

DISABILITY DISCRIMINATION ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 2: Discrimination by public authorities

New section 21E: Making of adjustments by public authorities

47. New section 21E imposes, on public authorities carrying out functions, duties equivalent to those imposed on service providers by section 21 of the DDA. In broad terms, new section 21E puts public authorities under a duty to make reasonable adjustments for disabled persons (such as adjustments to procedures, alterations to the physical features of buildings or the provision of an auxiliary service such as a BSL interpreter), where such persons are – by reason of their disability – disadvantaged in some way by, or in relation to, the carrying-out of the function. The duty requires public authorities to anticipate the requirements of disabled persons and the adjustments that may need to be made for them.
48. For the purposes of this section, two different aspects of public functions are considered separately:
 - First, the possibility that the exercise of a function may confer benefits on people affected by the exercise of the function. For example, that would be the case where a local authority is making grants to members of the public. In these cases, the provisions require public authorities to make reasonable adjustments when failing to make such an adjustment would make it ‘impossible or unreasonably difficult’ for a disabled person to receive such a benefit.
 - Second, the possibility that the exercise of a function may subject people affected by its exercise to a detriment. For example, that would be the case where a law enforcement agency exercises a power to arrest or detain members of the public. In these cases, the provisions require public authorities to make reasonable adjustments in order to avoid making it ‘unreasonably adverse’ for disabled people to experience being subjected to the detriment.
49. The so-called trigger for the duty to make a reasonable adjustment will therefore depend on whether the carrying-out of the function is capable of conferring a benefit or subjecting a person to a detriment.
50. When the relevant trigger is met, new section 21E(1) and (2) places a duty on a public body to take reasonable steps to change policies, practices or procedures (such as waiving a requirement in certain circumstances to fill out a form in writing). This duty is analogous to section 21(1) of the DDA.
51. When the relevant trigger is met, new section 21E(3) and (4) places a duty on a public body to take reasonable steps to deal with a physical feature (for example, installing a ramp as an alternative to steps). This duty is analogous to section 21(2) of the DDA.
52. New section 21E(5)(a) allows regulations to prescribe matters that can be taken into account when deciding whether the means of avoiding a physical feature

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

(new section 21E(4)(c)) or an alternative method of carrying out the function (new section 21E(4)(d)) is reasonable. New section 21E(5)(b) gives a regulation-making power to allow categories of public bodies to be specified to which the duty to make reasonable adjustments to physical features in section 21E(4) does not apply.

53. When the relevant trigger is met, new section 21E(6) and (7) places a duty on public authorities to take reasonable steps to provide auxiliary aids or services (such as notification of a decision on audio tape). This duty is intended to be analogous to section 21(4) of the DDA.
54. New section 21E(10) makes it clear that a breach of a duty imposed by section 21E is not actionable as such. Rather the duties are for the purposes of determining whether a public body has discriminated against a disabled person for the purposes of section 21B(1).