

EXPLANATORY MEMORANDUM TO
THE DISABILITY DISCRIMINATION (PUBLIC AUTHORITIES) (STATUTORY
DUTIES) (AMENDMENT) REGULATIONS 2008

2008 No. 641

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.
2. **Description**
 - 2.1 These Regulations amend the Disability Discrimination (Public Authorities) (Statutory Duties) Regulations 2005 (S.I.2005/2966) “the 2005 Regulations”. They require a number of public authorities to carry out certain specific disability equality duties. In particular these bodies will be required to publish Disability Equality Schemes which will set out how the body intends to carry out its disability equality duties by 1st December 2008. These Regulations also require public bodies already listed in Schedule 1 of the 2005 Regulations, but which were created after the relevant publication dates applicable to those bodies, to produce a Disability Equality Scheme by specified deadlines.
3. **Matters of special interest to the Joint Committee on Statutory Instruments.**
 - 3.1 None
4. **Legislative Background**
 - 4.1 The Disability Discrimination Act 2005 inserted new sections 49A to 49F into the Disability Discrimination Act 1995. New section 49A creates what is generally referred to as a “disability equality duty” requiring public authorities to have, whilst carrying out their functions, due regard to the need to:
 - eliminate discrimination against, and harassment of disabled people,
 - promote greater equality of opportunity for disabled people,
 - promote positive attitudes towards, and participation in public life of disabled people, and
 - recognise that achieving equality for disabled people will at times require adjustments that will mean treating a disabled person more favourably.
 - 4.2 Sections 49B and 49C describe the types of person or act subject to the disability equality duty. Sections 49E-F dealt with enforcement of the duties by the Disability Rights Commission and were repealed by the Equality Act 2006 and replaced with similar powers for the Commission for Equality and Human Rights.
 - 4.3 The 2005 Regulations imposed specific disability equality duties on listed public bodies, in order to assist the bodies in carrying out their duty under section 49A. Enforcement of the specific duties is by the Commission for

Equality and Human Rights through the issue of compliance notices, which are enforceable through the County Court (Sheriff Court in Scotland).

- 4.4 These regulations amend and add to the list of public authorities to which the duties imposed by the 2005 Regulations apply.
- 4.5 These regulations also include a requirement that public bodies already listed in Parts I to V of Schedule 1 of the 2005 Regulations, but which were established after the applicable relevant publication date for that Part (or in the case of those authorities listed in Parts I and II, after 3 December 2007), to publish a Disability Equality Scheme within 12 months of their establishment. For those public bodies in Part I and II of Schedule 1 which were established between 4 December 2006 and 3 December 2007 a relevant publication date of 1 December 2008 is specified.
- 4.6 This requirement is necessary to ensure that where a new public body is created which is already listed in Schedule I of the 2005 Regulations (those public bodies that are not individually listed by name) it is caught by the regulations. For example, all NHS Foundation Trusts created after 3 December 2007 will have to produce a Scheme within a year of their creation.

5. Extent

- 5.1 This instrument extends to Great Britain.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- 7.1 The disability equality duty created by the Disability Discrimination Act 2005 and the 2005 Regulations are intended to mirror, and have equivalent weight to, the similar race equality duty introduced by section 71 of the Race Relations Act 1976 (as amended by section 2 of the Race Relations Amendment Act 2000) and subordinate legislation such as the Race Relations Act 1976 (Statutory Duties) Order 2001 (SI 2001/3458)
- 7.2 The disability equality duty follows recognition that providing disabled people with individual right of redress against discrimination goes only part way towards addressing the disadvantage faced by disabled people. Often disabled people face disadvantage or discrimination because their needs have not been taken into account in the ways services are designed, or the way functions are carried out. This is borne out by the continuing inequality faced by disabled people as demonstrated in “Improving the Life Chances of Disabled People” (Strategy Unit Report 2005). As part of the Government’s strategy for tackling this inequality, the new duty is designed to ensure that across the public sector public bodies continually examine how they operate, and progressively remove barriers to greater equality of opportunity for disabled people.

Consultation

- 7.3 In July 2004 the Government published “Delivering Equality for Disabled People”, a consultation on how the regulation making powers in the then proposed Disability Discrimination Bill should be utilised to promote greater equality for disabled people, and to eliminate institutional barriers in the public sector.
- 7.4 The 2005 Regulations resulted from that exercise.
- 7.5 In the consultation document, the Government set out the factors to be taken into account when deciding if bodies should be subject to the proposed specific equality duties. These were whether the body –
- has significant direct dealings with disabled service users;
 - has significant impacts on the lives of disabled people;
 - could be a significant employer of disabled people; and
 - is of sufficient size to support the duties.
- 7.6 The Government made clear that it considered that the bodies already placed under the specific race equality duties met these criteria, and also, that cultural and countryside bodies had an important role in enabling access for disabled people, and it was the Government’s intention to place them under the specific disability duties.
- 7.7 In 2006 the Government carried out its first review of the list of bodies subject to the specific duties and that review resulted in the Disability Discrimination (Public Authorities) (Statutory Duties) (Amendment) Regulations 2007.
- 7.8 The list of bodies subject to the specific duties needs to be updated on a regular basis to take account of new bodies, and bodies that have changed their status or ceased to exist. The Government has reviewed the current list of bodies and, between August and October 2007, consulted a number of other bodies not currently listed which appeared to meet the factors discussed above. As a result of that review, Ministers decided that the bodies listed in regulation 4 of these Regulations should have specific duties and produce a disability equality scheme by 1 December 2008.
- 7.9 In accordance with the provisions of section 49D, these Regulations are made following consultation with Scottish Ministers, the Disability Rights Commission (and later its successor body, the Commission for Equality and Human Rights) and the Welsh Ministers. In addition, in respect of duties placed on Welsh public bodies, consent has been obtained from the Welsh Ministers.

Guidance and Consolidation

- 7.9 The Statutory Code of Practice on the Disability Equality Duty (England and Wales) and non-statutory guidance produced by the Disability Rights Commission are available on the Commission for Equality and Human Rights’ website:

<http://www.equalityhumanrights.com/en/forbusinessesandorganisation/publicauthorities/disabilityequalityd/Pages/Disabilitye.aspx>

7.10 An addendum will be placed on the Commission for Equality and Human Rights' website to reflect the changes made by these Regulations.

8. Impact

8.1 A full impact assessment has not been published for this order as it has no impact on the costs of business, charities and the voluntary sector.

8.2 The impact on the public sector is negligible. A copy of the final Regulatory Impact Assessment for the Disability Discrimination Act 2005 is available at:

<http://www.dwp.gov.uk/publications/dwp/2005/ria/dda-2005-final.pdf>

9. Contact

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