

Disability Discrimination Act 1995 Part 4

Code of Practice

for providers

of Post-16

education and

related services

New duties (from September 2002)
in the provision of post-16 education
and related services for disabled people
and students

London: TSO

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Foreword

This Code of Practice deals with the duties placed on providers of post-16 education and other related services in Great Britain by the Disability Discrimination Act 1995 as amended by the Special Educational Needs and Disability Act 2001. The Disability Discrimination Act makes it unlawful for bodies responsible for such provision to discriminate against disabled students and other disabled people.

The Government intends to implement the new duties in three stages:

- the main new sections of the Act on **1 September 2002**. These sections make it unlawful to discriminate against disabled people or students by treating them less favourably than others. In addition, they require responsible bodies to provide certain types of reasonable adjustments to provision where disabled students or other disabled people might otherwise be substantially disadvantaged
- the duty on responsible bodies to make adjustments involving the provision of auxiliary aids and services on **1 September 2003**
- the duty on responsible bodies to make adjustments to physical features of premises where these put disabled people or students at a substantial disadvantage on **1 September 2005**.

In general, schools, even when they make provision for pupils over 16, are not covered by this Code but by a separate Code of Practice (Schools).

Wholly privately-funded post-16 providers and providers of work-based training are not covered by this Code but by a Code covering Part 3 of the Disability Discrimination Act on goods, facilities and services (see **Appendix Three**).

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Introduction

1

The purpose of the post-16 sections of the Disability Discrimination Act 1995 (as amended by the Special Educational Needs and Disability Act 2001)

- 1.1 The Disability Discrimination Act 1995, which places requirements on employers and service providers not to discriminate against disabled people, did not originally include similar requirements for the provision of education. Part 4 of the Disability Discrimination Act placed a requirement on some post-16 education funding bodies to request disability statements from institutions, but it did not include any duties on institutions not to discriminate against disabled people or students. The Special Educational Needs and Disability Act 2001 amends the Disability Discrimination Act 1995. The new post-16 sections of the Disability Discrimination Act deal specifically with post-16 education and training and with related services such as, in England and Wales, the statutory youth service. From the implementation of this legislation, bodies responsible for the provision of education and other related services are required not to discriminate against disabled students and other disabled people.

- 1.2 The principle behind this legislation is that disabled people should have the same opportunities as non-disabled people to benefit wherever possible from whatever education or other related provision is available.

Purpose of the Code

- 1.3 This Code of Practice (Code) gives practical guidance on how to avoid discrimination against disabled people and students wanting to access education or other related provision. It describes the duties on the bodies responsible for this provision. The Code also helps disabled people to understand the law and what they can do if they feel they have been discriminated against.
- 1.4 The Disability Rights Commission (DRC) has prepared and issued this Code under the new legislation. It applies to the post-16 sections of the legislation, and to England, Wales and Scotland. With the exception of provision in a few specialist residential schools designated by regulations, schools provision, including that for pupils over 16, is not covered in this Code but in a separate Schools Code.
- 1.5 This Code deals only with how to avoid unlawful discrimination against disabled people and students. Those who work with disabled people in education and training or the provision of youth or community services are encouraged to go beyond mere compliance with the law and work towards eliminating discrimination against disabled people in these services altogether. Advice on good practice in some specific aspects of post-16 provision is being produced in relation to this legislation, and further details are available in **Appendix Three: Other publications.**

- 1.6 Each chapter of the Code should be viewed as part of an overall explanation of the post-16 sections of the legislation and the regulations made under it. In order to understand the law properly it is necessary to read the Code as a whole. The Code should not be read too narrowly or literally. It is intended to explain the principles of the law and to illustrate how the law might operate in certain situations. There are some questions which the Code cannot resolve and which must await the authoritative interpretation of the courts. The Code is not intended to be a substitute for taking appropriate advice on the legal implications of particular situations.

Status of the Code

- 1.7 The Code does not impose legal obligations. Nor is it an authoritative statement of the law – that is a matter for the courts. However, the Code can be used in evidence in legal proceedings under the Disability Discrimination Act. Courts must take into account any part of the Code that appears to them relevant to any question arising in those proceedings. If bodies responsible for post-16 education or other related provision follow the guidance in the Code, it may help to avoid an adverse judgement by a court in any proceedings.

References in the Code

- 1.8 The new requirements have been introduced through the Special Educational Needs and Disability Act 2001. As a result of this legislation being passed, the provisions in it have been incorporated into Part 4 of the Disability Discrimination Act 1995. For convenience, therefore, this Code refers to the provisions of the Disability Discrimination Act 1995 (referred to in this document as ‘the Act’) and the references in the margins are to this Act.

- 1.9 For example, s 28R(1) means section 28R(1) of the Disability Discrimination Act, and Sch 4C means Schedule 4C to the Disability Discrimination Act. Where reference is made to regulations that have already been made under the Act, the Statutory Instrument number is shown in the margins.
- 1.10 For the most part, references made to 'the Act' apply to the post-16 sections of Part 4 of the Disability Discrimination Act.
- 1.11 Throughout the Code, references are made to 'responsible bodies'. These are the bodies responsible for providing education or other related provision, and who are legally responsible under the Act. A definition of responsible bodies is given in **Appendix Two**.

How to use the Code

- 1.12 This chapter gives a general introduction to the Code and to the Act. **Chapter 2** gives a summary of the new post-16 legislation explaining who is protected by it. **Chapter 3** explains what types of provision must comply with the legislation. **Chapter 4** provides details on the duty not to treat people less favourably, and **Chapters 5 and 6** deal with the requirement to make reasonable adjustments for disabled people. **Chapter 7** covers premises issues. **Chapter 8** covers some other changes introduced by or alongside the new legislation, and **Chapter 9** deals with the process for taking forward a complaint under the Act, including the conciliation service. **Chapter 10** explains some of the links between the Disability Discrimination Act and other legislation.
- 1.13 The first two appendices give more information on some of the definitions in the Act. **Appendix One** gives more information on what is meant by

disability and who are disabled persons. **Appendix Two** gives more information on the institutions and organisations that must comply with the post-16 sections of the Act. **Appendix Three** lists other publications related to the Act and where these may be obtained.

Examples in the Code

- 1.14 Examples of how the Act is likely to work are given in boxes. They are intended simply to illustrate the principles and concepts used in the legislation and should be read in that light. The examples should not be treated as complete or authoritative statements of the law. It is not possible to offer generalised solutions. Individual circumstances will always require individual solutions. Changes to specific circumstances in any of the examples given might well change the solution or outcome.
- 1.15 While the examples refer to particular situations, they should be understood more widely as demonstrating how the law is likely to be applied generally. For this reason they attempt to include a wide range of disabilities and situations to demonstrate the width and scope of the Act. They can often be used to test how the law might apply in similar situations involving different disabilities, or different types of post-16 education or other related provision. References to men or women are given for realism and the examples could, of course, apply to either sex.

Changes to the legislation

- 1.16 This Code refers to the Disability Discrimination Act as at January 2002. There may be changes to the Act or to other legislation, for example, to the range of people who are considered to have a disability under the law, and these changes may have an effect on the duties explained in this Code.

- 1.17 You will need to ensure that you keep up to date with any developments that may affect the Act's provisions. You can get information about this from the Disability Rights Commission (see below for contact details).

Further information

- 1.18 Copies of the Act and regulations made under it can be purchased from The Stationery Office (see **Appendix Three** for contact details). Guidance relating to the definition of disability, codes covering the employment provisions and the goods and services provisions of the Act, and a further code dealing with the duties of trade organisations to their disabled members and applicants are also available from The Stationery Office.

- 1.19 Free information about the Act can be obtained by contacting the DRC Helpline:

Telephone: 08457 622 633

Textphone: 08457 622 644

Fax: 08457 778 878

Email: enquiry@drc-gb.org

Post: DRC Helpline
FREEPOST
MID02164
Stratford upon Avon
CV37 9BR

Information about the Act is also available in alternative formats or via the Internet:

<http://www.drc-gb.org>

What do the post-16 sections of the Act do?

2

This chapter provides a summary of the post-16 sections of the Act and their implications for disabled people and providers of further, higher, adult and community education and the statutory youth service. It explains what is meant by 'discrimination', what type of provision will be covered, and what action responsible bodies need to take to ensure that disabled people are not discriminated against.

Who has rights under the post-16 sections of the Act?

- 2.1 The Act applies to people who are disabled according to the definition of disability in the Disability Discrimination Act 1995. A disabled person is someone who has a physical or mental impairment, which has an effect on his or her ability to carry out normal day-to-day activities. That effect must be:
- substantial (that is, more than minor or trivial); and
 - long-term (that is, has lasted or is likely to last for at least 12 months or for the rest of the life of the person affected); and
 - adverse.
- 2.2 Physical or mental impairment includes sensory impairments and also hidden impairments (for example, mental illness or mental health problems, learning difficulties, dyslexia and conditions such

as diabetes or epilepsy). People who have had a disability within the terms of the Act in the past continue to be protected from discrimination even if they no longer have the disability. People with severe disfigurements are also covered.

- 2.3 It may be that some of those who currently receive support or adjustments from education providers because of a disability or learning difficulty are not covered by the Act. In particular, the definition of disability relevant to this Act is not the same as the definition of 'learning difficulty' used in the Further and Higher Education (Scotland) Act 1992 and the Learning and Skills Act 2000. The Disability Discrimination Act definition is based on ability to carry out normal day-to-day activities, whereas the Learning and Skills and Further and Higher Education (Scotland) Acts definition relates to learning. Some people may be covered by both, and others may be covered by only one of these definitions. Education providers should be aware that they may need to make different provision for people covered by the different pieces of legislation.
- 2.4 The examples used in the Code all assume a disability that would come under the definition of disability used by the Act.
- 2.5 For a fuller understanding of the concept of disability under the Act, see **Appendix One**. A publication available from The Stationery Office, *Guidance on matters to be taken into account in determining questions relating to the definition of disability*, provides additional help in understanding the concept of disability and in identifying disabled persons. Where relevant, the *Guidance* will be taken into account in any legal proceedings. (**Appendix Three** gives details of where to get copies of publications.)

- 2.6 The Act applies to any disabled people (including those overseas) who are enquiring about or applying to a course, and any disabled students (including those overseas) attending, undertaking or enrolled on a course. It also applies to any disabled people using or intending to use the statutory youth service or education authority-secured recreational or training facilities.

Who has responsibilities under the post-16 sections of the Act?

- 2.7 The post-16 sections of the Act place responsibilities on educational institutions and education authority-secured youth and community services not to discriminate against disabled people. The providers covered by this section of the Act include:
- institutions in the higher education sector
 - institutions in the further education sector and, in Scotland, colleges of further education
 - local education authorities or education authorities securing further education, including adult and community education
 - schools providing further education for adults
 - local education authorities providing the statutory youth service and, in Scotland, education authorities securing community education (from now on referred to jointly as 'Youth and Community Services')

Government regulations list other specific institutions covered by the Act. **See Appendix Two** for more details on the provision to be covered by the Act.

- 2.8 Any institution providing post-16 education that is not covered by the post-16 provisions of Part 4

s 19

of the Act is likely to be covered by Part 3 of the Act. For more details of what is required under Part 3 see the *Code of Practice on Rights of Access to Goods, Facilities, Services and Premises*.

2

s 28R(5),
Sch 4B and
Sch 4C

2.9 The legal responsibility for ensuring that discrimination does not take place lies with the **responsible body** for the provision. Responsible bodies are defined in **Appendix Two**.

A responsible body's legal liability for the actions of its employees

s 58

2.10 Under the Act, responsible bodies are legally responsible for the actions of their employees in the course of their employment. An employee who discriminates against a disabled person or student will usually be regarded as acting in the course of their employment, even if the responsible body has issued express instructions not to discriminate.

s 58(5)

2.11 However, in legal proceedings against a responsible body based on the actions of an employee, it is a defence that the responsible body took 'such steps as were reasonably practicable' to prevent such actions. Training for staff on how to work with disabled people is likely to be central to such a defence. It is not a defence for the responsible body simply to show that the action took place without its knowledge or approval.

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2.12 In some cases individual employees may also be legally liable for their own actions. This is explained further in **Chapter 8**.

What activities do the post-16 sections of the Act affect?

- 2.13 The Act makes it unlawful for a responsible body to discriminate against a disabled person:
- in admissions or enrolments of students
 - in the terms on which admissions or enrolment offers are made
 - by refusing or deliberately omitting to accept an application for admission or enrolment
 - in the provision of services provided wholly or mainly for students or those enrolled on courses. This includes provision such as courses of education, training, recreation, leisure and catering facilities or accommodation.
- 2.14 Responsible bodies of institutions have an additional duty not to discriminate against disabled students by excluding them temporarily or permanently from the institution on the grounds of their disability.
- 2.15 Responsible bodies for Youth and Community Services may not discriminate against disabled people in any of the provision they make.
- 2.16 There is more information on the provision affected by the post-16 sections of the Act in **Chapter 3**.

What is discrimination?

- 2.17 According to the Act, discrimination can occur in two ways:
- When a responsible body treats a disabled person **less favourably**, for a reason relating to the person's disability, than it treats (or would

s 28R(1)-(2),
Sch 4C
paras 1 or 5

2

s 28R(3)

Sch 4C
paras 1 and 5

s 28S(1),
Sch 4C
paras 1 or 5

2

s 28S(2),
Sch 4C
paras 2 or 6

treat) a person to whom that reason does not, or would not, apply and that treatment cannot be **justified**.

(There is more information on less favourable treatment and justifications for less favourable treatment in **Chapter 4**.)

- When a responsible body fails to make a **reasonable adjustment** when a disabled student is placed, or likely to be placed, at a **substantial disadvantage** in comparison with a person who is not disabled.

(There is more information on reasonable adjustments in **Chapters 5 and 6**.)

3

What sort of provision is covered by the post-16 sections of the Act?

This chapter explains which activities and provision are covered by the post-16 sections of the Act and which are not.

Which providers are covered by the duty not to discriminate against disabled people?

- 3.1 The post-16 sections of the Act apply only to certain types of providers. These are:
- institutions in the higher education sector
 - institutions in the further education sector and, in Scotland, colleges of further education
 - local education authorities or education authorities securing further education, including adult and community education
 - schools providing further education for adults
 - local education authorities providing the statutory youth service and, in Scotland, education authorities securing community education (from now on referred to jointly as ‘Youth and Community Services’).

s 28U, 28R
and Sch 4C
paras 1 and 5

s 28R(6)(c) and
s 28R(7)(e)

Government regulations list other specific institutions covered by the Act. See **Appendix Two** for more details on the provision to be covered by the Act.

Which providers are not covered by the post-16 duties?

- 3.2 The post-16 sections of the Act do not apply to other providers of education, even if the provision, education or qualifications they offer are the same as those offered by organisations that are covered. The key issue is whether the institution or providing body itself is covered. If the provider is not one of those listed above, the provision does not fall under the post-16 sections of the Act.
- 3.3 Non-statutory youth services, such as clubs and activities run by voluntary organisations, the Scouts or church youth clubs, are not covered by the post-16 sections of the Act. They are covered by the Part 3 duties.
- 3.4 Private providers of education and work-based training providers are not covered by Part 4 of the Act, but by Part 3. For more details of what is required under Part 3 see the *Code of Practice on Rights of Access to Goods, Facilities, Services and Premises* (see **Appendix Three**).

s 19

s 19

EXAMPLE 3.4A

A university in the USA offers its students the opportunity to study for a year in Great Britain. The students attend lectures and seminars in a college owned and run by their home institution. This provision is not covered by Part 4 of the Act, but by Part 3.

EXAMPLE 3.4B

A private college in Scotland offers a course in Typing and Shorthand leading to an examination. The course and the qualification are identical to those offered by a nearby further education college. However, the private college is not covered by Part 4 of the Act, but by Part 3.

EXAMPLE 3.4C

A school sixth form provides further education funded by the Learning and Skills Council. However, the institution itself is not a college and the provision is not to adults. The sixth form will be covered by the schools sections of the Act and not the post-16 sections.

EXAMPLE 3.4D

A voluntary organisation runs a youth club. It receives some funding from the local authority. However, the club is not part of Youth and Community Services and so falls within Part 3 of the Act, not Part 4.

EXAMPLE 3.4E

A voluntary organisation provides work-based training funded by the National Council for Education and Training for Wales. Although the qualification is the same as that provided by a nearby college, also funded by the National Council, the voluntary organisation itself is not within the further education sector. This provision is likely to fall within Part 3 of the Act, not Part 4.

EXAMPLE 3.4F

A students' union at a university is independent of the institution. It is not a service provided by the university although it does receive some funding from it. It is not covered by Part 4 of the Act, but is likely to be covered by Part 3.

When does a responsible body have responsibility for provision it does not make directly?

- 3.5 In some cases, responsible bodies may arrange for a third party to provide education, training or other related services for students on its behalf. This provision remains the responsibility of the responsible body, and so is covered by the Act. For more information on a responsible body's responsibility for the actions of its agents, see **Chapter 8**.

EXAMPLE 3.5A

Residential accommodation services in a university are contracted out. Although the university is no longer the direct provider of facilities on site, it is responsible under Part 4 of the Act for ensuring disabled students are not discriminated against.

EXAMPLE 3.5B

As part of a Business Studies course at a college, local business people are invited in to talk about their experiences. The business people are not employees of the college. It is the college's responsibility under Part 4 of the Act to ensure disabled students on the course are not discriminated against during the sessions with the visitors.

EXAMPLE 3.5C

A university has contracted with a local GP practice for the provision of health services to students. The university is responsible under the Act for ensuring that disabled students are not discriminated against in the provision of these health services.

EXAMPLE 3.5D

As part of an Art History course at a university in Great Britain, students spend a month in Italy on a programme run by an Italian university. It is the British university's responsibility to ensure that the Italian university can provide access for a disabled student who uses a wheelchair.

EXAMPLE 3.5E

A medical school delivers much of its teaching through the consultants in its affiliated teaching hospital. Consultants at the hospital are employed by the university as well as by the hospital. The university is responsible for teaching conducted in both the university and hospital settings.

- 3.6 However, to the extent that the provision is not made by, nor made on behalf of, the responsible body, it is not covered.

EXAMPLE 3.6A

A disabled student undertakes a work placement in a local business. The placement tutor has worked with the student and the manager with whom the student will be working to prepare both

parties for the placement, and set up the necessary support. This is part of the institution's duty under the Act. However, the placement is not provided by the institution, and the local business is not under any contract with the institution. Because the student is not employed by the business he is not covered by Part 2 of the Act (employment). Any treatment that the disabled student receives on the placement is not covered by Part 4 of the Act *because it is not made by or on behalf of the institution.*

EXAMPLE 3.6B

Part of the independent living course for students with learning difficulties at a college includes going to the shops on the bus. Although this takes place outside the college, the college is responsible under the Act to do what it can to ensure disabled students are not discriminated against. However, any treatment that a student receives from members of the public or others on the bus or at the shops is not covered by Part 4 of the Act *because it is not made by or on behalf of the institution.*

EXAMPLE 3.6C

A university has a partnership arrangement with a college overseas. The university awards the qualification, but does not provide the teaching or any other services; the overseas college provides these. The university is not responsible for any treatment that the student receives from college staff *because it is not made by or on behalf of the university.*

EXAMPLE 3.6D

Another university has a partnership arrangement with a college overseas. The university provides the teaching on the course using its own staff. The university is responsible for ensuring that students are not discriminated against in relation to the teaching they receive *because this is provided by the university*.

- 3.7 Even if an initial discriminatory act is not carried out by the responsible body, a responsible body may retain responsibility under the Act for preventing the discrimination continuing or recurring.

EXAMPLE 3.7A

A disabled student is being harassed by permanent staff members in the office where he is on work placement. The harassment is because of his disability. The placement tutor finds this out when talking to the student as part of his monitoring of the placement. The institution is responsible for preventing the discrimination continuing or recurring. In this case, the tutor might talk to the office manager, who agrees to take appropriate action to make sure this does not happen again.

EXAMPLE 3.7B

Students on a language course spend two months studying at a partner institution in Europe. Despite the work that the British institution has done with the European institution to explain the needs of disabled students on the programme, disabled students continue to complain that they have

been discriminated against during their stay. The British institution is responsible for preventing the discrimination continuing or recurring. In this case, the British institution might decide to sever its links with that institution, and find an alternative partner.

- 3.8 Some aspects of provision may be the responsibility of bodies other than the responsible body. In particular, entry to some courses may be regulated by a professional body, and many examinations are the responsibility of external examining bodies.

EXAMPLE 3.8A

A student at a further education college is studying for GCSEs. Modifications to the delivery of the examination have to be agreed by the examination board. The college has responsibility for finding out what modifications the student may need, for requesting these of the examination board and for making any adjustment needed to the administration of the examination in the college. The college is **not** responsible for deciding **whether** modifications are acceptable nor for any changes to the examinations themselves, which are not covered by Part 4 of the Act.

EXAMPLE 3.8B

A student applies to do a degree in Medicine at a university. Both the course and the examination are accredited by the General Medical Council (GMC). The student needs adaptations made to both the course and the examination because of his disability. The university is responsible for

making the adaptations. However, to the extent that the GMC accredits both the course and the examination, the university is not responsible for decisions about **whether** adaptations may be made.

EXAMPLE 3.8C

A high street bank opens a branch on a university campus. Although the bank rents premises from the university, it is not part of the provision made by the university for its student body. The university is not responsible for the behaviour or activities of the bank, although the bank must itself comply with Part 3 of the Act (goods and services).

What activities are covered by the duty not to treat a disabled person less favourably?

Admissions and exclusions

3.9 It is unlawful for a responsible body to discriminate against a disabled person:

- in the arrangements it makes for determining admissions or enrolments to the institution

EXAMPLE 3.9A

A college requires all applicants to fill out an application form by hand. It does not allow disabled students to type or use a helper to fill in the form. This is likely to be unlawful.

EXAMPLE 3.9B

A university requires selected applicants to attend an interview. One applicant has a speech difficulty which gets worse when he is nervous. This means he needs more time to express himself. The university refuses to allow him any extra time at interview. This is likely to be unlawful.

- in the terms on which it offers to admit or enrol a person

EXAMPLE 3.9C

An adult education centre informs a student with epilepsy that he may not enrol on a course unless he has an assistant with him at all times in case he has a seizure. In the past the student has only had seizures during the night. The centre's demand is likely to be unlawful.

- by refusing or deliberately omitting to accept an application for admission or enrolment.

EXAMPLE 3.9D

A university has many applications for a popular course. In order to cut down the numbers that the admissions tutor has to look through, the administrator sets to one side all applications from disabled students. These applicants are considered only if places remain after all other applicants have been considered. This is likely to be unlawful.

- 3.10 It is also unlawful for a body responsible for an educational institution to discriminate against disabled students by excluding them temporarily or permanently from the institution on grounds of their disability.

s 28R(3)

EXAMPLE 3.10A

A college learns that a student admitted himself to hospital during the holidays because of an ongoing mental health difficulty. The college excludes the student from the institution because staff fear he may be dangerous. The college has no evidence that the student will be dangerous; staff have simply made an assumption. This is likely to be unlawful.

Services

- 3.11 It is unlawful for bodies responsible for educational institutions to discriminate against disabled students in the provision of 'student services'. 'Student services' are any services that an institution provides or offers to provide wholly or mainly for students attending or undertaking courses.
- 3.12 Similarly, local education authorities or education authorities may not discriminate in the 'services' they provide or offer to provide wholly or mainly for people enrolled on courses.
- 3.13 For convenience, 'Services' is used throughout the Code to refer to 'services' and 'student services'.
- 3.14 Services will vary from one provider to another, but might include, for example:
- teaching, including classes, lectures, seminars, practical sessions
 - curriculum design

s 28R(2) and
s 28R(11)

Sch 4C
paras 1 or 5

- examinations and assessments
- field trips and outdoor education
- arranging study abroad or work placements
- outings and trips
- research degrees and research facilities
- informal/optional study skills sessions
- short courses
- day or evening adult education courses
- training courses
- distance learning
- independent learning opportunities such as e-learning
- learning facilities such as classrooms, lecture theatres, laboratories, studios, darkrooms, etc
- learning equipment and materials such as laboratory equipment, computer facilities, class handouts, etc
- libraries, learning centres and information centres and their resources
- information and communication technology and resources
- placement finding services
- careers advice and training
- careers libraries
- job references
- job shops and employment finding services
- graduation and certificate ceremonies
- leisure, recreation, entertainment and sports facilities
- the physical environment
- chaplaincies and prayer areas
- health services
- counselling services

- catering facilities
- childcare facilities
- campus or college shops
- car parking
- residential accommodation
- accommodation finding services
- financial advice
- welfare services.

Some of these areas were previously covered by Part 3 of the Act (goods and services) but aspects relating to teaching and learning are covered for the first time.

3.15 Educational institutions in particular often make provision that is wholly or mainly for other groups of people, not students. These are **not** covered by Part 4 of the Act. Examples might include:

- commercial conference facilities (these would be covered by Part 3 of the Act)
- commercial research or consultancy services (these might be covered by Part 3 of the Act)
- services and facilities for staff (these would be covered by Part 2 of the Act).

3.16 Responsible bodies for Youth and Community Services may not discriminate against disabled people in any of the services they provide. These services might include:

- clubs and activities
- one-to-one counselling or guidance work
- off-site and outreach work
- outings and trips
- facilitated work with groups of people, such as support for a residents' association.

What about students who are not completing an entire course?

- 3.17 A student does not have to be undertaking a complete course to have rights under the Act. Someone who is enquiring about, applying to, attending or undertaking a course of study at an educational institution, however long or short the study period, is covered. This includes people doing single modules, evening courses or distance learning. Similarly, anyone enquiring about, applying to or enrolled on a course or using recreational or training facilities provided by a local education authority or education authority is protected by the Act.

EXAMPLE 3.17A

A disabled student from the USA comes to a university in Britain to undertake a year's study for her junior year abroad. The British university has a duty not to discriminate against her during her period of study.

EXAMPLE 3.17B

A 15-year-old with a disability attends an open day at his local adult education centre. He is covered by the legislation during the open day.

Who else may have responsibilities towards disabled people under the Act?

- 3.18 In some cases, more than one body may have responsibilities towards the same people under the Act. The fact that two bodies have responsibility does not diminish the responsibility of either body.

EXAMPLE 3.18A

As part of a History course, students at one institution spend a fortnight at another university in Britain which has copies of original historical documents. During that time, the students receive teaching from staff at the second institution and use other facilities there. Both the home institution and the host institution have responsibilities towards disabled students under the Act.

- 3.19 In other cases, disabled people may be protected by a number of different parts of the Disability Discrimination Act. In these cases, the individual might seek redress for discrimination under whichever part of the Act was most appropriate.

EXAMPLE 3.19A

A disabled adult education tutor is taking an evening class in Shorthand at the centre where she works. While she is teaching, and in her relationship with her employer, she is protected by Part 2 of the Act (employment). While she is attending her Shorthand classes, and in her relationship with the centre as a student, she is protected by Part 4 of the Act. While she is using the canteen, which is open to staff and students, she is protected by both Parts 2 and 4.

EXAMPLE 3.19B

A college arranges a visit to an open day for prospective students at a university. One of the students is deaf and needs a sign language interpreter. Both the university and the college have responsibilities under Part 4 to ensure the adjustment is made.

EXAMPLE 3.19C

A student with a mental health problem is studying for an undergraduate degree in Engineering. As part of the course, she has to undertake a sandwich placement in an engineering firm. She works in the engineering firm for a year, and has a contract of employment with them. While she is on the placement the engineering firm has responsibilities towards her under Part 2 of the Act (employment) and the institution where she is studying for her degree has responsibilities towards her under Part 4 of the Act.

EXAMPLE 3.19D

A group of students with learning difficulties go on a theatre trip as part of the end-of-term celebrations at their college. The college, which has organised the trip, has responsibilities towards the students under Part 4 of the Act to the extent that it is reasonable for them to make appropriate adjustments. The theatre, as a service provider, has responsibilities towards the students under Part 3 of the Act (goods and services).

EXAMPLE 3.19E

A disabled student is taking a Scottish Vocational Qualification (SVQ) at a college. The college is responsible for the training that the student receives under Part 4 of the Act. The awarding body for the SVQ may be responsible for any reasonable adjustments to the assessment criteria under Part 3 of the Act (goods and services).

What about provision covered by Part 3 of the Act?

- 3.20 Some of the Services covered by Part 4 of the Act may also be covered by Part 3 of the Act, which relates to goods, facilities and services. Following implementation of Part 4 of the Act, students or those enrolled on courses are protected by Part 4 of the Act in respect of education, training and other related services. Service providers are still responsible under Part 3, however, if they continue to make provision for members of the public other than students or those enrolled on courses.

EXAMPLE 3.20A

The catering facilities at a college are currently covered by Part 3 of the Act as a service provided to the public. Because the catering facilities in the college are provided wholly or mainly for students, a disabled student using the canteen is protected by Part 4 of the Act.

EXAMPLE 3.20B

A university has a conference facility. It is not provided wholly or mainly for students. This facility is covered by Part 3 of the Act.

EXAMPLE 3.20C

A youth club provided by a local education authority puts on a performance for friends and family of the club members. The local education authority is already covered by Part 3 of the Act in its relationship with any disabled people who come to see the performance. From the implementation of the new sections of the Act, the authority has to comply with Part 4 of the Act in its relationship with both the young people and those coming to see the performance.

The duty not to treat people 'less favourably'

4

This chapter explains what is meant by the duty not to treat people less favourably for a reason relating to their disability. Treating people less favourably is one of the two ways in which discrimination can occur. It explains how not knowing about a person's disability may affect a responsible body's responsibilities, and gives examples of when less favourable treatment may be justified.

What is unlawful?

4.1 The Act makes it unlawful for a responsible body to discriminate against a disabled person:

- in the arrangements it makes for determining admissions to the institution or enrolments to a course
- in the terms on which it offers to admit or enrol the person
- by refusing or deliberately omitting to accept an application for admission or enrolment on grounds of their disability
- by excluding the person temporarily or permanently from an institution on grounds of their disability
- in the provision of Services.

4.2 One form of discrimination is to fail to make **reasonable adjustments** where existing arrangements or provision of Services place

disabled students at a **substantial disadvantage**. The duty to make reasonable adjustments is considered in **Chapter 5**. Another form of discrimination is for a responsible body to treat a disabled person **less favourably**, for a reason relating to the disability, than it treats (or would treat) a person to whom that reason does not or would not apply without **justification**.

Less favourable treatment

4.3 A responsible body discriminates against a disabled person if it treats him or her less favourably, for a reason relating to his or her disability, than it treats, or would treat, someone else to whom that reason does not, or would not, apply. In some cases, less favourable treatment may be justified. Justifications are considered later in this chapter. The reason for the less favourable treatment must relate to the disabled person's disability. The duty not to discriminate against disabled people or students by treating them less favourably is expected to come into force on **1 September 2002**.

4.4 For a disabled person to be discriminated against in this way, a responsible body must have treated him or her less favourably **in comparison** with how other people are treated or would be treated. The reason for the less favourable treatment must relate to the disabled person's disability.

EXAMPLE 4.4A

A dyslexic student applies to do a distance learning degree in English. The university tells her that it does not accept dyslexic students on English degrees. The treatment she receives is

less favourable compared to other students, and the reason for the treatment relates to her disability. The university is likely to be acting unlawfully.

EXAMPLE 4.4B

A student with a hearing impairment applies to do a course in Dentistry. He is turned down because he does not have the right entry qualifications. His rejection is not connected to his disability, and so is not likely to be unlawful.

EXAMPLE 4.4C

A student with a facial disfigurement is taking an evening class in Tai Chi. The tutor for the class spends time with all the students individually helping them with their technique. The tutor does not spend any time individually with the disabled student because he feels uncomfortable with her. Because no other student has been treated in this way, and because the less favourable treatment is related to her disability, the treatment is likely to be unlawful.

- 4.5 If the treatment is caused by the fact that the person is disabled, then the treatment 'relates to' the disability. This is the case even if other people are also treated unfavourably for a broadly similar reason. This means that a disabled person will have been treated less favourably if he or she would not have received the treatment but for the disability. Treating a disabled person less favourably cannot be excused on the basis that another student who behaved similarly would be treated in the same way.

EXAMPLE 4.5A

A student's disability has caused her to take time off and miss three sessions of her course. A college requires all students who miss three lessons to take the course again, and several of the disabled students' classmates are told they must take the course again. However, but for the disability, the student would not have missed any lessons. In this case, therefore, the appropriate comparison is with someone who has not had to take time off. Removing her from the course because of her absence would probably be less favourable treatment for a reason relating to her disability, and would be likely to be unlawful. It may be the case, however, that the college could justify this treatment because of academic or other standards (see **Chapter 6**).

- 4.6 The Act does not, however, provide a general excuse for disabled people or students to behave in disruptive or antisocial ways.

EXAMPLE 4.6A

A disabled student has been asked to leave the university's residential accommodation because of the number of noisy parties he has been holding which have been disturbing other students. The reason for asking him to leave is his disruptive behaviour and is not related to his disability, and so is likely to be lawful.

- 4.7 Bad treatment is not necessarily the same as less favourable treatment, although where a responsible body acts unfairly or inflexibly, a court might draw inferences that discrimination has occurred.

EXAMPLE 4.7A

A student who is a wheelchair user is treated rudely by one of the financial advisers in the student advice centre. The staff member is rude to all students that day; her bad treatment of the disabled student is not related to the student's disability. The disabled student has not been treated less favourably than other students.

- 4.8 The comparison may be between the way one disabled person is treated and the way people with other disabilities are treated.

EXAMPLE 4.8A

A community education tutor tells a woman who is blind that she cannot join the singing group because she cannot read the sheet music. Other disabled people are allowed to join the group, but the tutor cannot use this fact to claim that discrimination did not take place. The blind woman has been treated less favourably in comparison both with other people and with other disabled people for a reason relating to her disability. This is likely to be unlawful.

EXAMPLE 4.8B

A young woman who is deaf and also has a mobility difficulty attends a specialist residential college for deaf people. The college is organising an outing for the students one evening. The young woman has been told that she cannot go on the trip because it 'would not be suitable' for her because of her additional disability. She has been treated less favourably in comparison with the other students because of her mobility difficulties. This is likely to be unlawful.

- 4.9 A disabled person does not have to show that others were treated more favourably than he or she was. He or she needs only to show that others would have been treated better. The comparison might be made on the basis of the usual treatment received by other people, or the responsible body's policies or procedures about how people should be treated.

EXAMPLE 4.9A

A detached youth worker is arranging activities for young people on an estate. There is only one boy at a loose end but he has learning difficulties, and the youth worker has found it difficult in the past to communicate with him. The youth worker decides to see if other boys turn up with whom he finds it easier to communicate. None does turn up, so in the end he arranges no activities at all that evening. It does not matter that the disabled boy cannot point to any other boy treated better than himself. Had another boy, without his disability, shown up then that boy would have been treated more favourably. The treatment received by the disabled boy is, therefore, likely to be unlawful.

- 4.10 There must be a connection between the less favourable treatment and the person's disability for the treatment to be discriminatory.

EXAMPLE 4.10A

A student with epilepsy is told she cannot go on a trip to the theatre organised by the college. No other students are prevented from going on

the trip. The reason for her exclusion is that she has still not paid the money she owes for the previous theatre trip. The reason for the less favourable treatment is not related to the student's disability and so is unlikely to be unlawful.

Less favourable treatment in admissions

- 4.11 The post-16 sections of the Act make it unlawful for a responsible body to treat a disabled person less favourably in the arrangements it makes for determining admissions to the institution or enrolments to courses.

EXAMPLE 4.11A

An institution requires dyslexic applicants to a course to take a literacy test as a condition of entry. No other students are required to take the test. This is likely to be unlawful.

- 4.12 It is also unlawful for a responsible body to treat a disabled person less favourably in the terms on which it offers to admit or enrol him or her.

EXAMPLE 4.12A

A university makes an offer of a place to a student who is a wheelchair user on the condition that she finds her own living accommodation locally. No other students have this condition placed upon them. This is likely to be unlawful.

s 28R(1)(c),
Sch 4C
paras 1 or 5

- 4.13 Nor may a responsible body treat a disabled person less favourably by refusing or deliberately omitting to accept an application for admission or enrolment.

EXAMPLE 4.13A

An adult education centre has an enrolment evening. The staff member registering students instructs a blind enquirer to wait to be called until someone else can help him with his form, rather than registering him immediately. The enquirer is not called and, by the time he himself approaches the desk, the course he wants to join is full and he is told it is too late to enrol. This is likely to be unlawful.

Less favourable treatment in exclusions

- 4.14 It is unlawful for the bodies responsible for educational institutions to treat disabled students less favourably in excluding them temporarily or permanently from the institution for a reason relating to their disability.

s 28R(3)

EXAMPLE 4.14A

A student with a known history of bi-polar disorder is excluded from college because staff fear he may become disruptive in the future. They have no evidence to substantiate this fear and he has not broken any of the college regulations. This is likely to be unlawful.

EXAMPLE 4.14B

A wheelchair user is repeatedly rude to other students and staff and, on occasion, has wilfully damaged university property. This behaviour is not related to the person's disability. Other students behaving in this way would be excluded. The university decides to exclude the student. This is likely to be lawful.

Less favourable treatment in the provision of Services

- 4.15 It is unlawful for bodies responsible for educational institutions to treat disabled students less favourably in the provision of student services to students. Similarly, local education authorities or education authorities may not treat disabled people enrolled on courses less favourably in the provision of services. Responsible bodies for Youth and Community Services may not discriminate against disabled people in any of the services they provide.

EXAMPLE 4.15A

A facilitator, employed by a local education authority as part of the authority's community education provision, laughs and makes jokes about the speaking voice of a deaf man to other people in a tenants' association where she is supporting them in drawing up their constitution. This is likely to be unlawful.

s 28R(2)

Sch 4C
paras 1 or 5

Sch 4C
paras 1 or 5

EXAMPLE 4.15B

A student with an artificial limb is told that she cannot train on the college sports track because of this, although other students are allowed to train there. This is likely to be unlawful.

EXAMPLE 4.15C

A lecturer writes a job reference for a dyslexic student who has just obtained an upper second class honours degree. In the reference he makes disparaging and inaccurate comments about the student's dyslexia, saying that it is likely to make her unfit for any job which involves significant amounts of written work. This is likely to be unlawful.

May a responsible body treat a disabled person more favourably?

- 4.16 The Act does not prohibit positive action in favour of disabled people (unless this would be unlawful under other legislation). Responsible bodies may offer more favourable treatment to disabled people and students.

EXAMPLE 4.16A

An adult education centre runs evening classes in Yoga. The course is always oversubscribed. The centre gives preference to applicants with long-term back problems. This would be within the law.

Must a responsible body know that a person is disabled?

- 4.17 For a responsible body to discriminate against someone by treating him or her less favourably because of a disability, it needs to know about the disability. If the responsible body did not know and could not reasonably have known that a person was disabled, then the disabled person has not been treated less favourably for a reason relating to the disability. In order to claim lack of knowledge about a disability, the responsible body must have taken reasonable steps to find out about the person's disability. The Government has issued guidance on the reasonable action responsible bodies should take to find out about people's disabilities (see **Appendix Three**).

EXAMPLE 4.17A

A student has a mental health problem and, because of the medication she is on, finds it difficult to get to her first morning class. After several weeks during which she has missed all her morning classes, and without approaching the student to find out why she has not turned up, the college decides to remove her from the course. The institution has not taken reasonable action to find out whether the student's failure to attend is due to a disability, and so is likely to be acting unlawfully.

EXAMPLE 4.17B

In the same situation the tutor approaches the student and asks her in private if there is any reason preventing her from coming in to her first class. The student denies that there is any particular reason for her non-attendance. The college decides to remove her from the course. This is likely to be lawful.

- 4.18 A responsible body should be proactive in encouraging people to disclose a disability. This might involve asking applicants to courses to declare their disabilities on application and enrolment forms. It may mean publicising the provision that is made for disabled people, or providing opportunities for students to tell tutors/teachers or other staff in confidence. It might involve asking students when they apply for examinations whether they need any specific arrangements because of a disability. It might mean explaining to students the benefit of disclosure and how this information will be kept confidential. It means ensuring that the atmosphere and culture at the institution or service is open and welcoming so that disabled people feel safe to disclose a disability. If the responsible body might reasonably have been expected to know or find out about a person's disability, then it cannot claim that it did not know.

EXAMPLE 4.18A

A man with a medical condition that causes fatigue and subsequent loss of speech control applies to a university for a postgraduate degree. The application form does not ask whether he has a disability nor whether he would have any particular needs when attending interview. He attends an interview, during which he is very listless and his speech is very slurred because he is tired from the journey, and the selectors turn him down because of this. He mentioned at the interview that he felt tired but the panel ignored this. The admissions office made no attempts to find out whether the applicant had a disability. Because this information might reasonably have been known, the selectors' treatment of the applicant is likely to be unlawful.

- 4.19 The action that it is reasonable to take to find out about a person's disability may differ between different types of provision.

EXAMPLE 4.19A

A drop-in advice centre for young people states that it welcomes disabled young people. However, youth workers do not ask each young person they meet whether they have a disability, because they think this would be intrusive. This is likely to be lawful.

EXAMPLE 4.19B

A higher education college has a large number of applicants who say they have dyslexia, and also has a number of referrals during each year from staff who suspect that individual students may have dyslexia. The college makes an arrangement with an educational psychologist locally to provide diagnostic assessments. This is likely to be reasonable.

- 4.20 If a disabled person has told someone within the institution or service about his or her disability, then the responsible body may not be able to claim that it did not know.

EXAMPLE 4.20A

In the same situation, the student tells her tutor that she is seeing a therapist and has some medication. Although the tutor knows that the student might have a disability under the Act, he does not pass this information on to the head of department who is making the decision about the

student's continuation on the course. The college cannot claim that it did not know about the disability and so is likely to be acting unlawfully if it removes her from the course.

- 4.21 In some cases, the disabled person may have told someone in confidence about their disability. In this case, the responsible body might argue that it could not reasonably have known.

EXAMPLE 4.21A

A student visits the counselling service and tells a counsellor that she has recently contracted multiple sclerosis and this is distracting her from her work. Counsellors subscribe to their own code of confidentiality as part of their profession and this is made clear to the student. Because of this, the counsellor does not pass this information on to other staff. The student does not tell anyone else in the institution that she has a disability. The institution could claim that it did not know of the student's disability.

A further example regarding confidentiality can be found at Example 4.31D.

For more information on confidentiality, see **Chapter 6**.

Can a responsible body justify less favourable treatment?

- 4.22 A responsible body should not be looking for reasons or excuses to discriminate against disabled people or students. It is in the responsible body's own best interests to see that provision is

accessible. However, in limited circumstances, the Act does permit responsible bodies to justify treating a disabled person less favourably than other people. If the responsible body can show that the treatment in question is justified, then the treatment is not considered discriminatory in law.

s 28S(1)(b)

4.23 Less favourable treatment may be justified only if one of the following conditions is fulfilled:

s 28S(6)–(8)

- it is necessary to maintain academic standards
- it is necessary to maintain other prescribed standards
- it is of a prescribed type
- it occurs in prescribed circumstances
- the reasons are both material to the circumstances of the particular case and substantial.

The general approach to justification

4.24 If a disabled person or student can show that he or she has been treated less favourably than others for a reason relating to his or her disability, it is for the responsible body to show that the action taken was justified. The justification must fall within one of the categories listed in paragraph 4.23.

4.25 The responsible body can only use one of these justifications if the justification would still be valid even after a reasonable adjustment had been made. For more information on reasonable adjustments, see **Chapters 5 and 6**.

s 28S(9)

EXAMPLE 4.25A

A college gives a disabled student a poor mark for his exam. The student experiences fatigue and cannot concentrate for long periods. The college

is aware of this. The reason why he has performed badly in his examination is related to his disability and so he has been treated less favourably. The college tries to justify treating the student less favourably by arguing that this is necessary for maintaining academic standards. However, the college failed to make a reasonable adjustment for the student by allowing him short rest breaks. The college cannot use the justification, because they could have made an appropriate reasonable adjustment.

The maintenance of academic standards

- 4.26 The Act does not require a responsible body to do anything that would undermine the academic standards of a particular course. A responsible body may be able to justify less favourable treatment if it is necessary to maintain these standards.

s 28S(6)(a)

EXAMPLE 4.26A

A young man with learning difficulties applies to do a Biology degree. He does not meet the entry requirements for the course. The university talks to the college where the man had previously been studying and concludes that, even if reasonable steps were taken to eliminate any disadvantage caused by his disability, there would be no prospect of his completing the degree course successfully. Although the lack of entry requirements is related to the man's disability, the institution is likely to be justified in rejecting his application because to accept him would be to undermine the academic standards of the course.

- 4.27 The academic standards reason should not be used spuriously. Where elements are not central or core to a course, they are unlikely to provide a reason to justify discrimination based on academic standards. Nor can academic standards be used as justification for barring whole groups of disabled people from courses or services. Any justification has to be relevant to the academic standards of a particular course and to the abilities of an individual person.

EXAMPLE 4.27A

A severely dyslexic student applies to take a course in Journalism. She does not have the literacy necessary to complete the course because of her dyslexia. The college rejects her, using the justification of academic standards. This is likely to be lawful.

EXAMPLE 4.27B

The college now introduces a policy of rejecting all dyslexic applicants to Journalism. The policy does not allow course selectors to consider different levels of dyslexia, the ability of individual applicants or the range of possible adjustments. This is likely to be unlawful.

The maintenance of other prescribed standards, prescribed types of treatment and treatment in prescribed circumstances

- 4.28 The Act allows for future regulations to list any standards, treatments or circumstances that may also provide reasons to justify less favourable treatment.

Reasons that are material and substantial

s 28S(8)

- 4.29 Less favourable treatment may also be justified as long as the reasons for the treatment are both material to the circumstances of the particular case and substantial.
- 4.30 To be material to the circumstances of the particular case, the reasons have to relate to the individual circumstances.

EXAMPLE 4.30A

A student with emotional and behavioural difficulties applies for a college course. He has previously been on a link course to the college and staff know that he is extremely disruptive and makes a great deal of noise during classes which prevents other students from learning. During his previous periods in the college, tutors tried to make adjustments for him, but these were not successful. The college approaches the school, which confirms there has been no change in his behaviour. The college decides that they cannot accept him on to the course. The reasons for the failure to admit him relate to this particular student and his particular behaviour patterns. For this reason, the college is likely to be acting lawfully in rejecting the student.

- 4.31 A reason also has to be substantial and not just minor or trivial.

EXAMPLE 4.31A

A student with autistic spectrum disorder applies for a course. The student can be disruptive, and sometimes will talk inappropriately during classes. However, her interruptions are not much more than those made by other students, and when she has an assistant with her, her behaviour improves. There is unlikely to be any material and substantial reason to justify not admitting this student.

EXAMPLE 4.31B

A blind woman applies to do a Forensic Science degree. Although she can undertake some parts of the course, she cannot see enough to undertake the parts of the course which involve visual analysis of materials. This is a core component of the course. The college is likely to have a substantial reason to justify not accepting this student.

EXAMPLE 4.31C

A deaf student applies to do a college course. She communicates through sign language and would need an interpreter for all her classes. The college approaches the interpreting service which provides support for its other deaf students, but because of high demand that year, the service is unable to support this additional student. The college makes wider enquiries, but is unable to find the services of an interpreter or communicator. Because it is not possible to make the necessary adjustments for her to gain access to the course (see **Chapter 5**), the college does not accept her application. This is likely to be a material and substantial reason for less favourable treatment.

EXAMPLE 4.31D

A student has decided not to tell his institution that he has dyslexia despite several opportunities to do so. The course tutor notices that his test results are poor, and asks the student whether he might like to consider having a diagnostic assessment to see whether he has dyslexia. The student tells the tutor that he was just feeling tired that day and this appears a satisfactory explanation. While chatting to another member of staff, however, the student tells her in strictest confidence that he is dyslexic and is finding it difficult to write his essays. Because she has been asked to keep the information confidential, the staff member does not pass this information on. The tutor gives a low mark for the student's test. The institution is likely to have a material and substantial reason to justify the less favourable treatment.

The duty to make reasonable adjustments

5

This chapter looks at the duty to make reasonable adjustments for disabled people or students. This duty requires responsible bodies to take positive steps to make their education and other related services accessible to disabled people or students. This goes beyond simply avoiding treating disabled people or students less favourably than non-disabled people or students. The sort of adjustments that might be made, and issues concerning disclosure and reasonable adjustments, are also considered.

What does the Act say?

5.1 The Act says that:

- The responsible body for educational institutions must take reasonable steps to ensure that, in relation to the arrangements it makes for determining admissions, a disabled person is not placed at a substantial disadvantage in comparison with a person who is not disabled, and in relation to student services a disabled student is not placed at a substantial disadvantage in comparison with someone who is not disabled.
- A local education authority, an education authority, or the responsible body for a school or Youth and Community Services must take reasonable steps to ensure that, in relation to the arrangements it makes for enrolling people on a course and in relation to services provided or offered by it, a disabled person is not placed at a substantial disadvantage in comparison to someone who is not disabled.

What does it mean to be placed at a 'substantial disadvantage'?

- 5.2 When considering whether a disabled person or student is placed at a substantial disadvantage compared to somebody who is not disabled, a responsible body should take account of the time, inconvenience, effort or discomfort entailed in comparison with other people or students. A 'substantial' disadvantage is one that is more than minor or trivial.

EXAMPLE 5.2A

A partially deaf student who lipreads is attending a Business Studies course. One of her lecturers continues to lecture while simultaneously writing on the whiteboard. The student asks him to stop speaking when he turns his back to use the whiteboard so that she can follow what he is saying. The student is likely to be at a substantial disadvantage if this adjustment is not made.

EXAMPLE 5.2B

A student with restricted growth requests that all university student notice boards are lowered in height so that he can read the information more easily. He is, however, able to read the notices without significant difficulty or discomfort when the boards are placed at their regular height. The student's disadvantage compared to that of other students is unlikely to be found substantial.

EXAMPLE 5.2C

A youth club has a policy of not allowing dogs into its premises. A young blind person needs his guide dog to navigate around the premises. The young person is likely to be placed at a substantial disadvantage if a change is not made to the policy.

EXAMPLE 5.2D

A local education authority has three adult education centres. A wheelchair user wishes to attend a part-time art class at one particular centre which is nearest to his home. That centre does not have an accessible art room. However, another of the centres, only a little further away from his home, runs the same class with the same tutor and does have an accessible art room. The student is unlikely to be placed at a substantial disadvantage by attending the second centre.

EXAMPLE 5.2E

A student is receiving Disabled Students' Allowances to pay for a sign language interpreter and notetaker. Because of his disability, the student takes longer on his academic work than other students. On top of this, he has to take on the role of employer to his assistants, including arranging for National Insurance, insurance, etc. In this case, and in agreement with the student, the university arranges to process the assistants' wages through their payroll department. Without this, the student could be placed at a substantial disadvantage in relation to his access to student services.

EXAMPLE 5.2F

A tutor in Zoology delivers one of his modules through a computer-based learning environment and awards marks for students' participation in online discussion. The system does not work with a visually impaired student's software. The student is likely to be placed at a substantial disadvantage.

When do responsible bodies have to comply with this aspect of the legislation?

- 5.3 The main requirement to make reasonable adjustments is expected to be implemented from **1 September 2002**. There are two exceptions to this, however:
- reasonable adjustments relating to auxiliary aids and services are not expected to be required until **1 September 2003**
 - reasonable adjustments to physical features are not expected to be required until **1 September 2005**.
- 5.4 Although adjustments to physical features are not expected to be a legal requirement until 2005, it makes sense for providers to take any opportunities that arise to alter their premises in advance which will benefit disabled people or students.

To whom is the duty to make reasonable adjustments owed?

- 5.5 A responsible body's duty to make reasonable adjustments is **an anticipatory duty** owed to disabled people and students at large. It is not simply a duty to individuals.

- 5.6 Responsible bodies should not wait until a disabled person applies to a course or tries to use a Service before thinking about what reasonable adjustments they could make. Instead they should continually be anticipating the requirements of disabled people or students and the adjustments they could be making for them, such as regular staff development and reviews of practice. Failure to anticipate the need for an adjustment may mean it is too late to comply with the duty to make the adjustment when it is required. Lack of notice would not of itself provide a defence to a claim that an adjustment should have been made.

EXAMPLE 5.6A

All teaching staff in a prison produce all their handouts in electronic form thus ensuring that they can easily be converted into large print or put into other alternative formats. The staff are anticipating reasonable adjustments that might need to be made.

EXAMPLE 5.6B

A further education college modularises its learning programmes, thus allowing learners with learning difficulties who might be able to access one part of a programme at a more advanced level but require another part at a more basic level to match provision to their needs. The college is anticipating reasonable adjustments that might need to be made.

EXAMPLE 5.6C

A youth service requires all of its staff and volunteers to attend disability awareness training and also ensures that its staff training programme includes regular sessions on issues connected with disability. This is anticipating reasonable adjustments that might need to be made.

EXAMPLE 5.6D

A small college that is unable to employ a large number of specialist staff ensures it has close links with other organisations so that it is able to call on specialist support workers (for example, for learners who are dyslexic) when the need arises. It therefore anticipates reasonable adjustments that it might need to make if it has applications from dyslexic students.

EXAMPLE 5.6E

A university encourages its lecturers to put lecture notes on the institution intranet. It introduces new procedures to ensure that all notes put on the intranet meet established guidelines to ensure there is no conflict with specialist software or features that students with dyslexia may be using. It therefore anticipates reasonable adjustments that it might need to make for certain disabled students.

EXAMPLE 5.6F

A college makes its budget allocations to departments at the beginning of the year. Because it knows that the need for reasonable adjustments

may arise at any time during the year, it ensures there is sufficient flexibility in the budget to reallocate money between departments during the year if this is necessary. It therefore anticipates that it may need to make reasonable adjustments.

EXAMPLE 5.6G

A college has had a large number of students over the years needing assistance with taking medication. The college has no current member of staff willing to administer medication. The college recruits a support worker, part of whose duties is to do this. It therefore anticipates reasonable adjustments that it might need to make for some students.

5.7 The issue of anticipatory reasonable adjustments is particularly relevant in respect of buildings, whether these are owned, rented, or leased.

EXAMPLE 5.7A

A university ensures that its Building Works Department is thoroughly briefed on all aspects of physical access. Each time building works are undertaken an assessment is made of how the building can be made more accessible for example, when an area is repainted the department ensures it is using colour contrasts, which will help students with a visual impairment. It also carries out an acoustic audit to ensure it is responding appropriately to deaf students. The university is anticipating reasonable adjustments that might need to be made.

EXAMPLE 5.7B

An education authority provides most of its adult education classes in rented accommodation. It draws up a list of standards for physical accessibility that it wants its rented accommodation to meet and then looks for accommodation that meets these standards, thus anticipating reasonable adjustments that might be needed.

EXAMPLE 5.7C

A higher education institution has a partnership arrangement with a housing association to provide residential accommodation for students. It works with the housing association to make some of the rooms accessible for wheelchair users, thus anticipating reasonable adjustments that might need to be made.

What adjustments might responsible bodies need to make?

- 5.8 The Act does not define what 'reasonable steps' an institution should take. However, the purpose of taking the steps is to ensure that the disabled person or student is not placed at a substantial disadvantage. Responsible bodies should consider a wide range of adjustments. In some cases there may be financial or other support available from elsewhere to help provide the adjustments.

EXAMPLE 5.8A

A college insists that all potential students sit a basic English test before being admitted onto a particular programme. The test lasts an hour.

A disabled person applies for the course. She has severe back pain when sitting still for long periods and needs to be able to get up and move around. The college arranges for her to sit the test in a separate room so that she can do this. This is likely to be a reasonable adjustment for the college to make.

EXAMPLE 5.8B

A dyslexic student is accepted on a college course. He is unsure exactly what support he will need. The college arranges for him to have a needs assessment to make appropriate adjustments for him. Such an assessment is likely to be a reasonable initial adjustment for the college to make.

EXAMPLE 5.8C

A student with a visual impairment is following a distance learning course. She sends in her essays electronically but receives marked essays by post with handwritten comments in the margins that she is unable to read. A likely reasonable adjustment would be for comments to be returned electronically.

EXAMPLE 5.8D

A student with depression is on a Hair and Beauty training course run by a further education college. She spends part of the week in a hairdressing salon. Work placements are usually arranged on the basis of a full working day. However, because of the effects of her medication she is unable to attend in the mornings. A likely reasonable adjustment would be for the college to arrange for this student's work placement to take place in the afternoons only.

EXAMPLE 5.8E

As part of an Earth Science course, students are required to undertake a field trip involving an overnight stay in a mountain hut. A student who needs regular dialysis cannot stay overnight in the hut because the hut is not an appropriate environment for her to set up her dialysis equipment. A likely reasonable adjustment would be for the tutor to arrange for her to take part during the days but for someone to return with her to a nearby village at night where she has set up her equipment.

EXAMPLE 5.8F

A student with learning difficulties is attending a National Vocational Qualification (NVQ) course in Catering. She is managing the practical parts of the course but has difficulty with the basic skills required for the theory. A likely reasonable adjustment would be to provide a basic skills support worker at designated periods each week to give extra help.

EXAMPLE 5.8G

A young person with cerebral palsy wishes to attend a youth service music workshop which is situated on the second floor of a building with no lift. The local authority which runs the youth service owns the building. She is able to use the stairs but needs hand rails on both sides. It is likely to be reasonable to expect the local authority to fit these.

EXAMPLE 5.8H

A student who has recently become disabled is accepted on a Business Studies course. He is unable to use public transport and has no transport of his own. Without transport he is unable to get to college and is thus placed at a substantial disadvantage. In this case the college already operates its own transport for students living in particular outlying areas, and agrees to re-route the bus to stop close to the student's home. This is likely to be a reasonable adjustment.

EXAMPLE 5.8J

A student with mental health problems has to attend a month's work experience placement as part of his college course. The usual college procedure is for students to go independently to their work placement but this student is very anxious about how he will cope. A likely reasonable adjustment would be for his tutor to arrange to accompany him on the first day and then to telephone him at regular intervals.

How long does the duty continue?

- 5.9 The duty to make reasonable adjustments is a continuing duty. Responsible bodies should keep the adjustments constantly under review in the light of their experience with disabled people applying to courses and using Services. In this respect, it is an evolving duty, and not something that needs simply to be considered once and once only, and then forgotten. For example, technological developments may provide new or better solutions to the problems of inaccessible Services.

Disclosure and reasonable steps

s 28S(3)(a)

- 5.10 If the institution did not know and could not reasonably have known that the student was disabled, then failure to make an adjustment for a disabled person or student is not discrimination.

EXAMPLE 5.10A

A student with a heart condition goes on a field trip as a compulsory part of her Geography course. The student has not told the college about her condition although she had been given the opportunity to do so in private on several occasions including when the field trip was announced. Part of the trip involves walking around the town counting shops and residential housing. During the day, it becomes apparent that she cannot complete the assignment although some last minute adjustments are made. Because it could not have known about the disability in advance, the college is unlikely to have been acting unlawfully.

s 28S(3)(b)

- 5.11 The failure to make an adjustment and the lack of knowledge must be connected.

EXAMPLE 5.11A

A man makes a written request to a college and asks for information about courses. He does not tell the college that he has no sight. Although the college produces its prospectus in electronic format, he is sent the print version, which he cannot access. The college's failure to make an adjustment for the enquirer is due to lack of knowledge about his disability. This is likely to be lawful.

- 5.12 However, in some cases, the knowledge might not be relevant because the responsible body should have made the reasonable adjustment in response to the anticipatory nature of the duty.

EXAMPLE 5.12A

A man with a visual impairment asks for information about courses at a college. He does not tell the college that he has a visual impairment. He can read type if it is of a reasonable size. He is sent a prospectus for the college, which is printed in very small type that he cannot read. The college does not produce information in any other format or even in reasonably sized type. The college's failure to make an adjustment for the enquirer with the visual impairment is not related to lack of knowledge about his disability, it is due to the college's failure to make anticipatory adjustments for disabled people. This is likely to be unlawful.

- 5.13 If the disabled person has told someone within the institution or service about his or her disability, then the responsible body may not be able to claim that it did not know.

EXAMPLE 5.13A

A student declares her disability on her application form. Once she is enrolled on a course she receives none of the support or adaptations that she needs. The tutor claims she does not know that the student is disabled. However, because the student has disclosed her disability, the institution cannot claim it does not know about it. The failure to offer support and adaptations is therefore likely to be unlawful.

- 5.14 If the responsible body might reasonably have known or found out about a person's disability, then it cannot claim that it did not know.

EXAMPLE 5.14A

An applicant does not declare his disability on his application form. When he calls up to confirm his attendance at a selection interview he talks to the admissions officer via Typetalk, the telephone service for deaf people. The admissions officer does not ask the applicant if he will need any adaptations to the selection interview and fails to alert the interviewers for the course that the applicant may be deaf. The interviewers do not realise that the applicant is deaf and do not take any steps to ensure that the interview is accessible to him. The responsible body might reasonably have known that the student had a disability. The failure to offer adaptations is, therefore, likely to be unlawful.

- 5.15 A responsible body needs to be proactive to encourage people to disclose a disability. This might involve asking people to declare their disabilities on application and enrolment forms. It may mean publicising the provision that is made for disabled people, and then providing opportunities for people to tell tutors, teachers or other staff in confidence. It might involve asking students when they apply for examinations whether they need any specific arrangements because of a disability. It means ensuring that the atmosphere and culture are open and welcoming so that disabled people feel safe to disclose a disability. The Department for Education and Skills has issued guidance covering the action responsible bodies might take to find out about a person's disability (see **Appendix Three** for details).

Can a responsible body justify the failure to make a reasonable adjustment?

- 5.16 There may be rare occasions where a reasonable step might be taken, but there is a justification for not taking it. If this is the case, then the failure to take the reasonable step is not considered discriminatory in law. The failure to take a reasonable step can only be justified if the reasons are both material to the circumstances of the particular case and substantial.

EXAMPLE 5.16A

A college runs an NVQ in plumbing. A wheelchair user with limited upper body movement applies to do the course. The college is aware that it could take reasonable steps to make the course accessible, but that these adjustments would not be possible in the workplace because of the nature of the job. Because of the explicit vocational nature of the qualification the college decides it would not be appropriate to make adjustments which are not replicable in the workplace. This is likely to be a material and substantial justification for not making reasonable adjustments.

EXAMPLE 5.16B

A woman with limited mobility applies to do a degree in Civil Engineering. The course leader meets the student and feels that she would be unable to practice as a civil engineer because of her disability. For this reason he decides that it would be inappropriate to make adjustments to the course and so recommends that her application is rejected. The degree course is not, however, directly vocational, and not all graduates

from the course progress on to become engineers. There are therefore unlikely to be material reasons for failing to make reasonable adjustments.