



## **The Equality Act in post-school learning**

This booklet contains information on the Equality Act in relation to a range of post-school learning opportunities in Scotland, including:

- further education
- higher education (in both colleges and universities)
- community / adult learning
- education provider by private providers

The booklet is relevant for disabled learners and those working with them or supporting them. It is also relevant for learning providers in their role as employers of disabled staff and service providers to the public.

Lead Scotland is a charity that enables disabled adults and carers to access inclusive learning opportunities.

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# 1. How this booklet should be used

## For information

This booklet provides useful information for disabled learners (and potential learners) in post-school learning, as well as staff working with disabled learners. It provides information on the Equality Act in relation to disabled learners, employees and service users, including:

- education providers' duties to make reasonable adjustments
- the different types of disability discrimination
- enforcing disabled people's rights under the Act
- promoting disability equality.

For more information on the Equality Act in relation to school education, please contact [Enquire](#).

## A training resource

This booklet can also be used in conjunction with our staff training resource which provides practical case studies relating to the key concepts of the Act. Please contact Lead Scotland for more information about this.

***Note on language:*** For ease of reference, the booklet primarily refers to the duties of education providers, however the Equality Act also applies to education providers in their capacity as employers and providers of other services. 'Students' and 'learners' are interchangeable terms in this booklet.

## 2. What is the Equality Act?

The Equality Act came into force in October 2010, and replaces the Disability Discrimination Act (as well as other anti-discrimination laws).

### Who is protected under the Act?

It aims to protect people from discrimination in relation to:

- 
- disability
- age
- race
- sex
- sexual orientation
- religion and belief
- gender reassignment
- pregnancy and maternity
- marriage and civil partnership

This booklet focuses on disability discrimination, but you can find out about the other types of discrimination listed above from the [Equality and Human Rights Commission](#).

### Who has duties under the Act?

The Act places a number of duties on employers, education providers, service providers, public service providers (e.g. transport providers, health and social care providers, etc), and organisations who rent or sell property. This booklet only provides information on the duties of education providers. You can find out more about the duties of other providers from the [Equality and Human Rights Commission](#)

## **What does the Act say?**

The main aims of the Act are to place a duty on the agencies listed above to:

- not discriminate against disabled people
- make reasonable adjustments for disabled people
- promote disability equality.

## **What does 'disabled' mean?**

To be protected under the Equality Act, individuals must meet the legal definition. Disability is defined as:

**'A physical or mental impairment which has a substantial and long-term adverse effect on your ability to carry out normal day-to-day activities'.**

The definition is designed to be as broad as possible and there are a wide variety of conditions and impairments that will be covered, although each part of the definition must apply before the person can be classed as disabled under the Act. The only exceptions to this are cancer, HIV and Multiple Sclerosis, which are covered from the point of diagnosis. This means that some people who had not previously considered themselves as disabled may be protected.

To check if someone is disabled under the terms of the Act, it's helpful to ask the following questions:

### ***Do they have a physical or mental impairment?***

The term 'physical or mental impairment' can include:

- physical impairments, such as people with mobility difficulties
- sensory impairments, such as people with visual or hearing impairments

- learning difficulties, including people with autism, learning disabilities and specific learning difficulties such as dyslexia
- mental health conditions which have a long-term effect
- genetic conditions once the condition affects the person's ability to carry out normal day-to-day activities
- progressive conditions once the condition affects the person's ability to carry out normal day-to-day activities, **apart from** Multiple Sclerosis, cancer and HIV which are covered from the point of diagnosis
- conditions which are characterised by a number of cumulative effects such as pain or fatigue
- hidden impairments such as asthma or diabetes, when these have an effect on day-to-day activities
- a past history of disability

***Does the impairment have a substantial adverse effect?***

A substantial adverse effect is something that is more than minor or trivial and goes beyond the ordinary differences between people.

***What about severe disfigurements?***

If someone has a severe disfigurement, then they are considered as disabled because the disfigurement is taken as having an adverse effect on their ability to carry out normal day-to-day activities. It is not necessary to prove that the disfigurement has this effect.

***Does the impairment have a long-term effect?***

A long-term effect is one:

- which has lasted at least 12 months; **or**
- where the total period for which it lasts is likely to be at least 12 months; **or**
- which is likely to last for the rest of the person's life.

Some effects are not long-term and would therefore not be included, for example loss of mobility due to a broken limb which is likely to heal within 12 months, and the effects of temporary infections, from which the person would be likely to recover within 12 months.

***What if the effects come and go over a period of time?***

If an impairment has previously had a substantial adverse effect on a person's normal day-to-day activities but the situation changes and the condition gets better temporarily, it is treated as continuing **if it is likely to come back.**

A person has had rheumatoid arthritis, which has been substantial and adverse, but then they have a period of remission (it improves for a time). If the arthritis remains and the person is likely to have at least one recurrence 12 months or more after the first occurrence, this would then be a long-term effect.

***What about people who have recovered?***

People who have had a physical or mental impairment that was within the definition are protected from discrimination even if they have since recovered.

***Does the impairment affect normal day-to-day activities?***

Normal day-to-day activities are things that most people have to do every day, whatever their job or occupation. The term does not include activities which are normal only for a particular person, such as playing a musical instrument, or performing a skilled or specialist task at work. However, someone who is affected in such a specialised way, but is also affected in normal day-to-day activities, would be covered by this part of the definition. There are broad categories of capacity which are listed in the Act. These are:



- mobility
- manual dexterity
- physical co-ordination
- continence
- ability to lift, carry or otherwise move everyday objects
- speech, hearing or eyesight
- memory or ability to concentrate, learn or understand
- perception of the risk of physical danger.

### 3. What is discrimination?

Discrimination takes place when an education provider, employer or service provider treats a disabled person unfairly. This could either be intentionally or unintentionally, or because they have failed to put in place the support an individual needs as a disabled person (i.e. reasonable adjustments).

#### **Types of Discrimination**

There are 6 different types of discrimination, as well as other 'unlawful acts' under the Equality Act.

**NB:** For ease of reference, we use the terms 'education provider' and 'learners' – although the law also applies to service providers, employers and organisations who provide public services.

#### **(i) Direct Discrimination**

Direct discrimination happens when an education provider treats someone less favourably because of their impairment or condition.

A blind applicant is not offered a place on an Office Administration course because the education provider assumes that she will be unable to use a computer. This is likely to amount to direct discrimination and is therefore unlawful.

#### **How do you know if this type of discrimination has taken place?**

In order for someone to show that they have been directly discriminated against, they must compare what has happened to them to the treatment a non-disabled person is receiving (or would receive).

It is **not** unlawful direct discrimination to treat a disabled learner more favourably than a non-disabled learner because of their impairment.

## **(ii) Indirect discrimination**

Indirect discrimination takes place when a disabled person is inadvertently discriminated against because of the way an education provider does things, e.g. a policy, working practice or a criteria such as entry requirements. This happens when a policy or practice is applied in the same way for everyone, but has the effect of putting disabled people at a particular disadvantage.

A college has a policy of requiring all students to produce handwritten essays. Although there was no intentional discrimination here, this policy could be seen as indirectly discriminating against learners with visual impairments or other impairments which make it difficult to write on paper.

## **How do you know if this type of discrimination has taken place?**

Indirect discrimination takes place when:

- the policy or practice is applied equally to all learners; **and**
- the policy or practice puts (or would put) disabled learners at a particular disadvantage compared to non-disabled learners; **and**
- the education provider cannot show that the policy or practice is justified as a 'proportionate means of achieving a legitimate aim' (see below).

## **(iii) Discrimination arising from disability**

This happens when a disabled person is treated unfavourably because of something connected to their impairment or condition.

An admissions tutor refuses to accept someone who is D/deaf on to an English course because she believes the applicant does not have clear enough speech to do the course. This is likely to amount to 'discrimination arising from disability' and is therefore unlawful.

### **How do you know if this type of discrimination has taken place?**

The way of telling whether or not this type of discrimination has taken place is to focus on the **reason** for the treatment. Someone has been discriminated against if:

- they are being treated unfavourably (whether this was intentional or unintentional); **and**
- the unfavourable treatment is because of something connected with the person's impairment (e.g. being unable to walk unaided); **and**
- the education provider cannot show that the treatment is justified (see below).

### **(iv) Failure to make reasonable adjustments**

Failing to make reasonable adjustments is a form of discrimination under the Equality Act. This means that education providers must make reasonable adjustments to ensure that disabled people can access education and any related services.

A learner with ME finds it difficult to study for long periods of time as a result of her impairment. The college therefore allows her to take rest breaks during classes and supervised breaks during exams.

In relation to providing both education and other (non-educational) services, the duty to make reasonable adjustments is an

**anticipatory duty** - a duty owed to disabled people generally, not just to particular individuals. This means that the responsible body must anticipate what sort of adjustments may be necessary for disabled people in the future and, where appropriate, make adjustments in advance. The duty to make reasonable adjustments for employers is **not** an anticipatory duty (i.e. education providers, in their capacity as employers, only need to respond to individual requests for reasonable adjustments).

Reasonable adjustments might include:

- altering admissions, administrative and examination procedures
- offering course materials in alternative formats, such as large print, Braille, audio tape, or Easy Read
- allowing extra time in exams or for course work
- adjusting work placement procedures
- changing physical features and premises
- providing communication and support services, such as readers, interpreters or equipment.

### **How do you know if this type of discrimination has taken place?**

The Act says that the duty to make reasonable adjustments only applies when there are **substantial** disadvantages. Substantial disadvantages are those which are not minor or trivial. It also says that the education provider only has to make adjustments which are considered **reasonable** for it to have to make (see below).

### **(v) Discrimination by perception**

This type of discrimination takes place when a person is treated unfavourably because the education provider mistakenly believes they are disabled.

A college refuses a student a place on an HND Accounting course because they suspect he has a mental health condition (even though he does not) and assumes he would not be able to meet the demands of the course.

### **(vi) Discrimination by association**

This takes place when an education provider treats a non-disabled person unfavourably because of an association with a disabled person, e.g. a parent/carer, friend, tutor, support staff, etc.

A college refuses an applicant a place on a Nursing course because they are concerned that her caring responsibilities (for a disabled child) will impact on her ability to take part in course placements.

## **Other unlawful acts under the Equality Act**

### **Victimisation**

Victimisation can apply to ***both disabled and non-disabled people***. It is against the law for an education provider, employer or service provider to treat someone less favourably if they try to enforce their rights under the Act, e.g. if a learner takes a case of discrimination against a college to court. It is also unlawful to treat less favourably anyone who helps a disabled person to make a claim of discrimination, for example, someone who provides information or gives evidence for a disabled person in a court or tribunal.

A disabled student supported by the Disability Adviser brings a case of discrimination against a university. This is because, despite a number of requests, the university has failed to provide support workers and notetakers for that student. Later, the Disability Adviser receives a negative annual review in retaliation,

and a performance pay award which all other staff members got is withheld. This is victimisation and is likely to be unlawful.

## **Harassment**

This takes place where an education provider or person engages in unwanted behaviour towards a disabled person because of their impairment or condition. If the behaviour has the effect of violating the person's dignity or creates an intimidating, degrading or offensive environment for them, then this is harassment;

## **What if the education provider didn't know the learner was disabled?**

If the education provider can show that they did not know that the learner was disabled (or could not reasonably be expected to know that the learner was disabled), then it is unlikely that it will be liable for ***discrimination arising from disability*** or ***failure to make reasonable adjustments***.

However, the education provider will be expected to take all reasonable steps to find out if their learners are disabled, e.g. through application forms, conversations with learners, highlighting the support available to disabled learners in publicity materials, regular opportunities to disclose in confidence, etc.

If one member of staff is aware of a learner's disability, then the whole institution is '***deemed to know***' (unless the learner has requested that this information is not shared).

A learner tells his tutor that he has bipolar disorder. He then transfers to another course at the same college but doesn't mention his impairment to any of the staff on the new course. As one member of staff at the college is aware of his impairment, the whole college will be deemed to know.

It is also important to note that education providers have an ***anticipatory duty*** to make reasonable adjustments. The Act recognises that education providers cannot be expected to anticipate the needs of every prospective student, but they are required to think about and take reasonable steps to overcome barriers that the disabled population in general may experience.

## **Can disability discrimination ever be justified?**

***Direct discrimination*** is the only type of discrimination which can never be justified. Treatment of a disabled person which amounts to direct discrimination is always unlawful.

There is no justification under the Equality Act for failing to make a reasonable adjustment. However, it is important to note that education providers only need to make adjustments which are considered '**reasonable**'.

Whether it is 'reasonable' for an education provider to make any particular adjustment will depend on a number of factors, including:

- the effectiveness of making the adjustment and whether it is practical to do so
- the financial resources of the education provider
- the availability of grants, loans and other assistance to disabled students, such as Disabled Student Allowance, or charitable trusts
- the extent to which aids and services will be provided to disabled students from other sources
- health and safety requirements – this means if the adjustment increased the risks to the health and safety of another person
- the relevant interests of other people – this means where the adjustment results in significant disadvantage for other people.



A student with cerebral palsy requires daily support going to the toilet. It would not be reasonable for the college/university to provide this support as support workers for personal care needs should be provided by the social work department. Only support needs which are educational should be met by the college/university.

Education providers do **not** have to make reasonable adjustments when applying a competence standard. These are academic or other standards which measure a student's level of competency in a subject (see chapter 4 for more information). However, the duty does apply to ***the way the competence is assessed***.

All students taking a Higher Chemistry course are required to achieve at least 40% to pass the exam for the course. The duty to make reasonable adjustments to this competence standard therefore does not apply. However, the college will be required to make reasonable adjustments to the assessment process for students for whom the requirement to produce handwritten answers puts them at a disadvantage. The college therefore allows visually impaired students the opportunity to meet the competence standard by producing their answers on a laptop instead of on paper.

Both ***indirect discrimination*** and ***discrimination arising from disability*** can only be justified if the unfavourable treatment has taken place as a 'proportionate means of achieving a legitimate aim'. This means that:

- the provision, criteria or practice must represent a real objective consideration (i.e. a legitimate aim); **and**
- the means of achieving it must be appropriate and necessary (i.e. proportionate), taking into account that there may be more than one way of achieving the legitimate aim.

'Legitimate aims' might include:

- health and safety considerations
- maintaining academic/competence standards (see chapter 4).

A student with epilepsy is refused entry to a Dentistry course as the course leader believes that her frequent and unpredictable generalised seizures represent a health and safety risk. Although her impairment is the reason for refusing admission, this is likely to be justified as the health and safety assessment will be a legitimate aim for the university to take into account. It is also unlikely that there would be other ways of achieving this aim given the large amount of practical tasks involved in both the course and clinical placements.

Where the application of a competence standard amounts to 'discrimination arising from disability', this can be justified if the education provider can show that:

- the standard is or would be applied equally to all people; **and**
- its application is a 'proportionate means of achieving a legitimate aim' (there is a pressing need to apply the standard, and there is no other way of doing that).

This means that course providers have to set competence standards in all areas, such as entry requirements, assessment requirements, and so on. These standards cannot be discriminatory and must be justifiable.

## 4. How does the Equality Act apply to education providers?

The Equality Act sets out slightly different duties for **education providers**, **service providers**, and **employers**. Some organisations, such as education providers, will be subject to all three sets of duties.

Education providers have different duties to consider relating to their roles as:

- providers of education to disabled learners (which means the education provisions of the Act will apply)
- employers of disabled staff (which means the employment provisions of the Act will apply)
- providers of services to the public (which means the service providers section of the Act will apply)

While many of these duties are the same, some provisions of the Act are slightly different. The following section set out the main duties and differences between these three parts of the Act.

### (i) Duties as providers of education

#### Key duties

As with other parts of the Act, the education provisions place duties on education providers to promote disability equality and to avoid discrimination (see chapter 3 for information on the different types of discrimination, including failure to make reasonable adjustments).

Education providers must not discriminate against disabled people when providing 'education and related services', including:

## ***Admissions and enrolment***

This includes the various stages of this process such as designing and advertising courses, assessing applicants, interview, selection, enrolment and induction. The Act places a duty on education providers not to discriminate against or victimise people:

- in the arrangements it makes for deciding who is offered admission as a student;
- in relation to the terms on which it admits the person as a student; or
- by not admitting the person as a student.

## ***Provision of education and access to student services***

This includes any services that are provided wholly or mainly for students, such as teaching or lecturing; qualifications, assessment and examinations; tutorials; research facilities; exclusions, student accommodation services; careers, health and welfare services; extra-curricular activities; leisure and social facilities primarily for students; open days and induction events; complaints and examination appeals, etc. The content of the curriculum is **not** covered, which means education providers are not restricted in the range of issues, ideas and materials they use.

The Act places a duty on education providers not to discriminate against students:

- in the way they provide education
- in the way they give the student access to a benefit, facility or service
- by not providing education for the student
- by not affording the student access to any benefit, facility or service
- by excluding the student

- by subjecting them to any other detriment.

## **Who does this part of the Act apply to?**

This part of the Act applies to:

- schools (for information on this part of the Act, you can access guidance on the EHRC's website, or contact [Enquire](#))
- colleges and universities (including work-based training that takes place in colleges)
- local authorities providing adult and community education
- youth services (except voluntary groups such as Scouts)
- general qualifications awarding bodies, e.g. the Scottish Qualifications Authority.

**Note:** Private education providers and work-based training providers are considered to be service providers and are covered under the service providers section of the Act (see below). Work placement providers are covered under the employment section of the Act.

## **Who is protected by this part of the Act?**

The education sections of the Act protect the following disabled people:

- Any student enrolled on or attending a course of study. They can be:
  - full or part-time
  - a home or overseas student
  - publicly or self-funded
  - further education, undergraduate or postgraduate
  - studying for a specific qualification or undertaking part of a course
  - enrolled on a short course or evening classes
  - studying by open or distance learning
- Potential students and applicants, including:

- people enquiring about courses
- people attending open days or contacted during recruitment drives
- people applying for admission to a course
- Former students

The Act also gives rights to people who have been victimised, whether they are disabled or non-disabled (see chapter 3).

### **How does the duty to make reasonable adjustments apply?**

The duty to make reasonable adjustments under this part of the Act is an ***anticipatory duty***. This is because this is a duty owed to disabled people generally, not just to particular individuals.

Education providers must therefore anticipate what sort of adjustments may be necessary for disabled people in the future and, where appropriate, make adjustments in advance.

This duty arises where a physical feature or provision, criterion, or practice applied by an education provider puts disabled people at a substantial disadvantage compared to non-disabled people.

Substantial disadvantage' is defined in the Act as one that is more than minor or trivial. The level of disadvantage created by a lack of reasonable adjustments is measured in comparison with what the position would be if the student was not disabled.

When a disabled student is placed at such a disadvantage, the education provider must take such steps as it is reasonable to take to remove the effect. This might mean changing or removing a policy or practice, or allowing for flexibility.

A college has a policy of not allowing students to leave the room during examinations. A student with Chronic Fatigue Syndrome is unable to study for long period periods of time as a result of her

impairment. The college therefore allows the student to take supervised breaks in another room during the exam, as well as 20% extra time.

### **What are ‘competence standards’?**

‘Competence standards’ are defined in the Act as ‘academic, medical, or other standards applied by or on behalf of an education provider for the purpose of determining whether or not a person has a particular level of competence or ability’.

Education providers do not need to make reasonable adjustments to genuine competence standards, however they do need to make reasonable adjustments to the ***way in which these standards are assessed*** (e.g. providing exam papers in alternative formats).

### **Example of a competence standard**

An ability to demonstrate a particular level of knowledge in human biology is likely to be considered a competence standard for achieving a qualification in a National 5 in Biology. This is because this is a standard which all students should meet (with no exceptions) to maintain the academic standards of the course. So although the college doesn’t need to change this standard, they do need to consider the reasonable adjustments they could make to allow students to demonstrate their knowledge of the subject, e.g. allowing them to demonstrate their knowledge of the subject in ways other than written exams.

### ***Example of a standard which is not a competence standard***

One of the entry requirements for an HND in Hospitality Management is the ability to speak clearly. If the college is unable to show that this is a genuine requirement for this course, then this will not amount to a competence standard. This entry requirement

could therefore be regarded as discriminatory against learners whose impairment affects their speech.

## **(ii) Duties as a provider of services to disabled people**

### **Key duties**

This part of the Act makes it unlawful to discriminate when providing goods, services and facilities to the general public.

As with other parts of the Act, this section of the Act place duties on service providers to promote disability equality and to avoid discrimination (see chapter 3 for information on the different types of discrimination, including failure to make reasonable adjustments). This includes:

- refusing to serve someone or take them on as a client because they are disabled
- refusing to continue providing services to them because they are disabled
- giving a disabled person a worse quality service, or providing a service in a worse way
- giving a disabled person a service with worse terms than you would usually offer
- putting a disabled person at any other disadvantage.

### **Who does this part of the Act apply to?**

This part of the Act applies to education providers when they provide services which are not just for students, e.g. conference facilities, training restaurants, hairdressing salons, etc. It also covers services which education providers offer (other than educational services), such as welfare services, sports facilities, and students' unions.



As well as education providers, this part of the Act also applies to any organisation or business that provides goods, services or facilities to the general public, regardless of whether the services are free or not. These include:

- those who provide services to the public, whether in the private, public or voluntary sectors, for example public libraries shopping centres, banks, government departments, railway stations and cinemas;
- private education providers;
- voluntary sector organisations who provide adult / community learning;
- work-based learning providers;
- public authorities and other bodies with public functions, for example local authorities and government departments.

### **Who is protected under this part of the Act?**

The service provider parts of the Act protect all disabled people, if they meet the Act's definition of disability.

### **How does the duty to make reasonable adjustments apply?**

The duty to make reasonable adjustments means that service providers have to take positive steps to ensure that disabled people can access services. There are three requirements placed on service providers:

- changing practices, policies and procedures, e.g. changing a building's fire evacuation procedures to meet the needs of wheelchair users;
- removing, altering or avoiding physical features that make it difficult for a disabled person to use a service, or providing the service using an alternative method, for example, replacing heavy doors with automatic doors.

- providing aids and services to enable a disabled person to use a service, for example, induction loops in conference facilities for people who have a hearing impairment.

As with the education provisions of the Act, this part of the Act places an ***anticipatory duty*** on service providers to make reasonable adjustments.

A college conference venue is being refurbished. The college should consider making all parts of the building and facilities accessible to all potential users even if they have never had disabled users before. The cost of making the adjustments during the refurbishment is also likely to be considerably less than doing it separately later.

If a service provider fails to comply with this duty, and a disabled person finds it impossible or unreasonably difficult to access a service as a result, this will be considered unlawful discrimination.

### **(iii) Duties as an employer of disabled people**

#### **Key duties**

As with other parts of the Act, the employment provisions place duties on education providers to promote disability equality and to avoid discrimination among disabled staff (see chapter 3 for information on the different types of discrimination, including failure to make reasonable adjustments).

This part of the Act says that **discrimination is unlawful** in all aspects of employment and occupation, including:

- staff recruitment and selection, including advertising jobs
- retention of employees

- promotion
- training
- dismissal

This part of the Act also covers work placements which are done as part of a vocational training programme. It is unlawful for work placement providers to discriminate in selecting candidates, the terms of the placement, and dismissal.

### **Who does this part of the Act apply to?**

As well as education providers in their capacity as employers of disabled staff, the employment provisions of the Act apply to:

- all employers, including work placement / work experience providers
- people or organisations who provide employment services, such as employment agencies and careers services
- trade organisations, including trade unions, employers' associations and chartered professional institutes, eg the Royal College of Nursing
- qualifications bodies.

### **Who is protected under this part of the Act?**

The employment sections of the Act protect the following disabled people:

- all employees (apart from members of the Armed Forces), whether on full-time, part-time or temporary contracts
- former employees
- job applicants
- people doing work experience or work placements
- people who are self-employed who have a contract to carry out work personally for an employer

- people who are applying to a trade organisation or qualification body

This part of the Act also gives rights to people who have been victimised, including disabled and non-disabled people (see chapter 3).

### **How does the duty to make reasonable adjustments apply?**

Employers have a duty to make reasonable adjustments to the workplace, working practices and to job descriptions when required. This duty arises when disabled people are placed at a substantial disadvantage compared to non-disabled people.

An employee with ME needs to have rest periods during the day. This is refused, despite the employee working the full number of hours and completing the work that is required. This may amount to discrimination under the Act.

Reasonable adjustments might include:

- making adjustments to buildings to improve accessibility
- altering working hours for disabled employees
- providing or modifying equipment
- providing a reader or interpreter
- allocating some of a disabled person's duties to another person
- allowing a disabled person to take a period of disability leave

Access to Work (available through Jobcentre Plus), can pay for the full cost of adjustments for job applicants or new members of staff. It can also contribute to the cost of adjustments for existing staff.

Unlike the education and service providers part of the Act, the duty to make reasonable adjustments under the employment provisions are **not** anticipatory. This means that employers are only required to make adjustments when they are actually required by a disabled employee or applicant. If the employer did not know (or could not reasonably be expected to know) that someone is disabled, then it is unlikely that it will be liable for discrimination if it fails to make reasonable adjustments. However, it must do all it can to find out if staff/applicants have an impairment or condition.

## **5. Information for disabled people: Enforcing your rights under the Act**

**If you think you have been discriminated against you must get expert advice.** You can get general advice from Lead Scotland, but if you are considering taking legal action you should seek the support of a solicitor. Lead will be able to advise you on the different types of disability discrimination to help you decide if discrimination has taken place. You can also contact the [Equality Advisory and Support Service](#) (EASS).

The way to deal with discrimination under the Equality Act will depend on which part of the Act applies to your circumstances.

### **What can you do if you feel you have been discriminated against?**

It can be more effective to try to deal with problems informally at an early stage than taking legal action. However, you might want to consider more formal action if the issue is not resolved.

#### **Dealing with problems informally**

You may find that the employer, education provider or service provider is simply unaware of the problem. Discussing this at an early stage could lead to an effective resolution. You might want to discuss the problem with your Student Services Adviser/Disability Adviser, course tutor, line manager or service provider. You are more likely to get the result you want if you make practical and reasonable suggestions about how to put things right.

#### **Formal complaints procedures**

This will differ according to the area you are complaining about:

- **Education:** your institution should have an internal complaints procedure which sets out the steps you need to take to raise a formal complaint. Your students' union should be able to give you advice with this. If you are not satisfied with the outcomes of the complaint, you can take your complaint regarding colleges and universities to the Scottish Public Services Ombudsman (or the Office of the Independent Adjudicator for cases involving the Open University or if you are attending a university in England or Wales).
- **Employment:** you can raise a formal grievance against your employer if you feel you have been discriminated against. You will not be able to proceed to an employment tribunal unless you have taken this step first. Even if your employer does not have a grievance procedure, you should still put your complaint in writing.
- **Services and transport:** you might want to consider writing a formal letter to the service provider setting out the reasons why you found it difficult to access the service and asking how they intend to remove this barrier.

## Mediation

Mediation involves allowing a neutral third party to help the two sides reach an agreement.

- **Education, services and transport:** you may be able to take your dispute to [Scottish Mediation](#), an organisation which provides access to mediation services. Students attending the University of Dundee can access the [Early Dispute Resolution service](#) at the University. It may be possible for students studying at colleges or universities in Fife or Dundee to also access this service, and students should contact the [Early Dispute Resolution service](#) directly to discuss this.

- **Employment:** if you are unable to resolve your complaint with your employer, you can ask the [Advisory, Conciliation and Arbitration Service](#) (ACAS) to act as a mediator.

## Legal action

If you are still unable to resolve your complaint, you may decide to take legal action. For cases about employment, this should be taken to an Employment Tribunal. For all other areas, the case should be taken to the Sheriff Court:

- **Education:** you must take your complaint to court **within six months of the date when the alleged discrimination took place**. Where there has been a continuing process of discrimination taking place over a period of time, the 6 months begins at the date of the last discriminatory act. The outcomes of this process may include paying you compensation (including compensation for injury to feelings), an interdict to prevent further discriminatory practices by the institution, or order either you or the institution to pay litigation costs. You can get more information about [Sheriff Court procedures here](#).
- **Employment:** an Employment Tribunal is different from a court and has different powers. If you win a case at a tribunal they can make a declaration of rights, award financial compensation or a recommendation for action to put right the wrong. You must register a complaint **within 3 months of the discriminatory act**.

There is no charge for making a claim at tribunal, but if you choose to employ a representative or solicitor you will need to pay for this. Some people (depending on their income) may be able to qualify for Legal Aid or Legal Advice and Assistance



(you can get more information on this from the [Scottish Legal Aid Board](#). If you are eligible, you will get help and advice with preparing your claim. You may also be able to get help to pay for representation at the hearing.

- **Services and transport:** you can apply for damages to make up for financial loss or injury to feelings and you can apply for Legal Aid to cover the costs of the court case. Some issues could be addressed by the ‘small claims’ procedure. A complaint must be registered **within 6 months of the discriminatory act, or 3 months** where the claim is made to an Employment Tribunal.

### **Advice and support**

The following organisations may be able to give advice and support on the different parts of the Equality Act:

- **Equality Advisory and Support Service (EASS)** – this has replaced the Equality and Human Right Commission helpline, and can support you with resolving issues informally, advice on using conciliation or mediation services, and information about civil legal aid.
- **Citizens Advice Bureaux** give free, confidential and impartial advice on a range of subjects.
- **Law Centres** provide a free and independent professional legal service to people who live or work in their catchment areas.
- **Trades unions and staff associations** can advise you on how best to resolve disputes with employers, and may be able to attend meetings with you.
- **Disability organisations** provide leaflets and website information about disabled people’s rights in a range of areas.
- **Access to Work** can provide practical support and advice to disabled people and employers. It can give employers money

towards the cost of reasonable adjustments for disabled people in the workplace.

- **ACAS** aims to help employers and employees resolve disputes at work.

See the last section of this booklet for contact details for these organisations.

## 6. Promoting disability equality

As well as having duties towards individual disabled people, education providers also have a duty to promote equality for all disabled people (and other protected characteristics) under the Public Sector Equality Duty. This came into force in 2011 under the Equality Act, and replaces the race, disability and gender equality duties.

### What is the Public Sector Equality Duty?

The aim of the Duty is to help public sector bodies think about how to positively promote equality and prevent discrimination happening in the first place, rather than simply responding to cases after they occurred.

The Duty requires equality to be considered in all the functions of public authorities, including decision-making, in the design of internal and external policies, and in the delivery of services.

The duty imposes 3 '**general duties**' on all public bodies, and a range of '**specific duties**' on certain public bodies (including education providers).

### The 'general duties'

The law requires all public sector bodies who are subject to the Duty to have due regard to the need to:

#### ***(i) Eliminate unlawful discrimination, harassment and victimisation, and other unlawful conduct.***

This will involve ensuring that all policies, practices and procedures are non-discriminatory, and that staff are fully aware and receive appropriate discrimination training relating to the Equality Act.

***(ii) Advance equality of opportunity between people who share a protected characteristic and those who do not.***

The Act explains that this involves:

- removing or minimising disadvantage suffered by people due to their characteristics
- taking steps to meet the needs of people with certain protected characteristics where these are different from the needs of other people
- encourage people with certain protected characteristics to participate in public life or in other activities where their participation is disproportionately low.

***(iii) Foster good relations between people who share a protected characteristic and those who do not.***

The Act explains that this means tackling prejudice and promoting understanding between people from different groups.

The Duty also requires public bodies to take steps to take account of disabled people's impairments, and may involve treating some people more favourably than others.

**The 'specific duties'**

The purpose of the specific duties is to help those authorities who are subject to them in their performance of the general equality duty. These include:

**(i) Duty to report on mainstreaming the equality duty**

Public bodies are required to publish a report on the progress they have made to their duties under the general equality duty. These reports need to be published every two years, and must include (if not published previously):

- an annual breakdown of the information the authority has gathered under its duty to gather and use employee information; and
- details of the progress that it has made in using that information to enable the authority to better perform the general equality duty.

### **(ii) Duty to publish equality outcomes and report progress**

Public bodies must publish a set of equality outcomes which it considers would enable it to better perform the general equality duty. These must be published every 4 years, and in doing so, public bodies must take reasonable steps to involve people with protected characteristics and take account of any relevant evidence. If a set of outcomes does not further the needs of the general equality duty in relation to every relevant protected characteristic, the public body must publish the reasons for this. Reports on the progress made to achieve the equality outcomes a public body has set must be published every two years.

### **(iii) Duty to assess and review policies and practices**

Public bodies have a duty to assess the impact of new policies or practices (or when revising existing ones), against the needs of the general equality duty. In doing so, they must consider relevant evidence relating to people with protected characteristics.

### **(iv) Duty to gather and use employee information**

Public bodies must take steps to gather information on the composition of its employees, as well as annual information on the recruitment, development and retention of employees with protected characteristics. They must use this information to better perform the general equality duty.

### **(v) Duty to publish statements on equal pay, etc.**

Public bodies must publish statements on equal pay between men and women every four years, as well as information on occupational segregation relating to gender, disability and race. The same 150 employee threshold applies to this duty as to the duty to publish gender pay gap information.

**(vi) Duty to consider award criteria and conditions in relation to public procurement**

Where public bodies are carrying out a public procurement exercise, they must have due regard to whether their award criteria should include equality considerations to help them meet the Duty.

**(vii) Duty to publish in a manner that is accessible, etc.**

If a public body has existing public performance reporting systems, it is required to use these to publish its:

- report on mainstreaming the equality duty
- set of equality outcomes and report on progress made to achieve these outcomes
- gender pay gap information
- statement on equal pay and occupational segregation.

These reports must be accessible to the public.

**Further information**

You can get further information on the Public Sector Equality Duty from the [Equality and Human Rights Commission website](#).

## 7. Useful Publications and Contacts

### Useful Publications

#### Lead Scotland guides

Lead Scotland has a range of information guides and factsheets on our website, including:

- Post-School Learning Choices in Scotland
- Higher Education in Scotland
- Lead Scotland/Scottish Government guide: Supporting You at College: A guide for people with additional support needs in Scotland's Colleges
- Lead Scotland/Scottish Government guide: Arranging Support Workers in Higher Education

You can access all of the [Lead Scotland guides here](#).

Freephone Helpline: 0800 999 2568.

Available Monday, Wednesday & Thursday 2pm-4pm and Tuesday & Friday 10am-12pm.

Email: [info@lead.org.uk](mailto:info@lead.org.uk)

Textphone: (18001) 0131 228 9441

[Lead Scotland helpline page](#)

#### Disability Rights UK booklets

A range of information booklets are available on the Disability Rights UK website, including:

- [Adjustments for disabled students](#)
- [Careers and work for disabled people](#)
- [Funding from Charitable trusts](#)
- [A range of booklets on welfare benefits](#)

Disability Rights UK also produce a Handbook. The handbook is a guide to rights, benefits and services for all disabled people, their families and carers. The handbook is available to purchase from the [DRUK online shop](#).

Telephone: 020 7250 818

Email: [enquiries@disabilityrightsuk.org](mailto:enquiries@disabilityrightsuk.org)

[Disability Rights UK Website](#)

## **The Equality Act**

Copies of the Act are available from [The Stationery Office's online shop](#).

## **Guidance**

The Equality and Human Rights Commission has produced practical guidance together with examples which explains the Equality Act. You can find this on the [Equality Act guidance section of the EHRC website](#).

There are also Codes of Practice on Education, Employment, Services and Equal Pay. They explore each clause in technical terms and are useful for lawyers, advocates and human resources experts. The other guidance documents are mainly for legal professionals but it may be useful to refer to the education guidance document (non-statutory Code of Practice). This can be used as a guide for individual cases.

## **Information on student funding**

### **GOV.SCOT**

The Scottish Government has published a [Costs of learning: student funding guide](#), for learners and students including those going to college or university.



## **Lead Scotland**

Lead Scotland has a factsheet explaining [Disabled Students' Allowance](#). This is extra funding available to eligible students who are studying at higher education level.

## **SAAS**

The [Students Award Agency for Scotland](#), an agency of the Scottish Government, gives financial support to eligible students doing a course of higher education in the UK.

## **Colleges**

Many colleges have a section of their website dedicated to student funding. Search on college websites to find more information about the financial support available.

## **ILF Transition Fund**

[ILF Scotland](#) provide funding to young disabled people living in Scotland aged 16-25, to support with the transition into adulthood. Up to £7,500 is available for a maximum of one year and the money can be used for a variety of costs related to trying new activities and experiences. The funding could be used towards tuition fees for private courses, travel training, driving lessons and much more.

## **Individual Training Accounts (ITA)**

Individual Training Accounts are available via Skills Development Scotland. They provide funding towards a training course for eligible learners. The fund is limited and can sometimes run out early in the financial year. To request an application for an Individual Training Account, call the free helpline or visit their website.

Telephone: 0800 917 8000

Textphone: 0141 573 4883

Email: [ITA@sds.co.uk](mailto:ITA@sds.co.uk)

[Individual Training Account Website](#)

## **Information on welfare benefits**

### **GOV.UK**

UK Government website containing useful information on:

- support and services for disabled people
- legislation
- welfare benefits and tax credits
- support for carers

[GOV.UK website](#)

[Carers and Disability Benefits page](#)

[Disability Service Centre helpline page](#)

### **Carer's Allowance Unit**

For general enquires about Carer's Allowance.

Telephone: 0800 731 0297

Textphone: 0800 731 0317

[Carer's Allowance Unit Website](#)

### **Jobcentre Plus**

Disability Employment Advisors (DEAs) are based at your local Jobcentre Plus. You can search for the contact number of your local Jobcentre Plus on the [Jobcentre Plus website](#).

### **Lead Scotland**

The [Lead Scotland website](#) provides links via their guides page to various Child Poverty Action Group Student & Benefit factsheets, which provide information about benefits for students.

### **Turn2Us**

For advice on disability, sickness benefits, carers' allowances and grants. Contact can be made through [the contact form on the Turn2Us website](#). There is also a [Benefit Calculator](#) on the Turn2Us website that allows you to check your benefit entitlement and you can search for welfare advice services in your local area. For more information visit the [Turn2Us website](#).

## **Information on learning opportunities**

### **Lead Scotland**

Lead can provide you with advice on learning opportunities, support for disabled students, financial support, and information and advice on disability discrimination and complaints.

Freephone Helpline: 0800 999 2568

Textphone: (18001) 0131 228 9441

Email: [info@lead.org.uk](mailto:info@lead.org.uk)

[Lead Scotland Website](#)

### **Skills Development Scotland**

Skills Development Scotland (formerly known as Careers Scotland) can provide advice about learning and training opportunities, careers advice and employment.

Helpline: 0800 917 8000

Search for your local Careers centre on the [Skills Development Scotland website](#).

Search for learning and training courses on the [My World of Work website](#).

### **Hot courses**

Search engine which allows you to search for vocational and hobby paid courses in the UK, and online courses from around the world.

[Hot Courses Website](#)

# Support for disabled people

## Enquire

Enquire is the Scottish advice service for additional support for learning at school.

Helpline: 0345 123 2303

Telephone: 0131 313 8800

Email: [info@enquire.org.uk](mailto:info@enquire.org.uk)

[Enquire website](#)

## Disability Information Scotland

Disability Information Scotland covers a wide range of topics related to disabled people and their website has a database of disability related services available across Scotland.

Helpline: 0300 323 9961

[Disability Information Scotland website](#)

Email through the [contact form](#) on the Disability Information Scotland website.

## Disability Rights UK

A range of information guides are available online at the [Disability Rights UK website](#) including:

- [Adjustments for disabled students](#)
- [What counts as a disability](#)
- [Telling people you're disabled: clear and easy guide for students](#)

Disability Rights UK also produce a Handbook. The handbook is a guide to rights, benefits and services for all disabled people, their families and carers. The handbook is available to purchase from the [DRUK online shop](#).

Telephone: 020 7250 818

Email: [enquiries@disabilityrightsuk.org](mailto:enquiries@disabilityrightsuk.org)

## **Equality Advisory and Support Service**

Information, advice and resources including letter templates if you think you have been discriminated against.

Helpline: 0808 800 0082

Textphone: 0808 800 084

[EASS website](#)

## **General information**

### **Scottish Public Services Ombudsman**

If you are not satisfied with the outcome of a formal complaint to an institution, contact the Scottish Public Services Ombudsman.

Freephone: 0800 377 7330

Telephone: 0131 225 5300

[Scottish Public Services Ombudsman website](#)

### **Office of the Independent Adjudicator for Higher Education**

For cases involving the Open University or if you are attending a university in England or Wales, if you are not satisfied with the outcome of a formal complaint contact the Office of the Independent Adjudicator.

Telephone: 0118 959 9813

Email: [enquiries@oiahe.org.uk](mailto:enquiries@oiahe.org.uk)

[Office of the Independent Adjudicator website](#)

### **Advisory, Conciliation and Arbitration Service (ACAS)**

ACAS aims to improve organisations and working life through better employment relations. They provide free initial advice on employment queries in England, Scotland and Wales.

Helpline: 0300 123 1100

Text Relay Service: 18001 0300 123 1100

[ACAS website](#)

### **Citizens Advice Bureaux (CAB)**

Citizens Advice Bureaux are local, independent charities that provide free and confidential advice and information whoever you are and whatever your problem. Your local CAB should be listed in the telephone directory and details are also on the national website.

[Citizens Advice Scotland website](#)

### **National Union of Students Scotland**

NUS Scotland represents around 500,000 students in Scotland through member college and university students' associations. They work to promote, defend and extend the rights of students and to champion strong students' associations.

Telephone: 0300 303 8602

Email: [mail@nus-scotland.org.uk](mailto:mail@nus-scotland.org.uk)

[National Union of Students Scotland website](#)

### **Scottish Legal Aid Board**

The Board does not give legal advice and can only put people in touch with legal aid lawyers.

Telephone: 0131 226 7061

Email: [general@slab.org.uk](mailto:general@slab.org.uk)

[Scottish Legal Aid Board website](#)

For information and advice on the issues discussed within this guide, contact the Lead Scotland Disabled Students Helpline & Information Service at:

Helpline: 0800 999 2568

(Mondays, Wednesdays & Thursdays from 2pm-4pm and Tuesdays & Fridays from 10am-12pm)

[Lead Scotland helpline website page](#)

Email: [info@lead.org.uk](mailto:info@lead.org.uk)

**Lead Scotland, 2019**