

Access to the Built Environment

Disability Discrimination Act 1995: British Standard 8300 - 2001, Design of buildings and their approaches to meet the needs of disabled people – code of practice; British Standard 5588: 1999 edition, Means of escape for disabled people.

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Introduction

There have been several attempts to produce UK legislation which was intended to address physical barriers to disabled people in the built environment, despite this until recently access for disabled people to buildings, work and leisure was not a right under UK law. Much of the access to services and employment in the past has relied on the goodwill of the providers. Existing legislation that covers access to buildings need not take full account of all the needs of disabled people.

The most recent UK legislation that attempts to address both civil rights for disabled people and access to services and employment is the Disability Discrimination Act 1995 (DDA). This is an enabling Act with various sections to be phased in over a number of years. Whilst this latest Act has the potential to address some of the concerns of the disability rights movement with regards to civil rights for disabled people, there is no certainty that it will, and ongoing research and evaluation is necessary to assess how effectively The DDA and other related statutory legislation and guidance documents are being implemented:

‘ Most Western nations have now enacted laws and codes that aim to improve the physical accessibility of cities for all users (Imrie, 1996b). Such regulations recognise the specific (and long ignored) mobility needs of disabled people (Napolitano, 1996). While a considerable evaluation literature has emerged within Western nations to assess aspects of these legislative initiatives, such as policy coherence and the adequacy and consistency of design standards, there has been little social theoretical analysis of how these regulatory regimes have fared in practise. In particular, the issues of regulatory compliance, and the political economic context for this, have rarely been addressed’ (Gleeson 1999 pg 173).

The Disability Discrimination Act 1995

The ‘Disability Discrimination Act 1995’ has the potential for positive change but gives only general guidance as to what might be required to fully meet the requirements of the Act. The legislation is civil law that gives an individual the right to take action against an organization if the disabled person feels they have been discriminated against because of their disability.

It was recognized in a report by the Disability Rights Task Force issued in December 1999 ‘From Exclusion To Inclusion’ (one) that ‘The lack of an enforcement body responsible for ensuring compliance with disability rights legislation was perhaps one of the greatest flaws in the DDA’ From this report the government responded with a white paper ‘Promoting Disabled Peoples Rights: Creating a Disability Rights Commission fit for the 21st Century’ This resulted in the Disability Rights Commission Bill receiving Royal Assent in July 1999 and the disability rights commission being established in April 2000.

The DDA has no specific technical compliance document as it is intended that the duties will evolve as the courts determine cases. With no compliance document it also allows the requirements of the DDA to change inline with changes in national best practice guidelines with regard to disability so as time passes these may be encompassed naturally into the embrace of the Act.

There are relationships between Building Regulations Part M (two) (control of certain aspects of access design in buildings) and the Workplace - Health, Safety and welfare Regulation 1992, the Disability Discrimination Act 1995 and the Disability Discrimination (Employment) Regulations 1996.

At present the controls over improving access to the built environment are very limited via Approved Document M of the Building Regulations (1999 edition) and there are many aspects to the relationships with this legislation that are still unfolding. To follow the guidance within the approved document M is not a requirement for satisfying duties under 6 (employment) and 21 (service provision) of the Disability Discrimination Act 1995 to make adjustments to premises. Under regulation 8 of Disability Discrimination (employment) Regulations 1996 an employer will not be required to alter any physical characteristic included in a building that was adopted with a view to satisfying the requirements of Part M and met those requirements at the time of the building works. This exemption only applies up to 30th September 2004. From 1st October 2004 there are some changes to the duty to make reasonable adjustments and coverage is extended to all employees (irrespective of number of employees). Depending on the nature of the organisation concerned, the revised duty of reasonable adjustment is set out in sections 4A, 4B(5), 4B(6), 4E, 6B, 7B, 7D, 14, 14B, 14D and 16A (5) of the DDA as amended by the Disability Discrimination Act 1995 (Amendment) Regulations 2003 (SI 2003/1673).

The new DDA code of practice for rights of access to goods, facilities and services states that any element of a building works that has been constructed to the current Approved Document M Standard that was in force when the works were undertaken, that element will not have to be removed or altered for 10 years from the date of its completion. This exemption only applies to building works undertaken after October 1st 1994. The exemption allows a 10 year period where adjustments will not have to be made to any physical feature (from when it was constructed or installed) that accords with the relevant objectives, design considerations and provisions in the 1992 or 1999 editions of Approved Document M subject whichever was the effective edition when the works were undertaken. This exemption at present does not apply to the 2004 edition of Approved Document M. Extending the exemption to cover this document is to be considered sometime this year (no date has been fixed). If the extension of the exemption is not agreed before 1st May 2004 when the new 2004 edition of Approved Document M comes into force it might prove very difficult in terms of remembering what applies when.

The Disability Discrimination Act defines who will be deemed disabled for the purposes of the Act (three) and covers a number of areas including.

- **Employment**
- **Access to goods and services**
- **Buying or Renting land or property**
- **Education through 'The Special Educational Needs and Disability Act 2001' that amends section 28 of the DDA to cover pupils and students at schools colleges and universities**

- **The act also allows the Government to set minimum standards to allow disabled people to use public transport.**

The implementation of these sections is being phased in over a number of years with relevant general guidance being released accordingly. The first section implemented was Employment in 1996 and there have been numerous court decisions within this area of the Act. From these decisions it is becoming possible to form an understanding of how the courts will view future cases with regard to discrimination of disabled people within employment. The Disability Rights Commission has published details of many of these court decisions. The section of the DDA covering access to goods facilities and services has been partially implemented with final elements of this section still to be implemented. There is a requirement to:

- Provide reasonable adjustments to policies, procedures or practice which exclude disabled people (now enabled).
- Provide auxiliary aids and services to enable or to make it easier to use a service and where there is a physical barrier to a service, provide a reasonable alternative method of delivering the service (now enabled).
- The final stage of this section is due to be implemented in Oct 2004. Where a physical feature makes it impossible or unreasonably difficult to make use of that service, service providers will have to take reasonable steps to remove, alter or avoid it if the service cannot be provided by a reasonable alternative method.

With the service provision element of the DDA not fully implemented until 2004 there has been little in the way of case law to fully evaluate what is likely to be seen as a 'reasonable

step' to remove, alter or adjust a physical feature. Whilst there is limited case law on physical adaptations due to this section not being fully implemented there has been a number of court cases taken by individuals regarding attitudes to disability that has restricted or prevented a disabled person accessing a service. Some of the decisions by the courts have found that the service provider had been judged to be operating in a discriminatory manner. A number of examples of these can be viewed on the Disability Rights Commission Web site with a summary of the court or tribunals findings and recommendations/rulings.

With recognition of a need to shift attitudes and perceptions and with new legal powers of enforcement there results a need for major change on a practical level. Part of this practical change is the need for many groups of professionals with influence on decision making for the built environment to begin to look at their own fields of influence. Part of this process is to evaluate how practical change for decision makers is to be guided by existing and future nationally recognized publications which may include: Acts of Parliament, British Standards, Disability Rights Commission Guidelines, Building Regulations, Code of Practise etc. At the moment many of the publications linked to access guidance are in the process of change or have recently been amended. This is all occurring within a relatively short period of time when compared with the previous slow pace of change of access legislation and guidance before the release of the Disability Discrimination Act in 1995. Whilst the information available is much more far reaching and detailed than anything previously available, many of the publications are still only best practice guidelines and not statutory requirements at this moment in time.

Under the access to goods and services section of the DDA, it appears the intention is for the courts to refer to issued codes of practice for more detailed guidance for factors to consider in making any legal judgments. Although it must be pointed out that

the Codes of Practice clearly state that following their guidelines does not automatically grant immunity from prosecution. The DDA has no specific compliance document; the duties required by the DDA will evolve as the courts determine cases. Therefore the implementation of the DDA will be a difficult to predict route of change with no clear idea of how effective the implementation will be and what might be the end result.

'...anti-discrimination legislation is only a means to an end and cannot by itself, provide all the solutions to removing the barriers to disabled peoples full participation in society. As Mike Oliver points out, legislation is only the starting point. In many ways it is the process of implementation which will be the most important (and potentially, the most difficult) challenge to ending discrimination in practice' (Zarb 1995 pg 8).

Codes of Practice

The codes of practice issued by the Disability Rights Commission have been written to provide more detailed advice and examples as to what people might be expected to put into place to comply with the Act in its different areas of operation. There have been more than one code of practice and numerous guidance documents released but these have possibly created as many questions as they have answered which has led to further guidance being published. The Most current Code of Practice was released May 27th 2002. The information so far released has tended to have limited practical guidance for real life scenarios the examples only covering a restricted range of examples.

As the Disability Discrimination Act does not overrule any primary legislation there may be potential for difficulties in interpretation and practical implementation of the DDA when married with other statutory requirements. The most recent code of practice tries to

give some guidance on this. For example in the extract below it explores considerations on how a persons Health and Safety should be measured against any requirements of the Disability Discrimination Act with particular reference to fire evacuation.

- 7.11 The Act does not require a service provider to do anything which would endanger the health or safety of any person. A service provider can justify less favourable treatment or a failure to make an adjustment if it is necessary in order not to endanger the health or safety of any person, including the disabled person in question.*
- 7.12 The justification cannot apply unless the service provider reasonably believes that the treatment is necessary in order not to endanger the health or safety of any person. Health or safety reasons which are based on generalisations and stereotyping of disabled people provide no defence. For example, fire regulations should not be used as an excuse to place unnecessary restrictions on wheelchair users based on the assumption that wheelchair users would be an automatic hazard in a fire. It is for the management of the establishment concerned, with advice from the licensing authority or local fire officer, to make any special provision needed. Service providers should ensure that any action taken in relation to health or safety is proportionate to the risk. There must be a balance between protecting against the risk and restricting disabled people from using the service. Disabled people are entitled to make the same choices and to take the same risks within the same limits as other people.*
- 7.13 As indicated in paragraph 7.11 above, before a service provider relies on health or safety to justify less favourable treatment of a disabled person, it should consider whether a reasonable adjustment could be made which would allow the disabled person to access the service without concerns*

for health or safety. Similarly, if health or safety is used to justify a failure to make a particular reasonable adjustment, the service provider should consider whether there is any alternative adjustment that could be made to allow the disabled person to use the service.

(DDA Code of Practise 2002

The thrust of the DDA appears to be towards improving civil and physical rights of access for disabled individuals. Turning the theory into practical reality may prove to be a long and torturous road. In some cases to provide acceptable solutions for physical barriers to full access may prove very difficult to achieve in parts of the existing building stock. An area that may fall into this difficult category is fire evacuation. There is only one National standard of reference for means of escape of disabled people which is part 8 of British Standard 5588 (four) which covers a number of fire safety related issues with regard to planning for the safe evacuation of disabled people from a building in the event of an emergency. The application of strategies for the safe egress for disabled people from some buildings is becoming more difficult for the managers of buildings to understand and accommodate. Many existing buildings are being adapted for improved access to allow entry into many areas of buildings that were previously totally inaccessible to many disabled people. This new access brings a constant need to also address the problems of egress to ensure the full safety of all users of a building. It can often be the case that planning for safe egress of disabled people from a building is more difficult to accommodate than safe access into the building. In stating the above it is important to make clear that for the majority of buildings if there is an informed property management with the right attitude there is little that cannot be achieved to open up most or all facilities for everyone.

1999 - BS 5588 Part 8 'Means of Escape for Disabled People.'

Approved document M of the Building Regulations states that *'the scope of Part M is limited to matters of access to, into, and use of, a building'*. It does not extend to means of escape for disabled people in the event of a fire. Approved document M refers to Approved Document B of the Building Regulations, *'fire safety'*, for addressing this aspect of access considerations. Approved document B of the building regulations covering fire precautions in buildings does not cover practical details of evacuation of disabled people. Part B emphasises the importance of management arrangements as a potential solution to provide assisted escape for disabled people, for practical details approved document B refers to BS5588: part 8. This British Standard is not a statutory document but gives guidance and recommendations in the design and management of buildings (other than residential) to allow safe evacuation of disabled people in the event of a fire. The BS was updated in 1999 and made significant new recommendations giving useful if not all covering advice that is still filtering through to practical application. Plans were made to supersede this edition and look at incorporating it into BS 9999 – 2. This new BS was released in draft form to supersede the following Code of Practises from the BS5588 series: parts 1, 5, 6, 7, 8, 9, 10, and 11. The changes would introduce a much more complex guidance document based primarily on the concepts of fire-engineered and individually tailored solutions in fire safety for specific buildings. At present it has been decided to shelve this change. In addition to this British Standard there are a number of additional separate guides for means of escape of disabled people in buildings of a specialised nature, for example hospitals which use HTM81 *Fire precautions in new hospitals, 1996*, HTM85 *Fire precautions in existing hospitals, 1994*. Other premises not covered by BS 5588 Pt 8 include health care premises and those premises purposed built to house disabled people and also single family dwelling houses, flats and maisonettes and buildings used as a house in multiple occupation.

The BS5588 part 8 states:

‘As a code of practise, this British Standard take the form of guidance and recommendations. It should not be quoted as if it were a specification and particular care should be taken to ensure that claims of compliance are not misleading’

The code includes people with hearing or sight loss as well as those with mobility difficulties. It is the intention of the British Standard to give prescriptive guidelines that will prevent disabled people being refused admission to venues. This approach should complement the aims of the DDA in improving access to buildings.

Unfortunately there are gaps in the advice when considering the many differing types of buildings, locations and scenarios. There are shortcomings in the guidance given beyond giving good overall principles of escape management for disabled people. An example of this is the safe evacuation of disabled visitors from basement areas. Many practical scenarios and possible solutions are often absent leaving Building Managers, Access Officers, Building Control Officers and Fire Officers having to attempt to achieve acceptable solutions for evacuation of disabled people from certain building types with no nationally agreed standard. Fire evacuation planning is closely linked to the intention of the Disability Discrimination Act to ensure there is no restriction of disabled people entering and using a building. BS 5588 pt 8 stresses that:

‘Non compliance with all the recommendations of this code should not be used as grounds for excluding disabled people’.

Considering this statement the managers of a building cannot allow a situation to arise where the safety of users is

compromised. All possible scenarios and solutions to provide safe egress have to be explored before a fire evacuation procedure is laid down for any building that includes the needs of all users.

BS 8300 2001 *Design of buildings and their approaches to meet the needs of disabled people – code of practise. (five)*

It is worth noting that BS 5810 (six) has now been withdrawn (*access for the disabled to buildings*). This was one of the first truly practical guidance documents for improving the design of the built environment for disabled people. This was released in 1956 and was very limited in its coverage of physical barriers to access. The new British Standard 8300 has the most up to date practical guidelines to making the built environment accessible to disabled people. BS 5810 was long left behind by demand for improvements because of its very limited application containing only 24 pages. The replacement BS8300 has 167 pages covering a vast range of different design standards to improve access to the built environment including many considerations for sensory impairments that have been lacking in previous guidance notes. The new British Standard is very detailed in the areas it offers advice and covers a large variety of practical design solutions. It is important to recognise both the origins of this document and its legal limitations with regard to meeting obligations under both the DDA and Building Regulations, the forward to this new British standard states:

The design recommendations in this British Standard are, where relevant, based on user trials and validated desk studies which formed part of a research project commissioned in 1997 and 2001 by the Department of the Environment and the Regions. The scope of this research was based on recommendations included in PD 6523, which concluded that the guidance with

respect to the access needs of disabled people was incomplete, in some instances contradictory and, on the whole, not based on validated research.

BS 8300:2001 Foreword page v

‘As a code of practise, this British Standard takes the form of guidance and recommendations. It should not be quoted as if it were a specification and particular care should be taken to ensure that claims of compliance are not misleading’ and also ‘Compliance with a British Standard does not of itself confer immunity from legal obligation’ (BS8300 2001 pg vi).

There is no specific mention within the British Standard 8300 or any of the Disability Discrimination Act guidance documents as to how this new British Standard will interrelate with the Disability Discrimination Act. As there is no direct written linkage between the DDA and BS8300 it is not clear how the BS8300 relates to the Disability Discrimination Act. It could be argued that for many aspects of access design at this point in time the BS8300 is the most current and up-to-date nationally recognised standard for improvements to the built environment for disabled people. Therefore this is the most likely standard people should be looking to for guidance as to what they should be doing to address their obligations under the DDA with regard to physical adaptations. The 2004 Edition Approved Document M when implemented in May 2004 has adopted many of the BS8300 standards and in some cases the standards contained in the Approved Document M are higher than those contained within the British Standard. It would seem that for those standards that are higher, these are additional standards that should be applied to physical adaptations to work towards meeting design requirements under the Disability Discrimination Act.

Conclusion

It can be observed that change is occurring quite rapidly with regard to guidance on access to the built environment and there are continually changing interrelationships between the various pieces of legislation related to disability, the whole process is in a state of gel. There have been a number of prominent people within the disability rights movement state deep reservations regarding the direction that the legislation is leading. Indeed the Disability Discrimination Act 1995 is seen by many disabled people as inherently flawed, Barnes (1998) gave a speech in Sweden in which discussing weaknesses within the Disability Discrimination Act stated

'... the 1995 Disability Discrimination Act in the UK is, to say the least, a mistake' (Barnes 1998).

One of the key issues highlighted in his speech was the use of the medical definition of disability. The question of causality being linked to impairment and not the way society is organised. Because of this definition being adopted he envisaged many disabled people not receiving any benefit or protection under the legislation. Since Barnes made his speech in 1998 there has been a number of changes in the guidelines relevant to the Disability Discrimination Act and proposed changes to associated legislation controlling access to the built environment but the definitions have remained the same. As previously stated there have been numerous guides and booklets released by central government through the Disability Rights Commission to advise on all matters related to the DDA. These various publications have attempted to explain and clarify the current and future position of the Act with regard to its implementation. Whilst there has been some guidance attempting to show how the DDA can co-exist effectively with existing legislation. The reality is that there are still difficulties in finding acceptable solutions to real life situations where there is potential for conflicts between ensuring disabled people are not discriminated against and ensuring

compliance with other legislation. It appears that the fine detail of such considerations has not been fully thought through to practical solutions. This may well prove to be an area of the evolution of the Act, which will form a major part of future case law. In the mean time service providers, access specialists and disabled people are left in a state of uncertainty as to what exactly is an acceptable and 'reasonable' practical solution for all situations to meet all requirements.

It might be argued that the legislation is at present in a state of what might be defined as 'controlled chaos'. When you consider the way legislation has been formulated to address disability access issues in the last 10-15 years it is easy to see how this potential confusion is developing. The lack of a unifying compliance document with many access guide documents newly published or in the process of being changed there are immediate difficulties of interpretation even for those who are seeking to be proactive in bringing about positive change. For those who are dragging their feet it does nothing to encourage a change of attitude. The current Building Regulations 1999 edition of Approved Document M is not adequate to make completely suitable and effective change to all the built environment for both new and existing building stock. The new 2004 edition of Approved Document M substantially improves this situation but is not an all covering control of accessibility in the built environment. Therefore the DDA at present creates an element of doubt as to which are the most appropriate standards to be working to for DDA compliance and what will be accepted as reasonable adjustments if Legal actions are taken. The potential for lack of clarity in implementation and enforcement of the DDA could theoretically slow down the pace of change. Returning to the quote from Zarb (1995) he stated an important part of how the legislation evolves is how effectively it is implemented and that will be a crucial deciding factor in how quickly real change will occur for the full inclusion of disabled people within society.

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