

# Are you all-inclusive?

**Martin McConaghy and Mark Heighton give a brief insight into the planned replacement of the Disability Discrimination Act (DDA) and some of the key issues for built environment professionals**

The Disability Discrimination Acts 1995 and 2005 were both introduced to encourage service providers, transport organisations, employers and education providers to eliminate the discrimination of disabled people, where reasonable to do so. However, this legislation is set to be replaced by a new Equality Act, due to receive Royal Assent in the first quarter of 2010, the bulk of which it is anticipated will come into force in October 2010.

The new Equality Bill is currently under review within the legislative system, and if enacted will become the Equality Act. The proposal is set to bring a wide range of existing discrimination legislation into one single harmonious Act. This is likely to include the following:

- Equal Pay Act 1970
- Sex Discrimination Act 1975
- Race Relations Act 1976
- Disability Discrimination Act 1995 & 2005
- Employment Equality (Religion or Belief) Regulations 2003
- Employment Equality (Age) Regulations 2006
- Equality Act 2006, Part 2
- Equality Act (Sexual Orientation) Regulations 2007.

The proposed Bill will not just consolidate the existing legislation but will simplify and widen some of the existing laws. If enacted, the Bill will refocus attention on equality legislation, which could lead to increased claims for breach of statutory obligations.

The proposed new legislation will see the existing detailed provisions of the DDA relatively unchanged. The main change is a widening of the current test that at the moment focuses on whether a physical feature makes it 'impossible or unduly difficult' for a disabled person to use the service. Going forward, the test will be whether a physical feature places disabled people at a 'substantial disadvantage', which is likely

to lead to a wider range of circumstances triggering the need to make adjustments.

The Equalities Bill is set to widen the equalities agenda to include further 'strands' (see Figure 1).

The changes proposed by the Bill are likely to have several effects on building surveyors and the construction industry as a whole. For example, the existing public sector equality duties will be expanded in relation to public procurement, and greater emphasis will be placed on equality records of potential suppliers when contracts are awarded. Most notably, the Bill may increase the demand for a wider and more auditable form of inclusive design, both in the public and private sectors.

The combined nature of the Bill covers a much wider range of people than the current DDA. Clients, particularly local authority or central government organisations, may well ask how they can reflect the spirit of the proposed legislation in exercising their functions – instead of asking for buildings that comply with the DDA, they may well ask for buildings which comply with the proposed Equality Act.

However, in the same way that we cannot provide a DDA-compliant building because the DDA does not specify the design of buildings but is about human rights, we will not be able to provide an 'Equality Act-compliant building'. But there are some issues that built environment professionals can consider through an understanding of the context of an inclusive design process. For example, should we be providing:

- baby changing facilities for parents with children?
- faith and quiet rooms to allow people to practise religion?
- unisex WCs to allow people not to disclose their physical gender?
- and, will these ideas all become part of the norm?

There aren't any recognised design standards or guidance on these issues but it is clear that understanding the context of a project, and incorporating discussions with clients and users, will become central to successful implementation of the Act. The solutions will vary, for example:

- when designing a new office block without any real 'public' access, a baby change facility or private feeding space is a relatively minor consideration, but in a new school or college that is designed to be the hub of the community it is a much larger consideration
- other than toilets, designing with transgender in mind is not likely to lead to anything more than unisex provisions in an office building. But in a single sex hospital ward environment or single sex student halls it will be a much greater consideration.

In addition to the general considerations presented by the different strands of the legislation, there will be a need to think about crossover between the provisions. For example:

- provision of a quiet or faith room may also need to take into account the needs of people with disabilities, particularly if ablution facilities are to be provided
- provisions such as baby changing and feeding spaces will also need to be accessible to people with disabilities.

There are two things that are certain – there will be conflicts between the requirements of the different strands of equality, and there will be cost and spatial implications – but there will also be benefits for our clients and for the profession.



Figure 1 – The strands to be covered by the Equality Act

## Best practice process for delivering inclusive projects

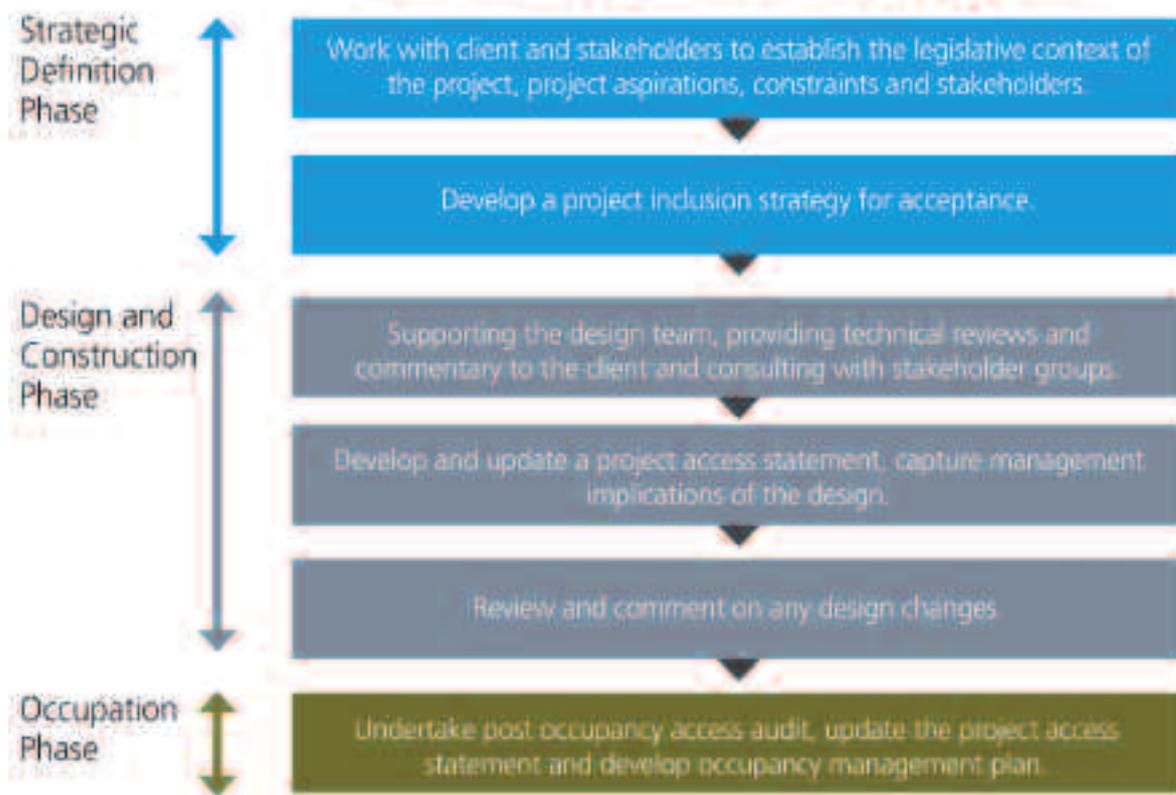


Figure 2 – A best practice approach to inclusive design (source: Disabled Persons Transport Advisory Committee)

For our clients, having inclusively designed buildings that reflect their policies will help them meet their legal duties, but perhaps more importantly there should be more quantifiable benefits. For example:

- providing an office building with facilities for people to undertake religious activity will ensure that staff don't have to waste time travelling to and from other locations, thus making the working day of users more comparable to people who don't practise religion
- in a retail context, provision of good quality family friendly facilities, more accessible features and possibly even more faith-friendly provisions may make the site more appealing to customers, with potential commercial benefits
- in some cases, there may be no perceived need for specific equality provisions at the time of design, but by including provisions in a flexible way (such as providing a room that can be easily adapted for different specific purposes) may help a client avoid potential retrofit costs at a later date. After all, retrofitting accessible design can be up to eight times more expensive than at the design stage.

The potential spending power of some groups covered by the proposed legislation has been quantified – disabled people: approx. £80bn per annum (Source: Department for Work and Pensions, 2004) and the lesbian, gay and bisexual community: approx. £6bn per annum (source: *Liverpool Daily Post* and Out Now Consulting, 2006) – which clearly makes them important groups for property clients to cater for.

So how can we help our clients deal with this area? The answers will lie in the concepts and processes of inclusive design, which are now relatively well established.

Broadly, inclusive design is a concept that puts people at the centre of the design. Its form follows function, but with a more explicit agenda – it aims to create designs that are easy to use, flexible, adaptable and offer

## If enacted, the Bill... could lead to increased claims for breaches of statutory obligations

dignity in use, regardless of any distinguishing characteristics or traits. Figure 2 shows the basis of a best practice approach to inclusive design, based on *Inclusive Projects: A guide to preparing and delivering inclusive briefs to secure access*, by the Disabled Persons Transport Advisory Committee 2003.

From a building surveying perspective, there is likely to be a need for greater awareness of these issues and potential growth for accredited specialists in this field. The RICS Inclusive Environment Consultants Scheme provides clients with accredited experts to help tackle the issues of providing future-proof accessible and inclusive designs that anticipate future legislation and protect organisations from potential litigation claims.

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