

Implications of the Equality Act 2010 in Tunnels

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- From the DDA to the Equality Act 2010
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The Speaker

- Engineer with extensive experience in tunnel safety
- Certificate in Legal Studies
- Third-year student for Bachelor of Laws degree (LLB)
- Interpreted disability legislation for a number of tunnels

Current Status

- Many tunnels in the UK do not comply with BD78/99 requirements for evacuation of *able-bodied* persons, never mind *disabled* persons
- Requirements of DDA 1995 may be misunderstood, ignored or flouted
- Rare instances of civil actions / awards





Limitations

- Presentation concerns disabled tunnel *users*, not *employees*
- Very limited case law to clarify statutory obligations



The Challenge

- How can disabled persons be evacuated quickly and safely from tunnels?
- Self-evacuation? External assistance?
- Physical features of tunnel?
- Communications with tunnel users?
- Points of safety: portals, refuges?
- Intervention plan?



Equality Act 2010

- 251 pages long, 218 sections, 28 schedules
- Consolidates various equality-related provisions into one Act

Additional references:

- Government's Explanatory Notes to the Bill for the 2010 Act (persuasive but not binding)
- Equality Act 2010 (Disability) Regulations 2010



Definition of Disability

Section 6(1) of Equality Act 2010:

- Disability = ‘Physical or mental impairment, which has a substantial and long-term adverse effect on a person’s ability to carry out normal day-to-day activities’
- Encompasses disabilities due to old age and medical conditions

Section 4 defines disability as a “protected characteristic”



Responsibilities of Service Providers

- Section 29(2)(c): **service-provider** concerned with the provision of a service to the public **must not discriminate** against such a person by subjecting them to any detriment
- The Explanatory Notes state that the provision of a “**service**” includes providing a “**facility**”



Provision of Transport Facilities

- Provision of a transport facility such as a road tunnel is a form of a “service” to the public
- For public sector organisations: additional duties through section 149(1) to “eliminate discrimination” against disabled people
- Direct and indirect binding of private service providers to public sector duties



Reasonable Adjustments

- Section 29(7) places a duty on the service provider to make “**reasonable adjustments**” for disabled users
- Section 20(4) states that such a “reasonable adjustment” is required where a **physical feature** puts a disabled person at a “substantial disadvantage” in comparison with able-bodied persons



Physical Features

- Section 20(10) explains “physical feature” as a reference to a “feature arising from the design or construction of a building” and a “feature of an approach to, exit from or access to a building”
- Includes the exits from a tunnel, on the basis that a tunnel is a type of building



Changes from DDA

- Reference to “**substantial disadvantage**” is a new and more onerous requirement, compared to the DDA
- Previously, adjustments to premises had to be made by service providers only where it would otherwise be “**impossible or unreasonably difficult**” for disabled persons
- Service providers may have to make more adjustments to satisfy the Equality Act 2010



Asymmetric Duties

- Asymmetric nature of disability discrimination law is retained
- Treating disabled people more favourably doesn't constitute discrimination against other people



Key Legal Issues

- Whether the current (or proposed) tunnel designs put disabled users at a “**substantial disadvantage**”
- The “**physical features**” of the tunnel that contribute to any disadvantage that disabled users may experience
- The nature of any “**reasonable adjustment**” in order to overcome any “substantial disadvantage”



Evacuation from Tunnels

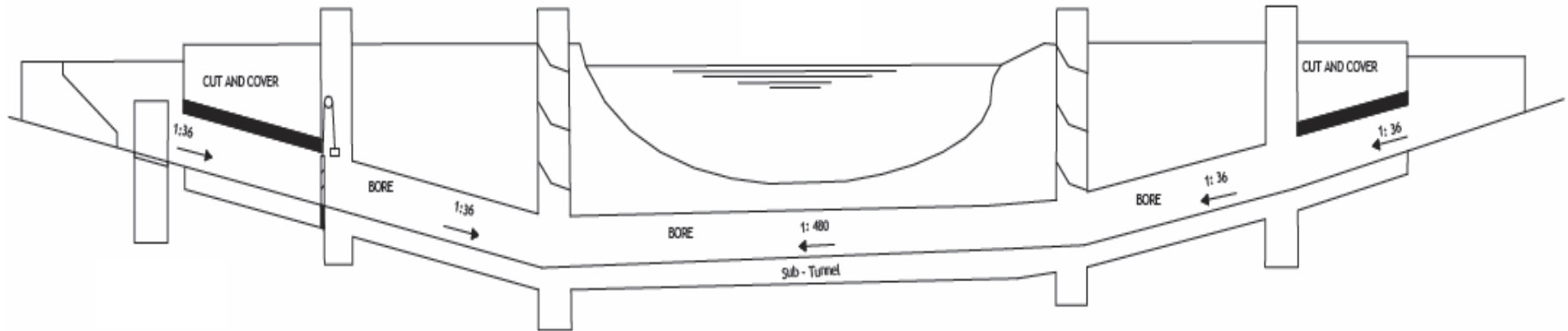
- Distances to nearest portals / cross-passages / evacuation shafts?
- BD78/99: cross-passages required every 100m. Not possible in older tunnels.
- Fire/smoke may block the nearest exits: need to consider next available exit.
- Contraflow traffic: additional risk of smoke blown over motorists.



Physical Features

- Lack of dropped kerbs to walkways?
- Minimum widths of walkway: 1.2m for existing developments or 1.5m for an inclined route (BS 8300:2009)
- Roadway slope steeper than 2.5% is impossible for many manual wheelchair users – includes many tunnels

Typical Longitudinal Section for River-Crossing Tunnel





Refuges

- Possible need for disabled refuges?
- Access to and from refuges?
- Pressurised to exclude smoke ingress?
- Route for intervention/help by fire brigade?
- Directions to refuges conflict with directions to portals?



Operator Responsibilities

- Assess compliance with Equality Act 2010
- Consider operational and physical measures
- Consider disabled persons in evacuation plans and exercises
- Invest in new systems and infrastructure where required



Summary

- Significant changes made from DDA to Equality Act 2010
- Some tunnels may not comply
- Assessments recommended to fulfil legal obligations