those using the services, since their very nature demands that services are provided to visiting members of the public. However, other premises will be subject to the DDA where the public require access in the course of the service to be provided.

The Act does not cover private clubs and associations. A club is usually considered private if it has strict conditions regulating membership.

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### Does the Act exempt any service providers from its provisions?

Part III of the DDA does exclude **education and the use of any means of transport** from its provisions. However, the transport infrastructure is covered by the DDA, e.g. a bus station. **Manufacturers and designers of goods** are also excluded because they are not providing services direct to the public. However, if they do provide services direct to the public then they may have duties under the DDA, e.g. a manufacturer of self-assembly furniture who sells direct by mail-order. The issue here would be the accessibility of the design of the self-assembly furniture for assembly by a disabled person.

### What are the duties of a service provider?

Service providers must treat disabled people in the same way as they would treat any other person, when offering or providing a service or facility. A service provider must not therefore: refuse to serve, or offer a service normally offered to other people offer a lower standard of service offer less favourable terms Section 21 of the Act places a duty upon a service provider to remove or alter any physical barrier that makes it impossible or unreasonably difficult for a disabled person to use that service.

The provisions relating to **how** services are provided are already in force and in October 2004 those requiring alterations to premises come into effect. From that date a service provider will have to **take reasonable steps** to remove or alter a physical feature of their premises which makes it unreasonably difficult, or impossible, for a disabled person to use the service. If the feature cannot be changed, the service provider must find an alternative way of providing the service to a disabled person, where this is reasonable. Similar provisions affecting the duties of employers to their employees are already in force.

### What are reasonable steps?

At present, for the purpose of assessing what is a reasonable adjustment the best guide we have about what is likely to be reasonable are the regulations in force for employees, the Disability Discrimination (Employment) Regulations 1996.

As an example, if building works have been carried out which satisfy the current building regulations affecting access to, and facilities for, the disabled, the employer will not have to alter those aspects. And if an employer needs consent from his landlord for any works it is never reasonable for him to carry them out without that consent. However, even if he thinks it will be refused he should always apply for it. It is likely that similar provisions will apply to service providers.

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### When is it reasonable for a landlord to withhold consent?

A landlord may not unreasonably withhold consent to any physical alterations which a tenant wishes to carry out, in order to comply with his duties under the DDA. This will override the provisions of the lease. He must act promptly in response, and take steps to obtain the consent of anyone else (such as a superior landlord).

So even if the lease prohibits alterations, the landlord must give permission unless there are good reasons not to. A landlord cannot unreasonably withhold his consent, or seek to impose unreasonable conditions.

### Alterations to listed buildings

The DDA states that: “nothing in this Act makes unlawful any act done in pursuance of any enactment”. The DDA obligations not to discriminate against disabled persons are therefore subordinate to other enactments, and to the conditions or requirements imposed under such enactments, which might conflict with those obligations. So there is no obligation to make alterations to premises where planning or similar permission for the works cannot be obtained, nor, even if planning consent to the alterations can be obtained, if the adjustments required are unreasonable – perhaps because they involve excessive expense or radical alterations to historic buildings. In order to demonstrate whether or not an adjustment is either reasonable, or unreasonable an Access Plan for the premises should be drawn-up which should:

- identify existing physical and communication barriers to access
- access the needs of users
- assess the impact of these on the features of historic, architectural or archaeological interest;
- and
- devise solutions which reconcile the needs for access with those of conservation.

### What steps should you be taking now?

Familiarise yourself with the Disability Discrimination Act 1995  
Familiarise yourself with the Disability Discrimination Act Code of Practice

Consider whether compliance may be effected by alterations to business practice rather than physical alteration to the premises, as this may be more cost-effective.

Specialist advice should be obtained before taking or refraining from taking, action based on comments contained in this note which is only intended as a briefing note.