

University of St Andrews

University Disability Advisory Group, 2 November 2010 meeting

Single Equality Act 2010 Guidance: Introductory changes on disability

Appendices:

- Annex 1: 'Substantial adverse effect on normal day-to-day activities'
- Annex 2: 'Non-substantial adverse effect on normal day-to-day activities'
- Annex 3: Equality Manager Briefing Consolidation of Equality Laws
- Annex 4: Single Equality Act: Plan for the University to meet essential Areas/Objectives

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Alternative formats available upon request

Sources:

Equality & Human Rights Commission: Equality Act - Guidance for Disability
Equality Challenge Unit: Equality Act 2010 - Key Provisions
Government Equalities Office: Equality Act Disability Guidance
Government Equalities Office: Single Equality Act 2010 Explanatory Notes
Government Office for Disability Issues: Equality Act 2010 Guidance
(Pending confirmed definitions of disability from government consultations)

1. Introduction

The Single Equality Act 2010 covers everything that the Disability Discrimination Act (DDA) applied to, including Special Educational Needs & Disability (SEND). The provision for disability in the new Act creates a new type of discrimination – **discrimination arising from disability**. This replaces disability-related discrimination as currently found in the DDA.

A proposed **in-depth guide** for staff working with students who have a disability, could be developed by the Equality & Diversity Officer in collaboration with DAG members and with relevant staff within Student Services, who are experts in providing a service for students with disabilities. For compliance with the new Act, this would ideally be inclusive of recommendations provided from the new 'Equality & Human Rights Commission: Code of Practice for Further and Higher Education' being published in January 2011.

1.1 Protected Characteristics

The term 'equality communities, groups or strands' has been incorporated into the new Act in order for simplification and further protection from discrimination. The terminology now used is known as 'Protected Characteristic', which should result in enhanced protection for people of the following 'protected characteristics':

- Age
- Disability
- Gender/sex
- Gender reassignment
- Pregnancy and maternity
- Race
- Religion or belief
- Sexual orientation

Annex 3 provides information on consolidation of UK Equality Laws, such as the DDA.

2. New definition of disability within the Act

In order to be protected by the Equality Act, a person must meet the Act's following 'protected characteristic' definition of disability:

- person must have an impairment that is either physical or mental
- impairment must have adverse effects which are substantial
- substantial adverse effects must be long-term
- long-term substantial adverse effects must be effects on 'normal day-to-day activities'

Whether a person satisfies the definition of a disabled person for the purposes of the Act will depend upon the full circumstances of the case. That is, whether the substantial adverse effect of the impairment on normal day-to-day activities is long-term.

Annex 1 and 2 provide examples of both substantial and non-substantial adverse effect on 'normal day-to-day activities'. Annex 4 provides an outline of areas and objectives in reference to disability required to be met in order to comply with the Single Equality Act.

2.1 Time taken to 'carry out an activity'

The time taken by a person with an impairment to carry out a 'normal day-to-day activity' should be considered when assessing whether the effect of that impairment is substantial. It should be compared with the time it might take a person who did not have the impairment to complete an activity. Regulations still provide for a person who is certified as blind, severely sight impaired, sight impaired or partially sighted by a consultant ophthalmologist to be deemed to have a disability.

2.2 Meanings of ‘long-term effects’

Within the Act, the following meaning of a long-term effect is:

- which has lasted at least 12 months; or
- where the total period for which it lasts, from the time of the first onset, is likely to be at least 12 months; or
- which is likely to last for the rest of the life of the person affected.

2.3 Meanings of ‘impairment’

It is the effects of these impairments that need to be considered, rather than the underlying conditions themselves. The following list is a non-exhaustive list of conditions that are regarded as impairments:

Impairment	Example
Sensory impairments	Total or partial loss of sight or hearing.
Fluctuating or recurring conditions	Rheumatoid arthritis, ME, depression and epilepsy.
Progressive conditions	Lupus, dementia and muscular dystrophy.
Organ specific impairments	Asthma, heart disease, strokes and thrombosis.
Mental health conditions or illnesses	Schizophrenia, eating disorders, bipolar disorder, depression and self harming.
Developmental conditions	Dyslexia, Autism and Down’s syndrome.
Impairment by injury	Injury to the body or brain.
Impairments by condition	Conditions related to learning difficulties.

3. What has changed?

To qualify for protection from discrimination, a disabled person no longer has to show that their impairment affects a particular ‘capacity’, such as mobility or speech, hearing or eyesight. The following provides examples of current changes to disability law:

Equality Act	Details of new or changed areas as compared to the DDA
Discrimination arising from disability	New: Replaces previous protection in disability discrimination law that was not fully effective. Discrimination arising from disability occurs when a disabled person is treated unfavourably because of something connected with their disability and the unfavourable treatment cannot be justified.
Indirect disability discrimination	New: Indirect disability discrimination happens when there is a rule, a policy or even a practice that applies to everyone, but which particularly disadvantages people with a particular disability as compared with people who do not have that disability. It cannot be shown to be justified as being intended to meet a legitimate objective in a fair, balanced and reasonable way.
Associative Discrimination	New: Someone is treated less favourably than someone else because they are caring for an elderly or disabled person, such as: <ul style="list-style-type: none"> • Refusing a placement, job offer, promotion, offer of greater responsibility as an employee/student due to caring responsibilities. • Treating someone less favourably due to caring commitments or responsibilities.

<p>Perceived Discrimination</p>	<p>New: Someone treated less favourably because it's perceived that they have a protected characteristic such as a disability. Even if the University as an institution maybe mistaken, it still could prove to be discriminatory. Such as:</p> <ul style="list-style-type: none"> • Staff are not promoted because senior staff believe them to have a disability irrespective of whether they are disabled or not. • Staff with a disability refuse to work with staff/students because they believe them to be of a “protected characteristic” irrespective of whether the staff/students are of a “protected characteristic” or not.
<p>Harassment</p>	<p>New: Disability harassment is unwanted behaviour related to disability that has the purpose or effect of violating a person’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them. Someone caring for an elderly or disabled person who experiences can also prove that harassment may have occurred.</p>
<p>People who are treated as having had a past disability</p>	<p>New: This means that someone who is no longer disabled, but who met the requirements of the definition in the past (substantial and long-term adverse effect on her ability to carry out ‘normal day-to-day activities’), will still be covered by the Act.</p>
<p>Public Sector Equality Duty</p>	<p>New: In April 2011 this replaces the present Disability Equality Duty resulting in covering all of the "protected characteristics", putting the University under a duty to:</p> <ul style="list-style-type: none"> ✓ eliminate discrimination ✓ eliminate harassment ✓ eliminate victimisation ✓ promote equality of opportunity ✓ foster good relations <p>The duty specific to disability contains the following three requirements that apply in situations where a disabled person would otherwise be placed at a ‘substantial disadvantage’ compared with people who are not disabled:</p> <ol style="list-style-type: none"> 1. Involves changing the way things are done (equality law calls this a provision, criterion or practice). 2. Involves making changes to overcome barriers created by the physical features of your premises, if these are open to the public or a section of the public. 3. Involves providing extra aids and services such as providing extra equipment or providing a different, or additional, service (which equality law calls auxiliary aids or auxiliary services). You must take reasonable steps to provide auxiliary aids or services if this would enable (or make it easier for) disabled people to make use of any of your services.
<p>Asking about disability</p>	<p>Changed: The Act says that in most situations it is unlawful for employers to ask questions about a job applicant's health or disability before short-listing or offering a job through the stages of recruitment and selection such as through "pre-employment health checks/questionnaires".</p>

	There are some exceptions so that the University can make reasonable adjustments for interviews and for data monitoring purposes (kept separate from selection process within Human Resources).
Disability Related Discrimination	Changed: Previously, direct disability discrimination was only unlawful when it happened in relation to work. The previous law did protect disabled customers from prejudicial discrimination in practice. The Act means the ban on direct discrimination will now apply more widely in other areas, such as access to the service which the University provide.
Reasonable adjustments	<p>Changed: Previously, adjustments to premises and to policies, practices and procedures had to be made by service providers only where it would otherwise be 'impossible or unreasonably difficult' for a disabled person to use the service.</p> <p>Adjustments must now be made where disabled people experience a 'substantial disadvantage', resulting in the need for the University to make more adjustments than previously required.</p> <p>Similar to the DDA, the following are basic examples of reasonable adjustments in the workplace/student environment for the University:</p> <ul style="list-style-type: none"> • Allocating some of the work to someone else. • Adapting the curriculum (course content, work placements, use of electronic or other materials), or modifying the delivery of teaching. • Changing standard institutional procedures, such as admissions procedures and terms attached to offers of admission, enrolment procedures and examination and assessment methods. • Encouraging staff to acquire additional skills in order to communicate effectively with disabled students, for example, in order to communicate with hearing impaired students and those with speech impairments. • Flexible approach to work/study hours – allowing different core working/studying hours and provision to be away from the workplace/studying environment for medical assessment, treatment or rehabilitation. • Making adjustments to the buildings of the workplace/studying environment. • Making instructions and manuals more accessible. • Providing additional services (any kind of aid or service, including teaching and information), whether temporary or permanent, such as a sign language interpreter or materials in alternative formats; • Providing a reader or interpreter. • Swapping associated roles with another worker. • Training staff to work with disabled students in order to understand the need to provide appropriate adjustments, for example, allowing more time to serve a disabled student. • Transferring to another place of work/study.
Victimisation	Changed: There is now no need for a victim to show that they have been treated less favourably than someone who has not made or supported a complaint under the Act. They only need to show that they have been treated badly.