



# Disability Discrimination Act 2005

## 2005 CHAPTER 13

### *Public authorities*

#### **1 Councillors and members of the Greater London Authority**

In the 1995 Act, after section 14D there is inserted—

*“Relationships between locally-electable authorities and their members*

#### **15A Interpretation of sections 15B and 15C**

- (1) Sections 15B and 15C apply to the following authorities—
- (a) the Greater London Authority;
  - (b) a county council (in England or Wales);
  - (c) a county borough council (in Wales);
  - (d) a district council (in England);
  - (e) a London borough council;
  - (f) the Common Council of the City of London;
  - (g) the Council of the Isles of Scilly;
  - (h) a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994;
  - (i) a parish council (in England); and
  - (j) a community council (in Wales or Scotland).
- (2) In relation to a member of an authority to which sections 15B and 15C apply, a reference in those sections to his carrying-out of official business is to his doing of anything—
- (a) as member of the authority;
  - (b) as member of any body to which he is appointed by, or is appointed following nomination by, the authority or a group of bodies that includes the authority; or
  - (c) as member of any other body if it is a public body.

- (3) In this section and sections 15B and 15C “member”, in relation to the Greater London Authority, means Mayor of London or member of the London Assembly.

### **15B Authorities and their members: discrimination and harassment**

- (1) It is unlawful for an authority to which this section applies to discriminate against a disabled person who is a member of the authority—
- (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 an authority to which this section applies to subject a disabled person who is a member of the authority to harassment in connection with his carrying-out of official business.
- (3) A member of an authority to which this section applies 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 authority;
  - (b) his not being appointed or elected to, or to an office of, a committee or sub-committee of the authority; or
  - (c) his not being appointed or nominated in exercise of any power of the authority, or of a group of bodies that includes the authority, 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), an authority to which this section applies 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.

### **15C Authorities and their members: duty to make adjustments**

- (1) Subsection (2) applies where—
- (a) a provision, criterion or practice applied by or on behalf of an authority to which this section applies, or
  - (b) any physical feature of premises occupied by, or under the control of, such an authority,

places a disabled person who is a member of the authority at a substantial disadvantage, in comparison with members of the authority who are not disabled persons, in connection with his carrying-out of official business.

- (2) It is the duty of the authority 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 an authority to which this section applies in relation to a member of the authority who is a disabled person if the authority 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 an authority 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 an authority to have to take;
  - (e) as to things which are, or as to things which are not, to be treated as physical features.”

## **2 Discrimination by public authorities**

In the 1995 Act, after section 21A there is inserted—

### *“Public authorities*

#### **21B Discrimination by public authorities**

- (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 Security Service;

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- (d) the Secret Intelligence Service;
  - (e) the Government Communications Headquarters; and
  - (f) 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 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) of this section 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); and
  - (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.
- (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 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 Scottish Parliament, the National Assembly for Wales or an authority mentioned in section 15A(1);
  - (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).

### **21C Exceptions from section 21B(1)**

- (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—
  - (a) an Act, an Act of the Scottish Parliament or an Order in Council; or
  - (b) an instrument made under an Act, or under an Act of the Scottish Parliament, by—
    - (i) a Minister of the Crown;
    - (ii) a member of the Scottish Executive; or
    - (iii) the National Assembly for Wales.
- (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.

### **21D Meaning of “discrimination” in section 21B**

- (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

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- (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 a 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 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.

### **21E Duties for purposes of section 21D(2) to make adjustments**

- (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.”

### 3 Duties of public authorities

In the 1995 Act, after section 49 there is inserted—

#### “PART 5A

##### PUBLIC AUTHORITIES

#### 49A General duty

- (1) Every public authority shall in carrying out its functions have due regard to—
- (a) the need to eliminate discrimination that is unlawful under this Act;
  - (b) the need to eliminate harassment of disabled persons that is related to their disabilities;
  - (c) the need to promote equality of opportunity between disabled persons and other persons;
  - (d) the need to take steps to take account of disabled persons' disabilities, even where that involves treating disabled persons more favourably than other persons;
  - (e) the need to promote positive attitudes towards disabled persons; and
  - (f) the need to encourage participation by disabled persons in public life.
- (2) Subsection (1) is without prejudice to any obligation of a public authority to comply with any other provision of this Act.

#### 49B Meaning of “public authority” in Part 5A

- (1) In this Part “public authority”—
- (a) includes any person certain of whose functions are functions of a public nature; but
  - (b) does not include—
    - (i) any person mentioned in section 21B(3);
    - (ii) the Scottish Parliament; or
    - (iii) a person, other than the Scottish Parliamentary Corporate Body, exercising functions in connection with proceedings in the Scottish Parliament.
- (2) In relation to a particular act, a person is not a public authority by virtue only of subsection (1)(a) if the nature of the act is private.



- (3) Regulations may provide for a person of a prescribed description to be treated as not being a public authority for the purposes of this Part.

#### **49C Exceptions from section 49A(1)**

- (1) Section 49A(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 49A(1) does not apply to any act of, or relating to, making or approving an Act of Parliament, an Act of the Scottish Parliament or an Order in Council.
- (3) Section 49A(1)(c) and (d) do not apply to—
- (a) an act done in connection with recruitment to any of the naval, military or air forces of the Crown; or
  - (b) an act done in relation to a person in connection with service by him as a member of any of those forces.
- (4) Regulations may provide for section 49A(1)(a), (b), (c) or (d) not to apply to an act of a prescribed description.

#### **49D Power to impose specific duties**

- (1) The Secretary of State may by regulations impose on a public authority, other than a relevant Scottish authority or a cross-border authority, such duties as the Secretary of State considers appropriate for the purpose of ensuring the better performance by that authority of its duty under section 49A(1).
- (2) The Secretary of State may by regulations impose on a cross-border authority such duties as the Secretary of State considers appropriate for the purpose of ensuring the better performance by that authority of its duty under section 49A(1) so far as relating to such of its functions as are not Scottish functions.
- (3) The Scottish Ministers may by regulations impose on a relevant Scottish authority such duties as the Scottish Ministers consider appropriate for the purpose of ensuring the better performance by that authority of its duty under section 49A(1).
- (4) The Scottish Ministers may by regulations impose on a cross-border authority such duties as the Scottish Ministers consider appropriate for the purpose of ensuring the better performance by that authority of its duty under section 49A(1) so far as relating to its Scottish functions.
- (5) Before making regulations under any of subsections (1) to (4), the person making the regulations shall consult the Disability Rights Commission.
- (6) Before making regulations under subsection (1) or (2) in relation to functions exercisable in relation to Wales by a public authority that is not a relevant Welsh authority, the Secretary of State shall consult the National Assembly for Wales.

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- (7) The Secretary of State shall not make regulations under subsection (1) or (2) in relation to a relevant Welsh authority except with the consent of the National Assembly for Wales.
- (8) Before making regulations under subsection (2), the Secretary of State shall consult the Scottish Ministers.
- (9) Before making regulations under subsection (4), the Scottish Ministers shall consult the Secretary of State.
- (10) In this section—
- “relevant Scottish authority” means—
- (a) a member of the Scottish executive or a junior Scottish Minister;
  - (b) the Registrar General of Births, Deaths and Marriages for Scotland, the Keeper of the Registers of Scotland or the Keeper of the Records of Scotland;
  - (c) any office of a description specified in an Order in Council under section 126(8)(b) of the Scotland Act 1998 (other non-ministerial office in the Scottish Administration); or
  - (d) a public body, public office or holder of a public office—
    - (i) which (or who) is not a cross-border authority or the Scottish Parliamentary Corporate Body;
    - (ii) whose functions are exercisable only in or as regards Scotland; and
    - (iii) some at least of whose functions do not (within the meaning of the Scotland Act 1998) relate to reserved matters;
- “cross-border authority” means a cross-border public authority within the meaning given by section 88(5) of the Scotland Act 1998;
- “Scottish functions” means functions which are exercisable in or as regards Scotland and which do not (within the meaning of the Scotland Act 1998) relate to reserved matters;
- “relevant Welsh authority” means—
- (a) the National Assembly for Wales; or
  - (b) a public authority whose functions are exercisable only in relation to Wales.

#### **49E Duties under section 49D: compliance notices**

- (1) Where the Disability Rights Commission is satisfied that a public authority has failed to comply with, or is failing to comply with, a duty imposed on it by regulations under section 49D, the Commission may serve a notice on it.
- (2) The following provisions of this section apply to a notice served on an authority under subsection (1).
- (3) The notice shall require the authority—
  - (a) to comply with the duty concerned; and
  - (b) to furnish the Commission, by the end of the period of 28 days beginning with the day on which the notice is served, with details of the steps that it has taken, or is taking, to comply with the duty.

- (4) The notice may also require the authority to furnish the Commission with other information specified in the notice if the Commission reasonably requires the information in order to verify that the duty has been complied with.
- (5) The notice shall specify the time by which the authority is to furnish information which it is required to furnish under subsection (4).
- (6) A time specified under subsection (5) shall not be later than the end of the three months beginning with the day on which the notice is served.
- (7) The notice may specify the manner and form in which the authority is to furnish information which the notice requires it to furnish to the Commission.
- (8) The notice shall not require the authority—
  - (a) to furnish information which it could not be compelled to furnish in evidence in civil proceedings before the High Court; or
  - (b) to furnish information which it could not be compelled to furnish in evidence in civil proceedings before the Court of Session.

#### **49F Enforcement of compliance notices**

- (1) If—
  - (a) a public authority on which a notice has been served under section 49E fails to furnish the Disability Rights Commission, in accordance with the notice, with any information required by the notice, or
  - (b) the Commission has reasonable cause to believe that a public authority on which a notice has been served under section 49E does not intend to furnish the information required by the notice,the Commission may apply to a county court or, in Scotland, the sheriff for an order requiring the authority to furnish any information required by the notice.
- (2) If on an application under subsection (1) the court is satisfied that either of the conditions specified in paragraphs (a) and (b) of that subsection is met, the court may grant the order in the terms applied for or in more limited terms.
- (3) If—
  - (a) the period of three months beginning with the day on which a notice is served on a public authority under section 49E has ended,
  - (b) the notice required the authority to comply with a duty imposed on it by regulations under section 49D, and
  - (c) the Commission considers that the authority has not complied with the duty,the Commission may apply to a county court or, in Scotland, the sheriff for an order requiring the authority to comply with the duty.
- (4) If on an application under subsection (3) the court is satisfied—
  - (a) that the conditions specified in paragraphs (a) and (b) of that subsection are met, and
  - (b) that the authority has not complied with the duty,the court may grant the order in the terms applied for or in more limited terms.

- (5) The sanctions in section 49E and this section shall be the only sanctions for breach of any duty imposed by regulations under section 49D, but without prejudice to the enforcement of any other provision of this Act (where the breach is also a contravention of that provision).”

#### **4 Police**

- (1) Section 64A of the 1995 Act (police) shall have effect with the following amendments.
- (2) In subsections (3) to (5) (the bringing of, and compensation and costs in, proceedings against the police under Part 2), after “Part 2” (in each place) there is inserted “or 3”.
- (3) In subsection (4) (bringing of proceedings under Part 2 which, by virtue of subsection (1), are to be brought against chief officer of police), for “subsection (1)” there is substituted “this section”.

#### *Transport*

#### **5 Application of sections 19 to 21 of the 1995 Act to transport vehicles**

In the 1995 Act, after section 21 there is inserted—

##### **“21ZA Application of sections 19 to 21 to transport vehicles**

- (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” has the same meaning as in the Transport and Works Act 1992.”

## **6 Rail vehicles: application of accessibility regulations**

- (1) In section 46 of the 1995 Act (rail vehicle accessibility regulations), before subsection (5) there is inserted—

“(4A) The Secretary of State 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” there is substituted—

““rail vehicle” means a vehicle constructed or adapted to carry passengers on any railway, tramway or prescribed system;”.

- (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) there is substituted—

“(1) The Secretary of State 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 there is inserted—

### **“67A Exercise of discretion under section 67(5A)**

- (1) Before the Secretary of State decides which of the parliamentary procedures available under section 67(5A) is to be adopted in connection with the making of any particular order under section 47(1), he must consult the Disabled Persons Transport Advisory Committee.
- (2) An order under section 47(1) may be made without a draft of the instrument that contains it having been laid before, and approved by a resolution of, each House of Parliament only if—
  - (a) regulations under subsection (3) are in force; and

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- (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 Secretary of State, when he comes to make an order under section 47(1), will decide which of the parliamentary procedures available under section 67(5A) is to be adopted in connection with the making of the order.
- (4) Before making regulations under subsection (3), the Secretary of State must consult—
  - (a) the Disabled Persons Transport Advisory Committee; and
  - (b) such other persons as he considers appropriate.”
- (5) In the 1995 Act, after section 67A (which is inserted by subsection (4)) there is inserted—

**“67B Annual report on rail vehicle exemption orders**

- (1) The Secretary of State 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(5A).
- (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 Secretary of State must lay before each House of Parliament each report that he prepares under this section.”

**7 Rail vehicles: accessibility compliance certificates**

- (1) In the 1995 Act, after section 47 there is inserted—

**“47A Rail vehicle accessibility compliance certificates**

- (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 Secretary of State is satisfied that the regulated rail vehicle conforms with those provisions of rail vehicle accessibility regulations with which the vehicle is required to conform.

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- (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 Secretary of State 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 Secretary of State to review the decision and pays any fee fixed under section 47C.
- (6) The Secretary of State shall—
  - (a) review the decision; and
  - (b) in doing so, consider any representations made to him in writing, before the end of the prescribed period, by the applicant.

#### **47B Rail vehicle accessibility compliance certificates: supplementary**

- (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.

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- (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 Secretary of State 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 Secretary of State 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 Secretary of State 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).



### **47C Rail vehicle accessibility compliance certificates: fees**

- (1) Such fees, payable at such times, as may be prescribed may be charged by the Secretary of State 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 Secretary of State shall be paid by him 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 Secretary of State shall consult such representative organisations as he thinks fit.”
- (2) In section 49 of the 1995 Act (forgery and false statements)—
    - (a) in subsection (1) (“relevant documents”), after paragraph (d) there is inserted “; or
    - (e) a rail vehicle accessibility compliance certificate.”, and
    - (b) in subsection (4) (false statements), for “or an approval certificate” there is substituted “, 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” there is inserted—

““rail vehicle accessibility compliance certificate” has the meaning given in section 47A(3);”.

## **8 Rail vehicles: enforcement and penalties**

- (1) In the 1995 Act, after section 47C (which is inserted by section 7 of this Act) there is inserted—

### **“47D Penalty for using rail vehicle without accessibility compliance certificate**

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 Secretary of State may require the operator of the vehicle to pay a penalty.

### **47E Penalty for using rail vehicle that does not conform with accessibility regulations**

- (1) Where it appears to the Secretary of State that a regulated rail vehicle does not conform with a provision of rail vehicle accessibility regulations with which

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the vehicle is required to conform, the Secretary of State 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 Secretary of State has given a notice under subsection (1);
  - (b) the improvement deadline specified in the notice has passed; and
  - (c) it appears to the Secretary of State that the vehicle still does not conform with the provision identified in the notice.
- (4) The Secretary of State 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 Secretary of State 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 Secretary of State may require the operator to pay a penalty.

#### **47F Penalty for using rail vehicle otherwise than in conformity with accessibility regulations**

- (1) Where it appears to the Secretary of State 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, the Secretary of State 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 Secretary of State has given a notice under subsection (1);
  - (b) the improvement deadline specified in the notice has passed; and

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- (c) it appears to the Secretary of State 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 Secretary of State 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 Secretary of State 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,the Secretary of State 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.

#### **47G Sections 47E and 47F: inspection of rail vehicles**

- (1) Where the Secretary of State 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 the Secretary of State—
  - (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 Secretary of State has given a notice under section 47E(1) or (4), a person authorised by the Secretary of State—
  - (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

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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 Secretary of State may, for purposes of section 47E(1) or 47F(1), draw such inferences from the obstruction as appear proper.
- (5) Where—
- (a) a person 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 Secretary of State 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 Secretary of State may require the operator of the vehicle to pay a penalty.
- (7) In this section “inspect” includes test.

#### **47H Sections 47E and 47F: supplementary powers**

- (1) For the purposes of section 47E, the Secretary of State may give notice to a person requiring the person to supply the Secretary of State, 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 Secretary of State may require the person to pay a penalty.
- (4) Where the Secretary of State has given a notice to a person under section 47E(1) or (4) or 47F(1) or (4), the Secretary of State may request that person to supply the Secretary of State, 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

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- (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 Secretary of State may treat section 47E(3)(c) or (as the case may be) section 47F(3)(c) as being satisfied in the case concerned.

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

- (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 Secretary of State before the end of the prescribed period.
- (5) Any sum payable to the Secretary of State as a penalty may be recovered by the Secretary of State as a debt due to him.
- (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 Secretary of State as a penalty shall be paid by him into the Consolidated Fund.
- (8) The Secretary of State shall issue a code of practice specifying matters to be considered in determining the amount of a penalty.
- (9) The Secretary of State 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 Secretary of State shall lay a draft of that version before Parliament.
- (11) After laying the draft of a version of the code before Parliament, the Secretary of State may bring that version of the code into operation by order.
- (12) The Secretary of State shall have regard to the code (in addition to any other matters he thinks relevant)—
- (a) when imposing a penalty; and
  - (b) when considering under section 47K(6) a notice of objection under section 47K(4).

**47K Penalties under sections 47D to 47H: procedure**

- (1) In this section “penalty” means a penalty under any of sections 47D to 47H.
- (2) If the Secretary of State decides that a person is liable to a penalty, the Secretary of State must notify the person of the decision.
- (3) A notification under subsection (2) must—
  - (a) state the Secretary of State’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 Secretary of State.
- (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 Secretary of State receives a notice of objection to a penalty in accordance with this section, he shall consider it and—
  - (a) cancel the penalty;
  - (b) reduce the penalty; or
  - (c) determine to do neither of those things.
- (7) Where the Secretary of State considers under subsection (6) a notice of objection under subsection (4), he shall—
  - (a) inform the objector of his decision before the end of the prescribed period or such longer period as he may agree with the objector; and
  - (b) if he reduces the penalty, notify the objector of the reduced amount.

**47L Penalties under sections 47D to 47H: appeals**

- (1) A person may appeal to the 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 court may—
  - (a) allow the appeal and cancel the penalty;
  - (b) allow the appeal and reduce the penalty; or
  - (c) dismiss the appeal.

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- (3) An appeal under this section shall be a re-hearing of the Secretary of State's decision 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 court thinks relevant (which may include matters of which the Secretary of State 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).
- (5) A reference in this section to “the court” is a reference—
  - (a) in England and Wales, to a county court; and
  - (b) in Scotland, to the sheriff.
- (6) The sheriff may transfer proceedings under this section to the Court of Session.
- (7) Where the sheriff has made a determination under subsection (2), any party to the proceedings may appeal on a point of law, either to the Sheriff Principal or to the Court of Session, against that determination.

#### **47M Sections 46 to 47H: interpretation**

- (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 5—public transport: offences), after subsection (4) there is inserted—
- “(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” there is inserted “, and impersonation”.

## **9 Recognition of disabled persons' badges issued outside Great Britain**

In the Chronically Sick and Disabled Persons Act 1970 (c. 44), after section 21 there is inserted—

### **“21A Recognition of badges issued outside Great Britain**

- (1) For the purposes of this section and section 21B, a “recognised badge” means—
  - (a) a badge issued under section 14 of the Chronically Sick and Disabled Persons (Northern Ireland) Act 1978, or any provision replacing that section, as from time to time amended, or
  - (b) a badge issued under provisions of the law of any jurisdiction outside the United Kingdom that are specified in regulations made by the appropriate national authority.
- (2) In exercising the power under subsection (1)(b), the appropriate national authority may specify a provision only if it appears to the authority that badges issued under the provision are issued by reference to persons who are, or include, disabled persons.
- (3) A recognised badge may be displayed on a motor vehicle only in such circumstances and in such manner as may be prescribed by regulations made by the appropriate national authority.
- (4) A person who drives a motor vehicle on a road (within the meaning of the Road Traffic Act 1988) at a time when a badge purporting to be a recognised badge is displayed on the vehicle is guilty of an offence unless the badge is a recognised badge and is displayed in accordance with regulations made under subsection (3).
- (5) A person guilty of an offence under subsection (4) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (6) Where it appears to a constable or enforcement officer that there is displayed on any motor vehicle a badge purporting to be a recognised badge, he may require any person who—
  - (a) is in the vehicle, or
  - (b) appears to have been in, or to be about to get into, the vehicle,to produce the badge for inspection.
- (7) The power conferred on an enforcement officer by subsection (6) is exercisable only for purposes connected with the discharge of his functions in relation to a stationary vehicle.
- (8) A person who without reasonable excuse fails to produce a badge when required to do so under subsection (6) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (9) In this section “enforcement officer” has the meaning given by section 21(4BB).

### **21B Recognised badges treated as badges under section 21 for certain purposes**

- (1) The concessions mentioned in subsection (2) shall apply in respect of vehicles lawfully displaying a recognised badge as they apply in respect of vehicles lawfully displaying a badge issued under section 21.
- (2) The concessions are—



- (a) any exemption from an order under the Road Traffic Regulation Act 1984 given by reference to vehicles lawfully displaying a badge issued under section 21;
  - (b) any provision made in an order under that Act for the use of a parking place by such vehicles.
- (3) The appropriate national authority may by regulations provide that recognised badges are to be treated, for purposes specified in the regulations, as if they were badges issued under section 21.

### **21C Sections 21A and 21B: regulations and interpretation**

- (1) Any power to make regulations under section 21A or 21B—
- (a) is exercisable by statutory instrument, and
  - (b) includes power—
    - (i) to make different provision for different cases, and
    - (ii) to make incidental, supplementary, transitional or consequential provision.
- (2) A statutory instrument containing regulations made under section 21A or 21B by the Secretary of State is subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) In sections 21A and 21B, “appropriate national authority” means—
- (a) in relation to England, the Secretary of State;
  - (b) in relation to Wales, the National Assembly for Wales.”

### *Other matters*

## **10 Discriminatory advertisements**

- (1) Section 16B of the 1995 Act (the employment field: discriminatory advertisements) shall have effect with the following amendments.
- (2) For subsection (1) (advertisements published, or caused to be published, by person intending to make appointment or confer benefit) there is substituted—
- “(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).”
- (3) After subsection (2) there is inserted—

“(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.”

- (4) In subsection (3) (definition of “relevant appointment or benefit”), for “subsection (1)” there is substituted “this section”.

## 11 Group insurance

- (1) Section 18 of the 1995 Act (provision of insurance services to employees under group insurance arrangements) ceases to have effect.

- (2) In section 25 of that Act (subsection (1) of which enables a claim under Part 3 to be made the subject of civil proceedings in the same way as breach of statutory duty), after subsection (6) there is inserted—

“(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 there is inserted—

““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;”.

## 12 Private clubs etc.

In the 1995 Act, after section 21E (which is inserted by section 2 of this Act) there is inserted—

*“Private clubs etc.*

**21F Discrimination by private clubs etc.**

- (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.

### **21G Meaning of “discrimination”**

- (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;

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- (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).

### **21H Duty to make adjustments**

- (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.

### **21J “Member”, “associate” and “guest”**

- (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.”

## **13 Discrimination in relation to letting of premises**

In the 1995 Act, after section 24 there is inserted—

### **“24A Let premises: discrimination in failing to comply with duty**

- (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.

#### **24B Exceptions to section 24A(1)**

- (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.

#### **24C Duty for purposes of section 24A(2) to provide auxiliary aid or service**

- (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.

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

- (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)).

#### **24E Sections 24C and 24D: supplementary and interpretation**

- (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 sections 24C and 24D, the terms of a letting of premises include the terms of any agreement which relates to the letting of the premises.

#### **24F Let premises: victimisation of persons to whom premises are let**

- (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.

#### **24G Premises that are to let: discrimination in failing to comply with duty**

- (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.

#### **24H Exceptions to section 24G(1)**

- (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.

#### **24J Duties for purposes of section 24G(2)**

- (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.

#### **24K Let premises and premises that are to let: justification**

- (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.

#### **24L Sections 24 to 24K: power to make supplementary provision**

- (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) Regulations under subsection (1)(a) may (in particular) provide for premises to be treated as let to a person where they are a commonhold unit of which he is a unit-holder; and “commonhold unit”, and “unit-holder” in relation to such a unit, have here the same meaning as in Part 1 of the Commonhold and Leasehold Reform Act 2002.
- (3) The powers under subsections (1)(j) and (k) are subject to sections 24E(1) and 24J(5).”

## **14 Power to modify or end small dwellings exemptions**

- (1) The Secretary of State may by order made by statutory instrument 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 provisions 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 statutory instrument containing the order (whether alone or with other provisions) has been laid before, and approved by a resolution of, each House of Parliament.

## **15 General qualifications bodies**

In Part 4 of the 1995 Act (education), after Chapter 2 there is inserted—

### **“CHAPTER 2A**

#### **GENERAL QUALIFICATIONS BODIES**

##### **31AA General qualifications bodies: discrimination and harassment**

- (1) It is unlawful for a general qualifications body to discriminate against a disabled person—
  - (a) in the arrangements which it makes for the purpose of determining upon whom to confer a relevant qualification;
  - (b) in the terms on which it is prepared to confer a relevant qualification on him;
  - (c) by refusing or deliberately omitting to grant any application by him for such a qualification; or
  - (d) by withdrawing such a qualification from him or varying the terms on which he holds it.
- (2) It is also unlawful for a general qualifications body, in relation to a relevant qualification conferred by it, to subject to harassment a disabled person who holds or applies for such a qualification.
- (3) 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.

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- (4) In this section and section 31AD, “relevant qualification” means an authorisation, qualification, approval or certification of a prescribed description.
- (5) But an authorisation, qualification, approval or certification may not be prescribed under subsection (4) if it is a professional or trade qualification (within the meaning given by section 14A(5)).
- (6) In this Chapter—
- (a) “general qualifications body” means any authority or body which can confer a relevant qualification, but it does not include—
    - (i) a responsible body (within the meaning of Chapter 1 or 2 of this Part),
    - (ii) a local education authority in England or Wales,
    - (iii) an education authority (within the meaning of section 135(1) of the Education (Scotland) Act 1980), or
    - (iv) an authority or body of a prescribed description or in prescribed circumstances;
  - (b) references (however expressed) to the conferment of a qualification on a person include—
    - (i) the renewal or extension of a qualification, and
    - (ii) the authentication of a qualification awarded to him by another person.

### **31AB Meaning of “discrimination”**

- (1) For the purposes of section 31AA, a body 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.
- (2) For the purposes of section 31AA, a body also discriminates against a disabled person if it fails to comply with a duty imposed on it by section 31AD in relation to the disabled person.
- (3) Treatment, other than the application of a competence standard, is (subject to subsections (5) to (7)) justified for the purposes of subsection (1)(b) if, but only if, the reason for it is both material to the circumstances of the particular case and substantial.
- (4) The application by a body of a competence standard to a disabled person is (subject to subsections (6) and (7)) justified for the purposes of subsection (1)(b) if, but only if, the body can show that—
- (a) the standard is, or would be, applied equally to persons who do not have his particular disability; and
  - (b) its application is a proportionate means of achieving a legitimate aim.
- (5) If, in a case falling within subsection (1) other than a case where the treatment is the application of a competence standard, a body is under a duty under section 31AD in relation to the disabled person but fails to comply with that

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duty, its treatment of that person cannot be justified under subsection (3) unless it would have been justified even if the body had complied with that duty.

- (6) Regulations may make provision, for purposes of this section, as to circumstances in which treatment is, or as to circumstances in which treatment is not, to be taken to be justified (but see subsection (7)).
- (7) Treatment of a disabled person cannot be justified under subsection (3), (4) or (6) if it amounts to direct discrimination falling within subsection (8).
- (8) A body directly discriminates against a disabled person if, on the ground of the disabled person's disability, it treats the disabled person less favourably than it treats or would treat a person not having that particular disability whose relevant circumstances, including his abilities, are the same as, or not materially different from, those of the disabled person.
- (9) In this section, "competence standard" means an academic, medical or other standard applied by or on behalf of a general qualifications body for the purpose of determining whether or not a person has a particular level of competence or ability.

### **31AC Meaning of "harassment"**

- (1) For the purposes of section 31AA, a body subjects a disabled person to harassment where, for a reason which relates to the disabled person's disability, the body engages in unwanted conduct which has the purpose or effect of—
  - (a) violating the disabled person's dignity; or
  - (b) creating an intimidating, hostile, degrading, humiliating or offensive environment for him.
- (2) Conduct shall be regarded as having the effect referred to in paragraph (a) or (b) of subsection (1) only if, having regard to all the circumstances, including in particular the perception of the disabled person, it should reasonably be considered as having that effect.

### **31AD General qualifications bodies: duty to make adjustments**

- (1) Where—
  - (a) a provision, criterion or practice, other than a competence standard, is applied by or on behalf of a general qualifications body,
  - (b) it is a provision, criterion or practice for determining on whom a relevant qualification is to be conferred,
  - (c) a disabled person is, or has notified the body that he may be, an applicant for the conferment of that qualification, and
  - (d) the provision, criterion or practice places the disabled person at a substantial disadvantage in comparison with persons who are not disabled,

it is the duty of the body 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 having that effect.

- (2) Where—

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- (a) a provision, criterion or practice, other than a competence standard, is applied by or on behalf of a general qualifications body,
- (b) it is a provision, criterion or practice other than one for determining on whom a relevant qualification is to be conferred, and
- (c) it places a disabled person who—
  - (i) holds a relevant qualification conferred by the body, or
  - (ii) applies for a relevant qualification which the body confers,
 at a substantial disadvantage in comparison with persons who are not disabled,

it is the duty of the body 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 having that effect.

- (3) Where any physical feature of premises occupied by a general qualifications body places a disabled person who—
  - (a) holds a relevant qualification conferred by the body, or
  - (b) applies for a relevant qualification which the body confers,
 at a substantial disadvantage in comparison with persons who are not disabled, it is the duty of the body 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 feature having that effect.
- (4) Nothing in subsection (1), (2) or (3) imposes a duty on a general qualifications body in relation to a disabled person if the body does not know, and could not reasonably be expected to know—
  - (a) in the case of an applicant or potential applicant for the conferment of a relevant qualification, that the disabled person concerned is, or may be, such an applicant; or
  - (b) in any case, that that person has a disability and is likely to be affected in the way mentioned in that subsection.
- (5) In this section—
  - (a) “provision, criterion or practice” includes (subject to any provision under subsection (6)(e)) any arrangements;
  - (b) “competence standard” has the meaning given by section 31AB(9).
- (6) Regulations may make provision, for purposes of this section—
  - (a) as to circumstances in which a provision, criterion or practice is to be taken to have, or as to circumstances in which a provision, criterion or practice is to be taken not to have, the effect mentioned in subsection (1) (d) or (2)(c);
  - (b) as to circumstances in which a physical feature is to be taken to have, or as to circumstances in which a physical feature is to be taken not to have, the effect mentioned in subsection (3);
  - (c) as to circumstances in which it is, or as to circumstances in which it is not, reasonable for a body 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 body to have to take;
  - (e) as to what is, or as to what is not, to be included within the meaning of “provision, criterion or practice”;



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- (f) as to things which are, or as to things which are not, to be treated as physical features.
- (7) This section imposes duties only for the purpose of determining whether a body has, for the purposes of section 31AA, discriminated against a disabled person; and accordingly a breach of any such duty is not actionable as such.

### **31AE Chapter 2A: claims, leased premises and certain agreements**

- (1) Regulations may make provision for, or in connection with, the making of a claim by a person—
  - (a) that a general qualifications body has discriminated against him, or subjected him to harassment, in a way which is unlawful under this Chapter;
  - (b) that a general qualifications body is by virtue of section 57 or 58 to be treated as having done so; or
  - (c) that a person is by virtue of section 57 to be treated as having done so.
- (2) Regulations may, in relation to a case where premises are occupied by a general qualifications body under a lease—
  - (a) make provision modifying the lease, or make provision for its modification, in connection with the making of alterations to the premises in pursuance of a duty imposed on the body by section 31AD;
  - (b) make provision in connection with the determination of questions that are about the body's compliance with any such duty and are related to the making of alterations to the premises.
- (3) Any term in a contract or other agreement made by or on behalf of a general qualifications body is void so far as it purports to—
  - (a) require a person to do anything which would contravene any provision of, or made under, this Chapter;
  - (b) exclude or limit the operation of any provision of, or made under, this Chapter; or
  - (c) prevent any person making a claim of a kind mentioned in subsection (1).
- (4) Regulations may—
  - (a) make provision for subsection (3)(b) or (c) not to apply to an agreement settling a claim of a kind mentioned in subsection (1);
  - (b) make provision modifying an agreement to which subsection (3) applies, or make provision for the modification of such an agreement, in order to take account of the effect of that subsection.
- (5) The provision that may be made under subsection (1), (2) or (4) includes (in particular)—
  - (a) provision as to the court or tribunal to which a claim, or an application in connection with a modification, may be made;
  - (b) provision for the determination of claims or matters otherwise than by the bringing of proceedings before a court or tribunal;
  - (c) provision for a person who is a lessor in relation to a lease under which a general qualifications body occupies premises to be made a party to proceedings;

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- (d) provision as to remedies;
  - (e) provision as to procedure;
  - (f) provision as to appeals;
  - (g) provision as to time limits;
  - (h) provision as to evidence;
  - (i) provision as to costs or expenses.
- (6) Provision under subsection (1), (2) or (4) may take the form of amendments of this Act.
- (7) Regulations may make provision as to the meaning of “lease” or “lessor” in this section.
- (8) Except as provided in regulations under subsection (1), no civil or criminal proceedings may be brought against any person in respect of an act merely because the act is unlawful under this Chapter.
- (9) Subsection (8) does not prevent the making of an application for judicial review.

### **31AF Chapter 2A: duty to consult before making regulations**

- (1) Before making regulations under this Chapter, the Secretary of State shall consult such persons as it appears to him to be appropriate to consult, having regard to the substance and effect of the regulations in question.
- (2) Without prejudice to the generality of subsection (1), the Secretary of State shall consult the National Assembly for Wales and the Scottish Ministers before making regulations under this Chapter.”

## **16 Improvements to let dwelling houses**

- (1) In the 1995 Act, after Part 5A (which is inserted by section 3 of this Act) there is inserted—

### **“PART 5B**

#### IMPROVEMENTS TO DWELLING HOUSES

### **49G Improvements to let dwelling houses**

- (1) This section applies in relation to a lease of a dwelling house if—
- (a) the tenancy is not a protected tenancy, a statutory tenancy or a secure 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.

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- (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;
  - “protected tenancy” has the same meaning as in section 1 of the Rent Act 1977;
  - “statutory tenancy” must be construed in accordance with section 2 of that Act;
  - “secure tenancy” has the same meaning as in section 79 of the Housing Act 1985.

#### **49H Conciliation of disputes**

- (1) The Disability Rights Commission 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

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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 3 must be construed as a reference to a dispute mentioned in subsection (1) above;
- (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 49G.”

(2) In section 53A of the 1995 Act (codes of practice), after subsection (1C) there is inserted—

“(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) section 19(2) of the Landlord and Tenant Act 1927;
- (b) sections 81 to 85 of the Housing Act 1980;
- (c) sections 97 to 99 of the Housing Act 1985;
- (d) section 49G above.”

(3) In section 7 of the Disability Rights Commission Act 1999 (provision of assistance in relation to proceedings)—

(a) in subsection (1), after paragraph (a) there is inserted—

“(aa) 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 subsection (4) there is inserted—

“(4A) A relevant improvement is an improvement (within the meaning of section 49G(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.”

## 17 **Generalisation of section 56 of the 1995 Act in relation to Part 3 claims**

For section 56 of the 1995 Act there is substituted—

### **“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—

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- (i) discriminated against in contravention of Part 2 or 3, or
    - (ii) subjected to harassment in contravention of Part 2 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 Secretary of State 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 2 or 3;
  - (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 Secretary of State 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) Rules of court 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.

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- (7) Regulations may 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, the sheriff or an employment 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.”

## **18 Meaning of “disability”**

- (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) there is inserted—
  - “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) there is inserted—
  - “(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 there is inserted—

### *“Interpretation*

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

### *Supplementary*

## **19 Minor and consequential amendments and repeals and revocation**

- (1) Schedule 1 (minor and consequential amendments) has effect.
- (2) The enactments specified in Schedule 2 are repealed or revoked to the extent specified there.

## **20 Short title, interpretation, commencement and extent**

- (1) This Act may be cited as the Disability Discrimination Act 2005.
- (2) In this Act “the 1995 Act” means the Disability Discrimination Act 1995 (c. 50).
- (3) This Act, except the blue badge provisions and this section, comes into force on such day as the Secretary of State may by order appoint.
- (4) The blue badge provisions—
  - (a) so far as relating to England, come into force on such day as the Secretary of State may by order appoint, and
  - (b) so far as relating to Wales, come into force on such day as the National Assembly for Wales may by order appoint.
- (5) A person who has power under this section to appoint a day for the coming into force of a provision may by order make in connection with the coming into force of that provision such transitional provision or saving as the person considers necessary or expedient.
- (6) An order under this section—
  - (a) shall be made by statutory instrument, and
  - (b) may make different provision for different purposes.
- (7) This Act does not extend to Northern Ireland, subject to subsection (11).
- (8) The blue badge provisions extend to England and Wales only.
- (9) Section 16 also extends only to England and Wales.
- (10) In this section “the blue badge provisions” means—
  - (a) section 9,
  - (b) Part 2 of Schedule 1,
  - (c) section 19(1) so far as relating to that Part of that Schedule,
  - (d) the entries in Schedule 2 in respect of the Road Traffic Regulation Act 1984 (c. 27) and the Traffic Management Act 2004 (c. 18), and
  - (e) section 19(2) so far as relating to those entries.
- (11) The entry in Schedule 2 in respect of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750), and section 19(2) so far as relating to that entry, have the same extent as the Order.