

# **DISABILITY DISCRIMINATION ACT 2005**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### *Section 1: Councillors*

14. **Section 1** inserts new sections 15A, 15B and 15C into Part 2 of the DDA, as amended by the Amendment Regulations. The new provisions make it unlawful for the locally-electable authorities listed in new section 15A(1) to discriminate against their members in relation to the carrying-out of official business.
15. New section 15A(1) sets out the authorities to which the new provisions apply. These include all local authorities in England, Wales and Scotland and the Greater London Authority.
16. The duties imposed on locally-electable authorities by the new provisions only apply where a member is carrying out “official business”. By virtue of new section 15A(2), a member carries out official business where he does anything in his capacity as: a member of his own authority; a member of any body to which he is appointed by his own authority or a group of authorities that includes his own authority; or a member of any other public body. Whether an authority actually has power to provide training or other facilities (see new section 15B(1)(a)) to its members for their carrying-out of any particular official business will be determined by the legislation from which the authority derives its powers.
17. New section 15B(1) makes it unlawful for an authority to discriminate against a disabled member: in relation to opportunities which it affords its members to receive training or any other facility it makes available to its members for the carrying-out of official business; or by subjecting the disabled member to any other detriment in relation to the carrying-out of official business. “Discrimination” bears the meaning set out in section 3A of the DDA (as inserted by the Amendment Regulations).
18. New section 15B(2) makes it unlawful for an authority to subject a disabled member to harassment in relation to the carrying-out of official business. “Harassment” is defined in section 3B of the DDA (as inserted by the Amendment Regulations).
19. New section 15B(3) provides for a number of matters to be excluded from the scope of the duties imposed by new section 15B(1). These are: election or appointment to an office of an authority (such as a cabinet post); election or appointment to a committee or sub-committee of an authority, or to an office of a committee or sub-committee (such as chairman); and appointments to any other body to which an authority, or a group of bodies including that authority, has the power to appoint or nominate (such as a police authority).
20. New section 15B(4) and (5) enable the Secretary of State to make regulations relating to the justification for less favourable treatment. New section 15B(4) permits regulations to be made prescribing the circumstances in which treatment is to be taken to be justified or not to be justified. New section 15B(5) allows regulations made under subsection (4) to modify or disapply the justification for less favourable treatment

*These notes refer to the Disability Discrimination Act  
2005 (c.13) which received Royal Assent on 7 April 2005*

set out in section 3A(3) of the DDA (as inserted by the Amendment Regulations). However, this power cannot be used to justify less favourable treatment which amounts to direct discrimination, which is defined in section 3A(5) of the DDA (as inserted by the Amendment Regulations).

21. New section 15B(6) imposes a limitation on the justifications that may be provided for in regulations under section 15B(4). The effect is that an authority which fails to comply with a duty to make a reasonable adjustment in relation to a disabled person cannot justify its treatment unless it would have been justified even if it had complied with the duty. See section 3A(6) of the DDA for a similar provision which applies to the rest of Part 2 of the DDA.
22. New section 15C sets out the duty of an authority to make reasonable adjustments in relation to its disabled members and broadly follows the pattern of Part 2 of the Act. An authority will be under a duty to make an adjustment where a provision, criterion or practice it applies, or which is applied on its behalf, or a physical feature of premises which it occupies or controls, places a disabled member at a substantial disadvantage in comparison with non-disabled members in relation to the carrying-out of official business. In these circumstances, an authority will be under a duty to take reasonable steps to prevent the provision, criterion, practice or physical feature from having that effect. Section 15C(3) provides that the duty in subsection (2) does not apply if the authority could not reasonably be expected to know that the member has a disability and is likely to be affected in the way mentioned in subsection (1).
23. New section 15C(4) enables the Secretary of State to make regulations elaborating on the duty to make adjustments.
24. A victim of unlawful discrimination or harassment contrary to the new provisions would be able to bring enforcement proceedings in an employment tribunal under section 17A<sup>1</sup> of the DDA.
25. [Schedule 1](#) includes a number of minor and consequential amendments arising out of new sections 15A to 15C (see the commentary below).

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<sup>1</sup> The Amendment Regulations renumber section 8 of the DDA as section 17A.