

Service Provider Advice on Protecting the Rights of Disabled People In the context of the Wearing of Face Coverings

This is the latest in [a series of advice notes](#) that we have produced for employers and service providers to help them to handle a variety of equality issues that have arisen from the Coronavirus and the measures taken to deal with it.

This advice note provides information for retailers and other service providers on protecting the rights of people with disabilities in the context of the law introducing the mandatory wearing of face coverings. It is worth remembering that this is an evolving area and that the law may develop to include further services or guidance.

What is the law on face covering?

The new law is the [Health Protection \(Coronavirus, Wearing of Face Coverings\) Regulations \(NI\) 2020](#), as amended by the [Health Protection \(Coronavirus, Wearing of Face Coverings\) \(Amendment\) Regulations \(NI\) 2020](#). Guidance on the specifics of the regulations is available on the [NI Direct website](#).

In short, the Regulations make it a criminal offence for a person aged 13 or over, without *reasonable excuse*, to enter and remain in a shop or enclosed shopping centre, or to use a bus, coach or train without wearing a face covering, such as a mask, that covers their nose and mouth.

These rules **do not apply to a wide variety of other services**, such as schools, restaurants, cafes, bars, hairdressers, cinemas, banks. These particular service providers may, however, still decide to request and/or require their customers to wear face coverings, and if so, the same advice that we have outlined here applies.

Do service providers have to enforce the new Regulations?

Service providers that are covered by these Regulations have [a power to enforce them](#), but they also have discretion in doing this. While it is for each service provider to consider its own approach, **their policy should allow for exceptions**. The reason for saying this derives from two things.

The Regulations do not apply to customers or passengers who cannot wear face coverings because they have a disability, or because they would otherwise suffer

severe distress. These people are deemed to have a *reasonable excuse*, and thus a legal defence, if they choose not to wear face coverings.

In addition to the Regulations and in parallel with them, the *Disability Discrimination Act 1995* also places a separate duty on service providers to make reasonable adjustments to their policies for disabled people who may need such changes for reasons related to their disabilities; i.e. an exception is an example of an adjustment to a policy.

If a service provider does not make such exceptions, they are leaving themselves open to a complaint of disability discrimination from an aggrieved customer or passenger who has a disability. Ultimately, it would be for a county court to determine whether an act of unlawful disability discrimination has occurred where an exception is not made.

If a court was considering such an issue it is likely to consider the [Government's guidance for shops](#) which states in section 6.1:

Some people don't have to wear a face covering including for health, age or equality reasons. No one who is exempt from wearing a face covering should be denied entry if they are not wearing one.

For other types of services, such as [restaurants, pubs and bars](#), and [close contact services like hairdressing](#), the corresponding Government guidance, is the same.

While the Regulations or Government guidance may change, it will not however remove the duty on service providers under the *Disability Discrimination Act 1995* to make reasonable adjustments for disabled people.

Should service providers ask a customer, not wearing a face covering, for medical or other evidence that they are exempt?

[Government guidance](#) advises disabled customers and passengers that:

There is no need to get a letter from a doctor or the government to show that you do not need to wear a face covering.

If you have a condition (for example, a disease such as asthma, chronic obstructive pulmonary disease (COPD), emphysema or bronchitis) which means you cannot wear a face covering you only need to say, if asked, that you cannot wear a face covering because you are exempt.

Where service providers ask for such evidence they may be at risk of facing a disability discrimination complaint from an aggrieved customer or passenger who has a disability.

However, there is nothing preventing an exempt person from voluntarily showing a card or badge that declares that they are exempt. That may help to smooth potential problems. The [Government has produced some suitable templates](#) that may be downloaded onto mobile phones or which may be printed in hard copy. Similar templates have also been produced by the charity, [Action on Hearing Loss](#). What is clear is that any declarations of disability should not be used to treat people less favourably than others.

Maintaining a culture of respect for all customers

Service providers should ensure that the environment in which they operate is not only safe and secure for health and safety reasons, but is also one in which all customers and staff are made to feel welcome and respected. This includes following public health guidance on the wearing of face coverings and ensuring that all permitted exemptions, including those for people with disabilities, are granted. Disabled people should not be subjected to discriminatory treatment because they are relying on exemptions.

It is worth remembering that, under the *Disability Discrimination Act*, service providers are liable in law for discriminatory acts committed by them or their staff. While service providers are unlikely to be held liable in law for discriminatory actions committed by one customer towards another, even if that other customer is disabled, it would be good practice to remind customers that they are expected to behave respectfully towards other customers and staff and that this is a condition of service.

Service providers, if covered by the Regulations, should advise customers that they are adhering to them and that exceptions apply.

Further advice and information

For advice on employers' and service-providers' obligations under equality and discrimination law, contact the Equality Commission's helpline on **028 90 500 600** and ask for our **Advisory Services Team**. Alternatively, you can email information@equalityni.org or edenquiries@equalityni.org

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