
STATUTORY INSTRUMENTS

2005 No. 3258

DISABLED PERSONS

**The Disability Discrimination
(Private Clubs etc.) Regulations 2005**

Made - - - - 23rd November 2005

Coming into force

regulations 1 to 5 5th December 2005

the remainder 4th December 2006

Whereas a draft of this Instrument was laid before Parliament in accordance with the provisions of section 67(4) and (4A) of the Disability Discrimination Act 1995(1) and approved by resolution of each House of Parliament;

Now therefore, the Secretary of State for Work and Pensions in exercise of the powers conferred upon him by sections 21F(6), 21G(5) and (7), 21H(1) and (2), 67(2) and (3) and 68(1) of the Disability Discrimination Act 1995(2) and of all other powers enabling him in that behalf, hereby makes the following Regulations:

PART 1

INTRODUCTORY

Citation and commencement

1.—(1) These Regulations may be cited as the Disability Discrimination (Private Clubs etc.) Regulations 2005.

(2) Except as provided by paragraph (3), these Regulations shall come into force on 4th December 2006.

(3) This regulation, and regulations 2 to 5, shall come into force on 5th December 2005.

(1) 1995 c. 50. Section 67(4) and (4A) was substituted by paragraphs 1 and 33(5) of Schedule 1 to the Disability Discrimination Act 2005 (c. 13).

(2) Sections 21F, 21G and 21H were inserted by section 12 of the Disability Discrimination Act 2005; section 67(3) was amended by paragraphs 1 and 33(3) of Schedule 1 to the Disability Discrimination Act 2005; section 68(1), which was amended by paragraphs 1 and 34 of Schedule 1 to the Disability Discrimination Act 2005, is cited because of the meaning there given to “prescribed” and “regulations”.

Interpretation

2. In these Regulations—

“the 1995 Act” means the Disability Discrimination Act 1995;

“building” means an erection or structure of any kind.

PART 2

LESS FAVOURABLE TREATMENT: JUSTIFICATION

Circumstances in which mental incapacity justification does not apply

3. The conditions specified in section 21G(3)(b) of the 1995 Act shall not apply where another person is acting for a disabled person by virtue of—

- (a) a power of attorney; or
- (b) functions conferred by or under Part 7 of the Mental Health Act 1983(3); or
- (c) powers exercisable in relation to the disabled person’s property or affairs in consequence of the appointment, under the law of Scotland, of a guardian, tutor or judicial factor.

Circumstances in which less favourable treatment is justified: guarantees

4.—(1) Where, for a reason which relates to the disabled person’s disability, an association treats a disabled person less favourably than it treats or would treat others to whom that reason does not or would not apply, that treatment shall be taken to be justified for the purposes of section 21G(1) of the 1995 Act in the circumstances specified in paragraph (2).

(2) The circumstances referred to in paragraph (1) are that—

- (a) the association provides a guarantee (whether or not legally binding) that—
 - (i) the purchase price of benefits, facilities or services that it has provided will be refunded if the benefits, facilities or services are not of satisfactory quality, or
 - (ii) benefits or services in the form of goods that it has provided will be replaced or repaired if those goods are not of satisfactory quality; and
- (b) the association refuses to provide a replacement, repair or refund under the guarantee because damage has occurred for a reason which relates to the disabled person’s disability, and the damage is above the level at which the association would normally provide a replacement, repair or refund under the guarantee; and
- (c) it is reasonable in all the circumstances for the association to refuse to provide a replacement, repair or refund under the guarantee.

(3) In this regulation “guarantee” includes any document having the effect referred to in paragraph (2)(a) whether or not that document is described as a guarantee by the association.

Circumstances in which less favourable treatment is justified: deposits

5.—(1) Where, for a reason which relates to the disabled person’s disability, an association treats a disabled person less favourably than it treats or would treat others to whom that reason does not or would not apply, that treatment shall be taken to be justified for the purposes of section 21G(1) of the 1995 Act in the circumstances specified in paragraph (2).

(3) 1983 c. 20. Part 7 is repealed by section 66 and Schedule 7 of the Mental Capacity Act 2005 (c. 9) which are not yet in force.

- (2) The circumstances referred to in paragraph (1) are that—
- (a) when benefits or services (in either case in the form of goods) or facilities are provided, the disabled person is required to provide a deposit which is refundable if such goods or facilities are undamaged; and
 - (b) the association refuses to refund some or all of the deposit because damage has occurred to such goods or facilities for a reason which relates to the disabled person's disability, and the damage is above the level at which the association would normally refund some or all of the deposit; and
 - (c) it is reasonable in all the circumstances for the association to refuse to refund some or all of the deposit.

PART 3

REASONABLE ADJUSTMENTS

Members, associates and guests: benefits, facilities or services

6.—(1) Where an association has a practice, policy or procedure which makes or would make it impossible or unreasonably difficult for disabled persons who are members, associates or guests to make use of a benefit, facility or service which it provides, or is prepared to provide, to other members, associates or guests as the case may be, it is the duty of the association to take such steps as it is reasonable in all the circumstances to take in order to change that practice, policy or procedure so that it no longer has that effect.

(2) Where a physical feature makes or would make it impossible or unreasonably difficult for disabled persons who are members, associates or guests to make use of such a benefit, facility or service, it is the duty of the association providing that benefit, facility or service to take such steps as it is reasonable in all the circumstances to take in order to—

- (a) remove the feature;
- (b) alter it so that it no longer has that effect;
- (c) provide a reasonable means of avoiding the feature; or
- (d) provide a reasonable alternative method of making the benefit, facility or service in question available to disabled persons who are members, associates or guests.

(3) Where an auxiliary aid or service (for example, the provision of information on audio tape or of a sign language interpreter) would—

- (a) enable disabled persons who are members, associates or guests to make use of a benefit, facility or service which an association provides, or is prepared to provide, to other members, associates or guests as the case may be; or
- (b) facilitate the use by disabled persons who are members, associates or guests of such a benefit, facility or service,

it is the duty of the association providing that benefit, facility or service to take such steps as it is reasonable in all the circumstances to take in order to provide that auxiliary aid or service.

(4) It is unlawful for an association to discriminate against a disabled person who is a member, associate or guest by failing to comply with a duty imposed on it by this regulation in circumstances in which the effect of that failure is to make it impossible or unreasonably difficult for the disabled person who is a member, associate or guest to make use of any benefit, facility or service which it provides, or is prepared to provide, to other members, associates or guests as the case may be.

Members and associates: membership

7.—(1) Where an association has a practice, policy or procedure which makes or would make it impossible or unreasonably difficult for disabled persons who are members or associates, in comparison with members or associates who are not disabled, to retain their membership or rights as an associate, or to avoid having their membership or rights as an associate varied, it is the duty of the association to take such steps as it is reasonable in all the circumstances to take in order to change that practice, policy or procedure so that it no longer has that effect.

(2) Where an auxiliary aid or service would—

- (a) enable disabled persons who are members or associates to retain their membership or rights as an associate, or to avoid having their membership or rights as an associate varied; or
- (b) facilitate the retention by disabled persons who are members or associates of their membership or rights as an associate, or facilitate such disabled persons avoiding having their membership or rights as an associate varied,

it is the duty of the association to take such steps as it is reasonable in all the circumstances to take in order to provide that auxiliary aid or service.

(3) It is unlawful for an association to discriminate against a disabled person who is a member or associate by failing to comply with a duty imposed on it by this regulation in circumstances in which the effect of that failure is to make it impossible or unreasonably difficult for the disabled person who is a member or associate, in comparison with members or associates who are not disabled, to retain their membership or rights as an associate, or to avoid having their membership or rights as an associate varied.

Persons who might wish to become members

8.—(1) Where an association has a practice, policy or procedure which makes it impossible or unreasonably difficult for disabled persons, in comparison with persons who are not disabled, to be admitted as members of the association, it is the duty of the association to take such steps as it is reasonable in all the circumstances to take in order to change that practice, policy or procedure so that it no longer has that effect.

(2) Where an auxiliary aid or service would—

- (a) enable disabled persons to be admitted as members of the association; or
- (b) facilitate disabled persons being admitted as members,

it is the duty of the association to take such steps as it is reasonable in all the circumstances to take in order to provide that auxiliary aid or service.

(3) It is unlawful for an association to discriminate against a disabled person by failing to comply with a duty imposed on it by this regulation in circumstances in which the effect of that failure is to make it impossible or unreasonably difficult for the disabled person, in comparison with persons who are not disabled, to be admitted as a member of the association.

Persons who are likely to become guests

9.—(1) Where an association has a practice, policy or procedure which makes it impossible or unreasonably difficult for disabled persons, in comparison with persons who are not disabled, to be invited as guests of the association, it is the duty of the association to take such steps as it is reasonable in all the circumstances to take in order to change that practice, policy or procedure so that it no longer has that effect.

(2) Where an auxiliary aid or service would—

- (a) enable disabled persons to be invited as guests of the association; or

- (b) facilitate disabled persons being invited as guests,

it is the duty of the association to take such steps as it is reasonable in all the circumstances to take in order to provide that auxiliary aid or service.

(3) It is unlawful for an association to discriminate against a disabled person by failing to comply with a duty imposed on it by this regulation in circumstances in which the effect of that failure is to make it impossible or unreasonably difficult for the disabled person, in comparison with persons who are not disabled, to be invited as a guest of the association.

Duty of associations to make adjustments relating to physical features

10. The duty at regulation 6(2) to take steps for a purpose relating to a physical feature applies, for example, to the following physical features (whether permanent or temporary)—

- (a) any feature arising from the design or construction of a building on the premises occupied by the association;
- (b) any feature on the premises occupied by the association of any approach to, exit from or access to such a building;
- (c) any fixtures, fittings, furnishings, furniture, equipment or materials in or on the premises occupied by the association;
- (d) any fixtures, fittings, furnishings, furniture, equipment or materials brought by or on behalf of the association on to premises (other than the premises that they occupy)—
 - (i) in the course of providing benefits, facilities or services,
 - (ii) for the purpose of providing such benefits, facilities or services;
- (e) any other physical element or quality of any land comprised in the premises occupied by the association.

Reasonableness where consent of third party necessary for an adjustment to physical features of premises

11.—(1) This regulation prescribes particular circumstances, for the purposes of regulation 6(2), in which it is reasonable, and in which it is not reasonable, for an association to have to take the steps specified in this regulation.

(2) Where—

- (a) under any binding obligation an association is required to obtain the consent of any person to an alteration to premises which it occupies; and
- (b) that alteration is one which, but for that requirement, it would be reasonable for the association to have to make in order to comply with a duty under regulation 6(2),

it is reasonable for the association to have to request that consent; but it is not reasonable for it to have to make that alteration before that consent is obtained.

(3) In this regulation “binding obligation” means a legally binding obligation (not contained in a lease) in relation to premises whether arising from an agreement or otherwise.

Reasonableness and design standards

12.—(1) This regulation prescribes particular circumstances, for the purposes of regulation 6(2), in which it is not reasonable for an association to have to take the steps specified in this regulation.

(2) It is not reasonable for an association to have to remove or alter a physical feature where the feature concerned—

- (a) was provided in or in connection with a building for the purpose of assisting people to have access to the building or to use facilities provided in the building; and
 - (b) satisfies the relevant design standard.
- (3) Whether a physical feature satisfies the relevant design standard shall be determined in accordance with the Schedule.

Duty of associations to make adjustments: justification

13.—(1) For the purposes of section 21G(6) of the 1995 Act, failure to comply with a duty set out in any of regulations 6 to 9 is justified only if—

- (a) in the opinion of the association, one or both of the conditions mentioned in paragraph (2) are satisfied; and
 - (b) it is reasonable, in all the circumstances, for it to hold that opinion.
- (2) The conditions are that—
- (a) the non-compliance with the duty is necessary in order not to endanger the health or safety of any person (which may include that of the disabled person);
 - (b) subject to paragraph (3), the disabled person is incapable of entering into an enforceable agreement, or of giving an informed consent, and for that reason the non-compliance with the duty is reasonable in that case.
- (3) The condition at paragraph (2)(b) shall not apply where another person is acting for a disabled person by virtue of—
- (a) a power of attorney; or
 - (b) functions conferred by or under Part 7 of the Mental Health Act 1983; or
 - (c) powers exercisable in relation to the disabled person's property or affairs in consequence of the appointment, under the law of Scotland, of a guardian, tutor or judicial factor.

Duty of associations to make adjustments: limitations

14. The duties set out in this Part of these Regulations do not require—

- (a) an association to take any steps which would fundamentally alter the nature of the benefits, facilities or services in question or the nature of the association;
- (b) a member or associate of an association which meets in that member's or associate's private house to make any adjustments to a physical feature in relation to that member's or associate's private house.

Signed by authority of the Secretary of State for Work and Pensions.

23rd November 2005

Anne C McGuire
Parliamentary Under-Secretary of State,
Department for Work and Pensions

SCHEDULE

Regulation 12(3)

REMOVAL OR ALTERATION OF PHYSICAL FEATURES: DESIGN STANDARDS

Definition of “relevant design standard”

1.—(1) Subject to sub-paragraph (3), a physical feature, in relation to a building situated in England or Wales, satisfies the relevant design standard for the purposes of regulation 12(2) where it accords with the relevant objectives, design considerations and provisions in Approved Document M.

(2) Subject to sub-paragraph (3), a physical feature, in relation to a building situated in Scotland, satisfies the relevant design standard for the purposes of regulation 12(2) where—

- (a) it was provided in or in connection with the building on or after 30th June 1994 and before 1st May 2005 in accordance with the Technical Standards relevant in relation to that feature; or
- (b) it was provided in or in connection with the building on or after 1st May 2005 in accordance with the relevant functional standards and guidance in the Technical Handbook.

(3) A physical feature does not satisfy the relevant design standard where more than 10 years have elapsed since—

- (a) the day on which the construction or installation of the feature was completed; or
- (b) in the case of a physical feature provided as part of a larger building project, the day on which the works in relation to that project were completed.

Buildings in England and Wales

2.—(1) For the purposes of this paragraph and paragraph 1(1)—

- (a) “Approved Document M” means—
 - (i) the 1992 edition of the document of that title approved by the Secretary of State as practical guidance on meeting the requirements of Part M of Schedule 1 to the Building Regulations 1991(4), first published for the Department of the Environment by Her Majesty’s Stationery Office in 1991 (ISBN 011 752447 6); or
 - (ii) the 1999 edition of the document of that title approved by the Secretary of State as practical guidance on meeting the requirements of Part M of Schedule 1 to the Building Regulations 1991, first published for the Department of the Environment, Transport and the Regions by The Stationery Office under licence from the Controller of Her Majesty’s Stationery Office in 1998 (ISBN 011 753469 2); or
 - (iii) the 2004 edition of the document of that title approved by the Secretary of State as practical guidance on meeting the requirements of Part M of Schedule 1 to the Building Regulations 2000(5), first published for the Office of the Deputy Prime Minister by The Stationery Office under licence from the Controller of Her Majesty’s Stationery Office in 2003 (ISBN 011 753901 5);
- (b) “the Building Regulations” means the Building Regulations 1991 or the Building Regulations 2000.

(4) S.I.1991/2768 (revoked by S.I. 2000/2531 as from 1 January 2001, except in relation to building work carried out or to be carried out in accordance with a building notice, an initial notice, an amendment notice or a public body’s notice given to, or full plans deposited with, a local authority, before that date).

(5) S.I. 2000/2531 (Part M substituted by S.I. 2003/2692).

(2) In the case of a physical feature provided as part of building works to which the Building Regulations applied, for the purposes of paragraph 1(1) Approved Document M is whichever edition is the practical guidance which was relevant in relation to meeting the requirements of the Building Regulations which applied to those building works.

(3) In any other case, for the purposes of paragraph 1(1) Approved Document M is whichever edition was the last edition published at the time when the physical feature was provided in or in connection with the building.

(4) For the purposes of sub-paragraph (3), a physical feature is deemed to be provided in or in connection with the building on—

- (a) the day upon which the works to install or construct the feature were commenced; or
- (b) in the case of a physical feature provided as part of a larger building project, the day upon which the works in relation to that project were commenced.

(5) Where in relation to the physical feature in question any provision of Approved Document M refers to a standard or specification (in whole or in part), that standard or specification shall be construed as referring to any equivalent standard or specification recognised for use in any member state of the European Community or European Economic Area.

Buildings in Scotland

3.—(1) For the purposes of this paragraph and paragraph 1(2)—

- (a) “Technical Standards” means the Technical Standards defined by regulation 2(1) of the Building Standards (Scotland) Regulations 1990⁽⁶⁾ in effect at the time when the physical feature was provided in or in connection with the building;
- (b) “Technical Handbook” means the Scottish Building Standards Agency Technical Handbook for non-domestic buildings approved by the Scottish Ministers as guidance meeting the requirements of the Building (Scotland) Regulations 2004⁽⁷⁾, published by Astron for the Scottish Building Standards Agency on 1st November 2004 (ISBN 09546292 3 X).

(2) For the purpose of paragraph 1(2) and sub-paragraph (1)(a), and subject to sub-paragraph (3), a physical feature is deemed to be provided in or in connection with the building on—

- (a) the day upon which the works to install or construct the feature were commenced; or
- (b) in the case of a physical feature provided as part of a larger building project, the day upon which the works in relation to that project were commenced.

(3) In a case where the physical feature is provided as part of building works in relation to which an application for a warrant for the construction or change of use of the building has been made and granted, the works are deemed to have commenced on the day upon which the application for the warrant was made.

(4) Where in relation to the physical feature in question any provision of the Technical Standards or Technical Handbook refers to a standard or specification (in whole or in part), that standard or specification shall be construed as referring to any equivalent standard or specification recognised for use in any member state of the European Community or European Economic Area.

⁽⁶⁾ S.I. 1990/2179 (S.187) (as amended by S.S.I. 1999/173 and S.S.I. 2001/320).

⁽⁷⁾ S.S.I. 2004/406.

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations modify the duties imposed on private clubs and other associations by sections 21F to 21J of the Disability Discrimination Act 1995 (“the 1995 Act”), as inserted by the Disability Discrimination Act 2005, and impose a duty on them to make adjustments.

In Part 1, regulation 1 sets out the title and dates of commencement of the Regulations and regulation 2 contains the interpretation provisions.

In Part 2, regulations 3 to 5 modify the application of the duty, set out at section 21G of the 1995 Act, not to treat a disabled person less favourably for a reason relating to his or her disability.

Regulation 3 provides that the condition in section 21G(3)(b), which may allow less favourable treatment to be justified where a disabled person is incapable of entering into an enforceable agreement or of giving an informed consent, does not apply where another person is acting for a disabled person by virtue of a power of attorney or in certain other circumstances.

Regulations 4 and 5 set out the circumstances in which less favourable treatment may be justified where an association is providing guarantees for benefits, facilities or services which it provides and where an association requires a deposit for benefits or services (in either case in the form of goods) or facilities which it provides.

In Part 3, regulations 6 to 14 are concerned with the duties on associations to make adjustments to policies, practices or procedures and physical feature of premises and to provide auxiliary aids or services to disabled persons who are members, associates or guests of the association, or who are prospective members or guests of the association.

Regulation 6 sets out the circumstances in which a duty to make adjustments to a practice, policy or procedure or physical feature arises, or where an association is under a duty to provide an auxiliary aid or service, in relation to disabled persons who are members, associates or guests of the association. The regulation also provides for the circumstances in which it is unlawful for an association to discriminate against a disabled person who is a member, associate or guest of the association by failing to comply with the duty.

Regulation 7 sets out the circumstances in which a duty arises to make adjustments to a practice, policy or procedure, or to provide an auxiliary aid or service, in relation to disabled persons who are members or associates of the association with regard to the variation or withdrawal of their membership or rights as an associate. It also provides for the circumstances in which it is unlawful for an association to discriminate against disabled persons who are members or associates of the association by failing to comply with the duty.

Regulation 8 sets out the circumstances in which a duty arises to make adjustments to a practice, policy or procedure in relation to disabled persons who might wish to become members of the association, or to provide an auxiliary aid or service to such disabled persons. The regulation also provides for the circumstances in which it is unlawful for an association to discriminate against disabled persons who might wish to become members of the association by failing to comply with the duty.

Regulation 9 sets out the circumstances in which a duty arises to make adjustments to a practice, policy or procedure in relation to inviting disabled persons to be guests of the association, or where an association is under a duty to provide an auxiliary aid or service in relation to disabled persons who are likely to become guests. The regulation also provides for the circumstances in

which it is unlawful for an association to discriminate against disabled persons who are likely to become guests of the association by failing to comply with that duty.

Regulation 10 sets out for the purposes of the duty to make adjustments in regulation 6(2) examples of the physical features to which it applies.

Regulation 11 sets out, for the purposes of the duty to take steps in relation to a physical feature in regulation 6(2), what it is and what it is not reasonable for an association to do where, under a legally binding obligation, it requires the consent of a third party before making an alteration to a physical feature of premises which it occupies.

Regulation 12 provides that, for the purposes of the duty to take steps in relation to a physical feature in regulation 6(2), it is not reasonable for an association to have to remove or alter a physical feature where the physical feature was provided in or in connection with a building for the purpose of assisting people to have access to the building or to use facilities provided in the building and where the physical feature concerned satisfies a relevant design standard. The meaning of “relevant design standard” is set out in detail in the Schedule to these Regulations.

Regulation 13 sets out the circumstances in which a failure to comply with a duty to make adjustments provided for in regulations 6 to 9 is justified and mirrors the provision made in section 21G(2) and (3)(a) and (b) of the 1995 Act in relation to justification for discrimination consisting of less favourable treatment.

Regulation 14 provides that the reasonable adjustment duties set out in Part 3 of these Regulations do not require an association to take steps which would fundamentally alter the nature of the benefits, facilities or services it provides, or the nature of the association itself. It also provides that those duties do not require a member or an associate of an association which meets in that member’s or associate’s private house to adjust any physical feature in relation to that house.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business is available, copies of which have been placed in the libraries of both Houses of Parliament. Copies are also available from Disability Rights Division, Department for Work and Pensions, Level 6, The Adelphi, 1-11 John Adam Street, London WC2N 6HT.

The Schedule refers to “Approved Document M” (in the case of England and Wales) and “Technical Handbook” (in the case of Scotland). Copies of Approved Document M (2004 edition: ISBN 011 753901 5; 1999 edition: ISBN 011 753469 2; 1992 edition: ISBN 011 752447 6) are available from The Stationery Office Limited (mail, telephone, fax and e-mail orders only), PO Box 29, Norwich NR3 1GN (telephone orders 0870 600 5522, fax orders 0870 600 5533, e-mail bookorders@tso.co.uk, textphone 0870 240 3701, internet <http://www.tso.co.uk/bookshop>) and from The Stationery Office Bookshops. Copies of the non-domestic Technical Handbook (ISBN 09546292 3 X) published by Astron for the Scottish Buildings Standards Agency (“SBSA”) on 1st November 2004 can be found on the SBSA’s website at: <http://www.sbsa.gov.uk/tbooks/htm>. Alternatively, the Handbook is available in loose-leaf format from the Stationery Office Limited.