

DISABILITY DISCRIMINATION ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedule 1

Minor and Consequential Amendments

Part 1

Amendments to the DDA 1995

Paragraph 33

222. This makes various amendments to section 67 of the DDA. Sub-paragraphs (2) and (3) tidy up section 67(1) and (3)(a), in particular to make provision for cases where the DDA confers regulation-making powers on devolved authorities (see sections 28D, 33 and 49D(3) and (4)).
223. Sub-paragraph (4) inserts new subsections (3A), (3B) and (3C) into section 67 of the DDA. Subsection (3A) provides that if regulations are made under new section 21D(7) (b) which omit new section 21D(5), there is power to make necessary consequential amendments to new section 21D. Subsection (3C) ensures that regulations made under section 49D imposing specific duties on public authorities can amend or repeal provisions in Acts of Parliament, Acts of the Scottish Parliament or subordinate legislation where this is necessary to make the specific duties effective, for example, because of a conflict with an existing duty or obligation.
224. Sub-paragraph (5) substitutes new subsections (4), (4A) to (4D), (5) and (5A) for the existing subsections (4) and (5) of section 67.
225. New subsections (4) and (4A) provide for the use of the affirmative Parliamentary procedure in the following cases:
- the first regulations made under new section 21H(1) (imposition of duty to make adjustments in relation to associations);
 - the first regulations to be made under sections 31AE(1), (2) and (4) (general qualifications bodies) and any regulations made under those provisions which amend the DDA;
 - regulations under section 31AE(1) that make provision as to remedies;
 - regulations made under section 47J(3) (determining the turnover of a rail vehicle operator for the purpose of imposing a penalty);
 - regulations made under 49D(1) or (2) that make consequential amendments to an Act of Parliament or an Act of the Scottish Parliament;

*These notes refer to the Disability Discrimination Act
2005 (c.13) which received Royal Assent on 7 April 2005*

- regulations made under section 67A(3) (setting out the basis on which the Secretary of State will exercise his discretion as to which of the parliamentary procedures available to him under section 67(5A) (the draft affirmative procedure or the negative resolution procedure) should be used when making an order under section 47(1) (exemptions from rail vehicle accessibility regulations));
 - regulations made under paragraph 6A(2) of Schedule 1 (excluding certain types of cancers from the extended definition of disability in paragraph 6A(1)).
226. New subsections (4B) and (4C) provide for regulations made by the Scottish Ministers under new section 49D, which make consequential amendments to either an Act of Parliament or an Act of the Scottish Parliament, to be made under the affirmative procedure in the Scottish Parliament.
227. New subsection (4D) provides for other types of regulations made by the Scottish Ministers under section 49D or regulations or orders made by them under section 33 to be subject to negative procedure in the Scottish Parliament.
228. New subsection (5) provides for the negative procedure (at the Westminster Parliament) to apply to all other regulations made under the DDA by the Secretary of State, and all orders made by the Secretary of State except for: appointed day orders made under any of sections 3(9), 53A(6)(a) and 70(3); and exemption orders made under section 47(1).
229. New subsection (5A) provides that orders made under section 47(1) (exemption from rail vehicle accessibility regulations) can be made by either the draft affirmative or the negative resolution procedure. The Secretary of State, in determining which of the parliamentary procedures should be used, must exercise his discretion subject to new section 67A which, in particular, enables him to make regulations setting out the basis on which he will make that decision. Until such regulations are in place, all orders made under section 47(1) will be subject to the draft affirmative resolution procedure.