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Disability Discrimination Law  
in employment and education  
– an overview  
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## Equality Act 2010

- Covers:
- Employment and occupation
- Services and Functions
- Schools and further and higher education
- Associations, qualifications bodies, trade associations
- premises



## Definition of disability

- Section 6 and Schedule 1
- (1) A person (P) has a disability if—
  - (a) P has a physical or mental impairment, and
  - (b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities
- Substantial – definition now in the Act (s.212(1) – more than minor or trivial)



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## Definition of disability

### Schedule 1

- long term – lasts 12 months, likely to last 12 months, or for the rest of the persons life if shorter;
- severe disfigurement;
- recurring conditions;
- deemed disability (cancer, HIV, MS);  
progressive conditions;
- past disabilities
- Disregard treatment when considering whether it has a substantial adverse effect



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## Equality Act 2010 employment

- Unlawful for an employer to discriminate against an applicant or an employee in certain situations
- Arrangements for deciding who to offer employment to (e.g. interviews)
- Terms on which employment are offered
- Refusing employment
- When an employee, terms of employment
- Not affording opportunities or benefits training etc., or the way in which they are afforded,
- Dismissing
- Subjecting to any other detriment

# Types of discrimination: Direct discrimination

- Less favourable treatment because of disability
- Preservation of the asymmetric nature of disability discrimination (s.13(3))
- Direct, prejudice
- Applies if you are treated less favourably because of association with a disabled person e.g. carer



# Discrimination arising from disability

- Section 15: Discrimination arising from disability
- (1) A person (A) discriminates against a disabled person (B) if—
- (a) A treats B unfavourably because of something arising in consequence of B's disability
- (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.



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## Discrimination arising from disability

- (2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.
- For example, you are refused a job because you have to take time off for medical appointments



## indirect discrimination

- Common definition of indirect discrimination – section 19
- Application of a provision criterion or practice which puts people who share the disability at a particular disadvantage compared to others without the disability, puts the individual at a disadvantage and cannot be objectively justified
- Intended to address policies which create barriers e.g. sickness absence policy; no-dogs policy

## Other prohibited conduct

- Harassment – unwanted conduct related to disability which has the purpose or effect of violating dignity or creating an intimidating hostile degrading humiliating or offensive environment.....[also sexual harassment]
- Victimisation – based on treatment because of a protected act (or suspicion of a protected act)



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# Duty to make reasonable adjustments

- Common basic definition, section 20 with detail in schedules (Schedule 3 – work; Schedule 2 – services and functions; Schedule 13 – education;)
- The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.
- The second requirement is a requirement, where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.



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## Duty to make reasonable adjustments

- The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.



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## Duty to make reasonable adjustments

- Cannot make a disabled person pay for reasonable adjustments (s.20(7));
- Where first or third requirement relates to provision of information, the steps which it is reasonable to have to take include steps for ensuring that the information is provided in an accessible format
- In the second requirement, a reference to avoiding a substantial disadvantage includes a ref to removing, altering or providing a reasonable means of avoiding a feature



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## Duty to make reasonable adjustments

- In employment:
- Applies in relation to deciding who to offer employment (in these arrangements, no physical feature duty); and employment
- Employer must know or be reasonably expected to know of disability and effect upon you



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## What is reasonable in employment?

- Consider
- Effectiveness
- Practicability
- Financial and other costs
- Extent of employer's financial and other resources
- Availability of financial or other assistance (e.g. Access to work)
- Type and size of employer



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## Examples of reasonable adjustments

- Providing ramps
- Instruction manuals in braille
- Allocating duties to another worker
- Transferring the disabled person to another vacancy
- Altering the disabled worker's hours of work or training
- Assigning the disabled person to a different place of work or training or arranging home working



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## Examples of reasonable adjustments

- Allowing the disabled worker to be absent during working or training hours for rehabilitation assessment or treatment
- Giving or arranging for, training or mentoring (whether for the disabled person or any other worker)
- Acquiring or modifying equipment
- Modifying procedures for test or assessment
- Providing a reader or interpreter
- Providing supervision or other support



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## Examples of reasonable adjustments

- Allowing a disabled worker to take a period of disability leave
- Participating in supported employment schemes such as workstep
- Employing a support worker to assist a disabled worker
- Modifying disciplinary or grievance procedures for a disabled worker



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## Examples of reasonable adjustments

- Adjusting a redundancy selection criteria for a disabled worker
- Modifying performance related pay arrangements for a disabled worker

## Pre-employment enquiries

- S.60
- Employers and others (e.g. those offering public appointments) must not ask about the health of an applicant before offering them work, or including them in a pool of applicants from whom they will select a person to offer work
- Contravention can only be enforced by the EHRC – though where a person brings a claim for breach of the DDA can rely on such questions to shift the burden of proof to the employer

# Pre-employment enquiries

- Does not apply where the question is necessary for the purposes of:
- Establishing whether the applicant will be able to comply with a requirement to undergo an assessment or establishing whether a duty to make reasonable adjustments applies in relation to o an assessment
- Establishing whether applicant ill be able to carry out a function that is intrinsic to the work concerned
- Monitoring diversity
- Taking positive action
- Where employment is only for people with a particular disability, for establishing whether the applicant has that disability



- Unlawful to discriminate :
- in the arrangements made for deciding who is offered admission as a pupil,
- terms on which a person is offered admission,
- by not admitting [though permitted forms of selection can be applied]



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## Schools

- Must not discriminate against a pupil:
- In the way that education is provided
- In the way that a pupil is afforded access to a benefit facility or service
- By not providing education
- By not affording the pupil access to a benefit facility or service
- By excluding the pupil from school
- By subjecting the pupil to any other detriment
- Duty to make reasonable adjustments applies

## Discrimination in schools

- Discrimination has the same meaning as throughout the act
- Anticipatory duty to make reasonable adjustments
- Obligation to change provisions criteria and practices and to provide auxiliary aids and services
- No obligation to alter physical features

## What is reasonable?

- The extent to which support will be provided to the disabled pupil under Part 4 of the Education Act 1996 (the SEN framework)
- The resources of the school and the availability of financial or other assistance
- The financial and other costs of making the adjustment

## What is reasonable?

- The extent to which taking any particular step would be effective in overcoming the substantial disadvantage suffered by a disabled pupil
- The practicability of the adjustment
- The effect of the disability on the individual



## What is reasonable?

- Health and safety requirements
- The need to maintain academic, musical, sporting and other standards
- The interests of other pupils and prospective pupils.



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## Examples of reasonable adjustments

- A disabled pupil with ME finds moving around a large three storey secondary school very tiring and despite the school adjusting the timetable and location of classes to minimise the amount she has to move around the school she is still too exhausted to complete the school day. The school then makes further adjustments of having a 'buddy' to carry her books for her, a dictaphone to record those lessons which she misses and a policy that she will not be penalised for arriving at lessons late.



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## Examples of reasonable adjustments

- Information in large print
- Reallocation of classes and timetabling
- Training to staff in administering medication



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## Examples of reasonable adjustments

- Provide a disabled pupil with:
- a piece of equipment
- assistance from a sign language interpreter, lip-speaker or deaf–blind communicator
- extra staff assistance
- an electronic or manual note-taking service



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## Examples of reasonable adjustments

- induction loop or infrared broadcast system
- videophones
- audio–visual fire alarms
- readers for people with visual impairments
- assistance with guiding
- an adapted keyboard
- specialised computer software



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## Public Sector

- S.149 – public sector equality duty
- Need to take disability into account in the decisions that they make



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## Public Sector

- Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—
- (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
- (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.



- The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.
- (5) Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—
  - (a) tackle prejudice, and
  - (b) promote understanding.
- (6) Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.



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## Enforcement

- Employment – employment tribunal, within 3 months of the act of discrimination – compensation and recommendations
- Education – First Tier tribunal (Sendist), unless about admission/exclusion, within 3 months of discrimination (unless admission/exclusion) – order only



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Finally.....

- Any Questions???
- Sources of Assistance:
- Equality and Human Rights Commission
- [www.equalityhumanrights.com](http://www.equalityhumanrights.com)
- Citizens Advice
- <http://www.citizensadvice.org.uk/>