

## **DISABILITY DISCRIMINATION ACT 2005**

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### **EXPLANATORY NOTES**

#### **COMMENTARY ON SECTIONS**

##### ***Section 12: Private clubs etc.***

124. Under the DDA, private members' clubs (referred to as "associations" in the new provisions) are not prohibited from discriminating against their members. Associations are only prevented from discriminating against disabled people in their capacity as employers (under Part 2 of the DDA) or providers of services to members of the public (under Part 3 of the DDA).
125. **Section 12** inserts new sections 21F to 21J into Part 3 of the DDA and will make it unlawful for associations with 25 or more members to discriminate against disabled members, applicants for membership, associates and guests in certain circumstances. (The new sections are modelled on the provisions of section 25 of the Race Relations Act 1976.) As with other provisions in Part 3 of the DDA, a victim of discrimination contrary to new sections 21F to 21J could bring enforcement proceedings under section 25.
126. Section 21F applies to any incorporated or unincorporated association with 25 or more members where admission to membership is regulated by its constitution (which may be written or oral) and is so conducted that its members do not constitute a section of the general public (section 21F(1)). In practice, this last requirement means that an association must operate a genuine policy of membership selection based on personal criteria so as to distinguish between members of the association and members of the public. Examples of a club which would be covered by this new section 21F include a golf club or a gentlemen's club, to which applicants for membership are required to make a personal application, be sponsored by other members as to their good character and then go through some kind of selection process, such as voting by existing members. A club which does not operate such a policy of membership selection is already covered by sections 19 to 21 of the DDA where it provides services to the public or a section of the public (whether for profit or not). Examples here would include social clubs, where payment of the requisite membership fee is all that is required to secure admittance to membership.
127. New section 21F(2) to (5) set out the circumstances in which an act of discrimination by an association will be unlawful against the following: an applicant for membership (new subsection (2)); a member or associate of the association (new subsection (3)); a guest of the association (new subsection (4)); and an intended guest of the association (new subsection (5)).
128. New subsection (2) protects a disabled applicant for membership from discrimination in relation to a refusal by a club to admit him as a member or the terms on which membership is granted.
129. New subsection (3) prohibits discrimination against a disabled member (as defined in new section 21J(1)(a)) or a disabled associate (as defined in new section 21J(1)(b)) in the following ways: in relation to the way in which he is granted access to a benefit,

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facility or service provided by the club; where he is refused access to a benefit, facility or service; where he is deprived of membership or his rights as an associate; where his terms of membership or rights as an associate are varied; or where he is subjected to any other detriment.

130. New subsection (4) prohibits discrimination by an association against a disabled guest (as defined in new section 21J(2)): in the way in which he is afforded access to a benefit, facility or service provided by the club; where he is refused access to a benefit, facility or service; or where he is subjected to any other detriment.
131. New subsection (5) prevents an association from discriminating against a disabled person where the association (or one of its members or associates) intends to invite him to be a guest of the association. It does so by making it unlawful for an association to discriminate against a disabled person: in the terms on which it is prepared to invite him or permit him to be invited by a member or associate to be a guest of the association; by refusing or deliberately omitting to invite him to be a guest; or by refusing to grant a member or associate permission to invite him as a guest.
132. New subsection (5) will ensure that an association cannot avoid liability for discriminating against a disabled person by omitting to invite him, or by refusing or withdrawing an invitation by one of its members or associates, to an event to which he would have been invited but for his disability. For example, a decision by an association refusing to allow a member to invite his disabled wife to attend an annual dinner held by the association which was open to all members' spouses, because she was a wheelchair user, would be caught by new subsection (5).
133. New section 21F(6) would make it unlawful for an association to discriminate against a disabled person by failing to comply with any duty to make reasonable adjustments imposed on the association by regulations made under section 21H (as to which, see the commentary below).
134. New section 21G sets out the meaning of discrimination. Under new section 21G, unlawful discrimination for the purposes of new section 21F is defined as less favourable treatment of a disabled person for a disability-related reason in circumstances in which that treatment cannot be justified. Less favourable treatment will only be capable of justification under new section 21G(2) where the association holds the opinion that one of the conditions in new section 21G(3) is satisfied, and it is reasonable for it to hold that opinion.
135. The conditions set out in new section 21G(3) broadly correspond to those found in section 20(4) of the DDA in relation to service providers, but have been adapted to suit the circumstances of private clubs. Subsection (4) provides that any cost of affording a disabled person access to a benefit, facility or service which results from a duty under section 21H shall be disregarded for the purposes of subsection (3)(e), (f) and (g). Under new subsection (5), the Secretary of State may, by regulations, add to, amend or omit any of the conditions set out in new subsection (3) or provide for them not to apply in prescribed circumstances. This power is intended to enable the Secretary of State to adapt the conditions, should this prove necessary, following consultation.
136. New section 21G(6) provides that an association also discriminates against a disabled person if it fails to comply with a duty to make adjustments imposed on it by new section 21H and it cannot show that such a failure is justified. New section 21H(1) and (2) enable the Secretary of State to make regulations prescribing the circumstances in which associations will be under a duty to make reasonable adjustments (which could include the alteration of physical features or the provision of an auxiliary aid). The first exercise of that regulation-making power will be subject to the affirmative resolution procedure (see paragraph 33(5) of Schedule 1 described below).
137. As the Secretary of State is consulting ("Consultation on private clubs; premises; the definition of disability and the questions procedure", December 2004, Cm 6402) before

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imposing such duties, the 2005 Act's provisions set out only the framework of this duty. It is not expected that the duties to be imposed by regulations made under new section 21H will go further than those which providers of goods, services or facilities are under by reason of section 21 of the DDA. In addition, it is expected that regulations will make provision for failure to make a reasonable adjustment to be justified in circumstances corresponding to circumstances set out in new section 21G(3).

138. New section 21J defines "member", "associate" and "guest" for the purposes of sections 21F to 21H. A member is a person who belongs to the association by virtue of his admission to membership as provided for by its constitution. An associate is defined as a person who, although not a member of the association, has some or all of the rights enjoyed by members under its constitution.
139. Subsection (2) provides that a guest of an association includes a person who is invited by a member or associate of the association with the permission of the association. The following are examples of persons who might be considered to be guests of an association: a disabled partner of a member invited to a club's annual dinner or other festive occasion; a member's adult son who has a severe learning disability and who joins his parents for a drink in a social club on a Saturday night. It is not intended to include a person who is invited onto the premises by the association in the course of their trade, such as a food and drink delivery-van driver or a plumber.
140. Subsection (3) enables the Secretary of State to make regulations setting out the circumstances in which a person is to be treated as being, or not to be treated as being, a guest of the association for the purposes of sections 21F to 21H. The power might be used, for example, in the case of associations which operate over the Internet in order to define what is meant by a "guest" should this prove problematic in practice.