

# Scottish Disability Team

## **Auxiliary Aids and Services in Higher Education: Guidance Notes May 2003**

These Guidance Notes have been devised to assist Higher Education Institutions to meet their new duties under Part IV of the Disability Discrimination Act 1995 to provide auxiliary aids and services from 1 September 2003. These Guidance Notes are intended to provide general guidance on the law. They do not constitute legal advice and are not an authoritative treatment of the law. Professional advice should be sought before acting on any of the material contained in these Guidance Notes as it may not be appropriate to your circumstances. These Guidance Notes are not intended to be used in place of reading the Codes of Practice or the Disability Discrimination Act 1995. While every care has been taken to ensure the factual accuracy of these Notes, the examples used are, by nature, illustrative and should be treated as such. The Guidance Notes relate only to Higher Education Institutions' obligations in relation to the provision of auxiliary aids and services in education-related services under the Disability Discrimination Act 1995 and do not cover any other obligations which a Higher Education Institution may have under the Disability Discrimination Act 1995 or otherwise.

The Scottish Disability team would like to thank Gavin Simpson [gsimpson@dendrite.fsnet.co.uk] who wrote and devised this document. We would also like to thank all colleagues for their most helpful comments on draft versions of the document. In particular, we are grateful to Lesley Paterson, Thorntons WS Solicitors, for her legal input [lpaterson@thorntonsws.co.uk].

# Auxiliary aids and services in Higher Education: Guidance Notes

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## **Section 1**

### **Introduction: Purpose of the Guidance Notes; Definition of Auxiliary Aids and Services**

In September 2002, the exemption of education- related services from the Disability Discrimination Act 1995 (DDA) was removed through the introduction of the Special Educational Needs and Disability Act 2001 (SENDA). This is now embedded within the DDA as Part IV and places a duty on institutions not to discriminate against a disabled person for reasons related to his or her impairment. Certain sections of the DDA Part IV are already in force, while others have yet to come into force. The duty to provide auxiliary aids and services comes into effect from September 2003. An additional duty to make adjustments to physical features comes into effect from September 2005 and is not covered in this document.

These guidance notes are primarily aimed at those within Higher Education Institutions who carry responsibility for resource planning and capital spending decisions. It is hoped that they may also be of use to academic staff who must decide matters of curricular design and delivery, and to disability co-ordinators and advisers, in the discharge of their role as advisers to the institution regarding the provision of auxiliary aids and services.

The purpose of the guidance notes is to help staff understand the legal responsibilities which will fall upon institutions after September 2003 in respect of provision of these aids and services and to explore issues which arise in connection with this provision.

### **Definition of “auxiliary aids and services”**

No definition of the phrase “auxiliary aids and services” is given in the DDA. It is, however, a technical term of disability discrimination law, beginning life in Part III of the DDA (which relates to service providers) where it is used to designate aids and services which, if provided by

a service provider, would enable or facilitate the use by disabled people of the services provided to the public. (DDA s.21 (4)). The example given in this section of the Act is the provision of information on audiotape or the provision of a sign language interpreter.

From this formulation, it becomes clear that the expression "auxiliary aids and services" does **not** mean certain things. Thus we are not talking about a distinction between core business and ancillary services. For example, a supermarket sells groceries; it may also offer banking services. The banking services do not relate to the provision of auxiliary aids and services under the DDA. Similarly, where a university provides lectures and tutorial services and it also has a printing service and a refectory, the latter are perhaps ancillary to the core higher education services, but they are unlikely to be auxiliary aids and services; they become auxiliary aids and services only to the extent that they make other services accessible to disabled users.

Auxiliary aids and services are likely to be, in the case of Higher Education Institutions, those items and services which, if provided, would enable disabled people to have access to the services offered by the institution, such as lectures, field trips or canteen meals.

## Section 2

### **Auxiliary aids and services are a kind of “reasonable adjustment”**

The DDA Part IV, requires higher education institutions to make reasonable adjustments so that disabled students will not be substantially disadvantaged by reason of their disability. The main requirement to make reasonable adjustments came into force in September 2002.

However, the provision of auxiliary aids and services is a category of reasonable adjustment which does not require to be made until September 2003. Time is given to prepare and embed this category of reasonable adjustments, because they are likely in their nature to be more costly or more far-reaching than other reasonable adjustments.

Intuitively, the difference between ***general reasonable adjustments*** on the one hand, and ***auxiliary aids and services*** on the other, is the difference between

- doing what you do, but in a different way, so that a disabled person is not put at a substantial disadvantage (this is the general obligation to make reasonable adjustments, required from September 2002); and
- doing something else which you never did before but which makes it easier for disabled people to access and enjoy those services which you are primarily in the business of providing (required from September, 2003). In this context “doing something” can include “providing something”; that is when it is more natural to talk about *aids* rather than *services*.

Sometimes the distinction between reasonable adjustments required from September 2002, and the particular class of reasonable adjustments known as auxiliary aids and services, is hard to maintain, and in any case it will lose nearly all of its importance after September 2003. But it is possible to give examples of

what would fall into the category of reasonable adjustments which are clearly *not* auxiliary aids and services, and reasonable adjustments which clearly *are* auxiliary aids and services. The table below is not an exhaustive list and its primary purpose is to highlight the differences between these two categories.

Reasonable adjustments	Reasonable adjustments which take the form of auxiliary aids and services
A lecturer makes a point of not talking to the whiteboard, but of turning and addressing the class	Lecturing staff are issued with and use radio microphones (an auxiliary aid)
A security man, on request of a blind applicant, guides the applicant to the faculty office	Some offices in the university are equipped with facilities for TypeTalk (an auxiliary aid)
The accommodation service issues a mobility impaired student with a key to allow her to use a more convenient entrance to halls of residence	Doors on an accommodation block are fitted with radio-controlled lock and opening devices which mobility impaired students can use to have better access (an auxiliary aid)
An academic department allows a dyslexic student extra time at exams	A note-taker is hired to take notes in lectures for a deaf student (an auxiliary service)
An academic department produces handout materials on coloured paper for the benefit of a dyslexic student	A student with a learning difficulty is provided with software which helps him
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An academic department provides large print examination papers for a visually impaired student

organize his essays (an auxiliary aid) and trained in the use of the software (an auxiliary service)

A blind student who uses a guide dog is permitted to bring the dog into areas of the university where dogs are not in general permitted

A sign language interpreter translates a lecture into British Sign Language (BSL) in real time for the benefit of a deaf student (an auxiliary service)

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## Section 3

### **What counts as an aid, and what counts as a service? When does the distinction matter?**

Generalising from the examples given in the DDA and the Codes of Practice, we can say: auxiliary aids are *things*, while auxiliary services essentially involve *people* in their delivery of a service. A PC with access software is an aid; a librarian finding a book for a blind student is a service.

The distinction between aids and services may have implications of different sorts. Here we will look at three ways in which the distinction may matter:

- (i) in terms of logistics and practical possibilities; some situations call for adjustments that are aids, some for services;
- (ii) in terms of accounting and the stewardship of public money; aids and services are treated differently;
- (iii) in human terms; our relations to other people are symbolically charged in a different way to our relations to things. This reflects upon the way we evaluate recourse to aids and recourse to services.

**In terms of what is possible: there is not always a choice.**

Victor, an archaeology student with a manual impairment, needs a personal assistant to wash and shave. No technological device, it is assumed, is available on the market and there is no realistic possibility of producing one.

On a particular geography field trip lasting several days, students have to make long journeys across moorland. A student with reduced stamina is unable to keep up with the rest of the group, but she is a horsewoman and at her own request is provided with a mule, which carries her and her pack. In this case an aid (the mule) is practically indispensable.

More often, perhaps, it is the case that a choice is available. This is particularly the case where information processing tasks may be done using a computer.

A student with limited upper body movement is to take an examination in mathematics. He is offered the choice of a scribe or an equation editor programme which he can operate using a mouse and a keypad.

### **In terms of accounting**

Accountants will usually treat objects and services differently, which is sensible when you think that an object may have a residual value, whereas a service is nearly always discharged by performance. Thus if you provide an auxiliary aid, it will figure in your balance sheet as an asset unless and until it is written off.

**An auxiliary aid which remains in the institution's asset register:** A university upgrades the campus bus so that it can accommodate wheelchair users. The bus is more expensive than it would otherwise have been, but this is fair enough because it has greater use-value; the additional value will be written off to depreciation over the bus's expected lifetime.

**An auxiliary aid which is written off and given to the student:** A student with manual weakness is finding a laboratory course taxing. The department technician is asked to design and build a suitable armrest so that the student can perform laboratory operations unaided. This auxiliary aid is made of cheap materials, and though it takes time to make and fit (and hence embodies significant cost) the department makes a gift of it to the student, who may use it in other laboratory-based courses. The justification would be that the major element of cost was the time spent on design, which is not lost to the institution since the technician can make a similar jig more easily next time.

**An auxiliary aid which is funded by a third party:** A dyslexic student is assessed for Disabled Student's Allowance (DSA). The Local Education Authority decides to award the student a grant sufficient to buy a computer and peripherals.

Meanwhile the student has started her course and desperately needs the use of the computer to make progress with her studies. The institution therefore makes a loan of a comparable computer system for the period until her DSA cheque arrives and she can get delivery of the computer system that she has been judged to require. In due course, the loaned computer system will be returned to the institution and used by other disabled students. (**This auxiliary aid remains part of the institution's assets**)  
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The student requires some training in the use of her computer. This service is provided by the institution's Technology Adviser and funded partly by the Local Education Authority and partly by the institution. (**This is an auxiliary service**)

Institutions will have accounting policies which affect the choice of aids as against services. For example, a Local Education Authority (LEA) may favour paying for personal services (non-medical personal help) rather than for technological devices:

Michael, a student with an acquired brain injury, finds it impossible to orient himself on the campus. A hand-held device which would solve his problem is available for about £700. The LEA refuses to fund this from a DSA, preferring to provide the services of a guide. This is a more expensive solution.

In a case like this, the LEA may wish to exercise some control over what it is buying; a service needs only be paid for when it is used, so that if the student were to abandon his/her course, the public purse makes a saving. We can see that such a rule is sensible enough in its own terms, however hard it may be to justify the particular result in this case.

### **In human and symbolic terms**

The choice between using an auxiliary aid rather than the services of a human being is likely to have significance for the disabled student, but it is not easy to predict what precise significance it will have.

Margaret, a student with a manual weakness, is unable to take notes in lectures. She is offered the use of a digital recording system, which will help matters greatly, or, alternatively, the services of a note-taker. She feels that using a note-taker will draw attention to her impairment, and prefers the technological device.

Another student with a similar impairment makes the opposite choice because he enjoys working with note-takers. He welcomes the opportunity to work with a person rather than using the machine.

Veronika, who has had a brain injury leaving her with hearing and memory deficits, uses a recording system which she then replays each day in private to produce written text. She would rather use this system than the services of an assistant, because she sees reliance upon an assistant as inconsistent with her own independence.

We have looked at three important ways in which the distinction between aids and services may have practical importance. Fundamentally the obligation on the institution is to make reasonable adjustments, which may take the form of providing auxiliary aids and services. Practicability, financial stewardship and symbolic considerations go to determine the pattern of adjustments which are likely to be made. But it remains to consider a more basic question: where alternative means of reasonable adjustment are possible, on what principled grounds are choices to be made? We turn to consider this question in the next section.

## Section 4

### **Reasonable adjustments, who decides? What principles ought to apply to decisions between different auxiliary aids and services?**

A reasonable adjustment is not a mandatory course of action and will depend on the facts and circumstances of every case. A particular type of reasonable adjustment would only become mandatory if it is the only practicable way of avoiding substantial disadvantage to a disabled student. Often there will be various types of reasonable adjustment which can be made.

A student with mental health difficulties is due to undertake two separate placements in different hospital physiotherapy departments. This student is unable to use public transport and lives on campus in a hall of residence. Possible reasonable adjustments might be (a) an individual arrangement so that she does both placements in the University hospital adjacent to the campus and reachable on foot (b) provision of a taxi to take her to a remote hospital.

The case given above is the relatively common one in which alternative reasonable adjustments seem to be available. It is also clear that the institution does not have to adopt **both** possible reasonable adjustments; in fact, adopting one seems to rule out adopting the other.

There may be no such thing as a typical reasonable adjustment, but for many years institutions have made such small adjustments to practice as giving some disabled students extra time in exams, printing documents in larger font size, and so forth. Such small adjustments involve no significant cost and are easy to implement and to change as required.

Auxiliary aids and services on the other hand nearly always involve significant cost, either in bought-in equipment or in employment of new staff or both.

Technological devices such as computers, audio loops, microphones, Braille printers and so forth represent significant capital expense. Personal services such as those of guides, note-takers, sign language interpreters and so forth are significant items of current or revenue expense.

Cost (along with a number of other factors) is obviously going to figure in determining what constitutes a reasonable adjustment, and it is to be expected that cost considerations will influence the institution's view and affect the institution's obligation as to how auxiliary aids and services are to be provided and to whom.

The engineering faculty has enrolled Jorge, a profoundly deaf student from Latin America. This student, who does not qualify for DSA, understands written English and American Sign Language. It is found that the services of American Sign Language interpreters in this country are not easy to secure and are correspondingly expensive. The faculty decides not to provide sign language interpretation in lectures, even though a combination of British Sign Language (BSL) interpretation, together cont'd....

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with the services of a note-taker, was provided for a British student a few years ago. Instead the faculty decides to use recording technology to produce a set of lecture transcripts for the student.

Such an arrangement may constitute a reasonable adjustment in the circumstances.

The faculty now enrolls Anna, from Eastern Europe. Anna is also profoundly deaf, understands written English and uses BSL. Like Jorge, she does not qualify for a DSA. The University now finds that, following their experience with Jorge and using the system created for him, transcripts can be produced quite cheaply, and will be much cheaper than the services of a BSL interpreter/note-taker combination. It therefore offers Anna a similar arrangement to the one made for Jorge.

This case is less clear-cut. Is Anna substantially disadvantaged by receiving transcripts instead of signed lectures?

**But cost is not the only consideration.**

The students will also have a view of what arrangement is better for them in terms of furthering their learning.

If Anna is now imagined to be given the free choice between signed lectures and transcripts, she might well choose the transcripts, because

- they suit her learning style, or

- because she finds lectures boring and inaccessible, or perhaps
- because she regards this solution as less obtrusive.

Or she might choose the signed lectures, because

- they suit her way of learning,
- she finds them interesting, or perhaps
- because she wants to be part of the general student group.

It would seem that any of these reasons are legitimate in the sense that a solution to Anna's difficulties which made no allowances for

- the way she learns,
- the extent to which she is productively engaged by the teaching offered, and
- the social and symbolic aspects of her experience as a student

might be held to amount to leaving her at a substantial disadvantage.

Perhaps the best guide in this context is the idea that higher education must, at a minimum, foster the student's development, both as a person and as an independent learner. Other factors, such as the cost of provision, have

their place in forming a policy on auxiliary aids and services. But the requirement to respect the student's interests in learning and development is an exigent one, and not lightly to be ignored.

It is in the interests of good practice that the reasons for selecting auxiliary aids and services be as transparent as possible. Hence it is advisable that institutions foster the practice of responsible decision-makers recording reasons for significant choices made. This information will allow them to build up experience of 'what works'. It may also serve to protect the institution in the case that a disabled student were to claim, after the event, that the adoption of a particular auxiliary aid or service, and the failure to adopt a possible alternative, had been prejudicial and unreasonable. In this circumstance, the institution will be well advised to be able to rely on a memorandum of the reasoning relied upon at the time.

## Section 5

### **Auxiliary Aids and Services: What is required of an institution?**

It is the responsible body which is required to make reasonable adjustments, including the provision of auxiliary aids and services. In practice, this will mean that the administrative systems of the institution must be put into a condition where they can

**anticipate** reasonable adjustments

**agree** them with the parties involved, including the disabled student

**communicate** the agreed adjustments to departments and individuals affected

**resource** the adjustments; particularly in the case of aids and services

regularly **review** adjustments, including the provision of aids and services

**publicise** the availability of achieved adjustments as appropriate

and, in those cases where a particular adjustment is not implemented, **defend** the institution's failure to do so.

A student with poor stamina and who uses a wheelchair enrolls for a general arts degree. Reasonable adjustments will probably include ensuring that accommodation for lectures and tutorials is accessible. They may also include some re-scheduling, e.g. of teaching and examinations, to the morning rather than the afternoon. They may include provision of cont'd...

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auxiliary aids such as keys for lifts. They may include provision of lecture notes for the student on those occasions when she is unable to attend class.

This student uses note-takers, financed by DSA, who are paid via the university payroll; (an auxiliary service).

The student also requires personal care support to assist with washing and dressing. This is provided by the Social Work Department. The Disability Office at the University liaises with the Social Work Department to assist with the organisation of this support and to ensure that the assistance is received at a time of day which enables the student to attend lectures on campus; (an auxiliary service).

The student has been provided with organizing software and a speech-to-text programme by the University so that she can manage her study time more effectively; (an auxiliary aid).

Some of these adjustments would need to be made by the faculty time-tabler, some by the University estates office, some by the finance and payroll administration, some by the departmental administrator, some by members of teaching staff. The University's Disability service plays a co-ordinating role.

In practice, the provision and delivery of auxiliary aids and services is bound to be a collaborative enterprise involving the Disability service and the various technical, administrative and academic departments of the University, not to mention outside agencies who have specific expertise to contribute.

Rebecca is deaf and requires the services of a note-taker in lectures. In her institution, institution A,

- note-takers are recruited from the student body by the Careers service;
- they are given training by the Staff Development unit;
- they are paid using the mechanism of the University payroll;
- the Personnel department oversees their appointment;
- financial arrangements are handled by the administrators of an institutional Disability resource fund

In institution B similar services are provided for Rachel, who is also deaf. In this case,

- the academic department recruits note-takers from recent graduates;
- the academic department trains the note-takers as required;
- the Disability service arranges for the note-takers to be paid;
- financial arrangements are made from the budget of the Disability service

Many other arrangements are possible. When supporting students to find and employ personal assistants, Universities should be aware of liability and professional indemnity issues and may wish to seek advice from their Human Resource Department. Whatever arrangements are made, however, it is clear that they must be open to monitoring and adjustment:

One of the students in the examples above quarrels with one of her note-takers. Neither is prepared to work with the other any more.  
cont'd...

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An appropriate solution will involve adjustments to the pay and employment arrangements and may involve re-deployment of the note-taker to other work as well as recruitment of another note-taker for the student. In a situation of this sort, it is likely that one department (perhaps the academic department, perhaps Personnel, perhaps the Disability service) will play a co-ordinating role.

Arrangements must, that is to say, be **responsive and reactive** to the student's needs. They must also be **anticipatory** as far as possible.

The examples given above, which mostly concern the provision of auxiliary services, illustrate the point that many organisational configurations are consistent with effective discharge of the institution's obligations under the DDA. Exactly the same can be said of the provision of auxiliary aids, which must be made as far as possible in an **anticipatory** way, **agreed** with those involved, **communicated**, **resourced**, **reviewed**, and **publicised**. Again, many different organisational realisations of these functions are possible:

A chemistry laboratory is being re-equipped as part of a rolling programme. In institution C, the purchasing department specifies that the workbenches be adjustable in height. In institution D, it is the Chemistry department that insists on this point. The extra cost of the adjustable benches is borne by a central fund in institution C, but comes from the Chemistry departmental budget in institution D.

A dyscalculic student of computer science in institution E is assessed by an external agency and, on the agency's recommendation, is supplied a computer running special software. Assessment and equipment are funded by DSA

A similar student in institution F is assessed in-house by a technology adviser in the Disability service, who might recommend the same or different hardware and software.

In institution G, the student is assessed and provided with purpose-built software developed as a teaching project by members of staff in the academic department where she is a student.

In each of the auxiliary-aid situations imagined above, the equipment must be **maintained**, the software kept up to date or developed.

In all situations where the adjustment takes the form of an auxiliary service, the service needs to be **managed**.

It is clear that the provision of aids and services presents institutions with a number of functional requirements. It is likely that these requirements can be met in more than one way in each case. Each institution will want to ensure that it can fund developments effectively and that its organisational means for delivering aids and services are well thought out and function so as to ensure that substantial disadvantage to disabled students is avoided.

At the same time, senior management should seek to promote an environment which is **positive and welcoming** to disabled people, and in which applicants and students are encouraged to disclose impairments, secure in the knowledge that this disclosure will be kept confidential if required.

## Section 6

### Conclusion

This guide has reviewed the obligation of higher education institutions to make reasonable adjustments in relation to the provision of *auxiliary aids and services*.

Although, technically speaking, the expression may perhaps lose significance in September 2003, when the provision of auxiliary aids and services becomes obligatory, many live issues will remain in the area of this particular class of reasonable adjustments. These include general questions about how decisions are to be made, in cases where alternative reasonable adjustment possibilities exist, as well as particular questions about the provision of specific services such as dyslexia assessments.

The guide has assumed no organisational model for the delivery or management of auxiliary aids and services provision. This provision will have to be achieved under many different organisational patterns of responsibility. For this reason, and because it is clear that provision of auxiliary aids and services is likely to continue to involve a deployment of resources on a significant scale, the guide suggests that thought be taken, in each institution, as to how best this provision can be managed.

## **Appendix 1**

### **Dyslexia assessments as an auxiliary service**

In the ordinary case, the institution does not have to expend resources in establishing that a student who reports a disability is disabled. The relevant facts are usually attested by a medical certificate, or they are evident and the matter is uncontested.

In the case of dyslexia, however, the institution may consider that there is a need for supporting evidence before making reasonable adjustments to examination or other assessment arrangements; such a requirement is often seen as essential in order to protect academic standards. In the absence of previous certification, the institution will probably require an assessment by a qualified person.

Dyslexia assessments are typically not cheap, because they are time-consuming and require special skill. For this very reason, it is argued that they ought to be provided free, or at very modest charge, to students who reasonably ask for them; because failure to do so may set a significant barrier to those disabled (dyslexic) students who cannot otherwise access appropriate reasonable adjustments. These students will be discouraged from seeking an assessment by the fear that, should they not be found to be dyslexic, they will be faced with a substantial bill.

Many of the standard examples of auxiliary services that are now good practice in Higher Education are of a substantive kind, designed to make accessible to disabled students the various services that go to make up the experience of education. A system of free dyslexia assessments operates rather to make possible, and consistent with the academic standards of the University, the implementation of those reasonable adjustments which some students require.

Where institutions provide advice and guidance to students prior to being assessed for specific learning difficulties, this would be an example of an auxiliary service which operates at yet another remove from the first-order services of the University.

## Appendix 2

### Useful Resources

- *Disability Discrimination Act 1995 (as amended) Code of Practice for providers of Post-16 Education and Related Services*
- *Disability Discrimination Act 1995 Code of Practice: Rights of Access (includes duties of providers of facilities and services other than education to disabled people)*

Both of the above are produced by the Disability Rights Commission and were published in 2003 and 2002 respectively by the Stationery Office. They are available from the Disability Rights Commission, [www.drc-gb.org](http://www.drc-gb.org)

The DRC also produces a useful series of booklets on particular aspects of disability law in Higher Education.

- *Teachability: Creating an Accessible Curriculum for Students with Disabilities*

Published in 2000 by the Scottish Higher Education Funding Council, this document aims to be a source of information and a structure to assist institutions to review their provision for disabled students. It is available from the University of Strathclyde Special Needs Service: [www.teachability.strath.ac.uk](http://www.teachability.strath.ac.uk)

- *Access All Areas: disability, technology and learning, eds Phipps, Sutherland, and Seale*

This publication contains useful information on the choice of IT solutions for access problems experienced by disabled students. It was published in 2002 by Techdis, [www.techdis.ac.uk](http://www.techdis.ac.uk)

- Skill: National Bureau for Students with Disabilities - a generally indispensable source of information on good practice for disabled students. [www.skill.org.uk](http://www.skill.org.uk)
- Code of Practice for the Assurance of Academic Quality Standards in Higher Education. Section 3: Students with Disabilities. Published in 1999 by the Quality Assurance Agency for Higher Education. [www.qaa.ac.uk](http://www.qaa.ac.uk)

# Scottish Disability Team

**SDT 1**  
**May 2003**

Through the delivery of specialised training and the provision of an informative website, the Scottish Disability Team aims to improve provision for disabled students across Higher Education.

This publication is available on our website and is also available from the Scottish Disability Team in accessible formats including Braille and large print, please contact the team for details.

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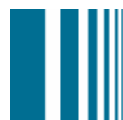
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The Scottish Disability Team is funded by



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