

The Disability Act, 2005 - A Guide for Students & Staff with Disabilities in Higher Education Institutions.

Why was this Act introduced and what does the Act actually do?

The Disability Act 2005 sets out to make significant improvements to the everyday lives of people with disabilities. It forms part of the Government's **National Disability Strategy**, which also includes the Employment Equality Act, 1998, the Equal Status Act, 2000, the Equality Act, 2004, the Education for Persons with Special Educational Needs Act, 2004 and the Comhairle (Amendment) Bill, 2004.

In short, the Act places a number of statutory obligations on **public bodies** (which include Higher Education Institutions) to:

- make public buildings accessible to people with disabilities
- make public services and information accessible to people with disabilities
- be pro-active in employing people with disabilities

It also provides for:

- individual assessment of need and related 'service statements'
- sectoral plans in key service areas
- restrictions on genetic testing
- the establishment of a Centre for Excellence in Universal Design

How is disability defined in the Act?

The definition of disability used in the Disability Act is quite restrictive:

"Disability", in relation to a person, means a **substantial restriction** in the capacity of the person to carry on a profession, business or occupation in the State or to participate in social or cultural life in the State by reason of an **enduring** physical, sensory, mental health or intellectual impairment'

In other words, a person must have a **significant ongoing difficulty** in the area of communication, learning or mobility.

If a student with a disability has a ‘service statement’ what is the college supposed to do with it, and who is responsible for complying with it?

If a student with a disability has a ‘service statement’, it means that the Health Service Executive (HSE), under either the Disability Act 2005 or the Special Educational Needs Act 2004, have carried out an assessment of the student’s **health and/or educational needs**. The ‘service statement’ will simply outline the services that should be provided to the student.

If the college does not meet the relevant services outlined in the statement, then the student can make a complaint to the HSE’s ‘complaint officer’, or an independent ‘appeals officer’ thereafter. The appeals officer is a civil servant in the Department of Health, and therefore separate from the HSE.

Are higher education institutions obliged to ensure that all buildings on their campus are accessible?

By **31st December 2015** all college buildings must comply with Part M of the Building Regulations*, so that students, staff and visitors with disabilities can access the campus with ease and dignity.

There are some exceptions to this rule however. Where a particular building is being used on a temporary basis, or where a building will no longer be used as a public building after three years, then an exception may be granted. Equally, if a building does not justify refurbishment on cost grounds with regard to the use of the building, then this rule may not apply. Strategically important offices such as, the presidents and registrar’s office, as well as offices that students need to access, such as exams, or career’s office should be made accessible.

Heritage sites which include architecturally protected buildings must, in as far as practicable, be made accessible by **31st December 2007**. However, if making the site accessible would compromise the nature of or have an adverse effect on the conservation of the building, then this rule is not applicable.

(* Part M of the Building Regulations deals with access for people with disabilities.)

As a college Administrator, or Lecturer, what obligation is there to provide the information in an accessible format?

Under the Act, **all college personnel** must provide information (such as lecture notes, notices, examination timetables) in an accessible format, if requested by students with a

visual or hearing impairment. This might include the provision of information on tape, Braille or CD for example. Moreover, any publications containing information that may be relevant to students with an intellectual disability, must be provided in a clear language that is easily understood.

What obligation is there on the college to ensure that the service it provides is accessible to everyone?

All colleges should ensure that the service they provide is the same for those with and without a disability, and should be proactive in this regard. To ensure that this happens, each college must have appointed an **'access officer'** by **31st December 2005**. The role of the access officer is to assist people with disabilities access college services in an integrated way. The college should also, where appropriate, get expert advice on the means of making services accessible to students with disabilities.

In cases where a college 'buys in' a particular service, then it is the responsibility of the college, not of the supplier, to ensure that the service is as far as is practicable, accessible. If, for example, a Library leases a number of photocopiers, then the Library must ensure that those photocopiers are accessible, regardless of the fact that they were supplied by an external source.

What redress is available under the Act to students or staff with disabilities who feel they may have been discriminated against?

Students can make a complaint in writing to the president of the college in relation to sections 25 to 29 of the Act, those sections that deal with access to information, access to public buildings and heritage sites, as well as internal and external service provision.

Each college must appoint an **'inquiry officer'** to process such complaints. The inquiry officer will investigate a complaint and report their findings in writing to both the president and the student. If a student is unhappy with the outcome of the complaint, then they can appeal the decision directly to the **Ombudsman**.

Are higher education institutions legally obliged to employ people with disabilities, and what happens if they don't comply?

Third level institutions are now **legally obliged**, to reach a **minimum 3% target** for the employment of people with disabilities, under the Act's definition of disability. In other words this 3% must be made up of staff who have a **significant ongoing difficulty** in the area of communication, learning or mobility.

Under the Act, the **National Disability Authority (NDA)** has been given the authority to monitor public bodies' compliance of this section of the Act. Not only this, but each government department will establish a '**monitoring committee**' which will report annually on the compliance of all public body's employment obligations. This includes third level institutions.

What is meant by “Universal Design”, and what role does the National Disability Authority (NDA) play?

'**Universal Design**' is a concept that all buildings, products and environments should be accessible by everyone, regardless of ability.

By **01st January 2007**, the National Disability Authority (NDA) will establish a Centre for Excellence in Universal Design. It will promote best practice in the design and refurbishment of buildings, and the accessibility of products such as computers and other electronic systems.

Example 1 – Access to College Building

A student who is both visually impaired and has a mobility difficulty, has trouble accessing the president's office, which is situated on the third floor of the building. As a public building, the college is obliged to ensure that the president's office is accessible. This may involve ensuring that such an office is on an accessible floor. The college should also be encouraged to contact the NDA's Centre for Excellence in Universal Design for further information and guidance.

Example 2 – Access to Information

A student with a learning disability has difficulty comprehending the college's admissions policy document, recently updated by the admissions office. The admissions office is legally obliged to produce this information in a way that can be easily understood by students with learning disabilities. Equally, the document must be provided in an accessible format (e.g. CD or Braille) if requested by a student with a visual or hearing difficulty.

Example 3 – Access to Employment

In preparing its report to the National Disability Authority regarding the level of employment of people

with disabilities in the college, the personnel department decide to include members of staff who have minor disabilities. This will not be acceptable. Under the Act, only those who have a **significant ongoing difficulty** in the area of communication, learning or mobility can be included in meeting its 3% obligation.

Where can I find out more information?

For further information on the **Disability Act 2005**, see www.oireachtas.ie/documents/bills28/acts/2005/a1405.pdf

For further information on the Employment Equality Act, 1998, the Equal Status Act, 2000, the Equality Act, 2004, the Education for Persons with Special Educational Needs Act, 2004 or the Comhairle (Amendment) Bill, 2004 see www.oireachtas.ie

Are there any useful addresses?

Equality Tribunal, 3 Clonmel Street, Dublin 2

Tel: 01 477 4100
Lo-Call: 1890 34 44 24
Fax: 01 477 4141
Email: info@equalitytribunal.ie
Website: www.equalitytribunal.ie

National Disability Authority, 25 Clyde Road, Dublin 4

Tel: 01 6080400
Fax: 01 6609935
Email: nda@nda.ie
Website: www.nda.ie

The Equality Authority, 2 Clonmel Street, Dublin 2

Public Information Centre: Locall 1890 245 545
Telephone: 01 4173333
Text Phone: 01 4173385
Fax: 01 4173331
Website: www.equality.ie

The Office of the Ombudsman, 18 Lower Leeson Street, Dublin 2

Tel: 01 639 5600
Lo-call: 1890 223030
Fax: 01 639 5674
Email: ombudsman@ombudsman.gov.ie
Website: www.ombudsman.gov.ie



Association for Higher Education Access & Disability

AHEAD – Association for Higher Education Access and Disability

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This leaflet was compiled by Claire Byrne on behalf of AHEAD. Special thanks to Shivaun Quinlivan, Faculty of Law, NUI Galway.

This leaflet is intended to provide general information and is not intended to provide legal advice or legal interpretation of the Act

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CHY No. 9999 Co Reg No 317562