

DISABILITY DISCRIMINATION ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 8: Enforcement and penalties

96. **Section 8(1)** inserts new sections 47D to 47M into the DDA. The effect is to replace the criminal sanctions in existing section 46(3) and (4) for non-compliance with the RVAR (which are repealed – see paragraph 27(a) of Schedule 1) with a civil enforcement regime which enables penalties to be levied. The new sections will enable the Secretary of State to issue an operator with an improvement notice, which sets a deadline for a non-compliance to be rectified. If the non-compliance continues after the improvement deadline, a final notice can be issued. If the final deadline is missed the Secretary of State can impose a penalty. An operator can lodge an objection with the Secretary of State against either the imposition or level of a penalty. The provisions also provide a right of appeal to the court.

New section 47D: Penalty for using rail vehicle without accessibility compliance certificate

97. New section 47D allows the Secretary of State to require an operator to pay a penalty if he uses a regulated rail vehicle that does not have a valid accessibility compliance certificate issued under section 47A to carry passengers. New sections 47J to 47L contain detailed provision about penalties.

New section 47E: Penalty for using rail vehicle that does not conform with accessibility regulations

98. This section sets out the procedure to be followed by the Secretary of State in respect of an operator of a regulated rail vehicle which appears not to comply with the construction requirements of the RVAR. The procedure involves the issuing of two notices (an improvement notice and a final notice) and, if the vehicle is used despite still being non-compliant with the RVAR, the Secretary of State may impose a penalty. The various timescales leading up to the imposition of the penalty are to be set out in regulations, but the Government has suggested in consultation that the final notice period should be two weeks.

New section 47F: Penalty for using rail vehicle otherwise than in conformity with accessibility regulations

99. This section makes similar provisions to section 47E but in respect of vehicles used in a way which does not comply with the operational, rather than technical, requirements of RVAR. This might apply, for example, where the vehicle has the appropriate equipment to assist a disabled person in getting on or off the vehicle, but no member of staff is available to operate it.

New section 47G: Sections 47E and 47F: inspection of rail vehicles

100. This section sets out new powers of inspection, to be available where the Secretary of State has reasonable grounds for suspecting that a regulated rail vehicle does not conform with those provisions of RVAR with which it is required to conform. The section also grants similar powers of inspection following the issuing of notices under section 47E(1) or (4). The Secretary of State may authorise an ‘inspector’ to examine and test such vehicles and, for the purposes of exercising these powers, the inspector is empowered to enter premises at which he believes the vehicle to be kept, and to enter the vehicle. If an inspector is obstructed in the exercise of these powers the Secretary of State may, in certain circumstances, impose a penalty on the operator.

New section 47H: Sections 47E and 47F: supplementary powers

101. Subsection (1) enables the Secretary of State to issue a notice to an operator requiring him to provide information by a specified deadline to enable a rail vehicle which is described in that notice to be identified. This may be necessary, for example, where a member of the public reports a technical breach of the RVAR and knows the time and route of the journey on which the vehicle was being used but not the vehicle’s fleet number. Under subsection (3), the Secretary of State may impose a penalty on the recipient of a notice under subsection (1) if they fail to provide the information required by the deadline, which must be a minimum of 14 days from the date on which the notice is given.

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

102. This section sets out the detail in terms of amount, due date and recovery with regard to penalties imposed under sections 47D to 47H. It stipulates that the maximum penalty cannot exceed the amount prescribed in regulations and that it also cannot exceed 10% of the turnover of the operator subject to the penalty. “Turnover”, for the purposes of subsection (2), must be determined in accordance with provisions set out in regulations. Subsection (5) enables the Secretary of State to start court proceedings to recover any penalty payable to him.
103. Subsection (8) requires the Secretary of State to issue a code of practice setting out matters that will be considered in determining the level of a penalty. For example, the code could specify a sliding scale of penalty levels so that a first ‘offence’ warranted a lower penalty. The Secretary of State is required to take account of the code when imposing a penalty under these provisions, as is a court in considering an appeal against the penalty under sections 47L: see section 47L(3). Before issuing either the first or a revised code, the Secretary of State must lay a draft before Parliament.

New section 47K: Penalties under sections 47D to 47H: procedure

104. This section sets out the procedure for the imposition of penalties under sections 47D to 47H. Subsections (4) and (5) set out the operator’s right to object to a penalty either because he does not think he is liable for such a penalty, or because he thinks the amount is too high. The Secretary of State is then under an obligation to consider the objection and take appropriate action.

New section 47L: Penalties under sections 47D to 47H: appeals

105. This section sets out the right of an operator subject to a penalty under these provisions to appeal to a court on the grounds that either they are not liable to a penalty, or that the level is too high. An appeal under this section is a re-hearing of the Secretary of State’s original decision to impose a penalty and may be brought whether or not the operator has given a notice of objection under section 47K(4), or the Secretary of State has already reduced a penalty.

New section 47M: Sections 46 to 47H: interpretation

106. Subsection (1) defines an “operator” for the purposes of sections 46 to 47H as the person having the management of a rail vehicle, and subsection (2) defines, for the purposes of sections 46 to 47H, the use of a vehicle for carriage as use for the carriage of passengers. The existing definitions of these terms in section 46 of the DDA are repealed under Schedule 2 to the 2005 Act.
107. Subsection (3) provides that where an exemption order under section 47 is in place, the references in sections 47A to 47G to the provisions of RVAR with which the vehicle is required to conform do not include a provision in respect of which an exemption order has been made.
108. *Section 8(2)* inserts into section 49 of the DDA a new subsection (5) making it a criminal offence for a person to impersonate an inspector authorised by the Secretary of State for the purposes of section 47G.