

DISABILITY DISCRIMINATION ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 3: Duties of Public Authorities

New section 49B: Meaning of “public authority” in Part 5A

60. New section 49B(1) defines “public authority” for the purposes of section 49A. The definition in new section 49B(1)(a) is the same as the definition used in new section 21B(2) (to be inserted by section 2).
61. The definition of “public authority” in new section 49B(1)(a) is also the same as that used in section 6(3)(b) of the Human Rights Act 1998. It is subject to the proviso in new section 49B(2), which provides that a body will not be a public authority if the nature of the act being carried out is private. For example, the Law Society is likely to be covered in respect of its statutory functions such as those relating to the regulation of solicitors, but not its private functions - for example the representation of the interests of the profession in dealings with Government.
62. The list of bodies subject to the equivalent race duties (see Schedule 1A to the Race Relations Act 1976, as inserted by the Race Relations (Amendment) Act 2000) was compiled with regard to the Human Rights Act definition of “public authority”, and so it is expected that the range of bodies covered by the definition in new section 49B will be similar. The definition will certainly include Government Departments, local authorities, the police and other governmental organisations.
63. New section 49B(1)(b) excludes certain bodies from the definition of public authority, in particular the Scottish Parliament and the bodies listed in section 21B(3) (see section 2), for example the Houses of Parliament and the intelligence agencies.
64. New section 49B(3) provides a power, by regulations, to exclude certain bodies from the definition of public authority for the purposes of Part 5A. It could be used, for example, to clarify the situation where there was doubt as to whether a body was covered or not, or to exclude bodies altogether where there were good policy reasons as to why they should not be covered by the section 49A(1) duty.