



## BRIEFING PAPER

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# Disabled access to goods, services and facilities

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## Summary

Disabled people have rights not to be discriminated against in a number of different areas of life. The *Disability Discrimination Act 1995* (DDA) made it unlawful for service providers to discriminate against disabled people in certain circumstances. From 1 October 2004 service providers had to take reasonable steps to remove, alter or provide a reasonable means of avoiding, a physical feature which made it impossible or reasonably difficult for disabled people to use a service.

On 1 October 2010, the *Equality Act 2010* (EA) replaced most of the DDA). The duty on providers of goods, services and facilities was replaced with a duty to make reasonable adjustments in order to avoid a disabled person being placed at a “substantial disadvantage” compared with non-disabled people when accessing services and facilities.

The EA does not prescribe what a reasonable adjustment might be – this is to be determined by the particular circumstances in each case.

The person who believes they have experienced disability discrimination as a result of not being able to access a (non-transport related) good, service or facility is, as a general rule, responsible taking enforcement action via the courts against the provider. Local authorities do not have an enforcement role in this context.

A separate Library Briefing Paper (00601), [Transport: access for disabled people](#) outlines the legislative requirements for transport providers to make their services and infrastructure accessible to disabled people.

# 1. Duties under the Equality Act 2010

The stated purpose of the *Equality Act 2010* (EA) is to streamline and strengthen anti-discrimination legislation.<sup>1</sup> The Act's provisions extend to England and Wales; the sections discussed in this note also extend to Scotland. In Northern Ireland the relevant parts of the *Disability Discrimination Act 1995* (as amended) still apply.

Where it applies, the 2010 Act provides the legal framework that protects people, including disabled people, from discrimination. The EA also provides rights for people not to be directly discriminated against or harassed because they have an association with a disabled person. In addition, people must not be directly discriminated against or harassed because they are wrongly perceived to be disabled.

## 1.1 Definition of “disabled person”

Section 6 of the EA sets out definitions of “disability” and “disabled person” for the purposes of the Act.

A person has a disability if he or she has a physical or mental impairment, and the impairment has a substantial and long-term adverse effect on that person's ability to carry out normal day-to-day activities.

For the purposes of the Act:

- 'substantial' means more than minor or trivial
- 'long-term' means that the effect of the impairment has lasted or is likely to last for at least twelve months (there are special rules covering recurring or fluctuating conditions)
- 'normal day-to-day activities' include everyday things like eating, washing, walking and going shopping.<sup>2</sup>

## 1.2 Definition of a “service provider”

The Act applies to all service providers and those providing goods and facilities in Great Britain. This includes, for example, those providing information, advice and day care or running leisure centre facilities. It applies to all your services, whether or not a charge is made for them. It also applies to private clubs and other associations with 25 or more members which have rules about membership and select their members.<sup>3</sup>

<sup>1</sup> For detailed information on the definition of disability see: [Disability: Equality Act 2010 - Guidance on matters to be taken into account in determining questions relating to the definition of disability](#), Office for Disability Issues

<sup>2</sup> GOV.UK: [Disability and the Equality Act 2010](#)

<sup>3</sup> [Disability: quick start guide for service providers](#), Office for Disability Issues

## 1.3 The right to access services, goods and facilities

The EA places a duty on providers of goods, services and facilities to make reasonable adjustments in order to avoid a disabled person being placed at a “substantial disadvantage” compared with non-disabled people when accessing these services and facilities. The [GOV.UK](https://www.gov.uk) website provides the following information on service providers’ duties to disabled people:

Under the Equality Act 2010 it is unlawful for service providers to treat disabled people less favourably because they are disabled. The service provider must not indirectly discriminate against a disabled person unless there is a clear reason to do so.

Also service providers must not treat a disabled person unfavourably because of something connected with their disability, unless there is a clear and fair reason. For this form of discrimination the service provider must know or should reasonably have been expected to know that the person is disabled.

A service provider must not harass a disabled person in relation to access to everyday services.

There is protection from direct disability discrimination and harassment for people who are associated with a disabled person or who are wrongly believed to be disabled.

Service providers have to make reasonable adjustments for disabled people in the way they deliver their services. This is so that a disabled person is not put at a substantial disadvantage compared to non-disabled people in accessing the services.

Examples of reasonable adjustments could include:

- installing an induction loop for people who are hearing impaired
- providing disability awareness training for staff who have contact with the public
- providing larger, well-defined signage for people with impaired vision
- putting in a ramp at the entrance to a building which has steps

What is considered a reasonable adjustment for a large organisation like a bank, may be different from what is a reasonable adjustment for a small local shop. It is about what is practical in the service provider’s individual situation and what resources the business may have. They will not be required to make adjustments that are not reasonable because they are unaffordable or impractical.<sup>4</sup>

There is an anticipatory aspect to the duty:

The Equality Act 2010 requires that service providers must think ahead and take steps to address barriers that impede disabled people. In doing this, it is a good idea to consider the range of

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<sup>4</sup> GOV.UK: [Disability and the Equality Act 2010](https://www.gov.uk/guidance/disability-and-the-equality-act-2010)

disabilities that your actual or potential service users might have. You should not wait until a disabled person experiences difficulties using a service, as this may make it too late to make the necessary adjustment.<sup>5</sup>

The EA does not prescribe what a reasonable adjustment might be in particular circumstances. The Act does not place a duty on all service providers to make specific disabled adaptations, for example, to install lifts or hearing loops.

## 1.4 Remedies

The Directgov website (now replaced by GOV.UK) provided the following advice for disabled people who feel that they have been discriminated against:

If you find it difficult to access a local service - for example, you cannot use a local takeaway or sandwich shop because the counter is too high - you should contact the organisation and let them know. It is in their interest to make sure everyone can use their service.

It is best to offer constructive suggestions as to how the service provider could improve the way their services are provided. Explain the difficulty you have in accessing their service and give examples of how other businesses have solved the problem, if you know of any.

If the service provider agrees to make an adjustment, ask if they can put it in writing. This will help you follow up your request if the service provider does not keep their promise.

### **Information for businesses on their responsibilities under the Equality Act 2010**

You may find it helpful to refer service providers to the Equality and Human Rights Commission's website for more information about making their services accessible to disabled customers. You could tell them that the Commission can advise service providers about their responsibilities under the Equality Act 2010 and how to meet them.

### **Where to get more formal help**

If talking to the service provider about your needs does not result in any changes, you can seek advice from the Equality and Human Rights Commission. The Commission can help and advise disabled people in securing their rights under the Equality Act 2010.

The EHRC's role as an advisory and support body on discrimination matters has been taken over by the [Equality and Advisory Support Service](#).

Local authorities do not have a role in enforcing the EA against non-transport related service providers – it is up to the individual who has experienced the discrimination to take enforcement action.

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<sup>5</sup> [Equality Act 2010: What do I need to know?](#) Government Equalities Office, p7

## 2. Guidance for providers and users

The Office for Disability Issues has published a range of guidance leaflets for providers and users of goods, services and facilities setting out their rights and obligations:

[Disability: quick start guide for service providers](#)

[Business: summary guide for providing goods and services](#)

[Private clubs and associations: quick start guide](#)

[Voluntary and community sector: summary guide for service providers](#)

[Individuals: a summary guide to your rights](#)

[Additional guidance for service providers](#) can be found on the website of the Equality and Human Rights Commission (EHRC).

### 3. Differences between the EA and the DDA 1995

Much of the protection provided for disabled people by the DDA has been carried forward but there are some key differences which were summarised by the Government's [Office for Disability Issues](#):

- The DDA provided protection for disabled people from direct discrimination only in employment and related areas. The EA protects disabled people against direct discrimination in areas beyond the employment field (such as the supply of goods, facilities and services)
- The EA introduces improved protection from discrimination that occurs because of something connected with a person's disability. This form of discrimination can be justified if it can be shown to be a proportionate means of achieving a legitimate aim
- The EA introduces the principle of indirect discrimination for disability. Indirect discrimination occurs when something applies in the same way to everybody but has an effect which particularly disadvantages, for example, disabled people. Indirect discrimination may be justified if it can be shown to be a proportionate means of achieving a legitimate aim
- The EA applies one trigger point at which there is a duty to make reasonable adjustments for disabled people. This trigger point is where a disabled person would be at a substantial disadvantage compared to non-disabled people if the adjustment was not made
- The EA extends protection from harassment that is related to disability. Previously, explicit protection only applied in relation to work. The EA applies this protection to areas beyond work
- The EA provides protection from direct disability discrimination and harassment where this is based on a person's association with a disabled person, or on a false perception that the person is disabled.
- The EA contains a new provision which limits the type of enquiries that a recruiting employer can make about disability and health when recruiting new staff. This provision will help prevent disabled candidates from being unfairly screened out at an early stage of the recruitment process

The Government Equalities Office published some FAQs about the change in legislation:



**I was protected as a disabled person under the Disability Discrimination Act 1995, am I still protected under the Equality Act 2010?**

Yes, in general the definition of who is a disabled person for the purposes of protection from discrimination has not changed. However, the Equality Act 2010 does make it easier for some people to show that they are disabled.

**Will I still have the same degree of protection under the Equality Act 2010 that I had under the Disability Discrimination Act 1995?**

Yes, the Equality Act generally carries forward the protection that the Disability Discrimination Act provided for disabled people.

However, it is stronger than the Disability Discrimination Act because it extends some protection, and introduces some new forms of protection, for disabled people. For example, it provides new protection for disabled people from indirect discrimination. In addition, it provides better protection from discrimination that arises from something connected with a person's disability (for example where a user of an assistance or guide dog is discriminated against because of their dog, not because of their disability).

Also, the Equality Act provides protection from disability-related harassment in more areas, such as in access to goods and services, or private clubs.

**Does the Equality Act 2010 still require employers, and people like providers of goods and services, organisations exercising public functions and private clubs to make reasonable adjustments for disabled people?**

Yes. The Equality Act maintains the duty to make reasonable adjustments, but it makes it more straightforward, because there is now a single trigger point for when adjustments have to be made. Reasonable adjustments have to be made to avoid a disabled person being put at a "substantial disadvantage" compared with non-disabled people.

**The Disability Discrimination Act didn't require schools to provide special aids or services for disabled children; does the Equality Act 2010?**

Yes, the Equality Act places a duty on schools to provide what are called auxiliary aids or services for disabled children where it is reasonable to do so. But these provisions are not being commenced on 1 October, because it is a brand-new requirement and schools and local authorities need time to plan for implementation. A public consultation is planned about the timing of implementation. We anticipate implementation in September 2011.

**Does the Equality Act 2010 provide me with protection from being discriminated against or harassed because I am associated with a disabled person (such as being a carer or parent), or because I am wrongly perceived to be disabled?**

Yes, the Equality Act provides protection from direct discrimination that happens because the person is associated with a disabled person, or because the person is wrongly thought to be disabled, and from harassment related to disability.

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