



## **Revised Staff Guidance Booklet**

### **Special Educational Needs and Disability (NI) Order 2005 (as amended)**

**2021**

## Introduction

This extension to the Disability Discrimination Act 1995 (DDA) relates to **the way** in which **the University** admits and **provides education** (and associated services) to **prospective, current and former disabled students** (including previously disabled students). As such, it places duties on the University to anticipate and make reasonable adjustments to facilitate access to education, vocational training and educational services by disabled students.

The provision of goods, facilities, services and premises to disabled customers (DDA III) is considered in the Staff Guidance Booklet 'Rights of Access, Goods, Facilities, Services and Premises'.

Guidance on how to develop competence standards is considered in the Staff Guidance Booklet 'Developing Competence Standards'. These and other staff guidance booklets can be found at: [ulster.ac.uk/peopleandculture/employee-benefits/equality-diversity/equality-policies-and-guidance](http://ulster.ac.uk/peopleandculture/employee-benefits/equality-diversity/equality-policies-and-guidance).

The purpose of this booklet is to provide information about:

- The duties placed by SENDO on those providing education, vocational training and associated services to prospective, current and former students;
- The concept of reasonable adjustments with specific reference to overcoming barriers to access to University courses and associated student services; and
- The implications of the SENDO duties for Ulster University.

This booklet draws on guidance provided by the Equality Commission for Northern Ireland (ECNI), and the Equality and Human Rights Commission for Great Britain (EHRC).

## **General points**

As from 1 September 2006, the University is prohibited from discriminating against prospective, current and former disabled students in their admissions and qualifications arrangements and in the education, vocational training and associated services it provides. In addition, the University will have to take reasonable steps to ensure that disabled students are not placed at substantial disadvantage, in comparison to those who do not have a disability, in relation to the education, vocational training and associated services provided to them.

The main points arising from the Order are:

- It amends the Disability Discrimination Act 1995 (DDA);
- It applies to the whole range of activities and services provided wholly or mainly for students, from admissions through to graduation, alumni and careers services;
- It protects all students<sup>1</sup> (including applicants<sup>2</sup>, current and former students, and students who have previously been disabled within the terms of the Act) from discrimination. It also protects non-disabled students from victimisation.

## **DDA definition of disability**

According to the DDA, an adult or child is disabled if he or she has a physical or mental impairment that has a substantial (more than minor or trivial), adverse (detrimental) and long term effect (lasting or expected to last for at least a year) on his or her ability to carry out 'normal' day to day activities.

The definition includes people with:

- Physical disabilities or mobility impairments;
- Visual impairment;
- Hearing disabilities;
- Speech disabilities;
- Learning disabilities;
- Dyslexia, or other learning difficulties;

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<sup>1</sup>A student is a person who is attending, or undertaking a course of study, at an educational institution. Students include full and part-time students, postgraduates and undergraduates, home, EU and international students, students on short courses and taster courses, students taking evening classes and day schools, distance and e-learning students and students undertaking only part of a course or visiting from another institution.

<sup>2</sup> Applicants and potential applicants include those attending open days or interviews, receiving a prospectus or those targeted by recruitment drives and outreach work.

- Medical conditions (unseen impairments such as heart condition, asthma, epilepsy), including AIDS, cancer, and Multiple Sclerosis from point of diagnosis); and
- Mental ill-health (for example, depression, bi-polar disorder).

Persons who have had a disability in the past are also considered to be disabled under the DDA, even if they no longer have the disability.

The following conditions are not considered to be disabilities under the Act:

- Addiction to alcohol, nicotine or non-prescribed drugs;
- Seasonal allergic rhinitis (e.g. hay fever) except where it aggravates the effect of another condition;
- Tendency to set fires;
- Tendency to steal;
- Tendency to physical or sexual abuse of other persons;
- Exhibitionism;
- Voyeurism; and
- Disfigurements which consist of a tattoo (which has not been removed), non-medical body piercing, or something attached through such piercing.

### **SENDO definition of discrimination**

According to SENDO, disability discrimination can be:

- **Direct.** This is where a disabled person is treated less favourably than someone else **because they are disabled**, regardless of whether or not the University is aware of their disability. This includes refusing to provide (or deliberately not providing) any service which is offered or provided to members of the public; or providing a service of a lower standard or in a worse manner: or providing service on worse terms. Direct discrimination can never be justified;
- **Disability - related.** This is where someone is treated less favourably than someone else **for a reason related to his/her disability**, regardless of whether or not the University is aware of their disability. Disability-related discrimination can only be justified once the reasonable adjustment duty has been considered and no adjustments have been found to be effective. Disability-related discrimination can be objectively justified in the application of competence standards;
- **A failure to make a reasonable adjustment** for the benefit of a disabled person; and
- **Victimisation**, regardless of whether or not the person victimised is a disabled person. This is where a person treats another person less favourably than they would treat someone else in the same circumstances because the victim has brought proceedings under SENDO or the DDA

(whether or not proceedings are later withdrawn), or given evidence or information in connection with such proceedings, done anything else under SENDO or the DDA, or alleged someone has contravened SENDO or the DDA (whether or not the allegation is later dropped).

Under SENDO, it is also unlawful to **harass** disabled students, prospective students and former students.

### **Definition of harassment**

According to SENDO, harassment will occur where, for a reason related to a disabled person's disability, a person engages in unwanted conduct which has the purpose or effect of violating a disabled person's dignity, or of creating an intimidating, humiliating or offensive environment for that person.

It is important to note that it is the **purpose** or **effect** of the behaviour rather than the motive, which must be considered, even when there may have been no intention to subject someone to harassment.

### **Competence standards**

Competence standards are defined as 'academic, medical, or other standards applied on 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'. They should be applied equally to **all applicants** for a course and must be '**objectively justified**' (i.e. there must be supporting evidence to demonstrate that the standard is genuinely necessary and fundamental of the qualification in order to ensure competency and proficiency, and that all reasonable alternative standards have been investigated).

Competence standards are intended to replace existing 'entry requirements' for a course, promote inclusivity and enable, rather than restrict entry to, or unlawfully discriminate against, disabled students/applicants.

There is no duty to make reasonable adjustments in respect of the application of a competence standard. This means that the University is not required to alter a competence standard for any individual. However, it may need to consider making a reasonable adjustment to the process by which a competence standard is assessed.

Further information about competence standards is provided in the University's 'Developing Competence Standards Staff Guidance Booklet'. Electronic copies of this document can be found at: [ulster.ac.uk/peopleandculture/employee-benefits/equality-diversity/equality-policies-and-guidance](http://ulster.ac.uk/peopleandculture/employee-benefits/equality-diversity/equality-policies-and-guidance)

## **Other unlawful acts**

SENDO also prohibits the following forms of discriminatory behaviour:

- Instructing another person, or putting pressure on them, to discriminate against a disabled person (for example, by instructing someone not to admit a disabled person to a course); and
- Publishing or causing to be published a discriminatory advertisement, unless competence standards apply (for example, by stating that the success of a person's application for a course may depend on that person not having a disability, or that the person determining the application is reluctant to make reasonable adjustments).

## **Coverage**

The Order applies to:

- The applications process, student admissions, enrolment and induction;
- All aspects of teaching and learning, including tutorials, lectures, seminars, lab work, practical sessions, arranging study abroad, work placements or fieldtrips;
- E-learning and distance learning;
- Curriculum design;
- Examinations and assessments;
- Graduation and certificate ceremonies;
- Research degrees and research facilities;
- Exclusions;
- Short courses, day or evening adult courses, training courses;
- All facilities/learning resources and equipment/materials such as class handouts, laboratory equipment, computer facilities, classrooms, lecture theatres, labs etc;
- Libraries, learning centres, information centres and their resources;
- All student services provided or offered, including careers advice, training and careers libraries;
- Placement finding services;
- Job references (see the University's Disclosure Guidelines for further information on providing information on attendance);
- Alumni services and reunions;
- Marketing, including accessible websites, advertising, promotional events/activities and open days;
- Leisure, recreation, entertainment, catering, childcare and sports facilities;
- Health, counselling, chaplaincies and prayer areas, welfare services, residential accommodation and accommodation finding services;

- Services provided by frontline staff (such as reception, security staff, porters, residential assistants, cleaning staff);
- Aspects of the physical environment such as buildings, landscaping and equipment (included in DDA III);
- Car parking; and
- Procurement.

This list is not exhaustive.

## **Reasonable adjustments**

The concept of reasonable adjustments requires the University to take reasonable steps to ensure disabled students are not placed at a 'substantial' disadvantage, i.e. **where it is impossible or unreasonably difficult for a disabled student to use its services**. A reasonable adjustment might involve:

- Changing standard institutional procedures, such as admissions procedures and terms attached to offers of admission, enrolment procedures and examination and assessment methods;
- Adapting the curriculum (course content, work placements, use of electronic or other materials), or modifying the delivery of teaching and/or assessment method;
- Providing additional services (any kind of aid or service, including teaching and information), whether temporary or permanent, such as a sign language interpreter or materials in alternative formats;
- Training staff to work with disabled students and to provide appropriate adjustments, for example, allowing more time to serve a disabled student;
- Encouraging staff to acquire additional skills in order to communicate effectively with disabled students, for example, in order to communicate with hearing impaired students and those with speech impairments; and
- Altering the physical environment (DDA Part III).

It is important to note that:

- This duty applies to all students at large (including applicants from other countries), regardless of whether the University knows that a particular student is disabled or whether it currently has disabled students;
- Disabled people are a diverse group with different requirements;
- Not all disabilities/impairments are visible; and
- The effects of a disability may vary or change over time.

## **This is an anticipatory and a reactive duty**

This means we cannot simply wait until a student with a particular requirement arrives and then make the adjustments. We should prepare and anticipate the

different requirements disabled students will have so that they are not placed at a substantial disadvantage. Wherever possible, teaching, learning, research and assessment activities should be designed from the start with the requirements of disabled people in mind (i.e. they should be inclusive). Accessibility requirements should also be built in when designing services.

Once a service provider has become aware of the requirements of a particular disabled student who uses or seeks to use its services, it might become reasonable to take a particular step to meet or 'react to' these requirements. This is especially so where a disabled student has pointed out the difficulty which they face in accessing services, or has suggested a reasonable solution to that difficulty.

## Disclosure

There is no duty on a student to disclose a disability. However, the University is expected to take reasonable steps to find out if a student is disabled. Once a student has disclosed a disability, or once the University might reasonably be expected to know about a student's disability (for example, if it is visible), the institution has a responsibility not to discriminate against that individual<sup>3</sup>.

For some courses there may be particular health and safety requirements that students disclose certain disabilities or conditions. **All students must, therefore, be made aware of the health and safety or legal implications of non-disclosure.** With this in mind, the University needs to provide enough appropriate opportunities for a disabled student/applicant to disclose their disability, for example:

- On application;
- On enrolment;
- When registering for exams;
- When arranging work placements and field trips;
- When requesting accommodation;
- When using the careers service for the first time;
- When joining the library; and
- When registering at the beginning of each year or module.

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<sup>3</sup> The Order says that an institution cannot be held to have unlawfully discriminated if it *did not know* and *could not reasonably have known* that a student is disabled. This defence only applies in individual cases: where an individual student has received less favourable treatment or the institution has failed to respond to his or her needs through provision of a reasonable adjustment. If it is decided that an institution should have anticipated that such a reasonable adjustment should be provided as part of its duty to all disabled people, then ignorance of a particular student's disability is no excuse.



**If these opportunities have not been provided, then it will not be a defence to say we did not know about a student's disability.**

This also raises issues about whom the disabled student chooses to disclose to. Once a responsible person in the University has been told, it may be that collectively the institution is deemed to know that the student is disabled. It is, therefore, essential that the Student Wellbeing team is made aware of all disabled students/applicants.

All disabled students/applicants should be encouraged to inform the Student Wellbeing team of their disability so that any additional requirements can be addressed.

Once a student has disclosed a disability and has provided written confirmation that information relating to their disability can be passed on to relevant staff, staff must pass on the disability information, as agreed with the student, as soon as possible. It is **not** the student's responsibility to tell every member of staff about their disability. In effect, a student should only have to disclose to a member of staff at the University once.

Additional information on student disclosure can be found at: [Disability Information for New Students - Student Wellbeing \(ulster.ac.uk\)](https://ulster.ac.uk/student-wellbeing/information-for-new-students)

### **Reasonable adjustments and confidentiality**

All reasonable adjustments must be consistent with any request for confidentiality, both in terms of all data protection legislation, and separately within the DDA. The confidentiality request allows a student to limit the scope of who can be informed about their disability and what they can be told (for instance, the disability itself might remain confidential, but additional support requirements might be communicated more widely). A confidentiality request does not absolve the institution of their duty to provide reasonable adjustments, but the range and success of adjustments that can be made may be compromised.

All student disability information should be treated as 'sensitive information' under all data protection legislation. This means that it must be stored in a secure place, be treated as confidential and be disposed of in line with the University's [GDPR Policy](#).

Additional information on confidentiality is provided in the University's 'Disclosure Guidelines'. Electronic copies of these guidelines can be found at: [ulster.ac.uk/peopleandculture/employee-benefits/equality-diversity/equality-policies-and-guidance](https://ulster.ac.uk/peopleandculture/employee-benefits/equality-diversity/equality-policies-and-guidance)

## **This is a continuing and evolving duty**

This means that the University should keep the duty under regular review. Furthermore, the reasonable adjustments provided to students must be reviewed (and may change) periodically to reflect any changes to the student's requirements.

## **Action required**

The following examples of best practice reasonable adjustments are recommended. Whilst some of these are already under consideration, senior officers will need to consider what specific action is required in their area.

## **Written communication**

All course leaflets/documentation, e-mails and any written document in the public domain should:

- Conform with the RNIB's '[Clear Print](#)' guidelines, i.e. be formatted to Arial 12 point, 1 ½ leading (i.e. 1 ½ times the space between the words on a line), left aligned (to make it easier for people with a visual impairment to find the starting point of the next line), where practicable; and
- Be available in alternative formats, i.e. **large** or clear print, audio, Moon and Braille. Large print documents should use a minimum type size of 16 point. A sentence outlining that the document can be made available in alternative formats should be included on all documentation (for example, 'This document can also be made available on request, in alternative formats including Braille and in minority languages to meet the needs of those who are not fluent in English.').

## **Electronic communication**

All web pages/sites, course notes, on-line courses etc should be accessible and comply with the Web Accessibility Regulations 2020 and be World Wide Web Consortium (W3C) approved.

## **Classroom/Teaching practice**

All lecturers should:

- Anticipate providing handouts on coloured paper, or in an enlarged font size if required;
- Anticipate providing lecture notes/slides prior to classes, preferably in electronic format so that they may be adapted as necessary;
- Not walk about whilst teaching, so as to allow someone to lip read;
- Be prepared to wear a microphone or radio aid, and/or allow lectures to be tape-recorded;
- Repeat or summarise any questions which are asked by students;
- Be prepared to provide an auditory equivalent of visual materials, for example, read out the content of slides, graphs, tables to assist students with visual impairment or those recording a lecture;
- Allow time for communicators to rest; and
- Be flexible with teaching and other arrangements to accommodate the use of alternative (assistive) media.

## **On-course assessments**

Adjustments may be necessary to assignments and assessments to enable disabled students to fully demonstrate their learning. Adjustments may include:

- Flexible deadlines for those with variable conditions;
- Support in researching booklists for those unable to 'browse' the library;
- Adjustments to assignments, such as allowing a student to submit a piece of work on video rather than in writing;
- Provision of study skills support covering essay writing or dissertation skills;
- Comments on course work in alternative formats;
- Adjustments to the design or delivery of an examination; and
- Altering the mode of an assessment if a particular method, for example a dissertation, sets up unnecessary barriers.

**All interaction with students should take into consideration that some students may need auxiliary aids, services or an assistant.**

Links to further guidance on how to provide an inclusive curriculum can be found at:

<https://www.advance-he.ac.uk/knowledge-hub/inclusive-curriculum-design-higher-education>

## **Criteria for judging reasonable adjustments**

When considering reasonable adjustments, the University will also take in to account:

- The need to maintain academic standards;
- The need to maintain other prescribed standards (e.g. standards of an external validating body);
- Health and Safety;
- Financial resources available and cost;
- The relevant interests of other stakeholders, including other students;
- The type of service provided;
- Practicality;
- The effect of the impairment on the individual disabled student;
- The amount of disruption caused by taking the steps;
- Money already spent on making adjustments; and
- Other aids or services available/funding.

Courts will take into account:

- Costs, convenience and practicability;
- The total resources of the University;
- The effectiveness of change;
- The financial assistance available; and
- The dignity of the disabled student.

## **Work placements and field trips – Duty of Care**

The University must also ensure that disabled students participating in work placements and field trips as an essential part of their course are not placed at a substantial disadvantage and that there is compliance with Health and Safety guidelines.

The University has a duty to work with the placement partner and ensure that appropriate support is in place. This means that the Placement Tutor must ensure that the relevant disability information, as agreed with the student, is passed on to the placement partner and ensure that any required risk assessments are carried out and reasonable adjustments are put in place, prior to placement. In addition, if the institution becomes aware that a disabled student is being discriminated against whilst on a work placement, then it is responsible for preventing the discrimination continuing or recurring, even if the student has signed a contract with the placement provider.

## **Both the placement partner and the University have a legal responsibility to the disabled student.**

The University must ensure that field trips are fully accessible and that any additional support requirements/resources are readily available prior to the field trip.

## **Professional and qualifications bodies**

Professional and qualifications bodies are also covered by the DDA. As such, they must review the competence standards for all of their qualifications to ensure that the manner in which they are measured does not unnecessarily exclude disabled people from being able to meet them.

## **Staff responsibilities**

All staff have a responsibility to:

- Complete the University's mandatory disability awareness training so that they fully understand:
  - the University's policy on the non-discriminatory (equitable) provision of services;
  - that it is unlawful to discriminate against disabled people;
  - the concept of reasonable adjustments; and
  - the implications to the University of discriminating against a disabled person;
- Ensure that they do not treat a disabled student less favourably than someone else for a reason relating to the student's disability. This applies to everyone who falls within the definition of 'disability' and not just those who appear to be disabled. All staff should therefore concentrate on meeting the needs of each individual student, regardless of whether they are disabled or not;
- Ensure that they do not indirectly discriminate against a disabled student by failing to make a 'reasonable adjustment' when a disabled student is placed, or is likely to be placed, at a 'substantial disadvantage' in comparison with a student who is not disabled;
- Comply with the University's disclosure and confidentiality guidelines and the AccessAbility protocols within the Student Wellbeing team;
- Assist in the development of competence standards for their respective courses;
- Provide accessible curricula and associated services, without compromising academic standards. If you teach, you need to consider adopting alternative/additional teaching methods, using alternative formats, providing course materials in advance and appropriate assessment. A good practice guide for accessible curricula is available at:

<https://www.advance-he.ac.uk/knowledge-hub/inclusive-curriculum-design-higher-education>

- Ensure that disabled students are made aware of any reasonable adjustment which has been put in place;
- Establish a means of letting disabled students know how to request assistance;
- Survey existing users for further individual and general requirements for reasonable adjustments;
- Continually review any reasonable adjustments already implemented. Ensure that they are appropriate and effective;
- Anticipate future needs of disabled students;
- Deal effectively with complaints of disability discrimination or harassment by making an initial response to complaints of unlawful discrimination or harassment and referring these to the Head of School/Department; and
- Ensure that any references provided for former disabled students are non-discriminatory, particularly regarding attendance. Further guidance on how to report on disability-related attendance within references is provided in the University's Disclosure Guidelines (located at: [ulster.ac.uk/peopleandculture/employee-benefits/equality-diversity/equality-policies-and-guidance](http://ulster.ac.uk/peopleandculture/employee-benefits/equality-diversity/equality-policies-and-guidance)).

## **Student responsibilities**

All students have a responsibility to:

- Disclose their disability to the Student Wellbeing team so that appropriate adjustments may be discussed. This information will be held in confidence and only disclosed with the student's explicit permission.
- Engage with the Student Wellbeing team and complete an online additional study needs form to provide more information about their needs and medical evidence.
- Apply for Disabled Students' Allowance (DSA) through Student Finance NI (or SFE, SAAS or SFW). Students funded through the Business Services Organisation or HEA (ROI) will be referred for funding approval by the Student Wellbeing team. DSA is additional funding to help students with extra essential costs as a direct result of a disability.
- Engage with the Needs Assessment process when DSA eligibility has been received so that a full assessment of need report can be completed and returned to the funding body for approval.
- Notify the Student Wellbeing team of any concerns about their support as well as changes in their circumstances and/or requirements;
- Comply with Health and Safety regulations.

## Useful links and resources

<https://www.ulster.ac.uk/wellbeing/disability/accessability/new-students>

<https://www.studentfinancenl.co.uk/types-of-finance/undergraduate/full-time/northern-ireland-student/extra-help/disabled-students-allowances/what-are-they/>

The following resources have been used to develop this guidance booklet:

SENDO Amendment Regulations:

<https://www.equalityni.org/Publications/Employers-Service-Providers/Service-providers/SENDO-amendments-to-Code-for-FHE?ID=671>

Disability Discrimination Code of Practice for Further and Higher Education:

<https://www.equalityni.org/ECNI/media/ECNI/Publications/Employers%20and%20Service%20Providers/SENDOCoPforFHE2006.pdf>

Code of Practice (Revised) for providers of post 16 education and related services:

[https://dera.ioe.ac.uk/6466/1/code\\_of\\_practice\\_revised\\_for\\_providers\\_of\\_post-16\\_education\\_and\\_related\\_services\\_dda.pdf](https://dera.ioe.ac.uk/6466/1/code_of_practice_revised_for_providers_of_post-16_education_and_related_services_dda.pdf)

## Further Assistance

Please contact the Student Wellbeing team via 028 9536 7000, email [studentwellbeing@ulster.ac.uk](mailto:studentwellbeing@ulster.ac.uk) or view [www.ulster.ac.uk/wellbeing](http://www.ulster.ac.uk/wellbeing)

Or if you require further assistance or advice in relation to SENDO contact the Section Leader - Equality, Diversity and Inclusion via [ulster.ac.uk/staff/ak-getty](http://ulster.ac.uk/staff/ak-getty)

This booklet is also available on the University's website at:

[ulster.ac.uk/peopleandculture/employee-benefits/equality-diversity/equality-policies-and-guidance](http://ulster.ac.uk/peopleandculture/employee-benefits/equality-diversity/equality-policies-and-guidance)

It can also be made available on request, in alternative formats including Braille, and in minority languages to meet the needs of those who are not fluent in English.