

*Draft Regulations laid before the Assembly under the Disability Discrimination Act 1995, for
approval by resolution of the Assembly*

DRAFT STATUTORY RULES OF NORTHERN IRELAND

2008 No.

DISABLED PERSONS

**The Disability Discrimination (Private Clubs,
etc.) Regulations (Northern Ireland) 2008**

*Made - - - -
Coming into operation in accordance with Regulation
1(1)*

The Office of the First Minister and deputy First Minister in exercise of the powers conferred 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(1) and now vested in it(2) makes the following Regulations:

PART I
INTRODUCTORY

Citation and commencement

1.—(1) These Regulations may be cited as the Disability Discrimination (Private Clubs etc.) Regulations (Northern Ireland) 2008 and shall come into operation on the day after these Regulations are made.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954(3) applies to these Regulations as it applies to an Act of the Assembly.

(2) In these Regulations—

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- (1) 1995 c. 50. Sections 21F, 21G and 21H were inserted by Article 13 of the Disability Discrimination (Northern Ireland) Order 2006 (S.I. 2006 No. 312 (N.I.1)) (“the 2006 Order”); sections 67(2) and (3) and 68(1) are modified in their application to Northern Ireland by paragraphs 46 and 47 of Schedule 8; section 67(3) is amended by paragraphs 1 and 25(1) of Schedule 1 to the 2006 Order; section 68(1), which was amended by paragraphs 1 and 26 of Schedule 1 to the 2006 Order, is an interpretation provision and is cited for the definitions of “prescribed” and “regulations”
- (2) See S.R. 1999 No. 481; Article 4(a) and Schedule 2, Part I for transfer of functions and Article 8(a) and Schedule 6, Part I for transfer of functions
- (3) 1954 c. 33 (N.I.)

“the 1995 Act” means the Disability Discrimination Act 1995;
“building” means an erection or structure of any kind.

PART II

LESS FAVOURABLE TREATMENT: JUSTIFICATION

Circumstances in which mental incapacity justification does not apply

3. The condition 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) an enduring power of attorney; or
- (b) functions conferred by or under Part VIII of the Mental Health (Northern Ireland) Order 1986(4).

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).

(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 III

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) an enduring power of attorney; or
- (b) functions conferred by or under Part VIII of the Mental Health (Northern Ireland) Order 1986.

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.

Sealed with the Official Seal of the Office of the First Minister and deputy First Minister on

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A senior officer of the Office of the First
Minister and deputy First Minister

SCHEDULE

Regulation 12(3)

REMOVAL OR ALTERATION OF PHYSICAL FEATURES: DESIGN STANDARDS

Definition of “relevant design standard”

1.—(1) Subject to sub-paragraph (2), a physical feature, in relation to a building situated in Northern Ireland, satisfies the relevant design standard for the purposes of regulation 12(2) where it accords with Technical Booklet R and Technical Booklet V: 2000.

(2) However, 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.

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

- (a) “Technical Booklet R” means—
 - (i) the booklet of that title prepared by the Department of the Environment for Northern Ireland which sets out provisions which, if followed, will satisfy the requirements of Part R of the Building Regulations, first published by Her Majesty’s Stationery Office in 1994 (ISBN 0 337 08328 2); or
 - (ii) the booklet of that title prepared by the Department of Finance and Personnel which sets out provisions which, if followed, will satisfy the requirements of Part R of the Building Regulations, first published by The Stationery Office Limited in 2001 (ISBN 0 337 23709 3); or
 - (iii) the booklet of that title prepared by the Department of Finance and Personnel which sets out provisions which, if followed, will satisfy the requirements of Part R of the Building Regulations, first published by The Stationery Office Limited in 2006 (ISBN 0 337 08826 8);
- (b) “Technical Booklet V: 2000” means the booklet of that title prepared by the Department of Finance and Personnel which sets out provisions which, if followed, will satisfy the requirements of Part V of the Building Regulations, first published by The Stationery Office in 2001 (ISBN 0 337 23710 7) as amended by DFP Amendments Booklet AMD 3 – 2006 first published by The Stationery Office Limited in 2006 (ISBN 0 337 08828 4);
- (c) “Technical Booklet H: 2006” means the booklet of that title prepared by the Department of Finance and Personnel which sets out provisions which, if followed, will satisfy the requirements of Part H of the Building Regulations, first published by The Stationery Office Limited in 2006 (ISBN 0 337 08825 X);
- (d) “the Building Regulations” means the Building Regulations (Northern Ireland) 1994(5) or the Building Regulations (Northern Ireland) 2000(6).

(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) any reference to Technical Booklet R is a reference to whichever edition sets out the provisions which were relevant in relation to satisfying the requirements of the Building Regulations which applied to those building works.

(5) S.R. 1994 No. 243; revoked by S.R. 2000 No. 389

(6) S.R. 2000 No. 389; amended by S.R. 2006 no.355

(3) In any other case, for the purposes of paragraph 1(1) Technical Booklet R 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 Technical Booklet R, Technical Booklet V: 2000 or Technical Booklet H 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.

EXPLANATORY NOTE

(This note is not part of the Regulations)

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 (Northern Ireland) Order 2006, and impose a duty on them to make adjustments.

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

In Part II, 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 an enduring 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 III, regulations 6 to 14 are concerned with the duties on associations to make adjustments to policies, practices or procedures and physical features 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 III 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.

An assessment of the impact of these Regulations on the costs of business was made as part of the regulatory impact assessment in relation to the Disability Discrimination (Northern Ireland) Order 2006. A copy may be obtained from: Equality, Rights and Social Need Division, Office of the First Minister and deputy First Minister, Room E3.19, Castle Buildings, Stormont, Belfast, BT4 3SR. A copy of the assessment for the Disability Discrimination (Northern Ireland) Order 2006 has been placed in the library of the Northern Ireland Assembly.

Schedule 1 refers to “Technical Booklet R”, “Technical Booklet V: 2000” and “Technical Booklet: H”. Copies of “Technical Booklet R” (1994 version ISBN 0 337 08328 2, 2001 version ISBN 0 337 23709 3 and 2006 version ISBN 0 337 08826 8), “Technical Booklet V: 2000” (ISBN 0 337 08828 4) and “Technical Booklet H; 2006” (ISBN 0 337 08825 X) are available from The Publications Centre (mail, telephone and fax orders only) PO Box 276, London SW8 5DT (Telephone orders

Draft Legislation: This is a draft item of legislation. This draft has since been made as a Northern Ireland Statutory Rule: *The Disability Discrimination (Private Clubs, etc.) Regulations (Northern Ireland) 2008 No. 81*

0171 873 9090); Fax orders 0171 873 8200 and from The Stationery Office Bookshop, 16 Arthur Street, Belfast BT1 4GD (Telephone 028 9023 8541; Fax 028 9023 5401). They are also available on the Department of Finance and Personnel's website (www.dfpni.gov.uk/buildingregulations/techbooklets.htm).