

Disability Discrimination Act 1995

1995 CHAPTER 50

PART III

DISCRIMINATION IN OTHER AREAS

[^{F1}Public authorities

Textual Amendments

F1 Ss. 21B-21E and cross-heading inserted (E.W.S.) (30.6.2005 for ss. 21D and 21E for the purpose only of exercising any power to make regulations, orders or rules of court and otherwise 4.12.2006 for all remaining purposes and for all inserted sections) by Disability Discrimination Act 2005 (c. 13), ss. {2}, 20(3)-(6); S.I. 2005/1676, art. 2(2)(a); S.I. 2005/2774, art. 4(a)

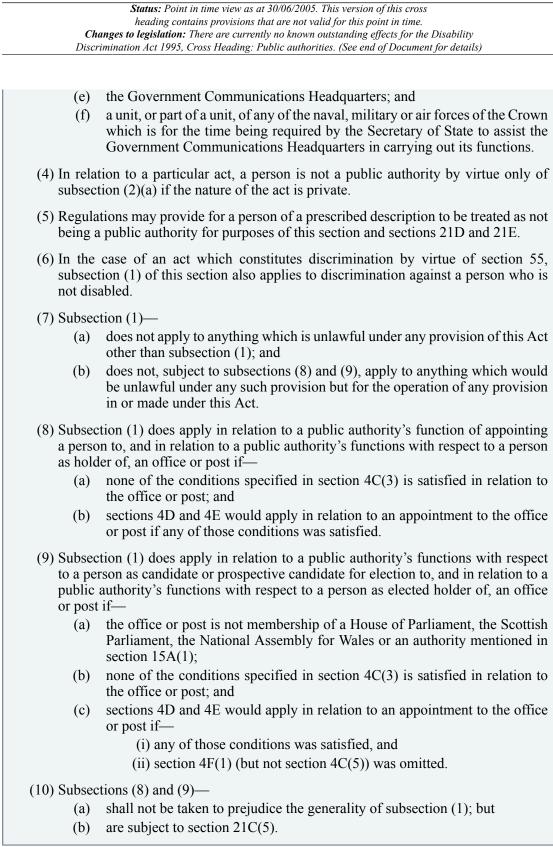
VALID FROM 04/12/2006

21B Discrimination by public authorities

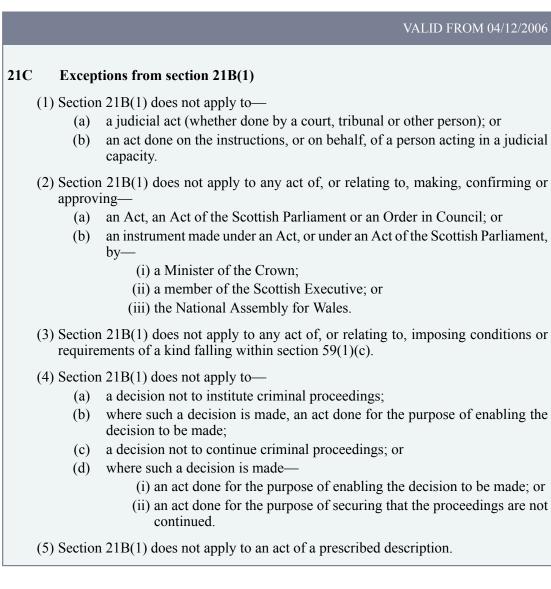
- (1) It is unlawful for a public authority to discriminate against a disabled person in carrying out its functions.
- (2) In this section, and sections 21D and 21E, "public authority"-
 - (a) includes any person certain of whose functions are functions of a public nature; but
 - (b) does not include any person mentioned in subsection (3).

(3) The persons are—

- (a) either House of Parliament;
- (b) a person exercising functions in connection with proceedings in Parliament;
- (c) the Security Service;
- (d) the Secret Intelligence Service;

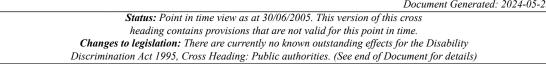


Status: Point in time view as at 30/06/2005. This version of this cross heading contains provisions that are not valid for this point in time. Changes to legislation: There are currently no known outstanding effects for the Disability Discrimination Act 1995, Cross Heading: Public authorities. (See end of Document for details)



21D Meaning of "discrimination" in section 21B

- (1) For the purposes of section 21B(1), a public authority discriminates against a disabled person if—
 - (a) for a reason which relates to the disabled person's disability, it treats him less favourably than it treats or would treat others to whom that reason does not or would not apply; and
 - (b) it cannot show that the treatment in question is justified under subsection (3), (5) or (7)(c).
- (2) For the purposes of section 21B(1), a public authority also discriminates against a disabled person if—
 - (a) it fails to comply with a duty imposed on it by section 21E in circumstances in which the effect of that failure is to make it—
 - (i) impossible or unreasonably difficult for the disabled person to receive any benefit that is or may be conferred, or



(ii) unreasonably adverse for the disabled person to experience being subjected to any detriment to which a person is or may be subjected,

by the carrying-out of a function by the authority; and

(b) it cannot show that its failure to comply with that duty is justified under subsection (3), (5) or (7)(c).

(3) Treatment, or a failure to comply with a duty, is justified under this subsection if-

- (a) in the opinion of the public authority, one or more of the conditions specified in subsection (4) are satisfied; and
- (b) it is reasonable, in all the circumstances of the case, for it to hold that opinion.

(4) The conditions are—

- (a) that the treatment, or non-compliance with the duty, is necessary in order not to endanger the health or safety of any person (which may include that of the disabled person);
- (b) that the disabled person is incapable of entering into an enforceable agreement, or of giving an informed consent, and for that reason the treatment, or non-compliance with the duty, is reasonable in the particular case;
- (c) that, in the case of treatment mentioned in subsection (1), treating the disabled person equally favourably would in the particular case involve substantial extra costs and, having regard to resources, the extra costs in that particular case would be too great;
- (d) that the treatment, or non-compliance with the duty, is necessary for the protection of rights and freedoms of other persons.
- (5) Treatment, or a failure to comply with a duty, is justified under this subsection if the acts of the public authority which give rise to the treatment or failure are a proportionate means of achieving a legitimate aim.
- (6) Regulations may make provision, for purposes of this section, as to circumstances in which it is, or as to circumstances in which it is not, reasonable for a public authority to hold the opinion mentioned in subsection (3)(a).
- (7) Regulations may—
 - (a) amend or omit a condition specified in subsection (4) or make provision for it not to apply in prescribed circumstances;
 - (b) amend or omit subsection (5) or make provision for it not to apply in prescribed circumstances;
 - (c) make provision for purposes of this section (in addition to any provision for the time being made by subsections (3) to (5)) as to circumstances in which treatment, or a failure to comply with a duty, is to be taken to be justified.

Modifications etc. (not altering text)

C1 S. 21D(4)(b) excluded (4.12.2006) by The Disability Discrimination (Service Providers and Public Authorities Carrying Out Functions) Regulations (S.I. 2005/2901), {regs. 1, 3}

21E Duties for purposes of section 21D(2) to make adjustments

(1) Subsection (2) applies where a public authority has a practice, policy or procedure which makes it—

- (a) impossible or unreasonably difficult for disabled persons to receive any benefit that is or may be conferred, or
- (b) unreasonably adverse for disabled persons to experience being subjected to any detriment to which a person is or may be subjected,

by the carrying-out of a function by the authority.

- (2) It is the duty of the authority to take such steps as it is reasonable, in all the circumstances of the case, for the authority to have to take in order to change that practice, policy or procedure so that it no longer has that effect.
- (3) Subsection (4) applies where a physical feature makes it—
 - (a) impossible or unreasonably difficult for disabled persons to receive any benefit that is or may be conferred, or
 - (b) unreasonably adverse for disabled persons to experience being subjected to any detriment to which a person is or may be subjected,

by the carrying-out of a function by a public authority.

- (4) It is the duty of the authority to take such steps as it is reasonable, in all the circumstances of the case, for the authority to have to take in order to—
 - (a) remove the feature;
 - (b) alter it so that it no longer has that effect;
 - (c) provide a reasonable means of avoiding the feature; or
 - (d) adopt a reasonable alternative method of carrying out the function.
- (5) Regulations may prescribe—
 - (a) matters which are to be taken into account in determining whether any provision of a kind mentioned in subsection (4)(c) or (d) is reasonable;
 - (b) categories of public authorities to whom subsection (4) does not apply.
- (6) Subsection (7) applies where an auxiliary aid or service would—
 - (a) enable disabled persons to receive, or facilitate the receiving by disabled persons of, any benefit that is or may be conferred, or
 - (b) reduce the extent to which it is adverse for disabled persons to experience being subjected to any detriment to which a person is or may be subjected,

by the carrying-out of a function by a public authority.

- (7) It is the duty of the authority to take such steps as it is reasonable, in all the circumstances of the case, for the authority to have to take in order to provide that auxiliary aid or service.
- (8) Regulations may make provision, for purposes of this section-
 - (a) as to circumstances in which it is, or as to circumstances in which it is not, reasonable for a public authority to have to take steps of a prescribed description;
 - (b) as to steps which it is always, or as to steps which it is never, reasonable for a public authority to have to take;
 - (c) as to what is, or as to what is not, to be included within the meaning of "practice, policy or procedure";
 - (d) as to things which are, or as to things which are not, to be treated as physical features;
 - (e) as to things which are, or as to things which are not, to be treated as auxiliary aids or services.

- (9) Nothing in this section requires a public authority to take any steps which, apart from this section, it has no power to take.
- (10) This section imposes duties only for the purposes of determining whether a public authority has, for the purposes of section 21B(1), discriminated against a disabled person; and accordingly a breach of any such duty is not actionable as such.]

Status:

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Changes to legislation:

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