

Disability and the Equality Act 2010

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We will discuss changes to disability introduced by the Equality Act

- Definition of disability: list of capacities removed
- Employment: Direct discrimination includes perception and association; discrimination arising from disability; indirect discrimination; changes to reasonable adjustment and prohibition on disability related questions in recruitment
- Goods and services: prohibition on direct discrimination and harassment; discrimination arising from disability; indirect discrimination changes to reasonable adjustment.

Definition of disability:

Schedule 1 Equality Act

List of capacities removed

Direct Discrimination s. 13

- “A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.”
- Association and perception
- Positive action

Direct discrimination – comparators s.23

- “(1) On a comparison of cases for the purposes of section 13, 14, or 19 there must be no material difference between the circumstances relating to each case.*
- (2) The circumstances relating to a case include a person’s abilities if—*
- (a) on a comparison for the purposes of section 13, the protected characteristic is disability;*
 - (b) on a comparison for the purposes of section 14, one of the protected characteristics in the combination is disability.*

Discrimination arising from disability s. 15

(1) A person (A) discriminates against a disabled person (B) if—

(a) A treats B unfavourably because of something arising in consequence of B's disability, and

(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

Indirect discrimination s.19

- 1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.
- (2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—
 - (a) A applies, or would apply, it to persons with whom B does not share the characteristic,
 - (b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,
 - (c) it puts, or would put, B at that disadvantage, and
 - d) A cannot show it to be a proportionate means of achieving a legitimate aim.

Duty to make reasonable adjustments ss 20-21

- (1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.*
- (2) The duty comprises the following three requirements.*
- (3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.*
- (4) The second requirement is a requirement, where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.*
- (5) The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.*

Pre employment enquiries s.60

- 1) A person (A) to whom an application for work is made must not ask about the health of the applicant (B)—
 - (a) before offering work to B, or
 - (b) where A is not in a position to offer work to B, before including B in a pool of applicants from whom A intends (when in a position to do so) to select a person to whom to offer work.
- (2) A contravention of subsection (1) (or a contravention of section 111 or 112 that relates to a contravention of subsection (1)) is enforceable as an unlawful act under Part 1 of the Equality Act 2006 (and, by virtue of section 120(8), is enforceable only by the Commission under that Part).
- (3) A does not contravene a relevant disability provision merely by asking about B's health; but A's conduct in reliance on information given in response may be a contravention of a relevant disability provision.
- (4) Subsection (5) applies if B brings proceedings before an employment tribunal on a complaint that A's conduct in reliance on information given in response to a question about B's health is a contravention of a relevant disability provision.
- (5) In the application of section 136 to the proceedings, the particulars of the complaint are to be treated for the purposes of subsection (2) of that section as facts from which the tribunal could decide that A contravened the provision.

Pre employment enquiries s.60

- (6) This section does not apply to a question that A asks in so far as asking the question is necessary for the purpose of—
 - (a) establishing whether B will be able to comply with a requirement to undergo an assessment or establishing whether a duty to make reasonable adjustments is or will be imposed on A in relation to B in connection with a requirement to undergo an assessment,
 - (b) establishing whether B will be able to carry out a function that is intrinsic to the work concerned,
 - (c) monitoring diversity in the range of persons applying to A for work,
 - (d) taking action to which section 158 would apply (positive action), or
 - (e) if A applies in relation to the work a requirement to have a particular disability, establishing whether B has that disability

Pre employment enquiries s.60

- 7) In subsection (6)(b), where A reasonably believes that a duty to make reasonable adjustments would be imposed on A in relation to B in connection with the work, the reference to a function that is intrinsic to the work is to be read as a reference to a function that would be intrinsic to the work once A complied with the duty.
- (8) Subsection (6)(e) applies only if A shows that, having regard to the nature or context of the work—
- (a) the requirement is an occupational requirement, and
 - (b) the application of the requirement is a proportionate means of achieving a legitimate aim.

Reasonable adjustments in employment Sch. 8

- Applicants?
- List of examples of reasonable adjustments no longer in statute
- Knowledge

Goods, facilities services and public functions

Direct (inc. association and perception) and indirect discrimination as well as DAD

Harassment s.26: unwanted behaviour

- related to disability
- that has the purpose or effect of violating a person's dignity or
- creating an intimidating, hostile, degrading, humiliating or offensive environment for them.

Reasonable adjustments in gfsfpf

Sch. 2

- ‘Trigger’ is ‘substantial disadvantage’ rather than ‘impossible or unreasonably difficult’
- Public function: if a benefit is or may be conferred in the exercise of the function, being placed at a substantial disadvantage in relation to the conferment of the benefit; or if a person is or may be subjected to a detriment in the exercise of the function suffering an unreasonably adverse experience
- Still anticipatory (sch. 2 para. 2.2)
- Avoid the disadvantage or adopt reasonable alternative method of providing service