

Disability

Framework Directive on Equal Treatment in Employment & Occupation (2000/78/EC)

- Measures to combat discrimination of disability *'with a view to putting into effect in the Member States the principle of equal treatment.'*
- **Article 5** – Provides duty of *'reasonable accommodation'* on employers.
 - o Obligated to take steps to ensure disabled have access to, participate in, have advancements in, and undergo training.
 - o Only exception: If it places a *'disproportionate burden'* on the employer.

Positive discrimination in favour of disabled is permitted (s159 & s13(3))

- *Archibald v Fife Council*
 - o HofL held DDA permitted or obliged employers to treat disabled more favourably. May require transferring to higher position without competitive interview.

The Disability Discrimination Act 1995 (DDA)

- Did not include indirect discrimination.
- DDA never required proof of disability in cases of severe disfigurement.
- Nor, since 2005, is need for proof where diagnosis of HIV, Cancer or MS.
 - o Removing requirement for all cases would allow minor impairments in.
- Strict use of comparator in *Lewisham LBC v Malcolm* caused difficulties.
- Individual registered as a disabled under Disabled Persons (Employment) Act 1944 & whose name appeared on register both on 12 January 1995 & 2 December 1996 treated as having disability for during the period of three years starting on 2 December 1996 (when DDA provisions came into force).
- Applied regardless of whether person met DDA definition during that period.
- Following the end of the 3-year transitional period, persons treated by this provision as disabled are now treated as having a disability in the past.
- *This provision is preserved for the purposes of the Equality Act 2010.*

Equality Act 2010 (Disability)

- Through EqA, Labour Gov. aimed to 'standardise existing definitions & concepts unless there [was] an overriding reason not to'
 - Was always going to create challenges eg.
 - Structural differences between pre-existing leg. For disability (DDA) & leg. Covering other discrimination eg. Sex Discrimination Act 1975 & Race Relations Act 1976 (RRA)
- Extended protection against indirect discrimination to disability
- Introduced "discrimination arising from disability" concept to replace protection under previous legislation lost as a result of a legal judgment
- Applying detriment model to victimisation protection.
- Harmonised thresholds for duty to make reasonable adjustments for disabled.