

# DISABILITY DISCRIMINATION ACT 2005

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Section 2: Discrimination by public authorities*

#### **New section 21B: Discrimination by public authorities**

29. New section 21B(1) makes it unlawful for a public authority to discriminate against a disabled person in carrying out its functions. It should be noted, however, that section 21B(1) is subject to section 59 of the DDA. This means that section 21B(1) will not apply where a public authority is exercising a statutory power and has no discretion as to whether or how to exercise that power, or no discretion as to how to perform its duties.
30. Section 21B(2) defines “public authority” for the purposes of sections 21B, 21D and 21E. The definition is the same as that used in section 19B(2) of the RRA. It is also the same as the definition used in section 6(3)(b) of the Human Rights Act 1998. The definition is subject to the exceptions in new section 21B(3). It is also subject to the proviso in new section 21B(4), which specifies that a body will not be a public authority if the nature of the act being carried out is private. For example, the BBC would not be considered to be a public authority when carrying out its commercial activities.
31. Section 21B(5) provides a regulation-making power that will allow for specified public authorities to be exempted from the prohibition of discrimination in section 21B(1).
32. Section 21B(7) sets the boundaries between the new public authority duty in section 21B(1) and the other provisions of the DDA. The intention is, in broad terms, that where something is unlawful under another provision of the DDA, that other provision, and not section 21B(1), will apply. This principle applies in the same way where something would be unlawful but for the operation of any other provision of the DDA or regulations made under it (for example, a proviso or an exception). So where, for example, a public authority is an employer or a service provider, its acts as an employer or as a service provider will be governed by the existing DDA provisions relevant to that sphere of activity (Part 2 in the case of employment, sections 19 to 21 in the case of the provision of services). It will not also be liable, as a public authority, for the same acts under section 21B(1).
33. Section 21B(8) creates an exception, for the case of office holders, to the general principle set out by section 21B(7). Under certain conditions and where sections 4C to 4E do not apply to appointment to the office or post in question, section 21B(1) will apply both to the function of appointing and to other functions of the public authority vis-à-vis the holder of the office. An example might be the function of a local education authority when appointing a school governor, which is an office not covered by the terms of section 4C.
34. Section 21B(9) creates, under certain conditions, a further exception to the general principle created by section 21B(7) for the case of certain elected office or post holders. Under certain conditions and where sections 4C to 4E do not apply to appointment to

*These notes refer to the Disability Discrimination Act  
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the office or post in question, section 21B(1) will apply to functions of a public authority in relation to a candidate or prospective candidate for certain public offices or posts and to functions of the authority vis-à-vis the elected office holder once he holds office. This means, for example, that functions of a local education authority in organising an election of parent school governors would be covered by section 21B(1). The election itself is not a function of a public authority and is not covered by section 21B(1). The functions of the public authority in relation to the parent governor, once elected, would also be covered by section 21B(1).