

Status: There are multiple versions of this provision on screen. These apply to different geographical extents. Skip to: E+W+S - England, Wales and Scotland extent N.I. - Northern Ireland extent

Changes to legislation: There are currently no known outstanding effects for the Disability Discrimination Act 1995, Section 21D. (See end of Document for details)



Disability Discrimination Act 1995

1995 CHAPTER 50

PART III

DISCRIMINATION IN OTHER AREAS

^{F1} [^{F2}Public authorities]

[^{F2}21D Meaning of “discrimination” in section 21B **E+W+S**

^{F3}]

Extent Information

E1 This section extended to England, Wales and Scotland only; a separate s. 21D exists for Northern Ireland only.

Textual Amendments

F2 Ss. 21B-21E and cross-heading inserted (E.W.S.) (30.6.2005 for ss. 21D and 21E for the purpose only of exercising any power to make regulations, orders or rules of court and otherwise 4.12.2006 for all remaining purposes and for all inserted sections) by [Disability Discrimination Act 2005 \(c. 13\)](#), ss. {2}, 20(3)-(6); [S.I. 2005/1676](#), [art. 2\(2\)\(a\)](#); [S.I. 2005/2774](#), [art. 4\(a\)](#)

F3 Act repealed (E.W.S.) (1.10.2010 (except for the repeal of ss. 49A-49D) and 5.4.2011 in so far as not already in force) by [Equality Act 2010 \(c. 15\)](#), 216(3), Sch. 27 Pt. 1 (as substituted (1.10.2010) by [S.I. 2010/2279](#), [Sch. 2](#)) (with ss. 6(4), 205, and with amendments and savings in the said [S.I. 2010/2279](#), [art. 16](#)); [S.I. 2010/2317](#), [art. 2\(15\)\(f\)](#) (with [arts. 4-25](#), [Schs. 1-16](#)); [S.I. 2011/1066](#), [art. 2\(h\)](#)

[^{F1}21D Meaning of “discrimination” in section 21B **N.I.**

(1) For the purposes of section 21B(1), a public authority discriminates against a disabled person if—

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- (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
 - (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 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 the 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;

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- (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.]

Extent Information

- E2** This section extends to Northern Ireland only; a separate s. 21D for England, Wales and Scotland only repealed (1.10.2010).

Modifications etc. (not altering text)

- C1** [S. 21D\(4\)\(b\)](#) excluded (N.I.) (31.12.2007) by [The Disability Discrimination \(Service Providers and Public Authorities Carrying Out Functions\) Regulations \(Northern Ireland\) 2007 \(S.R. 2007/473\)](#), **reg. 3**

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