

Equality Commission

FOR NORTHERN IRELAND



The European Year of
People with Disabilities

2004

– ACCESS ALL AREAS

A guide for disabled people on new
rights to accessing goods and services



The Disability Discrimination Act 1995

Do you find it difficult to get access to some services (for example, at a shop, restaurant, library or the doctor's surgery)?

As a disabled person you have rights of access to goods and services.

Disabled people already have important rights under the Disability Discrimination Act when it comes to using services or accessing goods.

From October 2004 these rights will be extended and service providers will have to consider making changes to physical features which make it unreasonably difficult for disabled people to use their services.

*Reproduced in Northern Ireland with the permission of
The Disability Rights Commission GB*

Introduction

The Disability Discrimination Act 1995 (DDA) gives disabled people rights in the way they receive goods, services or facilities. Service providers already have to change the way they deliver their services if they are difficult for disabled people to use.

Your rights to services have been introduced in three stages:

- since 2 December 1996 it has been against the law for service providers to treat you less favourably because of your disability
- since 1 October 1999 service providers have had to make "reasonable adjustments" for you, such as giving extra help or changing the way they provide their services
- from 1 October 2004 service providers may have to make other "reasonable adjustments" to their premises so that there are no physical barriers stopping or making it unreasonably difficult for you to use services.

The Equality Commission for Northern Ireland (ECNI) have produced a new Code of Practice for service providers about the DDA. It will be taken into account by the courts, where relevant and it guides disabled people and service providers on how reasonable adjustments should be made. It is available from ECNI, in a range of formats and on the ECNI website: www.equalityni.org

Frequently asked questions

Do these rights under the Act apply to all disabled people?

You are protected from discrimination under the DDA if you have a physical or mental impairment that affects your ability to carry out normal day-to-day activities. That effect must be:

- substantial (that is, more than minor or trivial) and
- adverse and
- long term (lasting or likely to last for at least a year).

This means that not only do people with mobility impairments have rights but also disabled people with sensory impairments, learning difficulties or mental health issues, as well as many other disabled people.

What are goods and services under the Act?

Most services are covered by the DDA. Anyone who provides a service to the public or a section of the public is a service provider. There are a few exceptions: private clubs that have a meaningful selection process for members, transport (but only the transport vehicle, not everything else connected with it such as stations, airports and booking facilities) and education (but there will be new DDA duties in N.I. anticipated in 2003/2004).

Not all manufactured goods are covered. The maker of a bathroom suite does not have to make the bath accessible for you but the shop selling it has to make sure that it is not unreasonably difficult to use its services.

It doesn't matter whether or not you pay for the service; it's providing the service that matters.

So disabled people have rights to all kinds of services. That includes going to a restaurant, shopping for clothes or food, using the local library, going to church or visiting your solicitor or doctor. All of these people provide services and are covered by Part III of the DDA.

The 2004 duties say that service providers should make reasonable adjustments to physical features but what is a physical feature?

Here is a long but not exhaustive list: steps, stairways, kerbs, exterior surfaces and paving, parking areas, building entrances and exits (including emergency escape routes), internal and external doors, gates, toilet and washing facilities, public facilities (such as telephones, counters or service desks), lighting and ventilation, lifts and escalators.

It is important to realise that these features aren't just buildings or indoor facilities. They include seating in the street or a pub garden, stiles and paths in a country park, or fixed signs in a shop or leisure facility.

Do service providers only have to make changes when it's completely impossible for me to use their services?

No. They also have to make changes when it's unreasonably difficult. They should think about whether your time, inconvenience, effort, discomfort or loss of dignity in using the service would be considered unreasonable by other people if they had to endure similar difficulties.

Service providers are expected to make "reasonable adjustments" to physical features but what is "reasonable"?

This isn't something we can give a straight answer to. The law uses this phrase to allow different solutions in different situations. However, the Code of Practice does say that what is reasonable may vary according to:

- the type of services being provided
- the nature of the service provider and its size and resources
- the effect of the disability on you.

A small second hand bookshop has a step at the front door. The shop is very small and only has one member of staff. They have put in handrails by the front step and will help disabled people who cannot reach the higher shelves to select books. They are planning to replace the lighting and are talking to the local access group about making access easier for people with a visual impairment. They decide to put up a sign saying that they will help people select books if they cannot reach the higher shelves. They are also drawing up longer-term plans to improve access for disabled people.

These are some of the factors that service providers might have to take into account:

- whether taking particular steps would overcome the difficulty that you face in accessing their service
- how practicable it is to take the steps
- the financial and other costs of this
- how disruptive it would be
- how much money and other resources they have available to spend on it
- how much they have already spent
- what financial help is available to them.

So you need to think about these factors when looking at whether the service is reasonable.

A large bookshop, which is part of a national chain, also has a step at the main entrance, poor lighting and high shelves in the store. They have not yet considered access. Under the DDA they would be expected to consider either removing or altering all of these features or finding a way of avoiding them or providing the service another way. This might mean building a level or suitably ramped entrance, improving the lighting immediately and either lowering the height of the shelves or having staff trained and available to help locate books. The ECNI would also recommend an access audit and immediate plans for improvements.

Is it all right for service providers to wait until I cannot use their services before making changes?

No. Their duties are anticipatory and continuing. In other words, service providers should be thinking ahead and continually looking at the way they provide services, their premises and the physical features and considering improvements for disabled people.

If a service provider does nothing until you are unable to use their services they could well be in breach of the law.

A large theatre has spaces for wheelchair users in the main auditorium but the lighting levels, colour contrast and poor signage make it very difficult for visually impaired people to use the theatre. They also do not have an induction loop nor adjustments to seating for other disabled people. The theatre should be considering these physical features as they may be preventing disabled people from using their services.

Can service providers just make changes for people with particular disabilities?

No. Service providers should not focus on stereotypes but should consider the full range of access needs of disabled people and the ways in which their services may be difficult to use.

The ECNI recommends that service providers have an access audit done. It is important to take into account the needs of a range of disabled people and not rely on stereotypes. As a disabled person you may want to become involved in this through your local access group or disability interest group.

Is it all right for service providers not to start thinking about this until October 2004?

Although the duties on physical features don't come into force until October 2004 service providers should be considering changes before then. They have been given lots of time by the government to assess what needs to be done and then prepare. The courts may well take into account what preparations, planning and changes service providers made in the period before October 2004 when considering whether they have met their legal duties.

How should a service provider deal with a physical feature that is making it difficult for me to use a service?

Once a service provider has identified the physical features that may make it difficult for you to use their service then the law gives them a choice. They can remove that feature, alter it, find a way of avoiding it or provide the service another way.

The ECNI strongly recommends that service providers first consider removing the physical feature or altering it. This is often the safest option because it is more likely to make the service accessible, meaning that you receive the services in the same way as other customers. This is called an "inclusive" approach.

Where a service provider does decide to avoid a feature or provide the service another way, then the service must not be unreasonably difficult for you to use.

A health centre with several GPs has steps at the front entrance and decides to make a side entrance available for disabled people who cannot use steps. This side entrance is up an unpleasant alley where the bins are kept. This is not acceptable under the DDA because it would still be unreasonably difficult for you to use the service.

A large clothes shop has very narrow aisles and poor lighting. They decide not to alter these physical features but to have a member of staff available to bring goods to disabled people who cannot get round the shop. This service is not available during busy times and the lighting is poor throughout the shop, including the area you would have to wait in while goods were brought to you. You would still find it unreasonably difficult to use the service so the shop may not have met its duties.

If I find it unreasonably difficult to use a service what should I do?

The most sensible thing is to talk to the service provider. It may be that they have considered this issue and have made changes that aren't obvious, such as an alternative entrance, staff who can help with providing the service or something similar. They may have plans for changes to address the issues. Although they may not have fully met their legal duty, it could be useful information.

If discussing this with them or contacting them in another way such as in writing or by telephone does not resolve the situation then you can consider taking it further. You can contact the ECNI or a local disability/ advice organisation for assistance.

The **ECNI** may be able to help you in the following ways:

- **Advice**

Advice staff will give you information on all aspects of the DDA including 2004 and what it means for you.

- **Legal Assistance**

If you think you have been treated unfairly, you can apply to the Equality Commission for help with your complaint. As well as giving legal advice and referring to conciliation¹, legal staff, in certain cases may represent you without any cost.

¹At time of printing a Conciliation Service for Goods and Services Complaints was in development by ECNI.

Summing up

- **Service providers already have to make reasonable adjustments under the DDA to consider policies, practices and procedures and provide aids or services to help access.**
- **From October 2004 these duties will be extended to dealing with physical features that make it difficult for you to use services.**
- **Service providers should anticipate everyone's needs and not just make changes when an individual cannot use their services.**
- **If after October 2004 you find a service unreasonably difficult because of a physical feature you should raise this with the service provider but also consider other options including legal action.**

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How can we help?

The Equality Commission for Northern Ireland can give advice and information on the Disability Discrimination Act 1995 through training, telephone and textphone advice, booklets and leaflets or we can meet with you.

For further information, please contact us at:
Advice and Information Department
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