



## Disabled access to historic and listed buildings

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The *Equality Act 2010* (most of which came into force on 1 October 2010) places duties on those providing goods, facilities or services to the public and those selling, letting or managing premises in the UK. The Act makes it unlawful for service providers, landlords and other persons to discriminate against disabled people in certain circumstances.

A disabled person is defined as someone who has a physical or mental impairment that has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.<sup>1</sup> Discrimination arising from disability occurs when a disabled person is placed at a substantial disadvantage in comparison with non-disabled people.

Prior to the introduction of the *Equality Act 2010*, duties on service providers towards disabled people had been phased in in three stages under the *1995 Disability Discrimination Act* (DDA):

- from December 1996 it was unlawful for service providers to treat disabled people less favourably for a reason related to their disability;
- from October 1999 service providers had to make ‘reasonable adjustments’ for disabled people, such as providing extra help or making changes to the way they provide their services;<sup>2</sup> and
- from 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.<sup>3</sup>

The key provision governing reasonable adjustments for disabled people is now section 20 of the *Equality Act 2010*. The explanatory notes to the Act explain the duties of service providers under section 20:

This section defines what is meant by the duty to make reasonable adjustments for the purposes of the Act and lists the Parts of the Act which impose the duty and the related Schedules which stipulate how the duty will apply in relation to each Part. The

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<sup>1</sup> Section 6 of the 2010 Act

<sup>2</sup> This does not place a duty on landlords to make ‘reasonable adjustments’ to their properties.

<sup>3</sup> The *Disability Discrimination (Providers of Services) (Adjustment of Premises) Regulations 2001* (SI 2001/3253) were laid before Parliament in October 2001 and came into force in October 2004. These Regulations were amended twice to take account of changes to the Building Regulations – see SI 2004/1429 and SI 2005/1121

duty comprises three requirements which apply where a disabled person is placed at a substantial disadvantage in comparison with non-disabled people. The first requirement covers changing the way things are done (such as changing a practice), the second covers making changes to the built environment (such as providing access to a building), and the third covers providing auxiliary aids and services (such as providing special computer software or providing a different service).

The section makes clear that where the first or third requirements involves the way in which information is provided, a reasonable step includes providing that information in an accessible format.

It sets out that under the second requirement, taking steps to avoid the disadvantage will include removing, altering or providing a reasonable means of avoiding the physical feature, where it would be reasonable to do so.

It also makes clear that, except where the Act states otherwise, it would never be reasonable for a person bound by the duty to pass on the costs of complying with it to an individual disabled person.<sup>4</sup>

In relation to listed buildings, the question arises as to which legislation takes precedence where disabled adaptations to improve access are required but, in the opinion of the planning authority or English Heritage, the adaptations would harm the character of the building.

The *Equality Act*, as with the DDA before it, does not override any other piece of legislation. The position of listed buildings in relation to the DDA was explained in the Written Answer reproduced below:

**Mr. Baker:** To ask the Secretary of State for Education and Employment if he will make a statement on the implications for owners and occupiers of listed buildings used for trading purposes of the decision to implement fully the Disability Discrimination Act 1995; what the total cost to business will be and over what timescale; and if he will make a statement.

**Ms Hodge:** When fully implemented, the Disability Discrimination Act 1995 will require service providers to make adjustments, where reasonable, so that their services are accessible to disabled people. These requirements are being introduced in two phases. They will apply to service providers in listed buildings.

From 1 October, service providers will have to take reasonable steps to change practices, policies or procedures which make it impossible or unreasonably difficult for disabled people to use a service; to provide auxiliary aids or services which would make it easier for, or enable, disabled people to use a service; and to provide the service by a reasonable alternative method where a physical feature makes it impossible or unreasonably difficult for disabled people to use the service. From 2004, service providers will have to take reasonable steps to remove, alter, or provide

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<sup>4</sup> <http://www.legislation.gov.uk/ukpga/2010/15/notes/division/2/2/2/8>

reasonable means of avoiding physical features that make it impossible or unreasonably difficult for disabled people to use a service.

Planning Policy Guidance Note (PPG 15) issued by the Department of the Environment, Transport and the Regions makes it clear that:

"it is important in principle that disabled people should have dignified easy access to and within historic buildings",

and that with a proper approach:

"it should normally be possible to plan suitable access for disabled people without compromising a building's special interest".

English Heritage's booklet "Easy Access to Historic Properties" is designed to help those who own, manage, or are professionally concerned with historic properties to strike a balance between conservation and access.

The Disability Discrimination Act, in common with the Sex Discrimination Act 1975 and the Race Relations Act 1976, cannot require anything to be done that would contravene another piece of legislation. Where a service provider must get statutory consent to a particular alteration, including listed building or scheduled monument consent, and that consent is not given, the Disability Discrimination Act will not have been contravened. However, a service provider would still need to take whatever other steps under the Act were reasonable to provide the service.

At the end of June, we shall be publishing a new Code of Practice which explains the duties coming into force in October as well as the current rights under the Disability Discrimination Act, and which gives examples of good practice. In due course, a public consultation exercise will be held in respect of a revised Code explaining the duties which are due to come into force in 2004.

The Government's assessment of the costs, and benefits, of implementing the later rights in Part III of the Disability Discrimination Act are contained in the Regulatory Impact Assessment, copies of which are in the Library. It is also available on the disability website: [www.disability.gov.uk](http://www.disability.gov.uk).<sup>5</sup>

The English Heritage website contains the following statement on the need to reconcile access requirements without compromising the nature of historic buildings:

Historic buildings, landscapes and monuments, the physical survivals of our past are protected for their sake and for ours. They are irreplaceable but sometimes they need to be changed. Appropriate or sensitive alteration will have due regard for what it is that makes a particular building special or significant. In most cases access can be improved without compromising historic buildings. The key lies in the process of

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<sup>5</sup> HC Deb 19 May 1999 c387-8W

information gathering about the building, understanding its significance and vulnerabilities and knowledge about the needs of people with disabilities.<sup>6</sup>

English Heritage updated its booklet, *Easy Access to Historic Properties*, in December 2012 to take account of the 2010 Act and changes to planning legislation:

Planning legislation has also been amended to include the requirement for ‘Design and Access statements’ (DAS) when most types of planning application are submitted **as well as listed building consent applications**. The access component needs to explain the policy adopted to access including what alternative means of access have been considered and how policies relating to access in relevant local development documents have been taken into account. **For historic buildings the statement should make clear how the approach to access has balanced the duties imposed by the Equality Act (where the proposal is subject to those duties) and the particular historical and architectural significance of the building.**<sup>7</sup>

The English Heritage [website](#) also explains the process through which service providers, including owners of historic buildings that are open to the public, should develop an “access strategy.”

*The Building Conservation Directory 1998* (updated for 2003) contains a helpful article by Robin Kent entitled ‘[Disability Access Provisions for Historic Buildings](#).’

Section 2 of the *2005 Disability Discrimination Act* made it unlawful for a public authority, without justification, to discriminate against a disabled person when exercising its functions. The public sector equality duty is now contained in Chapter 1 Part 11 of the *Equality Act 2010*. When the draft Disability Discrimination Bill (precursor to the 2005 DDA) was subjected to pre-legislative scrutiny the Joint Committee carrying out the scrutiny observed that clauses 4 and 8 of the draft Bill (later sections 2 and 3 of the 2005 Act) might have a bearing on the attitude of heritage and planning bodies when dealing with requests for disabled adaptations to historic and listed buildings:

The Committee notes that in future all public authorities, including English Heritage, will come under both the duty in clause 4 not to discriminate in the exercise of their functions, and the duty under clause 8 to promote equality of opportunity for disabled people. This should ensure that all heritage and planning authorities respond sympathetically and helpfully to requests for alterations under the DDA.<sup>8</sup>

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<sup>6</sup> <http://www.helm.org.uk/place-and-placemaking/access-and-inclusion/> (site accessed on 28 August 2013)

<sup>7</sup> <http://www.helm.org.uk/place-and-placemaking/access-and-inclusion/> (site accessed on 28 August 2013)

<sup>8</sup> HC 352-I & HL Paper 82-I 2003-04

The then Government published its response to the Committee's recommendations on 15 July 2004.<sup>9</sup> The Government agreed with the Committee's analysis of the potential impact of clauses 4 and 8 in respect of disabled adaptations.<sup>10</sup>

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<sup>9</sup> The Government's response to the Report of the Joint Committee on the Draft Disability Discrimination Bill, DWP, 15 July 2004

<sup>10</sup> *ibid* recommendation 52