

Determining what is reasonable

6

This chapter looks at criteria that might be taken into account when determining what is reasonable. The relationship between confidentiality and reasonable adjustments is also addressed.

The concept of reasonableness

- 6.1 What steps are reasonable for a particular responsible body to take depends on all the circumstances of the case. For example, they will vary according to:
- the type of services being provided
 - the nature of the institution or service and its size and resources
 - the effect of the disability on the individual disabled person or student.
- 6.2 Under the Act, responsible bodies must have regard to relevant provisions of this Code. Without attempting to be exhaustive, the following are some of the factors that might be taken into account when considering what is reasonable:
- the need to maintain academic and other prescribed standards
 - the financial resources available to the responsible body

s 28T(2)

- grants or loans likely to be available to disabled students (and only disabled students) for the purpose of enabling them to receive student services, such as Disabled Students' Allowances
- the cost of taking a particular step
- the extent to which it is practicable to take a particular step
- the extent to which aids or services will otherwise be provided to disabled people or students
- health and safety requirements
- the relevant interests of other people including other students.

The need to maintain academic or other prescribed standards

- 6.3 The Act does not require a responsible body to do anything that might mean it cannot maintain academic or other prescribed standards in a particular learning programme.

EXAMPLE 6.3A

A young man with moderate learning difficulties applies to study for an English A level. He has poor literacy skills and the college does not have sufficient evidence that he could sustain the reading and writing necessary to complete the course. It is unlikely to be reasonable to expect the college to adjust its entry requirements to accommodate the student.

EXAMPLE 6.3B

A student with a speech impairment is on a Hotel and Tourism course. Part of the assessment relates to customer service. The assessment usually considers a number of factors including the verbal fluency of each candidate, and on grounds of academic standards, the department refuses to make any changes to the assessment practice. However, fluency is not an essential element of customer service, it is simply an aspect that the assessment to this course habitually takes into account. It is likely to be reasonable, therefore, to make an adjustment that allows the student to show his customer service and conversational skills without demonstrating verbal fluency.

- 6.4 Some courses may not have defined academic standards, but they may have other prescribed standards which the responsible body needs to maintain.

EXAMPLE 6.4A

A student is following a Music degree, which involves both theory and practice. Her specialist instrument is the piano. During the course she develops arthritis and is unable to continue with the practical parts of the course. Although it might be possible for her to continue with the theory it is unlikely to be reasonable for the university to make an adjustment whereby she could receive a degree for the whole course by only completing the theoretical parts.

- 6.5 However, it might be reasonable to allow a student to validate the attainment of academic standards by using means different from those used by other students.

EXAMPLE 6.5A

A profoundly deaf student is following an art course. Most of the course is practically based. However, students are expected to give an oral presentation of their work. It is likely to be reasonable to allow this student to present her work using British Sign Language.

- 6.6 There could also be instances in which it was appropriate to make reasonable adjustments for a student who needed additional support to attain the standards prescribed by the course.

EXAMPLE 6.6A

A partially sighted student applies to do Dance. He has excellent physical mobility but requires floor markings to be very clearly accentuated and also requires extra time to be taken through certain movements. These are likely to be reasonable adjustments for the provider to make.

The financial resources available to the responsible body

- 6.7 The extent to which it would be reasonable for a responsible body to make adjustments will depend on the financial resources of the particular responsible body and its other commitments.

EXAMPLE 6.7A

A wheelchair user applies to do a Metalwork class for two hours a week in a building that is inaccessible to wheelchair users. The local education authority that runs the class is in the process of making its buildings accessible but has not yet begun altering this particular building. Because of the large amount of fixed equipment needed for the class, it is impossible to move its location this academic year. If the Metalwork class is to be made accessible to a wheelchair user this year a lift would need to be installed, which would be very expensive. The local education authority has a large number of statutory and other commitments. Its ability to find additional sums of money at short notice is extremely limited. It is unlikely to be reasonable to expect the local education authority to make an adaptation in this case.

EXAMPLE 6.7B

A sign language user wishes to use the careers service at a higher education institution. The institution says that funding for an interpreter must come from the careers service but the careers service does not have sufficient in its budget to pay for an interpreter. It transpires that the institution is currently planning a very costly refurbishment of several of its buildings. It is likely to be reasonable to expect the higher education institution to transfer some money to the careers service in order to make its careers service accessible to the student.

Grants or loans likely to be available to disabled students

- 6.8 Some disabled students following higher education courses receive Disabled Students' Allowances, the specific purpose of which is to pay for additional aids or services which students require because of a disability. It would not be reasonable to expect a responsible body to fund aids or services if Disabled Students' Allowances are already being used to provide these same services.

EXAMPLE 6.8A

A deaf student on a degree course has been assessed as needing a sign language interpreter for all her lectures and seminars. It is unlikely to be reasonable to expect the university to fund an interpreter if the student has the resources for this through her Disabled Students' Allowances.

- 6.9 However, there are instances when disabled students might need reasonable adjustments to be provided by the institution in addition to those resourced through their Disabled Students' Allowances. Institutions should anticipate that this might be the case.

EXAMPLE 6.9A

A student who has cerebral palsy has received funding through the Disabled Students' Allowances to buy an adapted keyboard to use with his computer. However, it is too cumbersome for him to transport every day from his residence to the university. It is likely to be reasonable to expect the university to provide him with a similar adaptation for a computer within the computer cluster at the university.

The cost of taking a particular step

6.10 No hard and fast rules can be given as to how much it is reasonable for a responsible body to spend on adjustments. This will depend on several factors including:

- the type of services being provided
- the nature of the responsible body and its size and resources
- the effect of the disability on the individual disabled person or student.

Depending on these circumstances, cost may be a reason for not providing an adjustment.

EXAMPLE 6.10A

A young deaf person who is a sign language user spends much of each week at a local youth club to which Part 4 applies. Three evenings a week he attends formal sessions run by the youth worker. At other times he is playing pool with his friends, reading and watching television. He can lipread to some extent and can communicate with his friends without the use of an interpreter. The youth club arranges for an interpreter to come to the formal sessions. However, it is unlikely to be reasonable for the local authority to pay a large sum of money for a sign language interpreter to be with the young man whenever he is at the club.

The extent to which it is practicable to take a particular step

6.11 There may be some instances when, although an adjustment might be in a person's or student's interests, it will not be practicable for the responsible body to take such a step.

EXAMPLE 6.11A

A person with severe learning difficulties is taking a weekly Local History class. Although much of the class is practically based, involving visits to local places of interest, the tutor also regularly gives out articles from history journals. While every effort should be made to ensure that the person with learning difficulties understands what the articles say, it might not be practicable for the tutor to try to represent them all in pictorial or symbol form.

EXAMPLE 6.11B

A young person with dyslexia is a student on a one-year diploma course. His disability makes it difficult for him to read long texts and, ideally, he would like all his books on audiotape. However, his course has a very long reading list which changes every year. Although the college does have a system for putting texts onto tape, this process takes some time and it is unlikely to be practicable for the college to provide him with all his books on tape during the year. It is likely, however, to be reasonable to look for other means of enabling him to access the reading list.

The extent to which the aids or services will otherwise be provided to disabled people or students

- 6.12 There will be some instances when a disabled person or student is provided with support from another agency. In these cases, it would not be reasonable to expect the responsible body to duplicate this support.

EXAMPLE 6.12A

A man with learning difficulties and also with physical disabilities is enrolled on an adult education course. His disabilities mean that he requires a support worker with him at all times. He is already receiving a package of care funded by his social work department and he has a full-time support worker allocated to him. It is unlikely to be reasonable to expect the education authority to provide an additional support worker.

Health and safety requirements

- 6.13 The Disability Discrimination Act does not override health and safety legislation. There might be instances when, although an adjustment could be made, it would not be reasonable as it would endanger the health and safety either of the disabled person or of other people.

EXAMPLE 6.13A

A wheelchair user is a student on a Theatre Studies course. One module of the course is on stage lighting. This involves students climbing up scaffolding and sitting on narrow gantry planks while they alter the lighting. Having taken specialist advice, the lecturer decides that, although an adjustment could be made in order to hoist a wheelchair up to the required height, the gantry planks and scaffolding system are not strong enough to hold a wheelchair. It is unlikely, therefore, to be reasonable for the college to make the adjustment in this instance.

- 6.14 There might be other instances where responsible bodies could make anticipatory reasonable adjustments in line with health and safety legislation.

EXAMPLE 6.14A

A student with learning difficulties who also has a physical disability applies to do a trampolining course for students with learning difficulties at an adult education centre. His disability means that he will require staff to lift him on to the trampoline. The adult education provider has drawn up a risk assessment policy for lifting, which states that no member of staff should lift a student unless they have received appropriate recognised training on lifting. Because this course is one that is highly likely to involve staff in lifting, it is likely to be reasonable to expect staff to have received training in lifting in anticipation of applicants who require support.

- 6.15 Health and safety issues must not be used spuriously to avoid making a reasonable adjustment.

EXAMPLE 6.15A

A university chaplaincy refuses to provide a temporary ramp into the chapel for a wheelchair user because they say that wheelchair users pose a health and safety hazard by preventing other people reaching the fire exits in an emergency. In fact, the chapel has a very wide set of double doors alongside a smaller door, where the ramp would be placed. There is unlikely to be a valid reason for not making a reasonable adjustment.

EXAMPLE 6.15B

A student with cerebral palsy who uses a wheelchair wants to take a Photography A level. The entrance to the darkroom is not wide enough for the student to enter. The college is willing to adapt the doorways but the tutors are concerned he should not be allowed to take the course anyway because there would be a health and safety risk when he used the chemicals in the darkroom. The college therefore agrees to make an additional adjustment to deal with the health and safety risk, by ensuring that he has an assistant or technician with him when in the darkroom.

The relevant interests of other people including other students

- 6.16 There might be instances when an adjustment for a disabled person or student results in significant disadvantage for other people or students. In such a case, the responsible body would not be expected to make the adjustment.

EXAMPLE 6.16A

A student with learning difficulties is attending a Scottish Vocational Qualification (SVQ) course at a further education college. She finds it difficult to follow the more theoretical parts of the course but is very reluctant to have any individual extra support. One option would be for the course tutor to go very slowly over the parts she finds difficult to ensure that she has understood the points being made. However, the slow pace of delivery would prevent the other students on the course finishing their syllabus and the attainment of their

qualification would be put at risk. It is likely that this would not be a reasonable adjustment, as it would significantly adversely affect other students on the course. In this case, it is likely to be appropriate to look at alternative adjustments.

- 6.17 There will, however, be other instances, where there is a duty to make an adjustment despite some inconvenience to others. In deciding what adjustments are reasonable it is important to weigh the level of inconvenience to others against the substantial disadvantage to the disabled person.

EXAMPLE 6.17A

A deaf student on a Basic Skills class has a sign language interpreter during the class. For the final 15 minutes of each class, the tutor holds a group discussion. Other students complain that the flow of their discussion is impeded because of having to wait while the sign language interpreter translates for the deaf student. However, the delay does not significantly adversely affect the group's learning. This is unlikely to be considered sufficient reason for not allowing the deaf student to participate in the discussion using a sign language interpreter.

Confidentiality and reasonable steps

- 6.18 A disabled person has a right to request that the existence or nature of his or her disability be treated as confidential. In determining whether it is reasonable to make an adjustment the responsible body must have regard to the extent that making the adjustment is consistent with a disabled person's request for confidentiality.

- 6.19 In some instances this might mean that reasonable adjustments have to be provided in an alternative way in order to ensure confidentiality.

EXAMPLE 6.19A

A student with a visual impairment can only read clearly if he has text enlarged into 16-point type. He is very embarrassed by his disability and has requested strict confidentiality. Normally his tutors would give a visually impaired student large-print handouts at the beginning of each class. However, because he has requested confidentiality, they agree to give him his handouts in advance so that he can look at them before the lesson but does not have to be seen reading them during the class.

- 6.20 In some cases a confidentiality request might mean that a less satisfactory reasonable adjustment is provided or that no reasonable adjustment can be provided.

EXAMPLE 6.20A

A student with AIDS is on a Chemical Engineering course. He does not want other students to know of his condition. His condition means that he sometimes needs to have time off. His tutors have offered to arrange extra time in the laboratory for him after hours to make up for the time he misses. However, he has refused this on grounds of confidentiality. Instead they offer to provide him with extra lecture notes. Although this adjustment is less effective, it is likely to be lawful.

Reasonable adjustments to leasehold premises

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Chapters 5 and 6 of the Code explain the duty to make reasonable adjustments. These chapters include examples of reasonable adjustments to the physical environment. This chapter addresses issues of how leases or other binding obligations affect the duty to make reasonable adjustments to premises. It deals with the Regulations entitled *The Disability Discrimination (Educational Institutions) (Alteration of Leasehold Premises) Regulations 2002*, which clarify the requirement to alter leasehold premises where consent is required from a landlord.

s 28W, Sch 4

Leases, binding obligations and reasonable adjustments

7.1 Responsible bodies should anticipate the need to obtain consent to make a proposed adjustment and allow sufficient time to obtain this. An application to a landlord may be necessary but there may also be a need to obtain statutory consent from elsewhere for some alterations. This might include:

- planning permission
- building regulations approval
- listed building consent
- consent to alter buildings in a conservation area
- consent to install a ramp onto a public highway.

The Act does not override the need to obtain such consents. It may be reasonable, therefore, to make an interim adjustment that does not require consent.

SI 2002/1458,
Reg 6(2)(a)
and (b)

EXAMPLE 7.1A

As part of its planned programme of access improvements, a university is installing a ramped entrance to its library. The university library is a listed building. The university has consulted the local planning authority and was told that consent was likely to be given but would take some weeks. In the meantime, as a temporary measure, the university arranges for disabled students unable to climb the steps to use an entrance at the rear of the building. Although this entrance is accessible, it is very inconvenient, requiring students to negotiate a series of pathways and wait in an unsheltered back yard. While this is not ideal, it is likely to be a reasonable adjustment for a limited period while statutory consent is being obtained.

- 7.2 If a lease requires a tenant to obtain permission from a landlord to alter a building, a responsible body must apply in writing to its landlord for consent to make an alteration. The written application should state that the alteration is to comply with a duty to make reasonable adjustments under Part 4 of the Disability Discrimination Act. The application should also include plans and specifications of the intended works.

What happens if a lease says that certain changes to premises cannot be made?

- 7.3 Where a responsible body occupies premises under a lease the terms of which prevent it from altering the premises, special provisions apply. If the alteration is one the responsible body proposes to make to comply with a duty of reasonable

adjustment, the Act overrides the terms of the lease and entitles the responsible body to make the alteration with the consent of its landlord.

s 28W

Obtaining other consents

- 7.4 A superior landlord and immediate landlord may give their consent but this does not override the responsible body's duty to obtain other appropriate consents. These might be from a statutory body or due to the terms of an agreement or other legally binding obligation, for example a restrictive covenant or a mortgage. It is likely that consent from a landlord or superior landlord would be given subject to such obligations.

EXAMPLE 7.4A

A local authority holds some of its classes in a building purchased with the assistance of a bank loan. The terms of the loan require the bank's consent for any changes to the building. The local authority is proposing to alter the building to comply with its duty to make reasonable adjustments. It is reasonable for the local authority to have to seek the bank's consent but it is not reasonable for it to have to make the alteration if this consent is not given.

- 7.5 The Regulations detail the duties and the processes that apply in the relationship between the landlord and any superior landlord. The superior landlord has a duty to the responsible body as if he or she was the immediate landlord.

SI 2002/1458,
Reg 7

When are landlords deemed to be withholding consent?

- 7.6 If the application includes details of the alterations including plans and appropriate specifications, and indicates that the alterations are to comply with a Part 4 duty, the landlord must reply within 42 days of receiving the application. If the landlord fails to reply within this time, the responsible body can assume that consent has been withheld. In such a case, the responsible body can apply to the court. This procedure is explained in paragraphs 7.19 and 7.20.
- 7.7 If the landlord needs to obtain the consent of another person, for example a superior landlord, the immediate landlord must advise the responsible body of this and apply to any superior landlord within the 42-day period. If this is done, consent will not be deemed to have been withheld. If a landlord fails to seek this consent, consent will be deemed to have been withheld.
- 7.8 A superior landlord or other person whose consent is required also has 42 days from receiving the application (or from receiving plans and further details – see paragraph 7.10) to provide consent.
- 7.9 A landlord will also be deemed to have withheld consent if he or she has obtained consent from a superior landlord but has failed to notify the responsible body of this within 14 days.
- 7.10 A landlord or superior landlord will not be deemed to have withheld consent if the responsible body (or immediate landlord) fails to provide appropriate plans and specifications of the intended works with the application. In this situation, the landlord may request them. The request must be made within

SI 2002/1458,
Reg 3(2)
s 28W, Sch 4
Part 3

SI 2002/1458,
Reg 3(4)

SI 2002/1458,
Reg 3(5)

21 days of receipt of the initial application and the 42-day period begins from the date the landlord receives the appropriate details.

SI 2002/1458,
Reg 3(3)

EXAMPLE 7.10A

On 1 January a local education authority writes a brief letter to the landlord of one of the buildings it rents, requesting permission to refit a pottery room with low benches and wider doorways and aisles. On 22 January the landlord telephones asking the local education authority to send in detailed floor plans and estimated costs for the proposed changes. The local education authority has been preparing these and sends them to the landlord on 9 February. The landlord then has until 23 March to notify the authority of the decision.

- 7.11 While a landlord is seeking consent from a superior landlord or other person, he or she must give consent to the responsible body conditional upon the other person's consent. If the responsible body is not advised of this conditional consent, the immediate landlord will be deemed to have withheld consent.

SI 2002/1458,
Reg 3(7)

When is a landlord withholding consent reasonably?

- 7.12 In most cases whether withholding consent will be reasonable or not will depend upon specific circumstances.
- 7.13 If the lease requires a landlord to give consent to an alteration of the kind in question and the landlord does not do so, the landlord will be deemed to have withheld consent unreasonably.

SI 2002/1458,
Reg 4(2)

SI 2002/1458,
Reg 5(2)

- 7.14 The Regulations provide circumstances in which a landlord can reasonably withhold consent to the making of an alteration. For example, where:
- there is a binding obligation requiring the consent of any person to the alteration; and
 - the landlord has taken steps to seek that consent; and
 - consent has not been given, or is given subject to a condition which makes it reasonable for the landlord to withhold consent (see paragraph 7.17).

EXAMPLE 7.14A

A college applies for consent to make a new doorway at ground floor level in the side of a building because the main entrance is up a set of steps. The landlord is willing to consent to the alteration but must obtain the permission of an adjoining landowner who has a restrictive covenant. This prevents the making of any openings in the side of the building. The neighbouring landowner will give consent but only if the landlord pays a substantial sum. Because of the size of the sum requested it is likely to be reasonable for the landlord to refuse consent.

- 7.15 It is also reasonable to withhold consent where the landlord or superior landlord does not know and could not reasonably be expected to know that the alteration is being proposed to comply with a duty to make reasonable adjustments.

- 7.16 If a landlord is withholding consent reasonably it may be necessary to consider an alternative (even if less effective) adjustment.

SI 2002/1458,
Reg 5(2)(b)

Power of landlords to impose conditions on consent

- 7.17 Either the landlord or the superior landlord can give consent subject to the conditions prescribed in the Regulations. They may include an obligation:
- to obtain appropriate other consents including planning permissions
 - to carry out the works in accordance with the plans and specifications submitted to and approved by the landlord or the superior landlord (such approval may not be unreasonably withheld)
 - to allow the landlord or the superior landlord to inspect the work after it has been completed
 - to repay to the landlord and the superior landlord any costs reasonably incurred in connection with giving the consent. (These costs might include building surveyors', architects' or legal fees incurred to provide documentary evidence for the consent.)
- 7.18 The landlord or superior landlord may also impose other conditions so long as these are reasonable.

What happens if the landlord refuses consent or attaches unreasonable conditions?

- 7.19 If the responsible body has written to the landlord for consent to make an alteration and the landlord:
- has refused consent unreasonably; or
 - has failed to respond (which is deemed as a refusal); or
 - has attached conditions to his consent

the responsible body or a disabled person who has an interest in the proposed alteration may make a

SI 2002/1458,
Reg 6

SI 2002/1458,
Reg 7(5)

claim against a landlord in a county court or, in Scotland, the Sheriff court.

- 7.20 The court will decide whether the landlord's refusal or any conditions imposed are unreasonable. It may make a statement as to whether the landlord has been unreasonable and/or authorise the responsible body to make the alteration under a court order. The court order may impose conditions on the responsible body.

Bringing landlords into proceedings brought by disabled people

- 7.21 In any legal proceedings under Part 4 of the Act that involve a failure to make an alteration to premises (see Chapter 9), the disabled person concerned or the responsible body may make the landlord a party to the proceedings. (In other words, the claim would be made jointly against both the responsible body and the landlord.)

s 28V, Sch 4
Part 3

EXAMPLE 7.21A

A college occupies premises under a lease, a term of which says that a staircase cannot be altered. The college wishes to alter the staircase to fit a chair lift for wheelchair users. The lease prevents the making of alterations and the landlord relies on this to refuse consent. The college takes no further action. A disabled student is unable to gain access to his classes on the first floor. The student may take both the college and the landlord to court.

- 7.22 The responsible body should, therefore, consider whether to make an application for a declaration that a landlord has been unreasonable at the time the application for consent has been refused.

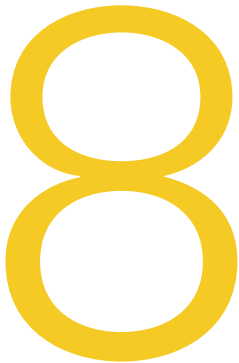
Failure to do so may mean that the responsible body has no defence to a claim by a disabled person.

EXAMPLE 7.22A

In the situation in 7.21A, the college claims that its failure to make an adjustment was because consent was withheld. The court finds that discrimination has taken place. The landlord's consent is found to have been withheld unreasonably. The fact that the college did not make a claim against the landlord may prevent the college from having a defence.

- 7.23 The court will grant a request to make a landlord a party to proceedings if the request is made before the hearing of the claim begins. It may refuse the request if it is made after the hearing begins. The request can not be granted if it is made after the court has determined the claim.
- 7.24 Where the landlord has been made a party to the proceedings, the court may determine whether the landlord has unreasonably refused consent to the alteration or has consented subject to unreasonable conditions. In either case the court can:
- state whether the landlord was reasonable or unreasonable
 - authorise the responsible body to make a specified alteration
 - order the landlord to pay compensation to the disabled person.
- 7.25 The court may require the responsible body to comply with any conditions specified in the order. If the court orders the landlord to pay compensation, it cannot also order the responsible body to do so.

Other provisions under the Act



This chapter explains a number of other changes that the Act introduces. It outlines how these changes offer additional protection to disabled people in post-16 education and other related services, and explores the implications for responsible bodies.

Victimisation

- 8.1 Victimisation is a special form of discrimination covered by the Act. It applies whether or not the person victimised is a disabled person. Victimisation is unlawful if it occurs in relation to the provision of post-16 education or other related services covered by Part 4.
- 8.2 The Act says that a person discriminates against another person (the victim) if he or she treats the victim less favourably than he or she treats (or would treat) other people in the same circumstances – regardless of disability – because the victim has:
- brought proceedings under the Act (whether or not proceedings are later withdrawn); or
 - given evidence or information in connection with such proceedings; or
 - done anything else under the Act; or
 - alleged someone has contravened the Act (whether or not the allegation is later dropped).

s 28R(4)

s 55

s 55(2)(a)

EXAMPLE 8.2A

A non-disabled student acts as a witness in a complaint by a disabled student against a college lecturer. Later, in retaliation, other lecturing staff at the college begin to 'lose' the non-disabled student's work, and hand assignments back later than for other students. This is likely to be victimisation, and therefore unlawful.

s 55(2)(b)

8.3 The Act also says that a person discriminates against another person (the victim) if he or she treats the victim less favourably than he or she treats (or would treat) other people in the same circumstances because he or she believes or suspects that the victim had done or intends to do any of the things mentioned in paragraph 8.2. Such victimisation is discrimination whether or not the victim is disabled.

8.4 However, it is not victimisation to treat a person less favourably because that person has made an allegation if the allegation was false and not made in good faith.

s 55(4)

EXAMPLE 8.4A

A disabled young man makes a series of allegations claiming that a youth worker is discriminating against him. The allegations are without any foundation, and are part of a personal grudge that the young man has against the worker. The co-ordinator decides to bar the man from the club for the rest of the year. Because of the particular circumstances, this is not likely to be victimisation and is likely therefore to be lawful.

Liability for employees' and agents' acts

- 8.5 The Act says that employers are responsible for anything done by their employees in the course of their employment. As an employer, a responsible body cannot use the defence that discrimination took place without its knowledge or approval.

s 58(1)

EXAMPLE 8.5A

A security guard employed at a college always takes a long time to open the barrier to the staff car park for a disabled student who has been allocated a space there. He does this because he disapproves of students being allowed into the staff car park even if they have permission. It is likely that this less favourable treatment is unlawful. Although the governing body at the college is not aware that this is happening, the responsible body is likely nevertheless to be liable under the Act.

EXAMPLE 8.5B

A tutor routinely turns his back on the class when he is teaching although he knows that one of the students has a hearing impairment and needs to lipread. The tutor has been trained in how to work with hearing impaired students, but no one monitors his practice or asks students for feedback on his lectures. The student is being substantially disadvantaged by the failure of the tutor to make a reasonable adjustment. Even though the governing body is not aware that discrimination is occurring, it is likely that the responsible body is acting unlawfully.

s 58(5)

8.6 If a claim under the Act is made against a responsible body based on anything done by an employee, it is a defence that the responsible body took such steps as were reasonably practicable to prevent such acts. Examples of such steps could be developing policies on disability matters and communicating these to employees and ensuring all staff are aware that it is unlawful to discriminate against disabled people.

s 58(2)

8.7 Responsible bodies are also liable for anything done by their agents, if done with their authority. That authority may be express or implied and may have been given before or after the act in question.

s 58(3)

EXAMPLE 8.7A

The cleaning at a university is contracted out to an agency. A blind student has asked the hall warden to ensure that cleaners replace things where they find them in his room and in the kitchen. The hall warden passes on this request to the agency. One of the cleaners continually moves things around which means the student cannot find them. The responsible body is likely to have been acting unlawfully by failing to ensure the reasonable adjustment was made. (The cleaner, and/or the agency employing the cleaner, may also be liable for aiding an unlawful act – see 8.8 below.)

EXAMPLE 8.7B

A visiting lecturer provides a series of lectures at a university. He is not given any instructions about the reasonable adjustments that need to be made for disabled people on the course. The lecturer fails to make adjustments for these students and some students are substantially disadvantaged as

a result. The responsible body is likely to have been acting unlawfully by failing to ensure its agent, the visiting lecturer, made reasonable adjustments. (The lecturer may also be liable for aiding an unlawful act – see 8.8 below.)

Aiding unlawful acts

- 8.8 An agent or employee may also be taken to have aided the responsible body in committing an unlawful act. This can be the case even in circumstances where the responsible body has a defence. Any person, whether or not they are an employee or agent, who knowingly helps someone else do something which is unlawful under the Act is also acting unlawfully.

s 57

s 58(5)

s 57(1)

EXAMPLE 8.8A

Unknown to the education authority, a community education worker is excluding a deaf woman involved in a local residents' group from discussions that he has been facilitating. The worker has been involved in a training day with other colleagues from the education authority in which the rights of disabled people under the Act were discussed, and where ways of including deaf people had been explained. The education authority regularly monitors its provision to ensure that its equal opportunities policy is being put into practice and that its guidance on the Act is being followed. The education authority may have a defence under the Act, but the worker is likely to be personally liable because he is aiding an unlawful act.

EXAMPLE 8.8B

A college provides guidance to its part-time agency teaching staff that they should not agree extra time or other examination arrangements for disabled students taking class exams because of the extra costs involved. When a dyslexic student requests additional time for a class exam the lecturer says this is not available, although she knows that this is likely to be against the law. It is likely that the responsible body (the governing body of the college) is acting unlawfully, and that the agency employing the lecturer is also likely to be liable for aiding the responsible body's unlawful act.

s 57(3)

8.9 A person does not knowingly aid someone else to do something unlawful if:

- that other person makes a statement to him or her that it would not be unlawful because of any provision of the Act; and
- he or she acts in reliance on that statement; and
- it is reasonable to rely on the statement.

s 57(4)–(5)

8.10 A person who knowingly or recklessly makes such a statement which is false or misleading in a material respect is guilty of a criminal offence and will be liable on conviction to a fine of up to level 5 on the standard scale (£5,000 at present).

EXAMPLE 8.10A

A local education officer sends a memo out to all the authority's part-time teachers and lecturers to advise them that the legislation does not apply to

part-time or evening class students. The local education officer knows that this is not the case. Acting on this advice, a lecturer who comes in to teach a local history course refuses to provide electronic copies of her overheads for a blind woman taking her class. The local education authority is likely to be acting unlawfully, although not criminally because it had no knowledge of the officer's memo. The lecturer is unlikely to be knowingly aiding an unlawful act because it is likely to be reasonable for her to rely on the memo she was sent. The local education officer, however, is likely to have committed a criminal offence.

Terms of agreements

8.11 Any term in an agreement is void (and therefore unenforceable) if its effect is to:

- require someone to do something which would be unlawful under the Act;
- exclude or limit the operation of the Act; or
- prevent someone making a claim under the Act.

ss 28P and 28X

EXAMPLE 8.11A

A college requires a disabled student travelling on a field trip to sign an agreement stating that he does not hold the college responsible for making any adjustments to aspects of the trip because of his disability. This agreement is not legally binding.

8.12 An agreement to settle or compromise a claim brought under the Act is not affected by this rule.

s 28X

s 59

Statutory authority and national security

- 8.13 A responsible body is not required to do anything under the Act that will result in a breach of legal obligations under any other legislation or enactment. Nothing in the Act makes unlawful anything done for safeguarding national security. For more information on responsibilities under other legislation, see **Chapter 10**.

Disability statements

- 8.14 Under previous provisions of the Disability Discrimination Act, the higher education funding councils had a responsibility to require institutions to publish disability statements outlining their provision for disabled students. Local education authorities also were required to publish disability statements. The Learning and Skills Council and the National Council for Education and Training for Wales had a power to require institutions to publish disability statements, but not a statutory duty to do so. These duties and powers are withdrawn by the Special Educational Needs and Disability Act 2001, and no longer exist from 1 September 2002. It may nevertheless be a reasonable anticipatory adjustment for an institution to provide information for disabled students about its provision (see **Chapter 5**).

**Special
Educational
Needs and
Disability
Act s 34**

Removal of exemptions

8.15 Under regulations some specific services were exempted from Part 3 of the Disability Discrimination Act which covers goods, facilities and services. These services include:

- social, cultural and recreational activities and facilities for physical education and training designed to promote personal or educational development provided by a voluntary organisation (for example, a local branch of the Scouts or Guides)
- some examination and assessment services closely related to education.

This exemption is expected to be removed on 1 September 2002 and to be covered by Part 3 from that date.

**Special
Educational
Needs and
Disability Act
Sch 9**

9

What happens if there is a dispute under the Act

This chapter explains what happens if someone makes a complaint against a responsible body, and what routes for redress exist. It also explains what action may be taken to put right any discrimination that is found to have taken place.

Raising a complaint

- 9.1 A person who believes that a responsible body has discriminated against him or her may bring civil proceedings. Those proceedings take place in a county court in England and Wales or the Sheriff court in Scotland. Similar proceedings may also be brought against a person who has aided someone else to commit an unlawful act. Court action must be brought within six months of the alleged discrimination. Where discrimination takes place over a period of time, the six months begins at the date of the last discriminatory act.

s 28V

Informal procedures

- 9.2 Complainants may want to raise complaints directly with responsible bodies. Many responsible bodies will have complaints procedures which aid the speedy resolution of disputes. Complainants may raise an issue with a responsible body either before or after legal proceedings have started.

Sch 3 Part 4

Conciliation

s 31B

9.3 The Disability Rights Commission is empowered by the Act to set up an independent conciliation service for disputes arising under the post-16 sections of the Act to promote the settlement of disputes without recourse to the courts. Conciliation is made available locally around the country, and disputes may be referred to conciliation if both the complainant and the responsible body agree. The Disability Rights Commission has no power to impose a settlement on either party.

Sch 3 Part 4

s 31B(7)

9.4 Agreeing to the conciliation process does not prevent a complainant from pursuing a case through the courts. The time limit for bringing an action in court is extended by two months if the conciliation process has been used within six months of a discriminatory act. No information disclosed to a conciliator during the conciliation process may be used in any subsequent court case without the permission of the person who disclosed it.

What happens if a dispute cannot be resolved?

s 28V(2)
and (5)

9.5 If conciliation or agreement cannot resolve a dispute, and the complainant has brought legal proceedings, the matter is decided by a court. If successful, a disabled person could be awarded compensation, including compensation for any financial loss, or injury to feelings. The disabled person may also seek an injunction (in England and Wales) or an interdict (in Scotland) to prevent the responsible body repeating any discriminatory act in the future, or an order to require positive action. The court may also make a declaration as to the rights and responsibilities of the parties involved.

Complaints that could also be heard under other sections of the Act

- 9.6 In some circumstances it is possible for a disabled person to be protected by more than one section of the Act at the same time. For example, a disabled employee who is also studying at an institution may be protected by both Part 2 and Part 4 of the Act when he is using the gym which is open to staff and students alike. In such circumstances, should a disabled person decide to pursue a case under Part 4 (or under Part 2), a responsible body may not use the defence that a case should have been pursued under another part of the Act. A responsible body must respond to the substance of the complaint made against it.

s 28V(6)

Where to go for information and advice

- 9.7 Students or others wanting to make complaints under the Act against a responsible body may get further information and advice about the process from the Disability Rights Commission. Complainants may be eligible for legal aid, and in some circumstances may receive direct assistance from the Disability Rights Commission.
- 9.8 The Disability Rights Commission also provides advice to responsible bodies about their legal responsibilities under the Act.

Telephone: 08457 622 633

Text phone: 08457 622 644

Fax: 08457 778 878

Email: enquiry@drc-gb.org

Post: DRC Helpline

FREEPOST

MID02164

Stratford upon Avon CV37 9BR

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

- 9.9 The Court Service has booklets that provide advice on how to bring a case to court in England and Wales. These are available at county courts or from the Court Service website:

www.courtservice.gov.uk

- 9.10 Information is also available from the Scottish Court Service about the court process and bringing a case to court:

Telephone: 0131 229 9200

Fax: 0131 221 6895

Email: enquiries@scotcourts.gov.uk

Website: www.scotcourts.gov.uk

Links to other legislation and responsibilities

10

This chapter sets out the general approach to be taken by responsible bodies when considering the Act and its interaction with other legislation and duties, and explains some of the links which they are most likely to encounter. **It is not an exhaustive list** and responsible bodies need to consider their other responsibilities where relevant.

General approach

- 10.1 Nothing in the Act takes precedence over any other legislation or any other duties which responsible bodies or other bodies may have. In carrying out their duties under the Act, responsible bodies must ensure that they comply with all other legal requirements upon them. However, the existence of other legislative provisions and responsibilities does not provide an automatic defence in a case under Part 4 of the Disability Discrimination Act. Responsible bodies are expected to take whatever action is necessary to ensure that they fulfil their responsibilities both under the Act and under any other legislation that applies to them.

The Data Protection Act 1998

- 10.2 The Data Protection Act 1998 restricts the processing of personal data and 'sensitive' personal data about individuals, and particularly how and whether that information can be passed

on to others. The use of sensitive personal data is particularly restricted. Information relating to an individual's disability is classified as sensitive personal data. In ensuring that disabled people and students are not discriminated against, and that reasonable adjustments are made, responsible bodies may need to pass data about disabled students on to members of staff and others including work placement providers. Even if students have not requested confidentiality under the Disability Discrimination Act, the use and transfer of information about them (including through job references) is restricted by the Data Protection Act. Such processing may often require students' explicit informed consent. In order to ensure that they are not in breach of either law, responsible bodies may need to:

- ask students' permission to pass on information necessary for making reasonable adjustments
- alert students to the use that will be made of information when asking them to disclose disability on application, enrolment or examination forms
- ensure appropriate procedures are in place to keep sensitive and other personal information confidential.

10.3 However, should a student request confidentiality under the Disability Discrimination Act, information may not, from that point, be passed on for the purposes of making reasonable adjustments.

The Health and Safety at Work Act 1974 and related regulations

10.4 Health and safety legislation requires employers and persons concerned with premises to undertake risk assessments and produce a health and safety policy. The risk assessment should list any risks to

staff or others, including students and users of services, and what control measures the employer will take to reduce those risks. Control measures may include:

- procedures for lifting people and equipment
- guidance on visits to students in their homes
- appropriate training and guidance for staff
- keeping passageways and means of access and egress clear and hazard-free
- minimising the risk posed by any machinery or hazardous substances (including any stored medicines)
- procedures for the safe disposal of waste and safe practices in first aid
- adequate procedures for monitoring and auditing to ensure that health and safety practices are operating properly.

- 10.5 The Disability Discrimination Act 1995 does not require responsible bodies to place employees or others at inappropriate risk. However, in many cases, changes to procedures, the provision of training or the purchasing of equipment may mitigate any risks that arise in relation to disabled people and students. The risk assessment process carried out to comply with health and safety legislation may provide an opportunity to consider adjustments required by the Disability Discrimination Act.

The Fire Precautions Act 1971 and related regulations

- 10.6 Legislation exists to prevent the risk of fire and the risk of injury in fire. In particular there are laws to ensure adequate warning in the case of fire and the safe egress of people from buildings to a place of

safety in case of fire. Responsible bodies must ensure that they do not breach fire regulations in their relationship with disabled people. In many cases reasonable anticipatory adjustments can be made which will ensure that warning of fire and access and egress routes can be provided for disabled people. For example:

- fire refuges on stairwells for those with mobility difficulties in case of fire
- flashing light fire alarms or vibrating pagers for deaf users of buildings
- clearly visible and simple to understand signage to indicate escape routes and exits
- increased numbers of exits or wider doors to ensure egress from a large meeting room
- emergency evacuation procedures.

The Occupiers' Liability Act 1957 and the Occupiers' Liability (Scotland) Act 1960

- 10.7 This legislation puts the common law duty of care which occupiers owe to lawful visitors on a statutory footing. The duty is to take such care as is reasonable in all the circumstances of the case so that people are reasonably safe when using the premises. For the purposes of this legislation a responsible body will be an occupier if it has sufficient control over premises. The responsible body owes this duty towards its students and other people using the premises, and may need to make adjustments to premises to comply with the legislation. The obligation to make reasonable adjustments under the Disability Discrimination Act may well overlap with duties under the Occupiers' Liability Acts.

- 10.8 Landlords in England and Wales who let premises and thereby part with all control are not ‘occupiers’ under the 1957 Act, even if they retain repair obligations. However, in Scotland, the Occupiers’ Liability (Scotland) Act 1960 places the same duty on landlords responsible for the maintenance or repair of premises as on occupiers and they must take reasonable care to ensure people on the premises do not suffer injury.

The Defective Premises Act 1972

- 10.9 Some responsible bodies may act in the role of landlord in regard to their premises. As such, they owe a duty to take such care as is reasonable in all the circumstances to see that anyone who might reasonably be affected by defects in the state of the premises is reasonably safe from personal injury or damage caused by the defect. Responsible bodies may need to make adjustments where necessary to ensure their compliance with this legislation, and again this may impact on their duties towards disabled students. The Defective Premises Act applies in England and Wales only.

Building regulations, planning permission and other property issues

- 10.10 Matters relating to building regulations and property are dealt with separately in **Chapter 7**.

The Human Rights Act 1998

- 10.11 The Human Rights Act brings into UK law certain of the rights and freedoms guaranteed under the European Convention on Human Rights, and is binding on ‘public authorities’, which includes bodies whose functions are of a public nature. Most responsible bodies will be public authorities to the extent that they offer education or other

related provision. The Human Rights Act includes a right not to be denied access to education, and a right not to be discriminated against in the enjoyment of that (or other) Convention rights. Some disabled people and students may have rights under both the Disability Discrimination Act 1995 and the Human Rights Act 1998 and may be able to pursue a claim under both Acts together.

The Race Relations Act 1976 and the Race Relations (Amendment) Act 2000

- 10.12 The Race Relations Act 1976 and the subsequent Race Relations (Amendment) Act 2000 make racial discrimination unlawful in employment, training and related matters, in education and in the provision of goods, facilities and services and in the management and disposal of premises. The legislation applies to Scotland, England and Wales.
- 10.13 The Race Relations Act 1976 applies to two forms of discrimination:
- direct discrimination when someone is treated less favourably on racial grounds; and
 - indirect discrimination when unjustifiable requirements or conditions are set which apply or would apply to everyone, but in fact discriminate against people on racial grounds.
- 10.14 The Race Relations Acts give individuals the right of access to civil courts and to employment tribunals. Responsible bodies should be aware that in some cases allegations of discrimination on the grounds of disability may also be related to allegations relating to racial discrimination. Specific reference to the duties of responsible bodies and providers of education are set out in Part III of the Race Relations Act 1976.

- 10.15 The Race Relations (Amendment) Act places a duty on public bodies to promote equality between different racial groups. Most responsible bodies under Part 4 of the Disability Discrimination Act are also public bodies for the purposes of the Race Relations (Amendment) Act.

The Sex Discrimination Act 1975

- 10.16 The Sex Discrimination Act 1975, as amended in 1986, makes it unlawful to discriminate on grounds of sex in employment, education, advertising, or when providing goods, facilities, services and premises. The Sex Discrimination Act applies to two forms of discrimination:
- direct discrimination when someone is treated less favourably because of their sex; and
 - indirect discrimination when unjustifiable requirements or conditions are set that apply or would apply to everyone but in fact discriminate against one sex.
- 10.17 Individuals have the right of access to civil courts and employment tribunals for legal remedies for unlawful discrimination under the Sex Discrimination Act 1975. Responsible bodies should be aware that in some cases allegations of discrimination on the grounds of disability may also be related to allegations relating to sex discrimination. Specific reference to the duties of responsible bodies and providers of education are set out in the Sex Discrimination Act 1975 and related guidance

The Welsh Language Act 1993

- 10.18 Under the Welsh Language Act 1993, public bodies notified by the Welsh Language Board which provide services to the public in Wales have a duty (so far as is appropriate in the particular

circumstances and is reasonably practicable) to treat the Welsh and English languages on a basis of equality. This includes a duty to provide information and services in the Welsh language. Public bodies include most education providers affected by this Code.

Common law duties

- 10.19 Responsible bodies have a duty to take care that injury or loss is not caused to students in a variety of circumstances. This common law duty may sometimes overlap with the duties imposed by the Disability Discrimination Act 1995. Premises must be kept in proper repair and the responsible body must ensure the safety of students when travelling to the premises of others. Reasonable steps should be taken to protect students from any dangers arising from practical work and responsible bodies should exercise a proper measure of supervision of students.
- 10.20 In some cases, responsible bodies may face conflicts between their responsibilities to one disabled person and to other disabled or non-disabled people. When such situations arise, responsible bodies still have a duty to make reasonable adjustments to ensure that disabled people and students are not placed at a substantial disadvantage. In other cases, however, it may be that the duty of care towards others means that a reasonable adjustment for a disabled student cannot be made, or that an alternative adjustment must be substituted.

Statutory responsibilities of other bodies

- 10.21 Other bodies may have statutory duties towards disabled people and students. For example:

- social services or social work departments may have responsibilities to provide personal assistance or other support
- awarding authorities have responsibilities to provide Disabled Students' Allowances or other financial support
- other service providers or employers may have responsibilities to make reasonable adjustments under the Disability Discrimination Act 1995.

10.22 In some cases, the responsibility of another body may overlap with that of the responsible body to make reasonable adjustments. The fact that another body also has a statutory duty does not reduce a responsible body's duty to make a reasonable adjustment where substantial disadvantage exists. Legally, both have duties. In practice, responsible bodies will want to negotiate with those who hold parallel duties to ensure that disabled students and other disabled people receive the support and adjustments they need in the most effective and efficient way.

10.23 Under the Learning and Skills Act 2000, the Learning and Skills Council and the National Council for Education and Training for Wales have a duty to have due regard to the need to promote equality of opportunity between disabled and non-disabled people. These bodies, and the higher education funding councils in England, Wales and Scotland, also have a duty to have regard to the requirements of disabled people when carrying out their functions. These duties are not, however, responsibilities towards individual disabled students, and these organisations are not responsible bodies under the Act.

The meaning of disability

Appendix one

This appendix is included to aid understanding about who is covered by the Act and should provide sufficient information on the definition of disability to cover the large majority of cases. The definition of disability in the Act is designed to cover only people who would generally be considered disabled. A publication is available from The Stationery Office, *Guidance on matters to be taken into account in determining questions relating to the definition of disability*.

When is a person disabled?

- A1.1 A person has a disability if he or she has a physical or mental impairment that has a substantial and long-term adverse effect on his or her ability to carry out normal day-to-day activities.

Sch 1

What about people who have previously had a disability?

- A1.2 People who have had a disability within the definition are protected from discrimination even if they no longer have a disability.

Sch 2

What does 'impairment' cover?

- A1.3 It covers physical or mental impairments; this includes sensory impairments, such as those affecting sight or hearing.

Are all mental impairments covered?

- A1.4 The term 'mental impairment' is intended to cover a wide range of impairments relating to mental

A

functioning, including what are often known as learning difficulties. However, the Act states that it does not include any impairment resulting from or consisting of a mental illness, unless that illness is a clinically well-recognised illness. A clinically well-recognised illness is one that is recognised by a respected body of medical opinion.

What is a 'substantial' adverse effect?

- A1.5 A substantial adverse effect is something more than a minor or trivial effect. The requirement that an effect must be substantial reflects the general understanding of disability as a limitation going beyond the normal differences in ability which might exist among people.

What is a 'long-term' effect?

- A1.6 A long-term effect of an impairment is one:
- which has lasted at least 12 months, or
 - where the total period for which it lasts is likely to be at least 12 months, or
 - which is likely to last for the rest of the life of the person affected.
- A1.7 Effects which are not long-term would therefore include loss of mobility due to a broken limb which is likely to heal within 12 months and the effects of temporary infections, from which a person would be likely to recover within 12 months.

What if the effects come and go over a period of time?

- A1.8 If an impairment has had a substantial adverse effect on normal day-to-day activities but that effect ceases, the substantial effect is treated as continuing if it is likely to **recur**; that is, if it is more probable than not that the effect will recur.

For example, a person with rheumatoid arthritis may have an impairment that has a substantial adverse effect, but which then ceases to be substantial (i.e. the person has a period of remission). In this case the effects should be treated as if they are continuing, and are likely to continue beyond 12 months, if:

- the impairment remains, and
- at least one recurrence of the substantial effect is likely to take place 12 months or more after the initial occurrence.

This would then be a long-term effect.

What are ‘normal day-to-day activities’?

A1.9 Normal day-to-day activities are those which are carried out by most people on a fairly regular and frequent basis. The term is not intended to include activities which are normal only for a particular person or group of people, such as playing a musical instrument or a sport to a professional standard or performing a skilled or specialist task related, for example, to a particular academic discipline, education or training course. However, someone who is affected in such a specialised way but is **also** affected in normal day-to-day activities would be covered by this part of the definition. The test of whether an impairment affects normal day-to-day activities is whether it affects one of the broad categories of capacity listed in Schedule 1 to the Act. They are:

- mobility
- manual dexterity
- physical co-ordination
- continence
- ability to lift, carry or otherwise move everyday objects

- speech, hearing or eyesight
- memory or ability to concentrate, learn or understand
- perception of the risk of physical danger.

What about treatment?

A1.10 Someone with an impairment may be receiving medical or other treatment which alleviates or removes the effects although not the impairment. In such cases, the treatment is ignored and the impairment is taken to have the effect it would have had without such treatment. This does not apply if substantial adverse effects are not likely to recur even if the treatment stops, because the individual no longer has a disability.

Does this include people who wear spectacles?

A1.11 No. The sole exception to the rule about ignoring the effects of treatment is the wearing of spectacles or contact lenses. In this case, the effect while the person is wearing spectacles or contact lenses should be considered.

Are people who have disfigurements covered?

A1.12 People with severe disfigurements are covered by the Act. They do not need to demonstrate that the impairment has a substantial adverse effect on their ability to carry out normal day-to-day activities.

What about people who know their condition is going to get worse over time?

A1.13 Progressive conditions are conditions that are likely to change and develop over time. Examples given in the Act are cancer, multiple sclerosis, muscular dystrophy and HIV infection. Where a person has a progressive condition he will be covered by the Act

from the moment the condition leads to an impairment which has **some** effect on ability to carry out normal day-to-day activities, even though not a **substantial effect**, if that impairment is likely eventually to have a substantial adverse effect on such ability.

Are people with genetic conditions covered?

A1.14 If a genetic condition has no effect on ability to carry out normal day-to-day activities, the person is not covered. Diagnosis does not in itself bring someone within the definition. If the condition is progressive, then the rule about progressive conditions applies.

Are any conditions specifically excluded from the coverage of the Act?

A1.15 Yes. Certain conditions are to be regarded as not amounting to impairments for the purposes of the Act. These are:

- addiction to or dependency on alcohol, nicotine, or any other substance (other than as a result of the substance being medically prescribed)
- seasonal allergic rhinitis (for example hay fever), except where it aggravates the effect of another condition
- tendency to set fires
- tendency to steal
- tendency to physical or sexual abuse of other persons
- exhibitionism
- voyeurism.

A1.16 Disfigurements which consist of a tattoo (which has not been removed), non-medical body piercing, or something attached through such piercing, are to

be treated as not having a substantial adverse effect on the person's ability to carry out normal day-to-day activities.

What about other definitions of disability used in education and training?

A1.17 Some students may have had statements or records of needs while at school. Others may come under the definition of learning difficulty in the Further and Higher Education (Scotland) Act 1992 or the Learning and Skills Act 2000. These students may be eligible for different sorts of support because of this. However, being eligible for additional support in school or college does not automatically mean that an individual is disabled under the Disability Discrimination Act.

Where can I find out more?

A1.18 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. See **Appendix Three** for details of where to obtain publications.

The meaning of 'responsible body'

What is a responsible body?

- A2.1 There will be some post-16 educational institutions, adult education provision and youth services that are not covered by the post-16 sections of the Act. The Act specifies which provision is covered, and also specifies the 'responsible body' for each of those organisations. The responsible body is the body that is liable for fulfilling any legal duties under the Act.

England and Wales

- A2.2 In England and Wales the responsible bodies that must comply with the post-16 sections of the Act are as follows:
- the governing body of an institution in the further education sector (those conducted by further education corporations and those designated for the purposes of Part 1 of the Further and Higher Education Act 1992)

- the governing body of an institution within the higher education sector (publicly funded universities, institutions conducted by higher education corporations and those designated for the purposes of Part 2 of the Further and Higher Education Act 1992)
- the specified body of any other institution designated by the Secretary of State (see paragraph A2.4)
- the local education authority in respect of any further, higher or community education (including any recreational or training facilities) secured by it
- the governing body of any maintained school in respect of any further education it provides to people other than its pupils
- the local education authority in respect of any statutory youth services secured by it.

Scotland

A2.3 In Scotland the responsible bodies that must comply with the post-16 sections of the Act are as follows:

- the board of management of a college of further education with a board of management within the meaning of section 36 of the Further and Higher Education (Scotland) Act 1992
- the governing body of an institution within the higher education sector within the meaning of section 56(2) of the Further and Higher Education (Scotland) Act 1992
- the governing body of a central institution within the meaning of section 135(1) of the Education (Scotland) Act 1980

Sch 4B and
Sch 4C

- the education authority of any institution maintained by an education authority in the exercise of the further education functions within the meaning of section 1(5)(b)(ii) of the Education (Scotland) Act
- the managers of a school in respect of grants made under section 73(c) or (d) of the Education (Scotland) Act 1980
- the specified body of any other institution designated by the Secretary of State (see paragraph A2.4)
- the education authority in respect of further, higher or community education (including any recreational or training facilities) secured by it.

Responsible bodies and institutions designated by the Secretary of State

- A2.4 There is an additional list of responsible bodies and institutions designated by the Secretary of State. This list is available from The Stationery Office (see **Appendix Three**).

Appendix Other publications

three

Legislation

The Special Educational Needs and Disability Act 2001

The Disability Discrimination Act 1995

The Disability Rights Commission Act 1999

The Disability Discrimination (Educational Institutions) (Alteration of Leasehold Premises) Regulations 2002 (SI 2002/1458)

Disability Discrimination (Designation of Educational Institutions) Order 2002 (SI 2002/1459).

Available from:

The Stationery Office:

PO Box 29

Norwich NR3 1GN

Telephone orders/general enquiries:

0870 600 5522

Fax orders: 0870 600 5533

Email: bookorders@theso.co.uk

Website: www.clicktso.com

Legislation is also available on the Internet:

www.hmso.gov.uk

Other Government publications

Guidance on matters to be taken into account in determining questions relating to the definition of disability

Code of Practice for the elimination of discrimination in the field of employment against disabled persons or persons who have had a disability

Code of Practice Rights of Access to Goods, Facilities, Services and Premises

Duties of Trade Organisations to their Disabled Members and Applicants

Available from The Stationery Office (see above).

Providing Work Placements for Disabled Students: A Good Practice Guide for Further and Higher Education Institutions (DfES/0023/2002)

Finding Out About People's Disability: A Good Practice Guide for Further and Higher Education Institutions (DfES/0024/2002)

These two publications are available from the Department for Education and Skills:

DfES Publications

PO Box 5050

Sherwood Park

Annesley

Nottingham NG15 0DJ

Telephone: 0845 602 2260

Textphone: 0845 605 5560

Fax: 0845 603 3360

Email: dfes@prologistics.co.uk

Disability Rights Commission publications

A range of information and guidance on the Disability Discrimination Act 1995 is available from the Disability Rights Commission:

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

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

Disability Rights Commission documents are available in alternative formats and languages. Ethnic language translation is available on request of documents that have not been published in that language.

Other publications

The Court Service has booklets providing advice on how to bring a case to court in England and Wales. This is available at county courts or from the Court Service website:

www.courtservice.gov.uk

Information is also available from the Scottish Court Service about the court process and bringing a case to court:

Telephone: 0131 229 9200

Fax: 0131 221 6895

Email: enquiries@scotcourts.gov.uk

Website: www.scotcourts.gov.uk