

DISABILITY DISCRIMINATION ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 3: Duties of Public Authorities

55. This section amends the DDA by inserting a new Part 5A following section 49. The effect of this is to introduce into the DDA provisions which impose on public authorities duties relating to disabled people that are similar to those imposed by section 71 of the Race Relations Act 1976 (as substituted by the Race Relations (Amendment) Act 2000, section 2).
56. The new Part 5A is intended to ensure that bodies which exercise public functions “mainstream” disability rights issues when exercising those functions. This means, in broad terms, that public bodies, when making decisions, or when developing or implementing a new policy, must make consideration of the needs of disabled people an integral part of the policy-making or decision-making process with a view to eliminating discrimination and harassment and to improving opportunities for, and promoting positive attitudes towards, disabled people. In addition, when exercising functions, bodies must take account of the need to encourage disabled people to take part in public life.

New section 49A: General Duty

57. New section 49A(1) sets out the six prongs of the duty. It requires a public authority, as defined in section 49B, to have due regard, when carrying out its functions, to the need to eliminate unlawful discrimination against disabled people, the need to eliminate disability-related harassment of disabled people, the need to improve equality of opportunity for disabled people, the need to promote positive attitudes towards disabled people, and the need to encourage participation by disabled people in public life. The duty will be enforceable through judicial review.
58. New section 49A(1)(d) requires public authorities to have due regard to the need to take steps to take account of disabled persons’ disabilities or, in effect, to have due regard to the need to take steps to overcome the effects of disabilities. This underlines that ‘equality of opportunity’ cannot be achieved simply by treating disabled and non-disabled people alike, and recognises the long-standing principle that it is sometimes necessary to take positive steps to overcome the barriers faced by disabled people by making reasonable adjustments (such as providing information in different formats) or by making special provision for disabled people’s needs (such as providing specialist transport services when public transport is inaccessible).
59. New section 49A(2) makes it clear that compliance with the general duty in section 49A(1) will not detract from a public authority’s obligations to comply with other provisions of the DDA.

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.

New section 49C: Exceptions from section 49A(1)

65. New section 49C(1) to (3) set out certain acts which are not subject to the duties in section 49A(1) such as judicial acts, legislative acts, and acts relating to employment in the armed forces.
66. New section 49C(4) provides a power to define in regulations other acts in relation to which duties under section 49A(1) will not apply. This would enable, for example, regulations to clarify the situation where there was doubt as to whether an act was covered or not, or to exclude particular types of act from those duties where there would be good policy reasons as to why they should not be covered.

New section 49D: Power to impose specific duties

67. New section 49D(1) to (4) will provide powers for the Secretary of State, in respect of all bodies other than certain Scottish bodies, and for the Scottish Ministers in respect of those Scottish bodies, to impose by regulations specific duties on bodies to assist the bodies in the performance of their duties under section 49A(1). Such duties may involve, for example, some organisations having to produce disability equality schemes, or carry out certain types of monitoring.
68. In the case of cross-border public authorities (within the meaning of section 88(5) of the Scotland Act 1998), the Secretary of State may impose, by regulations, duties in respect of their functions which are not Scottish functions, and the Scottish Ministers may impose, by regulations, duties in respect of their Scottish functions. New section 49D(8) requires that, before placing cross-border public authorities under specific duties, the Secretary of State must consult the Scottish Ministers. Similarly, new section 49D(9) requires that, before placing cross-border public authorities under specific duties, the Scottish Ministers must consult the Secretary of State.

69. New section 49D(5) to (7) provide for other consultation requirements in relation to regulations under section 49D(1) to (4).

New section 49E: Compliance notices

70. New section 49E sets out the framework for the enforcement of specific duties imposed by regulations under new section 49D. The Disability Rights Commission may serve a compliance notice on a public authority where it is satisfied that the authority is not complying with any specific duty imposed by such regulations. A compliance notice would require the public authority to comply with the duty concerned and also to inform the Disability Rights Commission of the steps it has taken (or is taking) to do so. It could also require the public authority to give the Disability Rights Commission other information that may be required in order to verify that the duty has been complied with.

New section 49F: Enforcement of compliance notices

71. New section 49F contains provisions about the enforcement of compliance notices. New section 49F(1) and (2) enable the Disability Rights Commission to apply to a county court, or in the case of Scotland a sheriff court, for an order to supply information where it believes that a public authority has not provided, or intends not to provide, information requested under section 49E, and for the court to grant such an order where the relevant conditions are met.
72. New section 49F(3) and (4) enable the Disability Rights Commission, at the end of the time specified in a compliance notice issued under section 49E, to apply to a county court, or in the case of Scotland a sheriff court, for an order that the public authority concerned must comply with a duty imposed by regulations made under new section 49D. The court has powers to grant such an order where it is satisfied that the duty has not been complied with.
73. New section 49F(5) makes it clear that the only sanctions for not complying with a duty under section 49D are those set out in sections 49E and 49F.