Draft Regulations laid before Parliament under section 67(4) and (4A) of the Disability Discrimination Act 1995 for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2005 No.

DISABLED PERSONS

The Disability Discrimination (Private Clubs etc.) Regulations 2005

Made - - - -	*2005*
Coming into force	
regulations 1 to 5	*5th December 2005*
the remainder	*4th December 2006*

Whereas a draft of this Instrument was laid before Parliament in accordance with the provisions of section 67(4) and (4A) of the Disability Discrimination Act 1995(**1**) and approved by resolution of each House of Parliament;

Now therefore, the Secretary of State for Work and Pensions in exercise of the powers conferred upon him by sections 21F(6), 21G(5) and (7), 21H(1) and (2), 67(2) and (3) and 68(1) of the Disability Discrimination Act 1995(**2**) and of all other powers enabling him in that behalf, hereby makes the following Regulations:

PART 1

INTRODUCTORY

Citation and commencement

1.—(1) These Regulations may be cited as the Disability Discrimination (Private Clubs etc.) Regulations 2005.

(**1**) 1995 c.50. Section 67(4) and (4A) was substituted by paragraphs 1 and 33(5) of Schedule 1 to the Disability Discrimination Act 2005 (c.13).

(**2**) Sections 21F, 21G and 21H were inserted by section 12 of the Disability Discrimination Act 2005; section 67(3) was amended by paragraphs 1 and 33(3) of Schedule 1 to the Disability Discrimination Act 2005; section 68(1), which was amended by paragraphs 1 and 34 of Schedule 1 to the Disability Discrimination Act 2005, is cited because of the meaning there given to "prescribed" and "regulations".

(2) Except as provided by paragraph (3), these Regulations shall come into force on 4th December 2006.

(3) This regulation, and regulations 2 to 5, shall come into force on 5th December 2005.

Interpretation

2. In these Regulations—

"the 1995 Act" means the Disability Discrimination Act 1995;

"building" means an erection or structure of any kind.

PART 2

LESS FAVOURABLE TREATMENT: JUSTIFICATION

Circumstances in which mental incapacity justification does not apply

3. The conditions specified in section 21G(3)(b) of the 1995 Act shall not apply where another person is acting for a disabled person by virtue of—

(a) a power of attorney; or

(b) functions conferred by or under Part 7 of the Mental Health Act 1983(**3**); or

(c) powers exercisable in relation to the disabled person's property or affairs in consequence of the appointment, under the law of Scotland, of a guardian, tutor or judicial factor.

Circumstances in which less favourable treatment is justified: guarantees

4.—(1) Where, for a reason which relates to the disabled person's disability, an association treats a disabled person less favourably than it treats or would treat others to whom that reason does not or would not apply, that treatment shall be taken to be justified for the purposes of section 21G(1) of the 1995 Act in the circumstances specified in paragraph (2).

(2) The circumstances referred to in paragraph (1) are that—

(a) the association provides a guarantee (whether or not legally binding) that—

(i) the purchase price of benefits, facilities or services that it has provided will be refunded if the benefits, facilities or services are not of satisfactory quality, or

(ii) benefits or services in the form of goods that it has provided will be replaced or repaired if those goods are not of satisfactory quality; and

(b) the association refuses to provide a replacement, repair or refund under the guarantee because damage has occurred for a reason which relates to the disabled person's disability, and the damage is above the level at which the association would normally provide a replacement, repair or refund under the guarantee; and

(c) it is reasonable in all the circumstances for the association to refuse to provide a replacement, repair or refund under the guarantee.

(3) In this regulation "guarantee" includes any document having the effect referred to in paragraph (2)(a) whether or not that document is described as a guarantee by the association.

(**3**) 1983 c.20. Part 7 is repealed by section 66 and Schedule 7 of the Mental Capacity Act 2005 (c.9) which are not yet in force.

Circumstances in which less favourable treatment is justified: deposits

5.—(1) Where, for a reason which relates to the disabled person's disability, an association treats a disabled person less favourably than it treats or would treat others to whom that reason does not or would not apply, that treatment shall be taken to be justified for the purposes of section 21G(1) of the 1995 Act in the circumstances specified in paragraph (2).

(2) The circumstances referred to in paragraph (1) are that—

(a) when benefits or services (in either case in the form of goods) or facilities are provided, the disabled person is required to provide a deposit which is refundable if such goods or facilities are undamaged; and

(b) the association refuses to refund some or all of the deposit because damage has occurred to such goods or facilities for a reason which relates to the disabled person's disability, and the damage is above the level at which the association would normally refund some or all of the deposit; and

(c) it is reasonable in all the circumstances for the association to refuse to refund some or all of the deposit.

PART 3

REASONABLE ADJUSTMENTS

Members, associates and guests: benefits, facilities or services

6.—(1) Where an association has a practice, policy or procedure which makes or would make it impossible or unreasonably difficult for disabled persons who are members, associates or guests to make use of a benefit, facility or service which it provides, or is prepared to provide, to other members, associates or guests as the case may be, it is the duty of the association to take such steps as it is reasonable in all the circumstances to take in order to change that practice, policy or procedure so that it no longer has that effect.

(2) Where a physical feature makes or would make it impossible or unreasonably difficult for disabled persons who are members, associates or guests to make use of such a benefit, facility or service, it is the duty of the association providing that benefit, facility or service to take such steps as it is reasonable in all the circumstances to take in order to—

(a) remove the feature;

(b) alter it so that it no longer has that effect;

(c) provide a reasonable means of avoiding the feature; or

(d) provide a reasonable alternative method of making the benefit, facility or service in question available to disabled persons who are members, associates or guests.

(3) Where an auxiliary aid or service (for example, the provision of information on audio tape or of a sign language interpreter) would—

(a) enable disabled persons who are members, associates or guests to make use of a benefit, facility or service which an association provides, or is prepared to provide, to other members, associates or guests as the case may be; or

(b) facilitate the use by disabled persons who are members, associates or guests of such a benefit, facility or service,

it is the duty of the association providing that benefit, facility or service to take such steps as it is reasonable in all the circumstances to take in order to provide that auxiliary aid or service.

(4) It is unlawful for an association to discriminate against a disabled person who is a member, associate or guest by failing to comply with a duty imposed on it by this regulation in circumstances in which the effect of that failure is to make it impossible or unreasonably difficult for the disabled person who is a member, associate or guest to make use of any benefit, facility or service which it provides, or is prepared to provide, to other members, associates or guests as the case may be.

Members and associates: membership

7.—(1) Where an association has a practice, policy or procedure which makes or would make it impossible or unreasonably difficult for disabled persons who are members or associates, in comparison with members or associates who are not disabled, to retain their membership or rights as an associate, or to avoid having their membership or rights as an associate varied, it is the duty of the association to take such steps as it is reasonable in all the circumstances to take in order to change that practice, policy or procedure so that it no longer has that effect.

(2) Where an auxiliary aid or service would—

(a) enable disabled persons who are members or associates to retain their membership or rights as an associate, or to avoid having their membership or rights as an associate varied; or

(b) facilitate the retention by disabled persons who are members or associates of their membership or rights as an associate, or facilitate such disabled persons avoiding having their membership or rights as an associate varied,

it is the duty of the association to take such steps as it is reasonable in all the circumstances to take in order to provide that auxiliary aid or service.

(3) It is unlawful for an association to discriminate against a disabled person who is a member or associate by failing to comply with a duty imposed on it by this regulation in circumstances in which the effect of that failure is to make it impossible or unreasonably difficult for the disabled person who is a member or associate, in comparison with members or associates who are not disabled, to retain their membership or rights as an associate, or to avoid having their membership or rights as an associate varied.

Persons who might wish to become members

8.—(1) Where an association has a practice, policy or procedure which makes it impossible or unreasonably difficult for disabled persons, in comparison with persons who are not disabled, to be admitted as members of the association, it is the duty of the association to take such steps as it is reasonable in all the circumstances to take in order to change that practice, policy or procedure so that it no longer has that effect.

(2) Where an auxiliary aid or service would—

(a) enable disabled persons to be admitted as members of the association; or

(b) facilitate disabled persons being admitted as members,

it is the duty of the association to take such steps as it is reasonable in all the circumstances to take in order to provide that auxiliary aid or service.

(3) It is unlawful for an association to discriminate against a disabled person by failing to comply with a duty imposed on it by this regulation in circumstances in which the effect of that failure is to make it impossible or unreasonably difficult for the disabled person, in comparison with persons who are not disabled, to be admitted as a member of the association.

Persons who are likely to become guests

9.—(1) Where an association has a practice, policy or procedure which makes it impossible or unreasonably difficult for disabled persons, in comparison with persons who are not disabled, to

be invited as guests of the association, it is the duty of the association to take such steps as it is reasonable in all the circumstances to take in order to change that practice, policy or procedure so that it no longer has that effect.

(2) Where an auxiliary aid or service would—

(a) enable disabled persons to be invited as guests of the association; or

(b) facilitate disabled persons being invited as guests,

it is the duty of the association to take such steps as it is reasonable in all the circumstances to take in order to provide that auxiliary aid or service.

(3) It is unlawful for an association to discriminate against a disabled person by failing to comply with a duty imposed on it by this regulation in circumstances in which the effect of that failure is to make it impossible or unreasonably difficult for the disabled person, in comparison with persons who are not disabled, to be invited as a guest of the association.

Duty of associations to make adjustments relating to physical features

10. The duty at regulation 6(2) to take steps for a purpose relating to a physical feature applies, for example, to the following physical features (whether permanent or temporary)—

(a) any feature arising from the design or construction of a building on the premises occupied by the association;

(b) any feature on the premises occupied by the association of any approach to, exit from or access to such a building;

(c) any fixtures, fittings, furnishings, furniture, equipment or materials in or on the premises occupied by the association;

(d) any fixtures, fittings, furnishings, furniture, equipment or materials brought by or on behalf of the association on to premises (other than the premises that they occupy)—

(i) in the course of providing benefits, facilities or services,

(ii) for the purpose of providing such benefits, facilities or services;

(e) any other physical element or quality of any land comprised in the premises occupied by the association.

Reasonableness where consent of third party necessary for an adjustment to physical features of premises

11.—(1) This regulation prescribes particular circumstances, for the purposes of regulation 6(2), in which it is reasonable, and in which it is not reasonable, for an association to have to take the steps specified in this regulation.

(2) Where—

(a) under any binding obligation an association is required to obtain the consent of any person to an alteration to premises which it occupies; and

(b) that alteration is one which, but for that requirement, it would be reasonable for the association to have to make in order to comply with a duty under regulation 6(2),

it is reasonable for the association to have to request that consent; but it is not reasonable for it to have to make that alteration before that consent is obtained.

(3) In this regulation "binding obligation" means a legally binding obligation (not contained in a lease) in relation to premises whether arising from an agreement or otherwise.