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STATUTORY INSTRUMENTS

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**2006 No. 312**

**The Disability Discrimination (Northern Ireland) Order 2006**

*Other matters*

**Private clubs, etc.**

**13.** In the 1995 Act, after section 21E (which is inserted by Article 4) insert—

*“Private clubs, etc.*

**Discrimination by private clubs, etc.**

**21F.—(1)** This section applies to any association of persons (however described, whether corporate or unincorporate, and whether or not its activities are carried on for profit) if —

- (a) it has twenty-five or more members;
- (b) admission to membership is regulated by its constitution and is so conducted that the members do not constitute a section of the public within the meaning of section 19(2); and
- (c) it is not an organisation to which section 13 applies.

(2) It is unlawful for an association to which this section applies, in the case of a disabled person who is not a member of the association, to discriminate against him—

- (a) in the terms on which it is prepared to admit him to membership; or
- (b) by refusing or deliberately omitting to accept his application for membership.

(3) It is unlawful for an association to which this section applies, in the case of a disabled person who is a member, or associate, of the association, to discriminate against him—

- (a) in the way it affords him access to a benefit, facility or service;
- (b) by refusing or deliberately omitting to afford him access to a benefit, facility or service;
- (c) in the case of a member—
  - (i) by depriving him of membership, or
  - (ii) by varying the terms on which he is a member;
- (d) in the case of an associate—
  - (i) by depriving him of his rights as an associate, or
  - (ii) by varying those rights; or
- (e) in either case, by subjecting him to any other detriment.

(4) It is unlawful for an association to which this section applies to discriminate against a disabled person—

- (a) in the way it affords him access to a benefit, facility or service,

- (b) by refusing or deliberately omitting to afford him access to a benefit, facility or service, or
  - (c) by subjecting him to any other detriment,
- in his capacity as a guest of the association.
- (5) It is unlawful for an association to which this section applies to discriminate against a disabled person—
- (a) in the terms on which it is prepared to invite him, or permit a member or associate to invite him, to be a guest of the association;
  - (b) by refusing or deliberately omitting to invite him to be a guest of the association; or
  - (c) by not permitting a member or associate to invite him to be a guest of the association.
- (6) It is unlawful for an association to which this section applies to discriminate against a disabled person in failing in prescribed circumstances to comply with a duty imposed on it under section 21H.
- (7) In the case of an act which constitutes discrimination by virtue of section 55, this section also applies to discrimination against a person who is not disabled.

### **Meaning of “discrimination”**

- 21G.**—(1) For the purposes of section 21F, an association discriminates against a disabled person if—
- (a) for a reason which relates to the disabled person’s disability, the association treats him less favourably than it treats or would treat others to whom that reason does not or would not apply; and
  - (b) it cannot show that the treatment in question is justified.
- (2) For the purposes of subsection (1), treatment is justified only if—
- (a) in the opinion of the association, one or more of the conditions mentioned in subsection (3) are satisfied; and
  - (b) it is reasonable, in all the circumstances, for it to hold that opinion.
- (3) The conditions are that—
- (a) the treatment is necessary in order not to endanger the health or safety of any person (which may include that of the disabled person);
  - (b) the disabled person is incapable of entering into an enforceable agreement, or giving an informed consent, and for that reason the treatment is reasonable in that case;
  - (c) in a case falling within section 21F(2)(a), (3)(a), (c)(ii), (d)(ii) or (e), (4)(a) or (c) or (5)(a), the treatment is necessary in order for the association to be able to afford members, associates or guests of the association, or the disabled person, access to a benefit, facility or service;
  - (d) in a case falling within section 21F(2)(b), (3)(b), (c)(i) or (d)(i), (4)(b) or (5)(b) or (c), the treatment is necessary because the association would otherwise be unable to afford members, associates or guests of the association access to a benefit, facility or service;
  - (e) in a case falling within section 21F(2)(a), the difference between—
    - (i) the terms on which membership is offered to the disabled person, and

- (ii) those on which it is offered to other persons,  
reflects the greater cost to the association of affording the disabled person access to a benefit, facility or service;
- (f) in a case falling within section 21F(3)(a), (c)(ii) or (d)(ii) or (4)(a), the difference between—
  - (i) the association's treatment of the disabled person, and
  - (ii) its treatment of other members, or (as the case may be) other associates or other guests, of the association,reflects the greater cost to the association of affording the disabled person access to a benefit, facility or service;
- (g) in a case falling within section 21F(5)(a), the difference between—
  - (i) the terms on which the disabled person is invited, or permitted to be invited, to be a guest of the association, and
  - (ii) those on which other persons are invited, or permitted to be invited, to be guests of the association,reflects the greater cost to the association of affording the disabled person access to a benefit, facility or service.
- (4) Any increase in the cost of affording a disabled person access to a benefit, facility or service which results from compliance with a duty under section 21H shall be disregarded for the purposes of subsection (3)(e), (f) and (g).
- (5) Regulations may—
  - (a) make provision, for purposes of this section, as to circumstances in which it is, or as to circumstances in which it is not, reasonable for an association to hold the opinion mentioned in subsection (2)(a);
  - (b) amend or omit a condition specified in subsection (3) or make provision for it not to apply in prescribed circumstances;
  - (c) make provision as to circumstances (other than any for the time being mentioned in subsection (3)) in which treatment is to be taken to be justified for the purposes of subsection (1).
- (6) For the purposes of section 21F, an association also discriminates against a disabled person if—
  - (a) it fails to comply with a duty under section 21H imposed on it in relation to the disabled person; and
  - (b) it cannot show that its failure to comply with that duty is justified.
- (7) Regulations may make provision as to circumstances in which failure to comply with a duty under section 21H is to be taken to be justified for the purposes of subsection (6).

### **Duty to make adjustments**

**21H.**—(1) Regulations may make provision imposing on an association to which section 21F applies—

- (a) a duty to take steps for a purpose relating to a policy, practice or procedure of the association, or a physical feature, which adversely affects disabled persons who—
  - (i) are, or might wish to become, members or associates of the association; or
  - (ii) are, or are likely to become, guests of the association;

- (b) a duty to take steps for the purpose of making an auxiliary aid or service available to any such disabled persons.
- (2) Regulations under subsection (1) may (in particular)—
  - (a) make provision as to the cases in which a duty is imposed;
  - (b) make provision as to the steps which a duty requires to be taken;
  - (c) make provision as to the purpose for which a duty requires steps to be taken.
- (3) Any duty imposed under this section is imposed only for the purpose of determining whether an association has, for the purposes of section 21F, discriminated against a disabled person; and accordingly a breach of any such duty is not actionable as such.

**“Member”, “associate” and “guest”**

- 21J.**—(1) For the purposes of sections 21F to 21H and this section—
- (a) a person is a member of an association to which section 21F applies if he belongs to it by virtue of his admission to any sort of membership provided for by its constitution (and is not merely a person with certain rights under its constitution by virtue of his membership of some other association), and references to membership of an association shall be construed accordingly;
  - (b) a person is an associate of an association to which section 21F applies if, not being a member of it, he has under its constitution some or all of the rights enjoyed by members (or would have apart from any provision in its constitution authorising the refusal of those rights in particular cases).
- (2) References in sections 21F to 21H to a guest of an association include a person who is a guest of the association by virtue of an invitation issued by a member or associate of the association and permitted by the association.
- (3) Regulations may make provision, for purposes of sections 21F to 21H, as to circumstances in which a person is to be treated as being, or as to circumstances in which a person is to be treated as not being, a guest of an association.”.