

Disability Discrimination
Goods Facilities and Services

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1. The Disability Discrimination Act (DDA) was passed in 1995. It protects disabled people in:
 - employment
 - access to goods, facilities and services
 - the management, buying or renting of land or property
 - education

2. Whilst various provisions of the DDA came into force in December 1996, there was an incredibly long lead in period for other provisions. For service providers:
 - since **December 1996** it has been unlawful to treat disabled people less favourably than other people for a reason related to their disability
 - since **October 1999** they have had to make reasonable adjustments for disabled people, such as providing extra help or making changes to the way they provide their services;
 - since **October 2004** they have had to make reasonable adjustments to the physical features of their premises to overcome physical barriers to access.

3. Part III of the DDA (sections 19-21) are set out in Appendix One to this paper.
Further amendments to Part III of the DDA are made by the Disability

Discrimination Act 2005, and at present a draft Code of Practice revising the existing Code is the subject of consultation. The proposed changes are due to come into force in December 2006 and will relate to:

- public authorities, some of whose functions had previously not been covered by the Act;
- private clubs, whose activities regarding their members had previously not been covered by the Act;
- the housing sector, with important new duties being placed on those letting, controlling and managing property.

There are no proposed changes to the duties of those already covered by Part 3 of the DDA (for example service providers such as shops and restaurants). This paper relates to the law as in force in October 2005, and will not cover these further proposed amendments.

A Provider of Services.

4. Section 19 DDA states that “it is unlawful for a provider of services to discriminate against a disabled person...”
5. On whom does this provision impose a duty? Section 19(2) makes it clear that the Act affects everyone (regardless of size) concerned with the provision in the United Kingdom of services to the public, or to a section of the public, whether in the private, public or voluntary sectors. It does not matter if services are provided free (such as access to a public park) or in return for payment (for example, a meal in a restaurant).

6. The Code of Practice on Goods, Facilities, Services and Premises (“The Code”) makes clear that among the services which are covered are those provided to the public by local councils, Government departments and agencies, the emergency services, charities, voluntary organisations, hotels, restaurants, pubs, post offices, banks, building societies, solicitors, accountants, telecommunications and broadcasting organisations, public utilities (such as gas, electricity and water suppliers), national parks, sports stadia, leisure centres, advice agencies, theatres, cinemas, hairdressers, shops, market stalls, petrol stations, telesales businesses, places of worship, courts, hospitals and clinics.

7. Certain transport services are excluded from this part of the Act by section 21ZA, and, as set out above, there are at present other exclusions, for example in relation to private clubs (which do not provide services to “members of the public”), which are due to be removed by December 2006.

8. The duty on service providers is applicable whether or not they have knowledge of a person’s disability. The test is simply whether, as a matter of fact, the treatment complained of is on grounds of disability. The Code gives the following example:
 - A pub employee orders a customer who is lying prone on a bench seat to leave the premises because he assumes she has had too much to drink. However, the customer is lying down as a result of a disability rather than alcoholic consumption. The refusal of further service is for “a reason which relates to the disabled person’s disability.” This will

be unlawful unless the service provider is able to show that the treatment in question is justified, as defined by the Act.

Goods, Facilities and Services.

9. “Services” are said to include the “provision of goods or facilities” (section 19(2)), and a non-exhaustive example of services to which Part III applies is given in section 19(3) (see appendix 1). The expressions are said to be deliberately vague and certainly encompass a very wide range of human activity. Incidental services such as in-store toilets, fire exits and emergency escape procedures are certainly included (The Code at para 2.18).

Who is protected?

10. All persons, whether adult or children, who have a disability, as defined by section 1 of the Act (in relation to which see also schedule 1 and the Guidance relating to the Definition of Disability). Usually the disabled person will be the service user, but protection is also given where disabled people are accessing services on behalf of other individuals or organisations (para 2.16 of the Code).
11. It should be noted that as the duty is owed to the public at large, whether or not a service provider knows a person is disabled, service providers should not wait until a disabled person wants to use a service which they provide before consideration is given to their duties under the act, particularly the duties to make reasonable adjustments. As the Code of Practice warns; “Failure to anticipate the need for an adjustment may render it too late to comply with the

duty to make the adjustment. Furthermore, it may not, of itself, provide a defence to a claim that it was reasonable to have provided one.”

12. In cases of victimisation, non-disabled people are also protected (section 19(4) DDA).

Discrimination.

13. Section 19(1) provides that it is unlawful for a provider of services to discriminate against a disabled person—

- (a) in refusing to provide, or deliberately not providing, to the disabled person any service which he provides, or is prepared to provide, to members of the public;
- (b) in failing to comply with any duty imposed on him by section 21 [*I.e. to make reasonable adjustments*] in circumstances in which the effect of that failure is to make it impossible or unreasonably difficult for the disabled person to make use of any such service;
- (c) in the standard of service which he provides to the disabled person or the manner in which he provides it to him; or
- (d) in the terms on which he provides a service to the disabled person.

14. Section 20 defines “discrimination” and sets two broad categories; disability related discrimination, and a failure to make reasonable adjustments. Either of these can potentially be justified if certain conditions are met (in relation to which see below).

Disability Related Discrimination.

15. Disability related discrimination (whether under section 20 of the Act, or under section 3A in an employment law context) prohibits *less favourable treatment* than others, *for a reason which relates to the disabled person’s disability*. The

reason relating to the disability does not have to be the only reason for the treatment complained of, so long as it is *a* reason.

16. Examples of disability related discrimination claims which have been successful under Part III include:

- *Purves v Joydisc Ltd* [2003] SC 694/01 – a decision of the Scottish Court of Session that a refusal to admit the Claimant with his assistance dog to the Defendant’s restaurant was discriminatory. Compensation of £1000 was awarded.
- *Ross v Ryanair* [2002] CLCC Claim NO CL2094768 – a wheelchair user was charged for the hire of a wheelchair. Central London County Court ruled that this was unlawful.
- Where a disabled person was told that to attend international rugby matches he had to be accompanied by an adult, the threat of legal action ensured a change in ticketing policy (and an agreement that all staff would undergo disability equality training!).

17. The Code gives the following examples of disability related discrimination:

- A football club admits visiting supporters to its stadium. However, one visiting supporter is refused entry because he has cerebral palsy and has difficulty controlling and co-ordinating his movements. No other visiting supporter is refused entry. This would amount to less favourable treatment for a reason related to disability and, unless the football club can justify its actions, would be an unlawful refusal of

service contrary to the Act. Further, as the correct comparator is a person who does not have that disability, the club cannot escape liability by saying that it would refuse entry to all disabled persons.

- A popular disco turns away prospective patrons who do not satisfy their “image” in one respect or another. A woman with a severe facial disfigurement is not admitted by the doorman for this reason. Even though the club also does not allow entrance to many non-disabled people, for example, because it does not consider they are appropriately dressed, the woman with the severe disfigurement has been treated less favourably for a reason related to her disability. This is likely to be unlawful.

18. According to William Hague, who was the Minister for Social Security and Disabled People when the DDA passed through Parliament, indirect discrimination is caught within the scope of disability related discrimination. Mr Hague gave the following example “A situation where dogs were not admitted to a place, with the effect that blind people would be unable to enter it, would be a prima facie case of indirect discrimination against blind people and would be unlawful”. As Mummery LJ said of this example (in the course of his judgment in *Clark v Novacold* [1999] ICR 951 at 964), “if no dogs are admitted to a café, the reason for denying access to refreshment in it by a blind person with his guide dog would be the fact that no dogs are admitted. That reason “relates to” his disability. His guide dog is with him because of his disability”.

Reasonable Adjustments.

19. Between 1999 and 2004 there was a duty only to provide auxiliary aids to facilitate the use by disabled people of services, (but auxiliary aids specifically did not include any device, structure or equipment which would necessitate making a permanent alteration to premises,) or to provide a reasonable alternative method of making a service available. Since 2004, these limitations have been removed and the duty to make reasonable adjustments has become much more extensive.

20. The duty to make reasonable adjustments is set out in section 21 DDA, and there have also been regulations under this section, notably, the Disability Discrimination (Services and Premises) Regulations SI 1999/2292, the Disability Discrimination (Providers of Services) (Adjustment of Premises) Regulations SI 2001/3253, and the Disability Discrimination (Providers of Services) (Adjustment of Premises) (Amendment) Regulations SI 2004/1429.

21. As the Code of Practice warns, “It is important that service providers do not assume that the only way to make services accessible to disabled people is to make a physical alteration to their premises (such as installing a ramp or widening a doorway). Often, minor measures such as allowing more time to serve a disabled customer, will help disabled people to use a service.”

Practice, policy or procedure.

22. Section 21(1) of the Act states that “where a provider of services has a practice, policy or procedure which makes it impossible, or unreasonably difficult, for

disabled persons to make use of a service which he provides, or is prepared to provide, to other members of the public, it is his duty to take such steps as it is reasonable, in all the circumstances of the case for him to have to take, in order to change that practice, policy or procedure so that it no longer has that effect”.

23. There is no definition in this part of the Act of “practice, policy or procedure”, but in an employment law context the words have been given a very broad interpretation. The Code of Practice states the terms cover practices, policies or procedures which have been set out formally, or which have been introduced by custom. The terms cover what a service provider actually does, what it intends to do and how it goes about doing it.

24. An example of a discriminatory practice in the Code of Practice is this:
 - A DIY superstore has a policy of not allowing dogs onto its premises. Members of staff are instructed to prevent anyone with a dog from entering the superstore. The "no dogs" policy is enforced in practice by this procedure. The policy makes it unreasonably difficult for disabled people accompanied by a guide or assistance dog to use the DIY superstore. The superstore has a duty to take such steps as are reasonable for it to have to take to avoid that effect and to make its services accessible to disabled people. It decides to amend its "no dogs" policy by allowing an exception for disabled people accompanied by a guide or assistance dog. This is likely to be a reasonable step for the superstore to have to take

Physical Features.

25. Section 21(2) is concerned with physical features which make it impossible or unreasonably difficult to make use of a service, and lays down a duty to either

- Remove the feature
- Alter it so that it no longer has that effect
- Provide a reasonable means of avoiding the feature
- Provide a reasonable alternative method of making the service in question available to disabled persons.

26. What is a “physical feature”? The Disability Discrimination (Services and Premises) Regulations 1999 make provision for various things to be treated as physical features, including:

- any feature arising from the design or construction of a building on the premises occupied by the service provider;
- any feature on those premises or any approach to, exit from or access to such a building;
- any fixtures, fittings, furnishings, furniture, equipment or materials in or on such premises;
- any fixtures, fittings, furnishings, furniture, equipment or materials brought onto premises (other than those occupied by the service provider) by or on behalf of the service provider in the course of (and for the purpose of) providing services to the public;
- any other physical element or quality of land comprised in the premises occupied by the service provider.

All these features are covered whether temporary or permanent. A building means an erection or structure of any kind.

27. Physical features will therefore include steps, stairways, kerbs, exterior surfaces and paving, parking areas, building entrances and exits (including emergency escape routes), internal and external doors, gates, toilet and washing facilities, public facilities (such as telephones, counters or service desks), lighting and ventilation, lifts and escalators, floor coverings, signs, furniture, and temporary or movable items (such as equipment and display racks).
28. The Code of Practice states that although the Act does not place the different options for overcoming a physical feature in any form of hierarchy, it is recognised good practice for a service provider to consider first whether a physical feature which creates a barrier for disabled people can be removed or altered because removing or altering the barriers created by a physical feature is an “inclusive” approach to adjustments. It makes the services available to everyone in the same way. In contrast, an alternative method of service offers disabled people a different form of service than is provided for non-disabled people. The code goes on to state that service providers are more likely to be able to comply with their duty to make adjustments in relation to physical features if they arrange for an access audit of their premises to be conducted and draw up an access plan or strategy.
29. There is no exhaustive list of factors which will be taken into account when considering what is reasonable, but the Code gives the following examples:
- whether taking any particular steps would be effective in overcoming the difficulty that disabled people face in accessing the services in question;

- the extent to which it is practicable for the service provider to take the steps;
- the financial and other costs of making the adjustment (though note that it is impermissible for a service provider to pass on the additional costs of complying with the duty to make reasonable adjustments to disabled customers alone; section 20(5));
- the extent of any disruption which taking the steps would cause;
- the extent of the service provider's financial and other resources;
- the amount of any resources already spent on making adjustments;
- the availability of financial or other assistance.

30. The Court of Appeal has considered the provisions relating to 'physical features' in the case of *Roads v Central Trains Limited* [2004] EWCA Civ 1541. Mr Roads complained that as he could not access a railway station platform via a footbridge, a reasonable adjustment was for the train company to provide him with a taxi to take him the half a mile route (via Station Lane) to get him to the other side of the tracks avoiding the footbridge. The correct approach, said Sedley LJ, is to ask (a) is it impossible or unreasonably difficult for wheelchair users to use the Station Lane route to get to platform 1?, and (b), if it is, had Central Trains taken such steps as it was reasonable for them to have to take in order to provide an alternative means of access for wheelchair users? The answers were yes, and no, and therefore liability attached to the Defendant and compensation of £1097 was awarded. (The costs of the appeal, and trial below were paid by the Defendant to the Claimant; the costs of the appeal were summarily assessed at £20,000.)

Auxiliary Aids and services.

31. Section 20(4) provides that where auxiliary aids of services would facilitate access to a service, service providers must take such steps as are reasonable to provide them. Easy examples include the provision of handouts in Braille, or the provision of information on audio tape. Account should also be taken of people with multiple communication disabilities, such as deaf-blindness or combined speech and hearing disabilities.

32. Nothing in the Act requires a service provider to provide an auxiliary aid or service to be used for personal purposes unconnected to the services being provided or to be taken away by the disabled person after use.

Justification.

33. Sections 20(3) and (4) deal with the question of justification and lay down fairly limiting conditions which must be reasonably believed to have been met in order to be able to successfully make out a justification defence. Any argument of justification not relying on one of the conditions set out in section 20(4) will fail. It should be noted that not all conditions relate to all failures, so for example a refusal to provide services to a disabled person on the basis of an increase in cost to the provider cannot be justified on that ground.

34. The narrowness of the conditions which must be invoked can be seen in the case of *White v Clitheroe Grammar School* (unreported; Preston County Court, 29 April 2002; see Gill et al, *Discrimination Law Handbook*, LAG, 2002 at pg 886) where a school argued that it did not allow an insulin dependant diabetic on

a water sports trip on grounds of health and safety. The pupil had previously failed to take his medication on a school trip and had suffered an attack, but the court held that the school did not have reasonable grounds for its stated belief either in the pupil's irresponsibility or risk to his health and safety. A risk assessment, it was noted, could have provided 'reasonable belief'.

35. The Court of Appeal in *Collins v Royal National Theatre Board Limited* [2004] EWCA Civ 144, IRLR 395, held that in the employment context, factors relied upon to argue that an adjustment was not "reasonable", could not later be relied upon when arguing justification, because they have already been evaluated. Whilst the relevant employment provisions have been repealed, this point is likely to have application to Part III of the Act.

Appendix 1.

DDA: Part III.

19.— Discrimination in relation to goods, facilities and services.

- (1) It is unlawful for a provider of services to discriminate against a disabled person—
- (a) in refusing to provide, or deliberately not providing, to the disabled person any service which he provides, or is prepared to provide, to members of the public;
 - (b) in failing to comply with any duty imposed on him by section 21 in circumstances in which the effect of that failure is to make it impossible or unreasonably difficult for the disabled person to make use of any such service;
 - (c) in the standard of service which he provides to the disabled person or the manner in which he provides it to him; or
 - (d) in the terms on which he provides a service to the disabled person.
- (2) For the purposes of this section and sections 20 to 21ZA—
- (a) the provision of services includes the provision of any goods or facilities;
 - (b) a person is “a provider of services” if he is concerned with the provision, in the United Kingdom, of services to the public or to a section of the public; and
 - (c) it is irrelevant whether a service is provided on payment or without payment.
- (3) The following are examples of services to which this section and sections 20 and 21 apply—
- (a) access to and use of any place which members of the public are permitted to enter;
 - (b) access to and use of means of communication;
 - (c) access to and use of information services;
 - (d) accommodation in a hotel, boarding house or other similar establishment;
 - (e) facilities by way of banking or insurance or for grants, loans, credit or finance;
 - (f) facilities for entertainment, recreation or refreshment;
 - (g) facilities provided by employment agencies or under section 2 of the Employment and Training Act 1973;
 - (h) the services of any profession or trade, or any local or other public authority.

(4) In the case of an act which constitutes discrimination by virtue of section 55, this section also applies to discrimination against a person who is not disabled.

[(5) Regulations may provide for subsection (1) and section 21(1), (2) and (4) not to apply, or to apply only to a prescribed extent, in relation to a service of a prescribed description.]¹

(5A) Nothing in this Part applies to the provision of a service in relation to which discrimination is made unlawful by section 28A, 28F or 28R.

20.— Meaning of “discrimination”.

(1) For the purposes of section 19, a provider of services discriminates against a disabled person if—

- (a) for a reason which relates to the disabled person's disability, he treats him less favourably than he treats or would treat others to whom that reason does not or would not apply; and
- (b) he cannot show that the treatment in question is justified.

(2) For the purposes of section 19, a provider of services also discriminates against a disabled person if—

- (a) he fails to comply with a section 21 duty imposed on him in relation to the disabled person; and
- (b) he cannot show that his failure to comply with that duty is justified.

(3) For the purposes of this section, treatment is justified only if—

- (a) in the opinion of the provider of services, one or more of the conditions mentioned in subsection (4) are satisfied; and
- (b) it is reasonable, in all the circumstances of the case, for him to hold that opinion.

(4) The conditions are that—

- (a) in any case, the treatment is necessary in order not to endanger the health or safety of any person (which may include that of the disabled person);
- (b) in any case, the disabled person is incapable of entering into an enforceable agreement, or of giving an informed consent, and for that reason the treatment is reasonable in that case;
- (c) in a case falling within section 19(1)(a), the treatment is necessary because the provider of services would otherwise be unable to provide the service to members of the public;
- (d) in a case falling within section 19(1)(c) or (d), the treatment is necessary in order for the provider of services to be able to provide the service to the disabled person or to other members of the public;

¹ substituted by Disability Discrimination Act 2005 c. 13 Sch. 1(1) para. 13(3)

(e) in a case falling within section 19(1)(d), the difference in the terms on which the service is provided to the disabled person and those on which it is provided to other members of the public reflects the greater cost to the provider of services in providing the service to the disabled person.

(5) Any increase in the cost of providing a service to a disabled person which results from compliance by a provider of services with a section 21 duty shall be disregarded for the purposes of subsection (4)(e).

(6) Regulations may make provision, for purposes of this section, as to circumstances in which—

(a) it is reasonable for a provider of services to hold the opinion mentioned in subsection (3)(a);

(b) it is not reasonable for a provider of services to hold that opinion.

(7) Regulations may make provision for subsection (4)(b) not to apply in prescribed circumstances where—

(a) a person is acting for a disabled person under a power of attorney;

(b) functions conferred by or under Part VII of the Mental Health Act 1983 are exercisable in relation to a disabled person's property or affairs; or

[(c) powers are exercisable in relation to a disabled person's property or affairs in consequence of the appointment, under the law of Scotland, of a guardian, tutor or judicial factor.]²

(8) Regulations may make provision, for purposes of this section, as to circumstances (other than those mentioned in subsection (4)) in which treatment is to be taken to be justified.

(9) In subsections (3), (4) and (8) “treatment” includes failure to comply with a section 21 duty.

21.— Duty of providers of services to make adjustments.

(1) Where a provider of services has a practice, policy or procedure which makes it impossible or unreasonably difficult for disabled persons to make use of a service which he provides, or is prepared to provide, to other members of the public, it is his duty to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to change that practice, policy or procedure so that it no longer has that effect.

(2) Where a physical feature (for example, one arising from the design or construction of a building or the approach or access to premises) makes it impossible or

² substituted by Disability Discrimination Act 2005 c. 13 Sch. 1(1) para. 14

unreasonably difficult for disabled persons to make use of such a service, it is the duty of the provider of that service to take such steps as it is reasonable, in all the circumstances of the case, for him to have 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 service in question available to disabled persons.

(3) Regulations may prescribe—

- (a) matters which are to be taken into account in determining whether any provision of a kind mentioned in subsection (2)(c) or (d) is reasonable; and
- (b) categories of providers of services to whom subsection (2) does not apply.

(4) 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 to make use of a service which a provider of services provides, or is prepared to provide, to members of the public, or
 - (b) facilitate the use by disabled persons of such a service,
- it is the duty of the provider of that service to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to provide that auxiliary aid or service.

(5) Regulations may make provision, for the purposes of this section—

- (a) as to circumstances in which it is reasonable for a provider of services to have to take steps of a prescribed description;
- (b) as to circumstances in which it is not reasonable for a provider of services to have to take steps of a prescribed description;
- (c) as to what is to be included within the meaning of “practice, policy or procedure”;
- (d) as to what is not to be included within the meaning of that expression;
- (e) as to things which are to be treated as physical features;
- (f) as to things which are not to be treated as such features;
- (g) as to things which are to be treated as auxiliary aids or services;
- (h) as to things which are not to be treated as auxiliary aids or services.

(6) Nothing in this section requires a provider of services to take any steps which would fundamentally alter the nature of the service in question or the nature of his trade, profession or business.

(7) Nothing in this section requires a provider of services to take any steps which would cause him to incur expenditure exceeding the prescribed maximum.

(8) Regulations under subsection (7) may provide for the prescribed maximum to be calculated by reference to—

- (a) aggregate amounts of expenditure incurred in relation to different cases;
- (b) prescribed periods;
- (c) services of a prescribed description;
- (d) premises of a prescribed description; or
- (e) such other criteria as may be prescribed.

(9) Regulations may provide, for the purposes of subsection (7), for expenditure incurred by one provider of services to be treated as incurred by another.

(10) This section imposes duties only for the purposes of determining whether a provider of services has discriminated against a disabled person; and accordingly a breach of any such duty is not actionable as such.

[21ZA Application of sections 19 to 21 to transport vehicles

(1) Section 19(1)(a), (c) and (d) do not apply in relation to a case where the service is a transport service and, as provider of that service, the provider of services discriminates against a disabled person—

- (a) in not providing, or in providing, him with a vehicle; or
- (b) in not providing, or in providing, him with services when he is travelling in a vehicle provided in the course of the transport service.

(2) For the purposes of section 21(1), (2) and (4), it is never reasonable for a provider of services, as a provider of a transport service—

- (a) to have to take steps which would involve the alteration or removal of a physical feature of a vehicle used in providing the service;
- (b) to have to take steps which would—
 - (i) affect whether vehicles are provided in the course of the service or what vehicles are so provided, or
 - (ii) where a vehicle is provided in the course of the service, affect what happens in the vehicle while someone is travelling in it.

(3) Regulations may provide for subsection (1) or (2) not to apply, or to apply only to a prescribed extent, in relation to vehicles of a prescribed description.

(4) In this section— “transport service” means a service which (to any extent) involves transport of people by vehicle; “vehicle” means a vehicle for transporting people by land, air or water, and includes (in particular)—

- (a) a vehicle not having wheels, and

(b) a vehicle constructed or adapted to carry passengers on a system using a mode of guided transport; “guided transport” has the same meaning as in the Transport and Works Act 1992.]³

21A Employment services

(1) In this Act, “employment services” means–

- (a) vocational guidance;
- (b) vocational training; or
- (c) services to assist a person to obtain or retain employment, or to establish himself as self-employed.

(2) It is unlawful for a provider of employment services, in relation to such services, to subject to harassment a disabled person–

- (a) to whom he is providing such services, or
- (b) who has requested him to provide such services; and section 3B (meaning of “harassment”) applies for the purposes of this subsection as it applies for the purposes of Part 2.

(3) In their application to employment services, the preceding provisions of this Part have effect as follows.

(4) Section 19 has effect as if–

- (a) after subsection (1)(a), there were inserted the following paragraph–
“(aa) in failing to comply with a duty imposed on him by subsection (1) of section 21 in circumstances in which the effect of that failure is to place the disabled person at a substantial disadvantage in comparison with persons who are not disabled in relation to the provision of the service;”;
- (b) in subsection (1)(b), for “section 21” there were substituted “subsection (2) or (4) of section 21”; [(c) in subsection (2), for “sections 20 to 21ZA” there is substituted “sections 20 to 21A”.]⁴

(5) Section 20 has effect as if–

- (a) after subsection (1), there were inserted the following subsection– “(1A) For the purposes of section 19, a provider of services also discriminates against a disabled person if he fails to comply with a duty imposed on him by subsection (1) of section 21 in relation to the disabled person.”;
- (b) in subsection (2)(a), for “a section 21 duty imposed” there were substituted “a duty imposed by subsection (2) or (4) of section 21”;

³ added by Disability Discrimination Act 2005 c. 13
s. 5

⁴ substituted by Disability Discrimination Act 2005 c. 13 Sch. 1(1) para. 15(3)

(c) after subsection (3), there were inserted the following subsection—
“(3A) But treatment of a disabled person cannot be justified under subsection (3) if it amounts to direct discrimination falling within section 3A(5).”.

(6) Section 21 has effect as if—

(a) in subsection (1), for “makes it impossible or unreasonably difficult for disabled persons to make use of” there were substituted “places disabled persons at a substantial disadvantage in comparison with persons who are not disabled in relation to the provision of”;

(b) after subsection (1), there were inserted the following subsection—

“(1A) In subsection (1), “practice, policy or procedure” includes a provision or criterion.”