

## **Property Policy & Strategy for implementation of the Disability Discrimination Act 1995**

### **1 Introduction**

The Disability Discrimination Act (DDA) was passed in 1995 to introduce new measures aimed at ending the discrimination which many disabled people faced. It was subsequently revised in 2001 by the Special Educational Needs and Disability Act (SENDA) 2001. This amendment includes Education as part of the Act which had been previously excluded. The amendment requires schools, colleges, universities, providers of adult education and youth services to ensure that they do not discriminate against disabled people

The current Act consists of the following parts:-

**Part I Disability (the meaning of)**

**Part II Employment**

**Part III Access to goods, facilities and services**

**Part IV Education**

**Part V Public transport**

**Part VI The National Disability Council**

**Part VII Supplemental**

**Part VIII Miscellaneous**

The DDA through the National Disability Council has generated a number of new regulations (Statutory Instruments). A few of these regulations are highlighted below.

The Disability Discrimination (Sub-leases and sub tenancies) Regulations 1996

The Disability Discrimination (Meaning of Disability) Regulations 1996

The Disability Discrimination (Employment) Regulations 1996

The Disability Discrimination (Services and Premises) Regulations 1996

The Disability Discrimination (Questions and Replies) Regulations 1996

The Disability Discrimination (Services and Premises) Regulations 1999

The Disability Discrimination (Taxis) (Carrying of Guide Dogs etc) (England and Wales) Regulations 2000

The Disability Discrimination (Providers of Services) (Adjustments of Premises) Regulations 2001

The Disability Discrimination (Amendment) Regulations 2003

There are also a number of codes of practice providing guidance and best practice to ensure that we do not discriminate against disabled people. These documents are all freely available on the Internet.<sup>1</sup>

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<sup>1</sup> The Disability Rights Commission – Homepage <http://www.drc-gb.org/>  
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### 2 Implementation of Legislation

When the DDA became law, it was introduced over a period of time, giving the opportunity to implement any changes or revisions to the way which service are provided. For employers (Part II Employment) these measures became law in December 1996, but for service providers (Part III Access to goods, facilities and services) e.g. businesses and organisations, their programme of implementation is as follows.

- December 1996** it has been unlawful to treat disabled people less favourably than other people for a reason related to their disability
- October 1999** service providers have had to make reasonable adjustments for disabled people, such as providing extra help or making changes to the way they provide their services;
- October 2004** service providers may have to make reasonable adjustments to the physical features of their premises to overcome physical barriers to access.

Since the revision to the DDA in 2001, education providers have been given the opportunity to implement any changes or revisions to the way they work over a period of time. Their programme of implementation was as follows:-

- September 2002** education providers' new duties came into effect under Part IV of the DDA as amended by SENDA. These require schools, colleges, universities, providers of adult education and youth services to ensure that they do not discriminate against disabled people.
- September 2003** under Part IV of the DDA as amended by the SENDA, the duty to provide auxiliary aids (e.g. induction loops), by way of reasonable adjustment was imposed.

### 3 Background

The nature of Corporate Resources Directorate – Property's work, will automatically be affected by the DDA. Therefore we must ensure that when buying or selling, managing, maintaining, refurbishing or designing our properties we consider the implications of the DDA. The individual parts impacting on our work are briefly highlighted below.

#### Part I Disability (the meaning of)

The DDA sets out the circumstances in which a person is "disabled". It states that people are considered to be disabled if they have:

- a mental or physical impairment
  - this has an adverse effect on the persons ability to carry out normal day-to-day activities
  - the adverse effect is substantial

- the adverse effect is long-term (meaning it has lasted for 12 months, or is likely to last for more than 12 months or for the rest of your life).

The DDA also states that certain conditions are not considered impairments:

- lifestyle choices such as tattoos and non-medical piercing
- tendency to steal, set fires, and physical or sexual abuse of others
- exhibitionism and voyeurism
- hay fever, if it doesn't aggravate the effects of an existing condition
- addiction to or a dependency on alcohol, nicotine or any other substance, other than the substance being medically prescribed.

### **Part II Employment**

The DDA protects disabled people from discrimination in the field of employment. As part of this protection employers may have to make "reasonable adjustments" if their employment arrangements or premises place disabled people at a substantial disadvantage compared with non-disabled people. The DDA does not prohibit an employer from appointing the best person for the job, and it does not prevent employers from treating disabled people more favourably than those without a disability.

Although the Act does not require an employer to make changes in anticipation of ever having a disabled applicant or employee, nevertheless when planning for change it could be cost-effective to consider the needs of a range of possible future disabled employees and applicants. There may be helpful improvements that could be built into plans. For example, a new telecommunications system might be made accessible to deaf people even if there are currently no deaf employees.

### **Part III Access to goods, facilities and services**

Part III of the DDA places duties on those providing goods, facilities or services to the public and those selling, letting or managing premises. The DDA makes it unlawful for service providers, landlords and other persons to discriminate against disabled people. The duties on landlords and other persons in connection with the selling, letting and managing of premises were introduced on 2 December 1996. Since that date, it has been unlawful for them to treat disabled people less favourably for a reason related to their disability.

Also Part III takes account of the further duties on service providers to make reasonable adjustments when the physical features of their premises make it impossible or unreasonably difficult for disabled people to use their services. Although these remaining duties do not come into force until 1 October 2004, service providers are encouraged to be proactive and to prepare for their obligations.

However, service providers do not have to consider changes to physical features until October 2004. This delay for implementation is to give service providers time to start identifying changes and prepare for them. The period before October 2004 is a time of transition and if service providers don't use it

to prepare, the courts may take this into account when deciding whether service providers have acted reasonably. Service providers are more likely to be able to comply with their duty to make adjustments to physical features if they arrange for a DDA access audit of their premises and draw up an access plan. Acting on the results of the audit may reduce the likelihood of legal claims. It is important that service providers take into account the needs of a range of disabled people and doesn't rely on stereotypes.

### **Part IV Education**

New duties, which came into effect in September 2002, extend the Disability Discrimination Act 1995 to cover every aspect of education. The Special Educational Needs and Disability Act 2001 adjusts the Disability Discrimination Act Part IV to prevent discrimination against disabled people in their access to education. The duties make it unlawful to discriminate, without justification, against disabled pupils and prospective pupils, in all aspects of school life. The principle behind this legislation is that wherever possible disabled people should have the same opportunities as non-disabled people in their access to education.

The reasonable adjustments duty does not apply to auxiliary aids and services because it is anticipated that in schools in the publicly-funded sector such provision will be made through the Special Education Needs (SEN) framework. Physical alterations to schools are not required under the reasonable adjustments duty as it is anticipated that these will be achieved through a longer term and more strategic approach to improving access for disabled pupils

### **Part V Public transport**

Under the Part V of the DDA it is unlawful for people providing services to discriminate against people with disabilities. Public transport covers those providers providing services with Taxi's, Public service vehicles and Rail vehicles. There are a number of regulations covering the public transport area.

### **Part VI The National Disability Council**

Under the DDA The National Disability Council is responsible for advising the Government on matters relevant to the elimination of discrimination against disabled people. It's also responsible for preparing the Regulations and Codes of Practice.

### **Part VII Supplemental & Part VIII Miscellaneous**

The DDA allows the Government to issue codes of practice and regulations containing practical guidance as they consider appropriate. It also allows the Government to appoint people or organisations to advise or assist them in connection with matters relating to disabled people and people who have had a disability

## 4 Policy

The introduction of Part III indicates that service providers may have to make reasonable adjustments to the physical features of their existing premises to overcome physical barriers to access, but there is no requirement to carry out this work until October 2004. If the service provider has not carried out reasonable adjustments to the way they provide their services or make reasonable adjustments to the physical features to their premises to overcome physical barriers to access by this date, the service provider can potentially be sued. In addition, courts may take any non compliance into account when deciding whether service providers have acted reasonably, especially as East Sussex County Council (ESCC) has had sufficient resources and several years to implement an improvement program. This could result in ESCC's prosecution under the Act with the associated adverse publicity.

ESCC is currently implementing an access improvement program under its Best Value Performance Indicator (BVPI) 156 "Access to Public Building Strategy". This strategy approved by Chief Officers Management Team (COMT) in June 2003 will ensure that our public buildings comply with the BVPI 156 i.e. compliance with the Building Regulations (Access for people with disabilities) Part M. This strategy will help ESCC deliver parts of the DDA, but only in the area of improving access for people with reduced mobility i.e. wheel chair users. **The Building Regulations Part M does not improve buildings for people with sensory, learning and emotional and behavioural difficulties, and therefore falls short of the DDA requirements**

We must recognise that current legislation only requires ESCC to design disabled access to the Building Regulations Part M. Therefore the above mentioned shortfall will also apply in our newly designed buildings, extensions, refurbishments and maintenance of non school properties. Therefore, henceforth, the policy is,

### Non School properties

**"that all recently programmed new buildings, extensions, refurbishments and maintained ESCC capital and revenue funded non-school properties should comply with the Building Regulations (statutory requirement) and BS 8300:2001<sup>2</sup>.**

The Local Education Authority (LEA) is implementing their "East Sussex Accessibility Strategy<sup>3</sup>" for schools. This strategy implements the requirements of the DDA for schools. They should be supported by Corporate Resources Property to ensure that building works do not jeopardise their strategy. Therefore, henceforth, the policy is,

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<sup>2</sup> British Standard 8300:2001 Design of Buildings and their approaches to meet the needs of disabled people – Code of practice

<sup>3</sup> East Sussex Accessibility Strategy - Circular 26/03 Dated 27 January 2003  
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School properties

**“all as described for non school properties plus Building Bulletin N° 91<sup>4</sup> and N°94<sup>5</sup>.**

The introduction of the above policies will ensure that our capital and revenue funded projects for non-school and school properties comply with the DDA.

It is important to remember that it is the provision of the service which is affected by Part III of the Act and not the nature of the service or business or the type of establishment from which it is provided. However the nature of our service makes the building central to our service delivery. Therefore the service providers must be pivotal when deciding and agreeing to any improvement recommendations. Implementing the Strategy below will initiate the DDA access audits and highlight the extent of the possible works.

## 5 Strategy

### Disabled Discrimination Act Access Audits

The County Council needs to develop and implement a strategy for all existing non school buildings and areas (i.e. Country Parks) classified as providing a service to the public with a view to auditing these buildings and areas for compliance with the DDA. Analysis of the property portfolio indicates that there are approximately 238 properties that may require auditing. Previous investigation indicates that carrying out an access audit on an individual basis would cost in the region of £750 - £1300. (185 public non school buildings x 750 =£138750 or 1300 = £240500) as a **phase 1 priority**. Then the remaining 53 approx. non school buildings in a **phase 2 priority** (53 non school buildings x 750 = £39750 or 1300 = £68900).

In addition to completing these DDA access audits, subsequent works would incur additional costs that cannot be currently ascertained. These costs will be related to the property, furniture, fittings and equipment. Therefore a decision will need to be made as to how to fund these works, either by the service Departments or on a Corporate basis.

The departmental split for non school buildings for phase 1 priority and phase 2 priority are indicated below.

**Phase 1 Priority Non schools DDA Access Audits** – Buildings or areas of land that provide a service to the public under Part III Access to goods, facilities and services of the DDA.

| <b>Service Department</b> | <b>Non schools (N°)</b> |
|---------------------------|-------------------------|
| Corporate Resources       | 8                       |
| Education                 | 40                      |

<sup>4</sup> Department of Education & Skills Building Bulletin 91: Access for disabled people to school buildings

<sup>5</sup> Department of Education & Skills Building Bulletin 94: Inclusive School Design

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## Appendix A

|                         |            |
|-------------------------|------------|
| Education Libraries     | 31         |
| Chief Executive         | 7          |
| Social Services         | 54         |
| Transport & Environment | 45         |
| <b>Total</b>            | <b>185</b> |

**Phase 2 Priority Non schools DDA Access Audits** - Buildings or areas of land that fall under Part II Employment of the DDA.

| <b>Service Department</b> | <b>Non schools (N<sup>o</sup>)</b> |
|---------------------------|------------------------------------|
| Corporate Resources       | 4                                  |
| Education                 | 13                                 |
| Education Libraries       | 2                                  |
| Chief Executive           | 4                                  |
| Social Services           | 16                                 |
| Transport & Environment   | 14                                 |
| <b>Total</b>              | <b>53</b>                          |

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