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STATUTORY INSTRUMENTS

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**2005 No. 2901**

**The Disability Discrimination (Service Providers and Public Authorities Carrying Out Functions) Regulations 2005**

**PART 2**

**JUSTIFICATION**

**Circumstances in which mental incapacity justification does not apply**

**3.** The conditions specified in sections 20(4)(b) and 21D(4)(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(1); 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.

**Insurance services: circumstances in which less favourable treatment is justified**

**4.—(1)** Where, for a reason which relates to the disabled person's disability, a provider of services treats a disabled person less favourably than he 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 20 of the 1995 Act in the circumstances specified in paragraph (2).

(2) The circumstances referred to in paragraph (1) are that the less favourable treatment is—

- (a) in connection with insurance business carried on by the provider of services;
- (b) based upon information (for example, actuarial or statistical data or a medical report) which is relevant to the assessment of the risk to be insured and is from a source on which it is reasonable to rely; and
- (c) reasonable having regard to the information relied upon and any other relevant factors.

**Insurance services: transitional provisions for existing policies**

**5.—(1)** Subject to paragraph (2), and except where regulation 6 applies, where, for a reason which relates to the disabled person's disability, a provider of services treats a disabled person less favourably than he 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 20 of the 1995 Act if the treatment is in connection with insurance business carried on by the provider of services and relates to an existing policy.

(2) Subject to paragraph (4), where an existing policy is due to be renewed, or the terms of such a policy are due to be reviewed, on or after 4th December 2006, any less favourable treatment which

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(1) 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.

occurs on or after the date that the review or renewal is due shall not be taken to be justified under paragraph (1).

(3) In this regulation “an existing policy” means a policy of insurance which incepted before 2nd December 1996 and which was not due to be renewed, or the terms of which policy were not due to be reviewed, before 4th December 2006.

(4) A review of an existing policy which is part of, or incidental to, a general reassessment by the provider of services of the pricing structure for a group of policies shall not be treated as a review for the purposes of paragraphs (2) and (3).

### **Insurance services: transitional provisions for cover documents and master policies**

6.—(1) Subject to paragraphs (2) and (3), where, for a reason which relates to the disabled person’s disability, a provider of services treats a disabled person less favourably than he 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 20 of the 1995 Act if the treatment is in connection with insurance business carried on by the provider of services and relates to a cover document which incepted before 2nd December 1997 and which was not due to be renewed, or the terms of which document were not due to be reviewed, before 4th December 2006.

(2) Paragraph (1) does not apply in a case where—

- (a) the relevant master policy was entered into or renewed on or after 2nd December 1996; or
- (b) the terms of the relevant master policy were reviewed on or after 2nd December 1996,

and for this purpose “the relevant master policy” means the master policy under which the cover document was issued.

(3) Where a cover document is due to be renewed, or the terms of such a document are due to be reviewed, on or after 4th December 2006, any less favourable treatment which occurs on or after the date that the review or renewal is due shall not be taken to be justified under paragraph (1).

(4) In this regulation—

“cover document” means a certificate or policy issued under a master policy;

“master policy” means a contract between an insurer and another person under which that person is entitled to issue certificates or policies to individuals, and which details the terms on which that person may do so.

### **Provision of services and guarantees: circumstances in which less favourable treatment is justified**

7.—(1) Where, for a reason which relates to the disabled person’s disability, a provider of services treats a disabled person less favourably than he 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 20 of the 1995 Act in the circumstances specified in paragraph (2).

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

- (a) the provider of services provides a guarantee (whether or not legally binding) that—
  - (i) the purchase price of services that he has provided will be refunded if the services are not of satisfactory quality, or
  - (ii) services in the form of goods that he has provided will be replaced or repaired if those goods are not of satisfactory quality; and
- (b) the provider of services 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 provider of services would normally provide a replacement, repair or refund under the guarantee; and

- (c) it is reasonable in all the circumstances for the provider of services 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 provider of services.

**Deposits in respect of the provision of goods and facilities: circumstances in which less favourable treatment is justified**

8.—(1) Where, for a reason which relates to the disabled person’s disability, a provider of services treats a disabled person less favourably than he 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 20 of the 1995 Act in the circumstances specified in paragraph (2).

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

- (a) when goods or facilities are provided, the disabled person is required to provide a deposit which is refundable if the goods or facilities are undamaged; and
- (b) the provider of services refuses to refund some or all of the deposit because damage has occurred to the goods or facilities for a reason which relates to the disabled person’s disability, and the damage is above the level at which the provider of services would normally refund some or all of the deposit; and
- (c) it is reasonable in all the circumstances for the provider of services to refuse to refund some or all of the deposit.