

*Draft Order in Council laid before Parliament under paragraph 2(1)(a) of the Schedule to the
Northern Ireland Act 2000, for approval by resolution of each House of Parliament*

DRAFT STATUTORY INSTRUMENTS

2005 No. (N.I.)

NORTHERN IRELAND

The Disability Discrimination (Northern Ireland) Order 2005

Made - - - - 2005

Coming into operation in accordance with Article 1(2)

At the Court at Buckingham Palace, the ** day of ** 2005

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order in Council has been approved by resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1(1) of the Schedule to the Northern Ireland Act 2000 (c. 1) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows—

Introductory

Citation and commencement

1.—(1) This Order may be cited as the Disability Discrimination (Northern Ireland) Order 2005.

(2) This Order (except this Article and Article 2) shall come into operation on such day or days as the Office may by order appoint.

(3) An order under paragraph (2) may contain such transitional or saving provisions as the Office thinks necessary or expedient.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 (c. 33) applies to this Order as it applies to an Act of the Assembly.

(2) In this Order—

“the Office” means the Office of the First Minister and deputy First Minister;

“the 1995 Act” means the Disability Discrimination Act 1995 (c. 50).

Public authorities

District councils

3. In the 1995 Act, after section 14D insert—

“Relationships between district councils and their members

Interpretation of sections 15B and 15C

15A.—(1) In sections 15B and 15C “council” means a district council.

(2) In relation to a member of a council, a reference in those sections to his carrying-out of official business is to his doing of anything—

- (a) as member of the council;
- (b) as member of any body to which he is appointed by, or is appointed following nomination by, the council or a group of bodies that includes the council; or
- (c) as member of any other body if it is a public body.

Councils and their members: discrimination and harassment

15B.—(1) It is unlawful for a council to discriminate against a disabled person who is a member of the council—

- (a) in the opportunities which it affords the disabled person to receive training, or any other facility, for his carrying-out of official business;
- (b) by refusing to afford, or deliberately not affording, the disabled person any such opportunities; or
- (c) by subjecting the disabled person to any other detriment in connection with his carrying-out of official business.

(2) It is unlawful for a council to subject a disabled person who is a member of the council to harassment in connection with his carrying-out of official business.

(3) A member of a council is not subjected to a detriment for the purposes of subsection (1)(c) by reason of—

- (a) his not being appointed or elected to an office of the council;
- (b) his not being appointed or elected to, or to an office of, a committee or sub-committee of the council; or
- (c) his not being appointed or nominated in exercise of any power of the council, or of a group of bodies that includes the council, to appoint, or nominate for appointment, to any body.

(4) Regulations may make provision as to the circumstances in which treatment is to be taken to be justified, or is to be taken not to be justified, for the purposes of section 3A(1) (b) as it has effect for the interpretation of “discriminate” in subsection (1).

(5) Regulations under subsection (4) may (in particular) provide for section 3A(3) to apply with prescribed modifications, or not to apply, for those purposes; but treatment of a disabled person cannot be justified under subsection (4) if it amounts to direct discrimination falling within section 3A(5).

(6) If, in a case falling within section 3A(1) as it has effect for the interpretation of “discriminate” in subsection (1), a council is under a duty imposed by section 15C in relation to a disabled person but fails to comply with that duty, its treatment of that person cannot be justified under subsection (4) unless it would have been justified even if it had complied with that duty.

Councils and their members: duty to make adjustments

15C.—(1) Subsection (2) applies where—

(a) a provision, criterion or practice applied by or on behalf of a council, or
(b) any physical feature of premises occupied by, or under the control of, a council, places a disabled person who is a member of the council at a substantial disadvantage, in comparison with members of the council who are not disabled persons, in connection with his carrying-out of official business.

(2) It is the duty of the council to take such steps as it is reasonable, in all the circumstances of the case, for it to have to take in order to prevent the provision, criterion or practice, or feature, having that effect.

(3) Subsection (2) does not impose any duty on a council in relation to a member of the council who is a disabled person if the council does not know, and could not reasonably be expected to know, that the member—

- (a) has a disability; and
- (b) is likely to be affected in the way mentioned in subsection (1).

(4) Regulations may make provision, for purposes of this section—

- (a) as to circumstances in which a provision, criterion or practice, or physical feature, is to be taken to have the effect mentioned in subsection (1);
- (b) as to circumstances in which a provision, criterion or practice, or physical feature, is to be taken not to have the effect mentioned in subsection (1);
- (c) as to circumstances in which it is, or as to circumstances in which it is not, reasonable for a council to have to take steps of a prescribed description;
- (d) as to steps which it is always, or as to steps which it is never, reasonable for a council to have to take;
- (e) as to things which are, or as to things which are not, to be treated as physical features.”.

Discrimination by public authorities

4. In the 1995 Act, after section 21A insert—

“Public authorities

Discrimination by public authorities

21B.—(1) It is unlawful for a public authority to discriminate against a disabled person in carrying out its functions.

(2) In this section, and sections 21D and 21E, “public authority”—

- (a) includes any person certain of whose functions are functions of a public nature; but

- (b) does not include any person mentioned in subsection (3).
- (3) The persons are—
 - (a) either House of Parliament;
 - (b) a person exercising functions in connection with proceedings in Parliament;
 - (c) the Assembly;
 - (d) a person exercising functions in connection with proceedings in the Assembly;
 - (e) the Security Service;
 - (f) the Secret Intelligence Service;
 - (g) the Government Communications Headquarters; and
 - (h) a unit, or part of a unit, of any of the naval, military or air forces of the Crown which is for the time being required by the Secretary of State to assist the Government Communications Headquarters in carrying out its functions.
- (4) In relation to a particular act, a person is not a public authority by virtue only of subsection (2)(a) if the nature of the act is private.
- (5) Regulations may provide for a person of a prescribed description to be treated as not being a public authority for the purposes of this section and sections 21D and 21E.
- (6) In the case of an act which constitutes discrimination by virtue of section 55, subsection (1) also applies to discrimination against a person who is not disabled.
- (7) Subsection (1)—
 - (a) does not apply to anything which is unlawful under any provision of this Act other than subsection (1) or under any provision of the 2005 Order;
 - (b) does not, subject to subsections (8) and (9), apply to anything which would be unlawful under any such provision but for the operation of any provision in or made under this Act or that Order.
- (8) Subsection (1) does apply in relation to a public authority's function of appointing a person to, and in relation to a public authority's functions with respect to a person as the holder of, an office or post if—
 - (a) none of the conditions specified in section 4C(3) is satisfied in relation to the office or post; and
 - (b) sections 4D and 4E would apply in relation to an appointment to the office or post if any of those conditions was satisfied.
- (9) Subsection (1) does apply in relation to a public authority's functions with respect to a person as candidate or prospective candidate for election to, and in relation to a public authority's functions with respect to a person as elected holder of, an office or post if—
 - (a) the office or post is not membership of a House of Parliament, the Assembly or a district council;
 - (b) none of the conditions specified in section 4C(3) is satisfied in relation to the office or post; and
 - (c) sections 4D and 4E would apply in relation to an appointment to the office or post if—
 - (i) any of those conditions was satisfied, and
 - (ii) section 4F(1) (but not section 4C(5)) was omitted.
- (10) Subsections (8) and (9)—
 - (a) shall not be taken to prejudice the generality of subsection (1); but

- (b) are subject to section 21C(5).

Exceptions from section 21B(1)

21C.—(1) Section 21B(1) does not apply to—

- (a) a judicial act (whether done by a court, tribunal or other person); or
- (b) an act done on the instructions, or on behalf, of a person acting in a judicial capacity.

(2) Section 21B(1) does not apply to any act of, or relating to, making, confirming or approving an enactment.

(3) Section 21B(1) does not apply to any act of, or relating to, imposing conditions or requirements of a kind falling within section 59(1)(c).

(4) Section 21B(1) does not apply to—

- (a) a decision not to institute criminal proceedings;
- (b) where such a decision is made, an act done for the purpose of enabling the decision to be made;
- (c) a decision not to continue criminal proceedings; or
- (d) where such a decision is made—
 - (i) an act done for the purpose of enabling the decision to be made; or
 - (ii) an act done for the purpose of securing that the proceedings are not continued.

(5) Section 21B(1) does not apply to an act of a prescribed description.

Meaning of “discrimination” in section 21B

21D.—(1) For the purposes of section 21B(1), a public authority discriminates against a disabled person if—

- (a) for a reason which relates to the disabled person's disability, it 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 under subsection (3), (5) or (7)(c).

(2) For the purposes of section 21B(1), a public authority also discriminates against a disabled person if—

- (a) it fails to comply with a duty imposed on it by section 21E in circumstances in which the effect of that failure is to make it—
 - (i) impossible or unreasonably difficult for the disabled person to receive any benefit that is or may be conferred, or
 - (ii) unreasonably adverse for the disabled person to experience being subjected to any detriment to which a person is or may be subjected,

by the carrying-out of a function by the authority; and

- (b) it cannot show that its failure to comply with that duty is justified under subsection (3), (5) or (7)(c).

(3) Treatment, or failure to comply with a duty, is justified under this subsection if —

- (a) in the opinion of the public authority, one or more of the conditions specified in subsection (4) are satisfied; and

- (b) it is reasonable, in all the circumstances of the case, for it to hold that opinion.
- (4) The conditions are—
 - (a) that the treatment, or 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) that the disabled person is incapable of entering into an enforceable agreement, or of giving an informed consent, and for that reason the treatment, or non-compliance with the duty, is reasonable in the particular case;
 - (c) that, in the case of treatment mentioned in subsection (1), treating the disabled person equally favourably would in the particular case involve substantial extra costs and, having regard to resources, the extra costs in that particular case would be too great;
 - (d) that the treatment, or non-compliance with the duty, is necessary for the protection of the rights and freedoms of other persons.
- (5) Treatment, or a failure to comply with a duty, is justified under this subsection if the acts of the public authority which give rise to the treatment or failure are a proportionate means of achieving a legitimate aim.
- (6) Regulations may 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 a public authority to hold the opinion mentioned in subsection (3)(a).
- (7) Regulations may—
 - (a) amend or omit a condition specified in subsection (4) or make provision for it not to apply in prescribed circumstances;
 - (b) amend or omit subsection (5) or make provision for it not to apply in prescribed circumstances;
 - (c) make provision for purposes of this section (in addition to any provision for the time being made by subsections (3) to (5)) as to circumstances in which treatment, or a failure to comply with a duty, is to be taken to be justified.

Duty for purposes of section 21D(2) to make adjustments

21E.—(1) Subsection (2) applies where a public authority has a practice, policy or procedure which makes it—

- (a) impossible or unreasonably difficult for disabled persons to receive any benefit that is or may be conferred, or
- (b) unreasonably adverse for disabled persons to experience being subjected to any detriment to which a person is or may be subjected,

by the carrying-out of a function by the authority.

(2) It is the duty of the authority to take such steps as it is reasonable, in all the circumstances of the case, for the authority to have to take in order to change that practice, policy or procedure so that it no longer has that effect.

(3) Subsection (4) applies where a physical feature makes it—

- (a) impossible or unreasonably difficult for disabled persons to receive any benefit that is or may be conferred, or
- (b) unreasonably adverse for disabled persons to experience being subjected to any detriment to which a person is or may be subjected,

by the carrying-out of a function by a public authority.

(4) It is the duty of the authority to take such steps as it is reasonable, in all the circumstances of the case, for the authority to have 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) adopt a reasonable alternative method of carrying out the function.

(5) Regulations may prescribe—

- (a) matters which are to be taken into account in determining whether any provision of a kind mentioned in subsection (4)(c) or (d) is reasonable;
- (b) categories of public authorities to whom subsection (4) does not apply.

(6) Subsection (7) applies where an auxiliary aid or service would—

- (a) enable disabled persons to receive, or facilitate the receiving by disabled persons of, any benefit that is or may be conferred, or
- (b) reduce the extent to which it is adverse for disabled persons to experience being subjected to any detriment to which a person is or may be subjected,

by the carrying-out of a function by a public authority.

(7) It is the duty of the authority to take such steps as it is reasonable, in all the circumstances of the case, for the authority to have to take in order to provide that auxiliary aid or service.

(8) Regulations may make provision, for purposes of this section—

- (a) as to circumstances in which it is, or as to circumstances in which it is not, reasonable for a public authority to have to take steps of a prescribed description;
- (b) as to steps which it is always, or as to steps which it is never, reasonable for a public authority to have to take;
- (c) as to what is, or as to what is not, to be included within the meaning of “practice, policy or procedure”;
- (d) as to things which are, or as to things which are not, to be treated as physical features;
- (e) as to things which are, or as to things which are not, to be treated as auxiliary aids or services.

(9) Nothing in this section requires a public authority to take any steps which, apart from this section, it has no power to take.

(10) This section imposes duties only for the purposes of determining whether a public authority has, for the purposes of section 21B(1), discriminated against a disabled person; and accordingly a breach of any such duty is not actionable as such.”

Duty of public authorities

5. In the 1995 Act, after section 49 insert—

“PART VA PUBLIC AUTHORITIES

General duty

- 49A.**—(1) Every public authority shall in carrying out its functions have due regard to—
- (a) the need to promote positive attitudes towards disabled persons; and
 - (b) the need to encourage participation by disabled persons in public life.
- (2) Subsection (1) does not apply to—
- (a) the functions of the Director of Public Prosecutions for Northern Ireland relating to the prosecution of offences; or
 - (b) any act of a description prescribed by regulations.
- (3) Subsection (1) is without prejudice to any obligation of a public authority to comply with any other statutory provision (including any other provision of this Act).
- (4) The Commission shall—
- (a) keep under review the effectiveness of the duty imposed by this section;
 - (b) offer advice to public authorities and others in connection with that duty.
- (5) Not later than 3 years after the appointed day, the Commission shall prepare and publish a report on the effectiveness of the duty imposed by this section.
- (6) In this section—
- “the appointed day” means the day appointed under Article 1(2) of the Disability Discrimination (Northern Ireland) Order 2005 for the coming into operation of Article 5 of that Order;
 - “the Commission” means the Equality Commission for Northern Ireland;
 - “public authority” has the same meaning as in section 75 of the Northern Ireland Act 1998 (c. 47).

Plan as to duty under section 49A

- 49B.**—(1) A public authority to which this subsection applies shall prepare and submit to the Commission a plan showing how the public authority proposes to fulfil the duty imposed by section 49A in relation to the relevant functions.
- (2) Any other public authority shall prepare and submit to the Commission such a plan if requested to do so by the Commission.
- (3) A public authority—
- (a) may at any time revise its plan and submit the revised plan to the Commission;
 - (b) shall, if requested to do so by the Commission, revise its plan and submit the revised plan to the Commission.
- (4) A plan (or revised plan) shall—
- (a) conform to any guidelines as to form or content which are issued by the Commission with the approval of the Office;
 - (b) specify a timetable for measures proposed in the plan;
 - (c) include details of how it will be published.

(5) Subsection (1) applies to any public authority except one which is notified in writing by the Commission that that subsection does not apply to it.

(6) If a public authority—

- (a) fails to submit a plan under subsection (1) before the end of the period of 6 months beginning with the appointed day or, if later, the establishment of the authority,
- (b) fails to submit a plan under subsection (2) before the end of the period of 6 months beginning with the date of the request under that subsection,
- (c) fails to submit a revised plan under subsection (3)(b) before the end of the period of 3 months beginning with the date of the request under that paragraph, or
- (d) submits to the Commission under paragraph (3)(a) or (b) a revised plan which in the opinion of the Commission fails to comply with subsection (4),

the Commission shall lay before the Assembly a report of that failure containing such comments and other material as appear to the Commission to be appropriate to bring to the attention of the Assembly.

(7) A public authority—

- (a) shall review its current plan under this section—
 - (i) in the case of an authority in relation to which there is a scheme under Schedule 9 to the Northern Ireland Act 1998, at the same time as the authority reviews its current scheme under paragraph 8(3) of that Schedule;
 - (ii) in the case of any other authority, at such times as the Commission may request; and
- (b) inform the Commission of the outcome of the review.

(8) In this section—

“the appointed day”, “the Commission” and “public authority” have the same meanings as in section 49A;

“the relevant functions” means the functions of the public authority or, in the case of a plan submitted in response to a request which specifies particular functions of the public authority, those functions.”.

Police

6. In sections 64A(3) and (4) and 64B(3) and (4) of the 1995 Act (the bringing of, and compensation and costs in, proceedings against the police under Part II), after “Part II” (in each place) insert “or III”.

Transport

Application of sections 19 to 21 of the 1995 Act to transport vehicles

7. After section 21 of the 1995 Act insert—

“Application of sections 19 to 21 to transport vehicles

21ZA.—(1) Section 19(1)(a), (c) and (d) do not apply in relation to a case where the service is a transport service and, as provider of that service, the provider of services discriminates against a disabled person—

- (a) in not providing, or in providing, him with a vehicle; or

- (b) in not providing, or in providing, him with services when he is travelling in a vehicle provided in the course of the transport service.
- (2) For the purposes of section 21(1), (2) and (4), it is never reasonable for a provider of services, as a provider of a transport service—
 - (a) to have to take steps which would involve the alteration or removal of a physical feature of a vehicle used in providing the service;
 - (b) to have to take steps which would—
 - (i) affect whether vehicles are provided in the course of the service or what vehicles are so provided, or
 - (ii) where a vehicle is provided in the course of the service, affect what happens in the vehicle while someone is travelling in it.
- (3) Regulations may provide for subsection (1) or (2) not to apply, or to apply only to a prescribed extent, in relation to vehicles of a prescribed description.
- (4) In this section—
 - “transport service” means a service which (to any extent) involves transport of people by vehicle;
 - “vehicle” means a vehicle for transporting people by land, air or water, and includes (in particular)—
 - (a) a vehicle not having wheels, and
 - (b) a vehicle constructed or adapted to carry passengers on a system using a mode of guided transport;
 - “guided transport” means transport by vehicles guided by means external to the vehicles (whether or not the vehicles are also capable of being operated in some other way).”.

Rail vehicles: application of accessibility regulations

8.—(1) In section 46 of the 1995 Act (rail vehicle accessibility regulations), before subsection (5) insert—

“(4A) The Department for Regional Development shall exercise the power to make rail vehicle accessibility regulations so as to secure that on and after 1st January 2020 every rail vehicle is a regulated rail vehicle, but this does not affect the powers conferred by subsection (5) or section 47(1) or 67(2).”.

(2) In that section for the definition in subsection (6) of “rail vehicle” substitute—

“rail vehicle” means a vehicle constructed or adapted to carry passengers by rail;”.

(3) For section 47(1) of the 1995 Act (rail vehicle accessibility regulations: power to exempt use of vehicles of specified descriptions or in specified circumstances) substitute—

“(1) The Department for Regional Development may by order (an “exemption order”)—

- (a) authorise the use for carriage of a regulated rail vehicle even though the vehicle does not conform with the provisions of rail vehicle accessibility regulations with which it is required to conform;
- (b) authorise a regulated rail vehicle to be used for carriage otherwise than in conformity with the provisions of rail vehicle accessibility regulations with which use of the vehicle is required to conform.

(1A) Authority under subsection (1)(a) or (b) may be for—

- (a) any regulated rail vehicle that is specified or is of a specified description; or

- (b) use in specified circumstances of—
 - (i) any regulated rail vehicle, or
 - (ii) any regulated rail vehicle that is specified or is of a specified description.”.
- (4) In the 1995 Act, after section 67 insert—

“Exercise of discretion under section 67(4B)

67A.—(1) Before the Department for Regional Development decides which of the Assembly procedures available under section 67(4B) is to be adopted in connection with the making of any particular order under section 47(1), it must consult such persons as it thinks appropriate.

(2) An order under section 47(1) may be made without a draft of the order having been laid before, and approved by a resolution of, the Assembly only if—

- (a) regulations under subsection (3) are in force; and
- (b) the making of the order without such laying and approval is in accordance with the regulations

(3) Regulations may set out the basis on which the Department for Regional Development, when it comes to make an order under section 47(1), will decide which of the Assembly procedures available under section 67(4B) is to be adopted in connection with the making of the order.

(4) Before making regulations under subsection (3), the Department for Regional Development must consult such persons as it considers appropriate.

Annual report on rail exemption orders

67B.—(1) The Department for Regional Development must after each 31st December prepare, in respect of the year that ended with that day, a report on—

- (a) the exercise in that year of the power to make orders under section 47(1); and
- (b) the exercise in that year of the discretion under section 67(4B).

(2) A report under subsection (1) must (in particular) contain—

- (a) details of each order made under section 47(1) in the year in respect of which the report is made; and
- (b) details of consultation carried out under sections 47(3) and 67A(1) in connection with orders made in that year under section 47(1).

(3) The Department for Regional Development must lay before the Assembly each report that it prepares under this section.”.

Rail vehicles: accessibility compliance certificates

- 9.**—(1) In the 1995 Act, after section 47 insert—

“Rail vehicle accessibility compliance certificates

47A.—(1) A regulated rail vehicle to which this subsection applies shall not be used for carriage unless a rail vehicle accessibility compliance certificate is in force for the vehicle.

(2) Subsection (1) applies to a regulated rail vehicle if the vehicle—

- (a) is prescribed; or
- (b) is of a prescribed class or description.

(3) A rail vehicle accessibility compliance certificate is a certificate that the Department for Regional Development is satisfied that the regulated rail vehicle conforms with those provisions of rail vehicle accessibility regulations with which the vehicle is required to conform.

(4) A rail vehicle accessibility compliance certificate may provide that it is subject to conditions specified in the certificate.

(5) Subsection (6) applies where—

- (a) the Department for Regional Development refuses an application for the issue of a rail vehicle accessibility compliance certificate for a regulated rail vehicle; and
- (b) before the end of the prescribed period, the applicant asks the Department for Regional Development to review the decision and pays any fee fixed under section 47C.

(6) The Department for Regional Development shall—

- (a) review the decision; and
- (b) in doing so, consider any representations made to it in writing, before the end of the prescribed period, by the applicant.

Rail vehicle accessibility compliance certificates: supplementary

47B.—(1) Regulations may make provision with respect to rail vehicle accessibility compliance certificates.

(2) The provision that may be made under subsection (1) includes (in particular)—

- (a) provision for certificates to be issued on application;
- (b) provision specifying conditions to which certificates are subject;
- (c) provision as to the period for which certificates are to continue in force or as to circumstances in which certificates are to cease to be in force;
- (d) provision (other than provision of a kind mentioned in paragraph (c)) dealing with failure to comply with a condition to which a certificate is subject;
- (e) provision for the withdrawal of certificates issued in error;
- (f) provision for the correction of errors in certificates;
- (g) provision with respect to the issue of copies of certificates in place of certificates which have been lost or destroyed;
- (h) provision for the examination of a rail vehicle before a certificate is issued in respect of it.

(3) In making provision of the kind mentioned in subsection (2)(a), regulations under subsection (1) may (in particular)—

- (a) make provision as to the persons by whom applications may be made;
- (b) make provision as to the form in which applications are to be made;
- (c) make provision as to information to be supplied in connection with an application, including (in particular) provision requiring the supply of a report of a compliance assessment.

(4) For the purposes of this section, a “compliance assessment” is an assessment of a rail vehicle against provisions of rail vehicle accessibility regulations with which the vehicle is required to conform.

(5) In requiring a report of a compliance assessment to be supplied in connection with an application, regulations under subsection (1) may make provision as to the person who has

to have carried out the assessment, and may (in particular) require that the assessment be one carried out by a person who has been appointed by the Department for Regional Development to carry out compliance assessments (an “appointed assessor”).

(6) For the purposes of any provisions in regulations under subsection (1) with respect to the supply of reports of compliance assessments carried out by appointed assessors, regulations under that subsection—

- (a) may make provision about appointments of appointed assessors, including (in particular)—
 - (i) provision for an appointment to be on application or otherwise than on application;
 - (ii) provision as to who may be appointed;
 - (iii) provision as to the form of applications for appointment;
 - (iv) provision as to information to be supplied with applications for appointment;
 - (v) provision as to terms and conditions, or the period or termination, of an appointment; and
 - (vi) provision for terms and conditions of an appointment, including any as to its period or termination, to be as agreed by the Department for Regional Development when making the appointment;
- (b) may make provision authorising an appointed assessor to charge fees in connection with, or incidental to, its carrying-out of a compliance assessment, including (in particular)—
 - (i) provision restricting the amount of a fee;
 - (ii) provision authorising fees that contain a profit element; and
 - (iii) provision for advance payment of fees;
- (c) may make provision requiring an appointed assessor to carry out a compliance assessment, and to do so in accordance with any procedures that may be prescribed, if prescribed conditions, which may include conditions as to the payment of fees to the assessor, are satisfied;
- (d) shall make provision for the referral to the Department for Regional Development of disputes between—
 - (i) an appointed assessor carrying out a compliance assessment, and
 - (ii) the person who requested the assessment,relating to which provisions of rail vehicle accessibility regulations the vehicle is to be assessed against or to what amounts to conformity with any of those provisions.

(7) In subsection (6)(b) to (d) “compliance assessment” includes pre-assessment activities (for example, a consideration of how the outcome of a compliance assessment would be affected by the carrying-out of particular proposed work).

Rail vehicle accessibility compliance certificates: fees

47C.—(1) Such fees, payable at such times, as may be prescribed may be charged by the Department for Regional Development in respect of—

- (a) applications for, and the issue of, rail vehicle accessibility compliance certificates;
- (b) copies of such certificates;
- (c) reviews under section 47A;

- (d) referrals of disputes under provision that, in accordance with section 47B(6)(d), is contained in regulations under section 47B(1).
- (2) Any such fees received by the Department for Regional Development shall be paid by it into the Consolidated Fund.
- (3) Regulations under subsection (1) may make provision for the repayment of fees, in whole or in part, in such circumstances as may be prescribed.
- (4) Before making any regulations under subsection (1) the Department for Regional Development shall consult such representative organisations as it thinks fit.”.
- (2) In section 49 of the 1995 Act (forgery and false statements)—
- (a) in subsection (1) (“relevant documents”), after paragraph (d) insert
- “; or
- (e) a rail vehicle accessibility compliance certificate.”, and
- (b) in subsection (4) (false statements), for “or an approval certificate” substitute “, an approval certificate or a rail vehicle accessibility compliance certificate”.
- (3) In section 68(1) of the 1995 Act (interpretation), before the definition of “rail vehicle accessibility regulations” insert—
- ““rail vehicle accessibility compliance certificate” has the meaning given in section 47A(3);”.

Rail vehicles: enforcement and penalties

- 10.**—(1) In the 1995 Act, after section 47C (which is inserted by Article 9) insert—

“Penalty for using rail vehicle without accessibility compliance certificate

47D. If a regulated rail vehicle to which section 47A(1) applies is used for carriage at a time when no rail vehicle accessibility compliance certificate is in force for the vehicle, the Department for Regional Development may require the operator of the vehicle to pay a penalty.

Penalty for using rail vehicle that does not conform with accessibility regulations

47E.—(1) Where it appears to the Department for Regional Development that a regulated rail vehicle does not conform with a provision of rail vehicle accessibility regulations with which the vehicle is required to conform, that Department may give to the operator of the vehicle a notice—

- (a) identifying the vehicle, the provision and how the vehicle fails to conform with the provision; and
- (b) specifying the improvement deadline.
- (2) The improvement deadline specified in a notice under subsection (1) may not be earlier than the end of the prescribed period beginning with the day when the notice is given to the operator.
- (3) Subsection (4) applies where—
- (a) the Department for Regional Development has given a notice under subsection (1);
- (b) the improvement deadline specified in the notice has passed; and
- (c) it appears to the Department for Regional Development that the vehicle still does not conform with the provision identified in the notice.
- (4) The Department for Regional Development may give to the operator a further notice—

- (a) identifying the vehicle, the provision and how the vehicle fails to conform to the provision; and
 - (b) specifying the final deadline.
- (5) The final deadline specified in a notice under subsection (4) may not be earlier than the end of the prescribed period beginning with the day when the notice is given to the operator.
- (6) If—
- (a) the Department for Regional Development has given a notice under subsection (4) to the operator of a regulated rail vehicle, and
 - (b) the vehicle is used for carriage at a time after the final deadline when the vehicle does not conform with the provision identified in the notice,
- the Department for Regional Development may require the operator to pay a penalty.

Penalty for using rail vehicle otherwise than in conformity with accessibility regulations

47F.—(1) Where it appears to the Department for Regional Development that a regulated rail vehicle has been used for carriage otherwise than in conformity with a provision of rail vehicle accessibility regulations with which use of the vehicle is required to conform, that Department may give to the operator of the vehicle a notice—

- (a) identifying the provision and how it was breached;
 - (b) identifying which of the regulated rail vehicles operated by the operator is or are covered by the notice; and
 - (c) specifying the improvement deadline.
- (2) The improvement deadline specified in a notice under subsection (1) may not be earlier than the end of the prescribed period beginning with the day when the notice is given to the operator.
- (3) Subsection (4) applies where—
- (a) the Department for Regional Development has given a notice under subsection (1);
 - (b) the improvement deadline specified in the notice has passed; and
 - (c) it appears to that Department that a vehicle covered by the notice has after that deadline been used for carriage otherwise than in conformity with the provision identified in the notice.
- (4) The Department for Regional Development may give to the operator a further notice—
- (a) identifying the provision and how it was breached;
 - (b) identifying which of the regulated rail vehicles covered by the notice under subsection (1) is or are covered by the further notice; and
 - (c) specifying the final deadline.
- (5) The final deadline specified in a notice under subsection (4) may not be earlier than the end of the prescribed period beginning with the day when the notice is given to the operator.
- (6) If—
- (a) the Department for Regional Development has given a notice under subsection (4), and
 - (b) a vehicle covered by the notice is at a time after the final deadline used for carriage otherwise than in conformity with the provision identified in the notice,
- that Department may require the operator of the vehicle to pay a penalty.

(7) For the purposes of subsection (1), a vehicle is operated by a person if that person is the operator of the vehicle.

Sections 47E and 47F: inspection of rail vehicles

47G.—(1) Where the Department for Regional Development has reasonable grounds for suspecting that a regulated rail vehicle may not conform with provisions of rail vehicle accessibility regulations with which it is required to conform, a person authorised by that Department—

- (a) may inspect the vehicle for conformity with the provisions;
- (b) for the purpose of exercising his power under paragraph (a)—
 - (i) may enter premises if he has reasonable grounds for suspecting the vehicle to be at those premises, and
 - (ii) may enter the vehicle; and
- (c) for the purpose of exercising his power under paragraph (a) or (b), may require any person to afford such facilities and assistance with respect to matters under that person's control as are necessary to enable the power to be exercised.

(2) Where the Department for Regional Development has given a notice under section 47E(1) or (4), a person authorised by that Department—

- (a) may inspect the vehicle concerned for conformity with the provision specified in the notice;
- (b) for the purpose of exercising his power under paragraph (a)—
 - (i) may enter premises if he has reasonable grounds for suspecting the vehicle to be at those premises, and
 - (ii) may enter the vehicle; and
- (c) for the purpose of exercising his power under paragraph (a) or (b), may require any person to afford such facilities and assistance with respect to matters under that person's control as are necessary to enable the power to be exercised.

(3) A person exercising power under subsection (1) or (2) shall, if required to do so, produce evidence of his authority to exercise the power.

(4) Where a person obstructs the exercise of power under subsection (1), the Department for Regional Development may, for purposes of section 47E(1) or 47F(1), draw such inferences from the obstruction as appear proper.

(5) Where a person—

- (a) obstructs the exercise of power under subsection (2), and
- (b) the obstruction occurs before a notice under section 47E(4) is given in respect of the vehicle concerned,

the Department for Regional Development may treat section 47E(3)(c) as satisfied in the case concerned.

(6) Where a person obstructs the exercise of power under subsection (2) and the obstruction occurs—

- (a) after a notice under section 47E(4) has been given in respect of the vehicle concerned, and
- (b) as a result of the operator, or a person who acts on his behalf, behaving in a particular way with the intention of obstructing the exercise of the power,

the Department for Regional Development may require the operator of the vehicle to pay a penalty.

(7) In this section “inspect” includes test.

Sections 47E and 47F: supplementary powers

47H.—(1) For the purposes of section 47E, the Department for Regional Development may give notice to a person requiring the person to supply the Department for Regional Development, by a time specified in the notice, with a vehicle number or other identifier for a rail vehicle—

- (a) of which that person is the operator; and
- (b) which is described in the notice.

(2) The time specified in a notice given to a person under subsection (1) may not be earlier than the end of 14 days beginning with the day when the notice is given to the person.

(3) If a person to whom a notice is given under subsection (1) does not comply with the notice by the time specified in the notice, the Department for Regional Development may require the person to pay a penalty.

(4) Where the Department for Regional Development has given a notice to a person under section 47E(1) or (4) or 47F(1) or (4), that Department may request that person to supply that Department, by a time specified in the request, with a statement detailing the steps taken in response to the notice.

(5) The time specified in a request under subsection (4) must—

- (a) if the request relates to a notice under section 47E(1) or 47F(1), be no earlier than the improvement deadline; and
- (b) if the request relates to a notice under section 47E(4) or 47F(4), be no earlier than the final deadline.

(6) Where a request under subsection (4)—

- (a) relates to a notice under section 47E(1) or 47F(1), and
- (b) is not complied with by the time specified in the request,

the Department for Regional Development may treat section 47E(3)(c) or (as the case may be) section 47F(3)(c) as being satisfied in the case concerned.

Penalties under sections 47D to 47H: amount, due date and recovery

47J.—(1) In this section “penalty” means a penalty under any of sections 47D to 47H.

(2) The amount of a penalty—

- (a) must not exceed the maximum prescribed for the purposes of this subsection; and
- (b) must not exceed 10 per cent of the turnover of the person on whom it is imposed.

(3) For the purposes of subsection (2)(b), a person's turnover shall be determined in accordance with regulations.

(4) A penalty must be paid to the Department for Regional Development before the end of the prescribed period.

(5) Any sum payable to the Department for Regional Development as a penalty may be recovered by that Department as a debt due to it.

(6) In proceedings under subsection (5) for enforcement of a penalty, no question may be raised as to—

- (a) liability to the imposition of the penalty; or
- (b) its amount.

(7) Any sum paid to the Department for Regional Development as a penalty shall be paid by it into the Consolidated Fund.

(8) The Department for Regional Development shall issue a code of practice specifying matters to be considered in determining the amount of a penalty.

(9) The Department for Regional Development may from time to time revise the whole or any part of the code and issue the code as revised.

(10) Before issuing the first or a revised version of the code, the Department for Regional Development shall lay a draft of that version before the Assembly.

(11) After laying the draft of a version of the code before the Assembly, the Department for Regional Development may bring that version of the code into operation by order.

(12) The Department for Regional Development shall have regard to the code (in addition to any other matters it thinks relevant)—

- (a) when imposing a penalty; and
- (b) when considering under section 47K(6) a notice of objection under section 47K(4).

Penalties under sections 47D to 47H: procedure

47K.—(1) In this section “penalty” means a penalty under any of sections 47D to 47H.

(2) If the Department for Regional Development decides that a person is liable to a penalty, that Department must notify the person of the decision.

(3) A notification under subsection (2) must—

- (a) state that Department's reasons for deciding that the person is liable to the penalty;
- (b) state the amount of the penalty;
- (c) specify the date before which, and the manner in which, the penalty must be paid; and
- (d) include an explanation of the steps that the person may take if he objects to the penalty.

(4) Where a person to whom a notification under subsection (2) is issued objects on the ground that—

- (a) he is not liable to the imposition of a penalty, or
- (b) the amount of the penalty is too high,

the person may give a notice of objection to the Department for Regional Development.

(5) A notice of objection must—

- (a) be in writing;
- (b) give the objector's reasons; and
- (c) be given before the end of the prescribed period.

(6) Where the Department for Regional Development receives a notice of objection to a penalty in accordance with this section, that Department shall consider it and—

- (a) cancel the penalty;
- (b) reduce the penalty; or
- (c) determine to do neither of those things.

(7) Where the Department for Regional Development considers under subsection (6) a notice of objection under subsection (4), it shall—

- (a) inform the objector of its decision before the end of the prescribed period or such longer period as it may agree with the objector; and
- (b) if it reduces the penalty, notify the objector of the reduced amount.

Penalties under sections 47D to 47H: appeals

47L.—(1) A person may appeal to the county court against a penalty imposed on him under any of sections 47D to 47H on the ground that—

- (a) he is not liable to the imposition of a penalty; or
- (b) the amount of the penalty is too high.

(2) On an appeal under this section, the county court may—

- (a) allow the appeal and cancel the penalty;
- (b) allow the appeal and reduce the penalty; or
- (c) dismiss the appeal.

(3) An appeal under this section shall be a re-hearing of the decision of the Department for Regional Development to impose a penalty, and shall be determined having regard to—

- (a) any code of practice under section 47J which has effect at the time of the appeal; and
- (b) any other matters which the county court thinks relevant (which may include matters of which the Department for Regional Development was unaware).

(4) An appeal may be brought by a person under this section against a penalty whether or not—

- (a) he has given notice of objection under section 47K(4); or
- (b) the penalty has been reduced under section 47K(6).

Sections 46 to 47H: interpretation

47M.—(1) In sections 46 to 47H “operator”, in relation to any rail vehicle, means the person having the management of that vehicle.

(2) For the purposes of those sections, a person uses a vehicle for carriage if he uses it for the carriage of passengers.

(3) Where an exemption order under section 47 authorises use of a rail vehicle even though the vehicle does not conform with a provision of rail vehicle accessibility regulations, references in sections 47A to 47G to provisions of rail vehicle accessibility regulations with which the vehicle is required to conform do not, in the vehicle's case, include that provision.”.

(2) In section 49 of the 1995 Act (Part V—public transport: offences), after subsection (4) insert—

“(5) A person who falsely pretends to be a person authorised to exercise power under section 47G is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.”.

and, in the section's heading, after “Forgery and false statements” insert “, and impersonation”.

Other matters

Discriminatory advertisements

11.—(1) In section 16B of the 1995 Act (discriminatory advertisements), for subsection (1) substitute—

“(1) It is unlawful for a person to publish or cause to be published an advertisement which—

- (a) invites applications for a relevant appointment or benefit; and
- (b) indicates, or might reasonably be understood to indicate, that an application will or may be determined to any extent by reference to—
 - (i) the applicant not having any disability, or any particular disability,
 - (ii) the applicant not having had any disability, or any particular disability, or
 - (iii) any reluctance of the person determining the application to comply with a duty to make reasonable adjustments or (in relation to employment services) with the duty imposed by section 21(1) as modified by section 21A(6).”.

(2) After subsection (2) of that section insert—

“(2A) A person who publishes an advertisement of the kind described in subsection (1) shall not be subject to any liability under subsection (1) in respect of the publication of the advertisement if he proves—

- (a) that the advertisement was published in reliance on a statement made to him by the person who caused it to be published to the effect that, by reason of the operation of subsection (2), the publication would not be unlawful; and
- (b) that it was reasonable for him to rely on the statement.

(2B) A person who knowingly or recklessly makes a statement such as is mentioned in subsection (2A)(a) which in a material respect is false or misleading commits an offence, and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.”.

(3) In subsection (3) of that section (definition of “relevant appointment or benefit”), for “subsection (1)” substitute “this section”.

Group insurance

12.—(1) Section 18 of the 1995 Act (provision of insurance services to employees under group insurance arrangements) shall cease to have effect.

(2) In section 25 of that Act (subsection (1) of which enables a claim under Part III to be made the subject of civil proceedings in the same way as breach of statutory duty), after subsection (6) insert—

“(6A) Subsection (1) does not apply in relation to a claim by a person that another person—

- (a) has discriminated against him in relation to the provision under a group insurance arrangement of facilities by way of insurance; or
- (b) is by virtue of section 57 or 58 to be treated as having discriminated against him in relation to the provision under such an arrangement of such facilities.”.

(3) In section 68(1) of that Act (interpretation), at the appropriate place insert—

““group insurance arrangement” means an arrangement between an employer and another for the provision by the other of facilities by way of insurance to the employer's employees or to any class of those employees;”.

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.”.

Discrimination in relation to letting of premises

14. In the 1995 Act, after section 24 insert—

“Let premises: discrimination in failing to comply with duty

24A.—(1) It is unlawful for a controller of let premises to discriminate against a disabled person—

- (a) who is a person to whom the premises are let; or
- (b) who, although not a person to whom the premises are let, is lawfully under the letting an occupier of the premises.

(2) For the purposes of subsection (1), a controller of let premises discriminates against a disabled person if—

- (a) he fails to comply with a duty under section 24C or 24D imposed on him by reference to the disabled person; and
- (b) he cannot show that failure to comply with the duty is justified (see section 24K).

(3) For the purposes of this section and sections 24B to 24F, a person is a controller of let premises if he is—

- (a) a person by whom the premises are let; or
- (b) a person who manages the premises.

(4) For the purposes of this section and sections 24B to 24F—

- (a) “let” includes sub-let; and
- (b) premises shall be treated as let by a person to another where a person has granted another a contractual licence to occupy them.

(5) This section applies only in relation to premises in the United Kingdom.

Exceptions to section 24A(1)

24B.—(1) Section 24A(1) does not apply if—

- (a) the premises are, or have at any time been, the only or principal home of an individual who is a person by whom they are let; and
- (b) since entering into the letting—
 - (i) the individual has not, and
 - (ii) where he is not the sole person by whom the premises are let, no other person by whom they are let has,
used for the purpose of managing the premises the services of a person who, by profession or trade, manages let premises.
- (2) Section 24A(1) does not apply if the premises are of a prescribed description.
- (3) Where the conditions mentioned in section 23(2) are satisfied, section 24A(1) does not apply.
- (4) For the purposes of section 23 “the relevant occupier” means, in a case falling within section 24A(1), a controller of the let premises, or a near relative of his; and “near relative” has here the same meaning as in section 23.

Duties for purposes of section 24A(2) to provide auxiliary aid or service

24C.—(1) Subsection (2) applies where—

- (a) a controller of let premises receives a request made by or on behalf of a person to whom the premises are let;
 - (b) it is reasonable to regard the request as a request that the controller take steps in order to provide an auxiliary aid or service; and
 - (c) either the first condition, or the second condition, is satisfied.
- (2) It is the duty of the controller to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to provide the auxiliary aid or service (but see section 24E(1)).
- (3) The first condition is that—
- (a) the auxiliary aid or service—
 - (i) would enable a relevant disabled person to enjoy, or facilitate such a person's enjoyment of, the premises, but
 - (ii) would be of little or no practical use to the relevant disabled person concerned if he were neither a person to whom the premises are let nor an occupier of them; and
 - (b) it would, were the auxiliary aid or service not to be provided, be impossible or unreasonably difficult for the relevant disabled person concerned to enjoy the premises.
- (4) The second condition is that—
- (a) the auxiliary aid or service—
 - (i) would enable a relevant disabled person to make use, or facilitate such a person's making use, of any benefit, or facility, which by reason of the letting is one of which he is entitled to make use, but
 - (ii) would be of little or no practical use to the relevant disabled person concerned if he were neither a person to whom the premises are let nor an occupier of them; and
 - (b) it would, were the auxiliary aid or service not to be provided, be impossible or unreasonably difficult for the relevant disabled person concerned to make use of

any benefit, or facility, which by reason of the letting is one of which he is entitled to make use.

Duty for purposes of section 24A(2) to change practices, terms, etc.

24D.—(1) Subsection (3) applies where—

- (a) a controller of let premises has a practice, policy or procedure which has the effect of making it impossible, or unreasonably difficult, for a relevant disabled person—
 - (i) to enjoy the premises, or
 - (ii) to make use of any benefit, or facility, which by reason of the letting is one of which he is entitled to make use, or
- (b) a term of the letting has that effect,

and (in either case) the conditions specified in subsection (2) are satisfied.

(2) Those conditions are—

- (a) that the practice, policy, procedure or term would not have that effect if the relevant disabled person concerned did not have a disability;
- (b) that the controller receives a request made by or on behalf of a person to whom the premises are let; and
- (c) that it is reasonable to regard the request as a request that the controller take steps in order to change the practice, policy, procedure or term so as to stop it having that effect.

(3) It is the duty of the controller to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to change the practice, policy, procedure or term so as to stop it having that effect (but see section 24E(1)).

Sections 24C and 24D: supplementary and interpretation

24E.—(1) For the purposes of sections 24C and 24D, it is never reasonable for a controller of let premises to have to take steps consisting of or including the removal or alteration of a physical feature.

(2) Sections 24C and 24D impose duties only for the purpose of determining whether a person has, for the purposes of section 24A, discriminated against another; and accordingly a breach of any such duty is not actionable as such.

(3) In sections 24C and 24D “relevant disabled person”, in relation to let premises, means a particular disabled person—

- (a) who is a person to whom the premises are let; or
- (b) who, although not a person to whom the premises are let, is lawfully under the letting an occupier of the premises.

(4) For the purposes of section 24C and 24D, the terms of a letting of premises include the terms of any agreement which relates to the letting of the premises.

Let premises: victimisation of persons to whom premises are let

24F.—(1) Where a duty under section 24C or 24D is imposed on a controller of let premises by reference to a person who, although not a person to whom the premises are let, is lawfully under the letting an occupier of the premises, it is unlawful for a controller of the let premises to discriminate against a person to whom the premises are let.

(2) For the purposes of subsection (1), a controller of the let premises discriminates against a person to whom the premises are let if—

- (a) the controller treats that person (“T”) less favourably than he treats or would treat other persons whose circumstances are the same as T’s; and
- (b) he does so because of costs incurred in connection with taking steps to avoid liability under section 24A(1) for failure to comply with the duty.

(3) In comparing T’s circumstances with those of any other person for the purposes of subsection (2)(a), the following (as well as the costs’ having been incurred) shall be disregarded—

- (a) the making of the request that gave rise to the imposition of the duty; and
- (b) the disability of each person who—
 - (i) is a disabled person or a person who has had a disability, and
 - (ii) is a person to whom the premises are let or, although not a person to whom the premises are let, is lawfully under the letting an occupier of the premises.

Premises that are to let: discrimination in failing to comply with duty

24G.—(1) Where—

- (a) a person has premises to let, and
- (b) a disabled person is considering taking a letting of the premises,

it is unlawful for a controller of the premises to discriminate against the disabled person.

(2) For the purposes of subsection (1), a controller of premises that are to let discriminates against a disabled person if—

- (a) he fails to comply with a duty under section 24J imposed on him by reference to the disabled person; and
- (b) he cannot show that failure to comply with the duty is justified (see section 24K).

(3) For the purposes of this section and sections 24H and 24J, a person is a controller of premises that are to let if he is—

- (a) a person who has the premises to let; or
- (b) a person who manages the premises.

(4) For the purposes of this section and sections 24H and 24J—

- (a) “let” includes sub-let;
- (b) premises shall be treated as to let by a person to another where a person proposes to grant another a contractual licence to occupy them;

and references to a person considering taking a letting of premises shall be construed accordingly.

(5) This section applies only in relation to premises in the United Kingdom.

Exceptions to section 24G(1)

24H.—(1) Section 24G(1) does not apply in relation to premises that are to let if the premises are, or have at any time been, the only or principal home of an individual who is a person who has them to let and—

- (a) the individual does not use, and

- (b) where he is not the sole person who has the premises to let, no other person who has the premises to let uses,

the services of an estate agent (within the meaning given by section 22(6)) for the purposes of letting the premises.

(2) Section 24G(1) does not apply if the premises are of a prescribed description.

(3) Where the conditions mentioned in section 23(2) are satisfied, section 24G(1) does not apply.

(4) For the purposes of section 23 “the relevant occupier” means, in a case falling within section 24G(1), a controller of the premises that are to let, or a near relative of his; and “near relative” has here the same meaning as in section 23.

Duties for purposes of section 24G(2)

24J.—(1) Subsection (2) applies where—

- (a) a controller of premises that are to let receives a request made by or on behalf of a relevant disabled person;
- (b) it is reasonable to regard the request as a request that the controller take steps in order to provide an auxiliary aid or service;
- (c) the auxiliary aid or service—
 - (i) would enable the relevant disabled person to become, or facilitate his becoming, a person to whom the premises are let, but
 - (ii) would be of little or no practical use to him if he were not considering taking a letting of the premises; and
- (d) it would, were the auxiliary aid or service not to be provided, be impossible or unreasonably difficult for the relevant disabled person to become a person to whom the premises are let.

(2) It is the duty of the controller to take such steps as it is reasonable, in all the circumstances of the case, for the controller to have to take in order to provide the auxiliary aid or service (but see subsection (5)).

(3) Subsection (4) applies where—

- (a) a controller of premises that are to let has a practice, policy or procedure which has the effect of making it impossible, or unreasonably difficult, for a relevant disabled person to become a person to whom the premises are let;
- (b) the practice, policy or procedure would not have that effect if the relevant disabled person did not have a disability;
- (c) the controller receives a request made by or on behalf of the relevant disabled person; and
- (d) it is reasonable to regard the request as a request that the controller take steps in order to change the practice, policy or procedure so as to stop it having that effect.

(4) It is the duty of the controller to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to change the practice, policy or procedure so as to stop it having that effect (but see subsection (5)).

(5) For the purposes of this section, it is never reasonable for a controller of premises that are to let to have to take steps consisting of or including the removal or alteration of a physical feature.

(6) In this section “relevant disabled person”, in relation to premises that are to let, means a particular disabled person who is considering taking a letting of the premises.

(7) This section imposes duties only for the purpose of determining whether a person has, for the purposes of section 24G, discriminated against another; and accordingly a breach of any such duty is not actionable as such.

Let premises and premises to let: justification

24K.—(1) For the purposes of sections 24A(2) and 24G(2), a person's failure to comply with a duty is justified only if—

- (a) in his opinion, a condition mentioned in subsection (2) is satisfied; and
 - (b) it is reasonable, in all the circumstances of the case, for him to hold that opinion.
- (2) The conditions are—
- (a) that it is necessary to refrain from complying with the duty in order not to endanger the health or safety of any person (which may include that of the disabled person concerned);
 - (b) that the disabled person concerned is incapable of entering into an enforceable agreement, or of giving informed consent, and for that reason the failure is reasonable.
- (3) 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 a person to hold the opinion mentioned in subsection (1)(a);
 - (b) amend or omit a condition specified in subsection (2) or make provision for it not to apply in prescribed circumstances;
 - (c) make provision, for purposes of this section, as to circumstances (other than any for the time being mentioned in subsection (2)) in which a failure is to be taken to be justified.

Sections 24 to 24K: power to make supplementary provision

24L.—(1) Regulations may make provision, for purposes of sections 24(3A) and (3B) and 24A to 24K—

- (a) as to circumstances in which premises are to be treated as let to a person;
- (b) as to circumstances in which premises are to be treated as not let to a person;
- (c) as to circumstances in which premises are to be treated as being, or as not being, to let;
- (d) as to who is to be treated as being, or as to who is to be treated as not being, a person who, although not a person to whom let premises are let, is lawfully under the letting an occupier of the premises;
- (e) as to who is to be treated as being, or as to who is to be treated as not being, a person by whom premises are let;
- (f) as to who is to be treated as having, or as to who is to be treated as not having, premises to let;
- (g) as to who is to be treated as being, or as to who is to be treated as not being, a person who manages premises;
- (h) as to things which are, or as to things which are not, to be treated as auxiliary aids or services;

- (i) as to what is, or as to what is not, to be included within the meaning of “practice, policy or procedure”;
 - (j) as to circumstances in which it is, or as to circumstances in which it is not, reasonable for a person to have to take steps of a prescribed description;
 - (k) as to steps which it is always, or as to steps which it is never, reasonable for a person to have to take;
 - (l) as to circumstances in which it is, or as to circumstances in which it is not, reasonable to regard a request as being of a particular kind;
 - (m) as to things which are, or as to things which are not, to be treated as physical features;
 - (n) as to things which are, or as to things which are not, to be treated as alterations of physical features.
- (2) The powers under subsections (1)(j) and (k) are subject to sections 24E(1) and 24J(5).”.

Power to modify or end small dwellings exemption

15.—(1) The Office may by order amend or repeal provisions of sections 23, 24B and 24H of the 1995 Act—

- (a) for the purpose of adding to the conditions for entitlement to the exemptions conferred by sections 23, 24B(3) and 24H(3);
- (b) for the purpose of making any of the conditions for entitlement to those exemptions more onerous;
- (c) for the purpose of making the conditions for entitlement to those exemptions more onerous overall;
- (d) for the purpose of otherwise restricting the cases in which any of those exemptions is available; or
- (e) for the purpose of removing those exemptions.

(2) The power under subsection (1) includes power to make consequential repeals of enactments (including future enactments) that amend section 23, 24B or 24H of the 1995 Act.

(3) No order under this section shall be made unless a draft of the order has been laid before, and approved by a resolution of, the Assembly.

Improvements to let dwelling houses

16.—(1) In the 1995 Act, after Part VA (which is inserted by Article 5) insert—

“PART VB

IMPROVEMENTS TO DWELLING HOUSES

Improvements to let dwelling houses

49C.—(1) This section applies in relation to a lease of a dwelling house if—

- (a) the tenancy is not a secure tenancy or a regulated tenancy;
- (b) the tenant or any other person who lawfully occupies or is intended lawfully to occupy the premises is a disabled person;

- (c) the person mentioned in paragraph (b) occupies or is intended to occupy the premises as his only or principal home;
 - (d) the tenant is entitled under the lease to make improvements to the premises with the consent of the landlord; and
 - (e) the tenant applies to the landlord for his consent to make a relevant improvement.
- (2) If the consent of the landlord is unreasonably withheld it must be taken to have been given.
- (3) Where the tenant applies in writing for the consent—
- (a) if the landlord refuses to give consent, he must give the tenant a written statement of the reason why the consent was withheld;
 - (b) if the landlord neither gives nor refuses to give consent within a reasonable time, consent must be taken to have been withheld.
- (4) If the landlord gives consent to the making of an improvement subject to a condition which is unreasonable, the consent must be taken to have been unreasonably withheld.
- (5) In any question as to whether—
- (a) the consent of the landlord was unreasonably withheld, or
 - (b) a condition imposed by the landlord is unreasonable,
- it is for the landlord to show that it was not.
- (6) If the tenant fails to comply with a reasonable condition imposed by the landlord on the making of a relevant improvement, the failure is to be treated as a breach by the tenant of an obligation of his tenancy.
- (7) An improvement to premises is a relevant improvement if, having regard to the disability which the disabled person mentioned in subsection (1)(b) has, it is likely to facilitate his enjoyment of the premises.
- (8) Subsections (2) to (6) apply to a lease only to the extent that provision of a like nature is not made by the lease.
- (9) In this section—
- “improvement” means any alteration in or addition to premises and includes—
- (a) any addition to or alteration in landlord’s fittings and fixtures,
 - (b) any addition or alteration connected with the provision of services to the premises,
 - (c) the erection of a wireless or television aerial, and
 - (d) the carrying out of external decoration;
- “lease” includes a sub-lease or other tenancy, and “landlord” and “tenant” must be construed accordingly;
- “regulated tenancy” has the same meaning as in the [Rent \(Northern Ireland\) Order 1978 \(NI 20\)](#);
- “secure tenancy” has the meaning given by Article 25 of the [Housing \(Northern Ireland\) Order 1983 \(NI 15\)](#).

Conciliation of disputes

49D.—(1) The Equality Commission for Northern Ireland may make arrangements with any other person for the provision of conciliation services by, or by persons appointed by, that person in relation to a dispute of any description concerning the question whether it is

unreasonable for a landlord to withhold consent to the making of a relevant improvement to a dwelling house.

(2) Subsections (2) to (8) of section 28 apply for the purposes of this section as they apply for the purposes of that section and for that purpose a reference in that section to—

- (a) a dispute arising under Part III must be construed as a reference to a dispute mentioned in subsection (1);
- (b) arrangements under that section must be construed as a reference to arrangements under this section.

(3) “Relevant improvement” has the same meaning as in section 49C.”.

(2) In section 54A of the 1995 Act (codes of practice), after subsection (1C) insert—

“(1D) The Commission may prepare and issue codes of practice giving practical guidance to landlords and tenants as to—

- (a) circumstances in which a tenant requires the consent of his landlord for making a relevant improvement to a dwelling house;
- (b) circumstances in which it is unreasonable to withhold such consent;
- (c) the application of the improvement provisions in relation to relevant improvements to dwelling houses.

(1E) In subsection (1D) the improvement provisions are—

- (a) Article 42(e) of the [Rent \(Northern Ireland\) Order 1978 \(NI 20\)](#);
- (b) Article 34 of the [Housing \(Northern Ireland\) Order 1983 \(NI 15\)](#);
- (c) Article 49C.”.

(3) In Article 9 of the [Equality \(Disability, etc\) \(Northern Ireland\) Order 2000 \(NI 2\)](#) (assistance in relation to proceedings)—

(a) in paragraph (1), after sub-paragraph (aa) insert—

“(ab) proceedings of any description to the extent that the question whether it is unreasonable for a landlord to withhold consent to the making of a relevant improvement to a dwelling house falls to be considered in the proceedings;”, and

(b) after paragraph (4) insert—

“(4A) A relevant improvement is an improvement (within the meaning of section 49C(9) of the 1995 Act) to premises which, having regard to the disability which a disabled person who lawfully occupies or is intended lawfully to occupy the premises has, is likely to facilitate his enjoyment of the premises.”.

Generalisation of section 56 of the 1995 Act in relation to Part III claims

17. For section 56 of the 1995 Act substitute—

“56 Help for aggrieved persons in obtaining information etc.

(1) For the purposes of this section—

- (a) a person who considers that he may have been—
 - (i) discriminated against in contravention of Part II or III, or
 - (ii) subjected to harassment in contravention of Part II or section 21A(2),
 is referred to as “the person aggrieved”; and

- (b) a person against whom the person aggrieved may decide to institute, or has instituted, proceedings in respect of such discrimination or harassment is referred to as “the respondent”.
- (2) With a view to helping the person aggrieved decide whether to institute proceedings and, if he does so, to formulate and present his case in the most effective manner, the Office shall by order prescribe—
- (a) forms by which the person aggrieved may question the respondent on his reasons for doing any relevant act, or on any other matter which is or may be relevant; and
 - (b) forms by which the respondent may if he so wishes reply to any questions.
- (3) Where the person aggrieved questions the respondent in accordance with forms prescribed by an order under subsection (2)—
- (a) the question, and any reply by the respondent (whether in accordance with such an order or not), shall be admissible as evidence in any proceedings under Part II or III;
 - (b) if it appears to the court or tribunal in any such proceedings—
 - (i) that the respondent deliberately, and without reasonable excuse, omitted to reply within the period of eight weeks beginning with the day on which the question was served on him, or
 - (ii) that the respondent's reply is evasive or equivocal,it may draw any inference which it considers it just and equitable to draw, including an inference that the respondent committed an unlawful act.
- (4) The Office may by order—
- (a) prescribe the period within which questions must be duly served in order to be admissible under subsection (3)(a); and
 - (b) prescribe the manner in which a question, and any reply by the respondent, may be duly served.
- (5) County court rules may enable a court entertaining a claim under section 25 to determine, before the date fixed for the hearing of the claim, whether a question or reply is admissible under this section or not.
- (6) In proceedings in respect of a section 21B claim, subsection (3)(b) does not apply in relation to a failure to reply, or a particular reply, if the following conditions are met—
- (a) that at the time of doing any relevant act, the respondent was carrying out public investigator functions or was a public prosecutor; and
 - (b) that the respondent reasonably believes that a reply or (as the case may be) a different reply would be likely to prejudice any criminal investigation, any decision to institute criminal proceedings or any criminal proceedings or would reveal the reasons behind a decision not to institute, or a decision not to continue, criminal proceedings.
- (7) The Office may by regulations provide for this section not to have effect, or to have effect with prescribed modifications, in relation to section 21B claims of a prescribed description.
- (8) This section is without prejudice to any other enactment or rule of law regulating interlocutory and preliminary matters in proceedings before a county court or industrial tribunal, and has effect subject to any enactment or rule of law regulating the admissibility of evidence in such proceedings.

(9) In this section “section 21B claim” means a claim under section 25 by virtue of section 21B.”.

Meaning of “disability”

18.—(1) Schedule 1 to the 1995 Act (which supplements the definition of “disability” in section 1 of that Act) shall have effect with the following amendments.

(2) Paragraph 1(1) (mental illness must be clinically well-recognised if it is to be basis of “mental impairment”) is omitted.

(3) Before paragraph 7 (persons deemed to be disabled) insert—

“**6A.**—(1) Subject to sub-paragraph (2), a person who has cancer, HIV infection or multiple sclerosis is to be deemed to have a disability, and hence to be a disabled person.

(2) Regulations may provide for sub-paragraph (1) not to apply in the case of a person who has cancer if he has cancer of a prescribed description.

(3) A description of cancer prescribed under sub-paragraph (2) may (in particular) be framed by reference to consequences for a person of his having it.”.

(4) In paragraph 7, after sub-paragraph (5) insert—

“(5A) The generality of sub-paragraph (5) shall not be taken to be prejudiced by the other provisions of this Schedule.”.

(5) At the end insert—

“Interpretation

9. In this Schedule, “HIV infection” means infection by a virus capable of causing the Acquired Immune Deficiency Syndrome.”.

Supplementary

Amendments and repeals

19.—(1) Schedule 1 (which contains minor and consequential amendments to the 1995 Act) shall have effect.

(2) The statutory provisions listed in Schedule 2 are repealed to the extent set out in column 2 of that Schedule.

A.K.Galloway
Clerk of the Privy Council

SCHEDULES

SCHEDULE 1

article 19(1)

MINOR AND CONSEQUENTIAL AMENDMENTS

1. The 1995 Act is amended as follows.
- 2.—(1) Section 2 (past disabilities) is amended as follows.
 - (2) In subsection (1) for “and III” insert “, III and VA”.
 - (3) In subsection (4) for “or Part III” substitute “, III or VA”.
- 3.—(1) Section 3 (guidance) is amended as follows.
 - (2) Before subsection (1) insert—

“(A1) The Office may issue guidance about matters to be taken into account in determining whether a person is a disabled person.”.
 - (3) In subsection (1) (power to issue guidance about particular matters) for the words from the beginning to “may” substitute “Without prejudice to the generality of subsection (A1), the Office may, in particular,”.
 - (4) In subsection (2) (elaboration of the power under subsection (1)), for “The guidance” substitute “Without prejudice to the generality of subsection (A1), guidance about the matters mentioned in subsection (1)”.
 - (5) In subsection (3) (duty of court or tribunal to take guidance into account), for the words from “an impairment” to “activities” substitute “a person is a disabled person”.
4. In the heading to Part II , after “THE EMPLOYMENT FIELD” insert “AND DISTRICT COUNCILS”.
5. In section 4C(2) (provisions whose application to an office or post prevents sections 4D and 4E applying), for “and section 14C” substitute “, section 14C and section 15B(3)(b)”.
6. For section 14C(3) (provisions about practical work experience do not apply where certain other provisions operate) substitute—
 - (3) This section and section 14D do not apply—
 - (a) to anything which is unlawful under any provision of section 4, sections 19 to 21A, sections 21F to 21J or Part 4; or
 - (b) to anything which would be unlawful under any such provision but for the operation of any provision in or made under this Act.”.
7. In section 16A(2) (meaning of relevant relationship in section 16A)—
 - (a) in paragraph (a) (relationships during which certain acts are unlawful under preceding provisions of Part II), after “under any preceding provision of this Part” insert “, other than sections 15B and 15C”; and
 - (b) in paragraph (b) (which refers to employment services within the meaning of Part III), omit the words “(within the meaning of Part III)”

- 8.**—(1) Section 16B (discriminatory advertisements) is amended as follows.
- (2) After subsection (2B) (which is inserted by Article 11) insert—
- “(2C) Subsection (1) does not apply in relation to an advertisement so far as it invites persons to apply in their capacity as members of a district council, for a relevant appointment or benefit which the council is intending to make or confer.”.
- (3) In subsection (3)(i) (which refers to employment services within the meaning of Part III), omit the words “(within the meaning of Part III)”.

- 9.**—(1) Section 17B (enforcement of section 16B and 16C) is amended as follows.
- (2) In subsections (1), (3) and (4)(a), and in the section's heading, for “16B” substitute “16B(1)”.
- (3) In subsection (4)(c) for “that section” substitute “section 16B(1) or (as the case may be) section 16C”.

- 10.** In section 18D(2) (interpretation of Part II)—
- (a) in the definition of “duty to make reasonable adjustments”, after “14D” insert “, 15C”; and
- (b) in the definition of “physical feature”, after “in relation to any premises, includes” insert “(subject to any provision under section 15C(4)(e))”.

- 11.** In Part II (the employment field and district councils), after section 18D insert—

“Premises provided otherwise than in course of a Part II relationship

18E.—(1) This Part does not apply in relation to the provision, otherwise than in the course of a Part II relationship, of premises by the regulated party to the other party.

- (2) For the purposes of subsection (1)—
- (a) “Part II relationship” means a relationship during the course of which an act of discrimination against, or harassment of, one party to the relationship by the other party to it is unlawful under sections 4 to 15C; and
- (b) in relation to a Part II relationship, “regulated party” means the party whose acts of discrimination, or harassment, are made unlawful by sections 4 to 15C.”

- 12.**—(1) Section 19 (discrimination in relation to goods, facilities and services) is amended as follows.

- (2) In subsection (2) (interpretation of sections 19 to 21), for “and 21” substitute “to 21ZA”.
- (3) For subsection (5) (services to which sections 19 to 21 do not apply) substitute
- “(5) Regulations may provide for subsection (1) and section 21(1), (2) and (4) not to apply, or to apply only to a prescribed extent, in relation to a service of a prescribed description.”.

- (4) For subsection (6) (relationship between Part III of the 1995 Act and the 2005 Order) substitute—

“(6) Nothing in this section or sections 20 to 21A applies to the provision of a service in relation to which discrimination is unlawful under Part III of the 2005 Order.”

- 13.**—(1) Section 21A (employment services) is amended as follows.

(2) In subsection (1) (meaning of “employment services” in Part III), for “this Part” substitute “this Act”.

- (3) In subsection (4) (application of section 19 in relation to employment services), for paragraph (c) (application of section 19(2)) substitute—

- “(c) in subsection (2), for “sections 20 to 21ZA” there were substituted “sections 20 to 21A”.”
14. In section 22 (discrimination in relation to premises), after subsection (3) insert—
- “(3A) Regulations may make provision, for purposes of subsection (3)—
- (a) as to who is to be treated as being, or as to who is to be treated as not being, a person who manages premises;
- (b) as to who is to be treated as being, or as to who is to be treated as not being, a person occupying premises.”.
15. In section 23(6) (meaning of “relevant occupier”), after paragraph (a) insert—
- “(aa) in a case falling within section 22(3), the person managing the premises, or a near relative of his;”.
- 16.—(1) Section 24 (meaning of “discrimination” in section 22) is amended as follows.
- (2) In subsection (3) (justifications), after paragraph (d) insert—
- “(e) in a case to which subsection (3A) applies, the terms are less favourable in order to recover costs which—
- (i) as a result of the disabled person having a disability, are incurred in connection with the disposal of the premises, and
- (ii) are not costs incurred in connection with taking steps to avoid liability under section 24G(1);
- (f) in a case to which subsection (3B) applies, the disabled person is subjected to the detriment in order to recover costs which—
- (i) as a result of the disabled person having a disability, are incurred in connection with the management of the premises, and
- (ii) are not costs incurred in connection with taking steps to avoid liability under section 24A(1) or 24G(1).”.
- (3) After that subsection insert—
- “(3A) This subsection applies to a case if—
- (a) the case falls within section 22(1)(a);
- (b) the premises are to let;
- (c) the person with power to dispose of the premises is a controller of them; and
- (d) the proposed disposal of the premises would involve the disabled person becoming a person to whom they are let.
- (3B) This subsection applies to a case if—
- (a) the case falls within section 22(3)(c);
- (b) the detriment is not eviction;
- (c) the premises are let premises;
- (d) the person managing the premises is a controller of them; and
- (e) the disabled person is a person to whom the premises are let or, although not a person to whom they are let, is lawfully under the letting an occupier of them.
- (3C) Section 24G(3) and (4) apply for the purposes of subsection (3A) as for those of section 24G; and section 24A(3) and (4) apply for the purposes of subsection (3B) as for those of section 24A.”.

(4) After subsection (4) insert—

“(4A) Regulations may make provision for the condition specified in subsection (3)(b) not to apply in prescribed circumstances.”.

17. After section 24L (which is inserted by section 14) insert—

“Premises provisions do not apply where other provisions operate

24M.—(1) Sections 22 to 24L do not apply—

- (a) in relation to the provision of premises by a provider of services where he provides the premises in providing services to members of the public;
- (b) in relation to the provision, in the course of a Part II relationship, of premises by the regulated party to the other party;
- (c) in relation to the provision of premises to a student or prospective student—
 - (i) by a responsible body within the meaning of Chapter I or II of Part III of the 2005 Order, or
 - (ii) by an authority in discharging any functions mentioned in Article 19(1) of the 2005 Order; or
- (d) to anything which is unlawful under section 21F or which would be unlawful under that section but for the operation of any provision in or made under this Act.

(2) Subsection (1)(a) has effect subject to any prescribed exceptions.

(3) In subsection (1)(a) “provider of services”, and providing services, have the same meaning as in section 19

(4) For the purposes of subsection (1)(b)—

- (a) “Part II relationship” means a relationship during the course of which an act of discrimination against, or harassment of, one party to the relationship by the other party to it is unlawful under sections 4 to 15C; and
- (b) in relation to a Part II relationship, “regulated party” means the party whose acts of discrimination, or harassment, are made unlawful by sections 4 to 15C.

(5) In subsection (1)(c) “student” includes pupil.”.

18. In section 25 (enforcement etc. of Part III), for subsections (7) and (8) substitute—

“(7) Subsection (1) does not apply in relation to a claim by a person that another person—

- (a) has discriminated against him in relation to the provision of employment services; or
- (b) is by virtue of section 57 or 58 to be treated as having discriminated against him in relation to the provision of employment services.

(8) A claim—

- (a) of the kind referred to in subsection (6A) or (7); or
- (b) by a person that another—
 - (i) has subjected him to harassment in a way which is unlawful under section 21A(2), or
 - (ii) is by virtue of section 57 or 58 to be treated as having subjected him to harassment in such a way,

may be presented as a complaint to an industrial tribunal.”.

19. In section 26 (validity and revision of certain agreements), for subsection (1A) substitute—

“(1A) Subsection (1) does not apply to—

- (a) any term in a contract for the provision of employment services;
- (b) any term in a contract which is a group insurance arrangement; or
- (c) a term which—
 - (i) is in an agreement which is not a contract of either of those kinds, and
 - (ii) relates to the provision of employment services or the provision under a group insurance arrangement of facilities by way of insurance.”.

20. In section 27 (alterations to premises occupied under leases), in subsection (1) (circumstances in which section applies)—

- (a) in paragraph (a), after “provider of services” insert “, a public authority (within the meaning given by section 21B) or an association to which section 21F applies”
- (b) in paragraph (b), for “he” substitute “the occupier”, and
- (c) in paragraph (c), at the end insert “or a duty imposed under section 21E or 21H”.

21. In section 46 (rail vehicle accessibility regulations)—

- (a) omit subsections (3) and (4) (offence of using rail vehicle that does not comply with accessibility regulations);
- (b) in the definition of “regulated rail vehicle” in subsection (6) for “the” substitute “provisions of”.

22.—(1) Section 54A (codes of practice) is amended as follows.

(2) In subsection (1) (persons to whom codes may be issued), after paragraph (b) insert—

- “(ba) public authorities within the meaning given by section 21B;
- “(bb) associations to which section 21F applies;”.

(3) After paragraph (1B) insert—

“(1C) The Commission may prepare and issue codes of practice giving practical guidance to persons subject to duties under section 49A on how to perform those duties.”.

(4) In paragraph (8) (account to be taken of code of practice in proceedings under Part II or III) for “or Part III” substitute “, III or VA , or any proceedings relating to a relevant improvement, ”.

(5) In paragraph (9) after the definition of “the Office” insert—

““relevant improvement” means an improvement (within the meaning of section 49C(9)) to premises which, having regard to the disability which a disabled person who lawfully occupies or is intended lawfully the premises has, is likely to facilitate his enjoyment of the premises.”.

23.—(1) Section 55 (victimisation) is amended as follows.

(2) In subsection (1) (victimisation is discrimination for the purposes of Parts II and III of the 1995 Act) after “Part III” insert “(other than sections 24A to 24L)”.

(3) In subsection (2)(a)(iii) (discrimination on account of something done under the Act), after “done anything under” insert “, or by reference to,”.

(4) In subsection (5) (provisions of Part II under which discrimination includes victimisation of a non-disabled person) after “14C” insert “, 15B”.

(5) Subsection (6) is omitted.

24.—(1) Section 64 (application to Crown etc) is amended as follows.

(2) Before subsection (1) insert—

“(A1) The following provisions bind the Crown—

- (a) sections 21B to 21E and Part VA; and
- (b) the other provisions of this Act so far as applying for the purposes of provisions mentioned in paragraph (a)

and sections 57 and 58 shall apply for purposes of provisions mentioned in paragraph (a) as if service as a Crown servant were employment by the Crown.”.

(3) In subsection (1) (Act applies to certain acts done on behalf of the Crown as to acts done by private persons), after “This Act” insert “, other than the provisions mentioned in paragraphs (a) and (b) of subsection (A1),”.

(4) In subsection (2A) (subsections (1) and (2) have effect subject to section 64A), for “(1) and” substitute “(A1) to”.

25.—(1) Section 67 (regulations and orders) is amended as follows.

(2) After subsection (3) insert—

“(3A) Where regulations under section 21D(7)(b) provide for the omission of section 21D(5), the provision that may be made by the regulations in exercise of the power conferred by subsection (3)(a) includes provision amending section 21D for the purpose of omitting references to section 21D(5).

(3B) The provision that may be made by regulations under section 21G(5)(b) in exercise of the power conferred by subsection (3)(a) includes provision amending or repealing section 21G(4).”.

(3) For subsection (4) (instruments containing orders under section 50(3), which has been repealed, to be subject to affirmative procedure) substitute—

“(4) Subsection (4A) applies to—

- (a) the first regulations to be made under section 21H(1);
- (b) regulations under section 47J(3);
- (c) regulations under section 67A(3);
- (d) regulations under paragraph 6A(2) of Schedule 1.

(4A) No regulations to which this subsection applies shall be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

(4B) An order under section 47(1), if made without a draft having been laid before and approved by a resolution of, the Assembly shall be subject to annulment in pursuance of a resolution of the Assembly; but the exercise of the discretion conferred by this subsection is subject to section 67A.”.

26.—(1) Section 68(1) (interpretation) is amended as follows.

(2) In subsection (1) at the appropriate places insert—

““criminal investigation” has the meaning given in subsection (1A);”;

““criminal proceedings” includes—

- (a) proceedings on dealing summarily with a charge under the Army Act 1955 or the Air Force Act 1955 or on summary trial under the Naval Discipline Act 1957;
- (b) proceedings before a summary appeal court constituted under any of those Acts
- (c) proceedings before a court-martial constituted under any of those Acts or a disciplinary court constituted under section 52G of the Naval Discipline Act 1957 (c. 53);
- (d) proceedings before the Courts-Martial Appeal Court; and

- (e) proceedings before a Standing Civilian Court;”;
- ““employment services” has the meaning given in section 21A(1);”;
- ““the Office” means the Office of the First Minister and deputy First Minister;”;
- ““public investigator functions” has the meaning given in subsection (1B);”.

(3) After subsection (1) insert—

“(1A) In this Act “criminal investigation” means—

- (a) any investigation which a person in carrying out functions to which section 21B(1) applies has a duty to conduct with a view to it being ascertained whether a person should be charged with an offence, or whether a person charged with or prosecuted for an offence is guilty of it; or
- (b) any investigation which is conducted by a person in carrying out functions to which section 21B(1) applies and which in the circumstances may lead to a decision by that person to institute criminal proceedings which the person has power to conduct.”.

(1B) In this Act “public investigator functions” means functions of conducting criminal investigations or charging offenders.

(1C) In subsections (1A) and (1B)—

“offence” includes any offence of a kind triable by court-martial under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957, and

“offender” is to be construed accordingly.”.

27. In Schedule 1 (provisions supplementing section 1), in paragraph 8 (progressive conditions), in sub-paragraph (1)(a), for “infection by the human immunodeficiency virus” substitute “HIV infection”.

28.—(1) Schedule 2 (modifications with which provisions mentioned in section 2(1) apply to persons who have had a disability) is amended as follows.

(2) In paragraph 2 (references in Parts II and II to a disabled person) for “and III” substitute “, III and VA”.

(3) In paragraph 3 (past disabilities: modification of references to “not disabled”) after “14D(1)” insert “, 15C(1)”.

(4) In paragraph 4 (past disabilities: modification of references to “has a disability”) after “14D(3)(b)” insert “, 15C(3)(a)”.

(5) After paragraph 4 insert—

4A. In section 24(3)(e)(i) and (f)(i), after “having” insert “had”.

4B. In sections 24D(2)(a) and 24J(3)(b), for “did not have” substitute “had not had”.”

29.—(1) Schedule 3 (enforcement and procedure) is amended as follows.

(2) In paragraph 2 (restriction on proceedings for breach of Part II of the Act), after sub-paragraph (2) insert—

“(3) Sub-paragraph (1) does not prevent the bringing of proceedings in respect of an offence under section 16B(2B).”.

(3) In Part II (claims under section 25 to enforce Part III of the Act), after paragraph 6 insert—

“Staying proceedings on section 21B claim affecting criminal matters

6A.—(1) Sub-paragraph (2) applies where a party to proceedings under section 25 which have arisen by virtue of section 21B(1) has applied for a stay of those proceedings on the grounds of prejudice to—

- (a) particular criminal proceedings;
- (b) a criminal investigation; or
- (c) a decision to institute criminal proceedings.

(2) The court shall grant the stay unless it is satisfied that the continuance of the proceedings under section 25 would not result in the prejudice alleged.

Restriction of remedies for section 21B claim relating to criminal matters

6B.—(1) Sub-paragraph (2) applies to a remedy other than—

- (a) damages; or
- (b) a declaration.

(2) In proceedings under section 25, the remedy shall be obtainable in respect of a relevant discriminatory act only if the court is satisfied that—

- (a) no criminal investigation,
- (b) no decision to institute criminal proceedings, and
- (c) no criminal proceedings,

would be prejudiced by the remedy.

(3) In sub-paragraph (2) “relevant discriminatory act” means an act—

- (a) which is done, or by virtue of section 57 or 58 is treated as done by a person—
 - (i) in carrying out public investigator functions, or
 - (ii) in carrying out functions as a public prosecutor; and
- (b) which is unlawful by virtue of section 21B(1).”.

30.—(1) Schedule 3A (validity of contracts, etc.) is amended as follows.

(2) In paragraph 2(3) (meaning of “relevant independent adviser”), after paragraph (c) insert “; or

(d) if he is a person of a description specified in an order made by the Office.”

(3) For paragraph 11 (application of Schedule to Part III of the Act so far as relating to employment services) substitute

“**11.** Any reference in this Schedule to this Part of this Act shall be taken to include a reference to Part III of this Act, to the extent that it relates to—

- (a) the provision of employment services; or
- (b) the provision under a group insurance arrangement of facilities by way of insurance.

12. Where a term to which section 26(1A)(c) applies is a term in an agreement which is not a contract, Part I of this Schedule shall have effect as if the agreement were a contract.”.

31.—(1) Schedule 4 (premises occupied under leases) is amended as follows.

(2) In paragraph 2 (joining lessors in tribunal proceedings)—

- (a) in the heading, the words “or 25(8)” are omitted, and
- (b) in sub-paragraph (1), for “under section 17A or 25(8)” substitute “on a complaint under section 17A”.
- (3) In the heading to Part II (occupation by provider of services) for “provider of services” substitute “persons subject to a duty under section 21, section 21E or 21H”.
- (4) In paragraph 5 (failure to obtain consent to alteration), after “section 21 duty” insert “or the duty imposed under section 21E or 21H”.
- (5) In paragraph 7(1) (joining lessors in proceedings under section 25), for “under section 25, in a case to which this Part of this Schedule applies,” substitute “under section 25 in a case to which section 27 applies, other than a claim presented as a complaint under section 25(8),”.
- (6) After paragraph 7 insert—

“Joining lessors in proceedings relating to group insurance or employment services

7A.—(1) In any proceedings on a complaint under section 25(8) in a case to which section 27 applies, the complainant or the occupier may ask the tribunal hearing the complaint to direct that the lessor be joined as a party to the proceedings.

(2) The request shall be granted if it is made before the hearing of the complaint begins.

(3) The tribunal may refuse the request if it is made after the hearing of the complaint begins.

(4) The request may not be granted if it is made after the tribunal has determined the complaint.

(5) Where a lessor has been so joined as a party to the proceedings, the tribunal may determine—

(a) whether the lessor has—

(i) refused consent to the alteration, or

(ii) consented subject to one or more conditions; an

(b) if so, whether the refusal or any of the conditions was unreasonable.

(6) If, under sub-paragraph (5), the tribunal determines that the refusal or any of the conditions was unreasonable it may take one or more of the following steps—

(a) make such declaration as it considers appropriate;

(b) make an order authorising the occupier to make the alteration specified in the order;

(c) order the lessor to pay compensation to the complainant.

(7) An order under sub-paragraph (6)(b) may require the occupier to comply with conditions specified in the order.

(8) Any step taken by the tribunal under sub-paragraph (6) may be in substitution for, or in addition to, any step taken by the tribunal under section 17A(2).

(9) If the tribunal orders the lessor to pay compensation it may not make an order under section 17A(2) ordering the occupier to do so.”.

32. In Schedule 8, omit paragraph 2(1).

SCHEDULE 2

REPEALS

Short Title	Extent of repeal
The Disability Discrimination Act 1995 (c. 50)	<p>In sections 16A(2)(b) and 16B(3)(i), the words “(within the meaning of Part III)”.</p> <p>Section 18.</p> <p>In section 46—</p> <p>(a) subsections (3) and (4);</p> <p>(b) in subsection (6), the definition of “operator”; and</p> <p>(c) subsections (8) to (10).</p> <p>In section 48(1), the words “or 46”.</p> <p>In section 49(1)(c), the word “or” at the end.</p> <p>Section 55(6).</p> <p>In Schedule 1, paragraph 1(1).</p> <p>In Schedule 3A, in paragraph 2(3)(b), the word “or” at the end.</p> <p>In Schedule 8, paragraphs 2(1) and 30(2).</p>

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Disability Discrimination Act 1995.