

Disability Discrimination (Amendment) Bill [HL]

[AS AMENDED IN COMMITTEE]

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B I L L

[AS AMENDED IN COMMITTEE]

TO

Amend the Disability Discrimination Act 1995 and the Disability Rights Commission Act 1999.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Persons deemed to be disabled

- In Schedule 1 of the Disability Discrimination Act 1995 (c. 50) (“the 1995 Act”)— 5
- (a) in paragraph 1(1) omit “only if the illness is a clinically well-recognised illness”,
 - (b) at the end of paragraph 2(1) insert “; or
 - (d) if the mental impairment consists of or results from depression, it has lasted or is likely to last at least three months”, 10
 - (c) at the end of paragraph 4(1) insert—
 - “(i) ability to care for oneself;
 - (j) ability to communicate and interact with other people; or
 - (k) ability to perceive reality”,
 - (d) after paragraph 7 insert— 15
 - “7A (1) A person in whom there is the presence of human immunodeficiency virus (referred to hereinafter as HIV) shall be deemed to have a disability and hence to be a disabled person from the point of diagnosis of HIV.

- (2) A person with cancer which is likely to require substantial treatment shall be deemed to have a disability and hence to be a disabled person from the point at which the cancer is diagnosed as being likely to require substantial treatment.
- 7B (1) A person who has been certified by a consultant ophthalmologist as blind or partially sighted is to be deemed to have a disability and hence to be a disabled person. 5
- (2) A copy of a record of examination to certify a person as blind or partially sighted or a record of registration as such with a local authority shall be conclusive evidence, in relation to the person to whom it was issued, of the matters certified. 10
- (3) Unless the contrary is shown, any document purporting to be a record of examination or registration shall be taken to be such a record and to have been validly issued.”
- 2 Effect of coping and avoidance strategies 15**
- In Schedule 1 of the 1995 Act, after paragraph 6, insert—
- “6A (1) An impairment which would be likely to have a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities, but for the fact that the person concerned has unreasonably modified his behaviour to prevent or reduce the effects of the impairment to a minor level, is to be treated as having that effect. 20
- (2) The person concerned shall be taken to have unreasonably modified his behaviour if he has developed coping or avoidance strategies which significantly restrict his range of activities or ability to undertake them, even if the person accepts that level of restriction and therefore underplays the effects of his impairment.” 25
- 3 Discrimination by associations not within section 13 of the 1995 Act 30**
- (1) The 1995 Act is amended as follows. 30
- (2) In section 19(5), after “this section and sections”, insert “19A”.
- (3) After section 19, insert the following section—
- “19A Discrimination by associations not within section 13**
- (1) This section applies to any association of persons (however defined, whether corporate or unincorporate, and whether or not its activities are carried on for profit) if— 35
- (a) it has twenty-five or more members;
- (b) admission to membership is regulated by its constitution and is so conducted that the members do not constitute a section of the public for the purposes of section 19(2)(b); and 40
- (c) it is not an organisation to which section 13 applies;
- and in this Part “association” shall be construed accordingly.

- (2) It is unlawful for an association to which this section applies, in the case of a disabled person who is not a member of the association, to discriminate against him—
- (a) in the terms on which it is prepared to admit him to membership; or 5
 - (b) by refusing or deliberately omitting to accept his application for membership.
- (3) It is unlawful for an association to which this section applies, in the case of a disabled person who is a member or associate of the association, to discriminate against him— 10
- (a) in the way it affords him access to any benefits, goods, facilities or services, or by refusing or deliberately omitting to afford him access to them (and for the purposes of this section and sections 20 and 21 it is irrelevant whether such access is afforded on payment or without payment); 15
 - (b) in the case of a member, by depriving him of membership, or varying the terms on which he is a member;
 - (c) in the case of an associate, by depriving him of his rights as an associate, or varying those rights; or
 - (d) in either case, in failing to comply with any duty imposed on it 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 access any such benefits, goods, facilities or services. 20
- (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. 25
- (5) For the purposes of this Part—
- (a) a person is a member of an association if he belongs to it by virtue of his admission to any sort of membership provided for by its constitution (and is not merely a person with certain rights under its constitution by virtue of his membership of some other association), and references to membership of an association shall be construed accordingly; 30
 - (b) a person is an associate of an association to which this section applies if, not being a member of it, he has under its constitution some or all of the rights enjoyed by members (or would have apart from any provision in its constitution authorising the refusal of those rights in particular cases).” 35
- (4) In sections 20 and 21 of the 1995 Act, after “provider of services” (in each place where it occurs), insert “or association”. 40
- (5) In section 20 of the 1995 Act—
- (a) in subsections (1) and (2), for “section 19”, substitute “sections 19 and 19A”; 45
 - (b) in paragraph (c) of subsection (4)—
 - (i) for “section 19(1)(a)”, substitute “section 19(1)(a) or 19A(3)(a), (b) or (c)”; and

- (ii) at the end insert “or to other members or associates of the association”;
- (c) in paragraph (d) of subsection (4)—
 - (i) after “section 19(1)(c) or (d),” insert “or section 19A(3)(a), (b) or (c),”; and 5
 - (ii) at the end insert “or to other members or associates of the association”;
- (d) in paragraph (e) of subsection (4)—
 - (i) for “section 19(1)(d),” substitute “section 19(1)(d) or 19A(3)(a), (b) or (c),”; and 10
 - (ii) after “other members of the public”, insert “or to other members or associates of the association”.
- (6) In section 21 of the 1995 Act—
 - (a) in subsection (1), after “to other members of the public”, insert “or to other members or associates of the association (as the case may be),”; 15
 - (b) in subsection (2), after “provider of that service”, insert “or the association in question”;
 - (c) in paragraph (b) of subsection (3), after “providers of services”, insert “or associations”;
 - (d) in paragraph (a) of subsection (4), after “to members of the public”, insert “or to other members or associates of the association”; 20
 - (e) in the full-out to subsection (4), after “provider of that service”, insert “or the association in question”;
 - (f) in subsection (6), at the end insert “or (as the case may be) would fundamentally alter the nature of the association”; and 25
 - (g) after subsection (10), insert—
 - “(11) Nothing in this section requires an association to take any steps in relation to a disabled person unless that person is a member or associate of the association at the time when the duty is alleged to have applied.” 30
- (7) In section 68(1) of the 1995 Act, before ““benefits””, insert—
 “association”, in Part III, has the meaning given in section 19A;”.

4 Power to take proceedings under the Human Rights Act

In the Disability Rights Commission Act 1999 (c. 17) after section 7(1)(a) insert—

- “(aa) proceedings which an individual has brought or proposes to bring under section 7 of the Human Rights Act 1998 (c. 42);” 35

5 Extension of the 1995 Act to police etc.

- (1) Section 64 of the 1995 Act is amended as follows.
- (2) Subsections (5) to (8) are omitted.
- (3) After subsection (8), insert— 40
 - “(8A) For the purposes of this Part, the holding of the office of constable shall be treated as employment—

- (a) by the chief officer of police as respects any act done by him in relation to a constable or that office;
 - (b) by the police authority as respects any act done by them in relation to a constable or that office.
 - (8B) There shall be paid out of the police fund— 5
 - (a) any compensation, costs or expenses awarded against a chief officer of police in any proceedings brought against him under this Act, and any costs or expenses incurred by him in any such proceedings so far as not recovered by him in the proceedings; and 10
 - (b) any sum required by a chief officer of police for the settlement of any claim made against him under this Act if the settlement is approved by the police authority.
 - (8C) Any proceedings under this Act which, by virtue of this subsection would lie against a chief officer of police shall be brought against the chief officer of police for the time being or, in the case of a vacancy in that office, against the person for the time being performing the functions of that office; and references in this section to the chief officer of police shall be construed accordingly. 15
 - (8D) This section applies to a police cadet and appointment as a police cadet as it applies to a constable and the office of constable. 20
- (4) In this section— 25
 - “chief officer of police”—
 - (a) in relation to a person appointed, or an appointment falling to be made, under a specified Act, has the same meaning as in the Police Act,
 - (b) in relation to any other person or appointment, means the office who has the direction and control of the body of constables or cadets in question; 30
 - “the Police Act” means, for England and Wales, the Police Act 1996 (c. 16), or, for Scotland, the Police (Scotland) Act 1967 (c. 77);
 - “police authority”—
 - (a) in relation to a person appointed or an appointment falling to be made, under a specified Act, has the same meaning as in the Police Act, 35
 - (b) in relation to any other person or appointment, means the authority by whom the person in question is or on appointment would be paid;
 - “police cadet” means any person appointed to undergo training with a view to becoming a constable;
 - “police fund” in relation to a chief officer of police within paragraph (a) of the above definition of that term has the same meaning as in the Police Act, and in any other case means money provided by the police authority; 40
 - “specified Act” means the Metropolitan Police Act 1829 (c. 44), the Metropolitan Police Act 1839 (c. 47) or the Police Act.

6 Extension of provisions to small employers

In the 1995 Act, section 7 is omitted.

7 Discrimination against voluntary workers

(1) The 1995 Act is amended as follows.

(2) After section 9, insert—

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“9A Discrimination against voluntary workers

(1) The Secretary of State may by order provide that the provisions of this Part apply to work sought or carried out by a disabled person on an unpaid, voluntary basis as if he was an employee or an applicant for the employment concerned with such modifications as are specified in the order.

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(2) Before making any order under subsection (1), the Secretary of State shall conduct a review.

(3) Unless he has already begun or completed a review under subsection (2), the Secretary of State shall begin to conduct a review immediately after the first anniversary and if no order is subsequently made under subsection (1) he shall conduct a further review after the third anniversary.

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(4) Any review shall be completed within nine months.

(5) In conducting any review, the Secretary of State shall consult—

(a) such organisations representing the interests of disabled persons in voluntary work or seeking voluntary work as he considers appropriate; and

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(b) such organisations representing the interests of employers as he considers appropriate.

(6) If, on completing a review, the Secretary of State decides not to make an order, he shall no later than one year after the commencement of the review lay before Parliament a report—

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(a) summarising the results of the review; and

(b) giving the reasons for his decision.

(7) Any report made by the Secretary of State under subsection (6) shall include a summary of the views expressed to him in his consultations.

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(8) In this section—

“anniversary” means the anniversary of the coming into force of this section; and

“review” means an assessment of the effects of extending the scope of Part 2 to disabled persons who seek or undertake unpaid voluntary work and what modifications to the provisions of Part 2 may be required in respect of voluntary workers.”

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8 Extension of provisions to qualifying bodies

(1) In the 1995 Act, after section 15, insert—

“15A Discrimination by qualifying bodies

- (1) It is unlawful for an authority or body which can confer an authorisation or qualification which is needed for, or facilitates, engagement in a particular profession or trade (a “qualifying body”) to discriminate against a disabled person— 5
- (a) in the terms on which it is prepared to confer on him that authorisation or qualification;
 - (b) by refusing, or deliberately omitting to grant, his application for it; 10
 - (c) by withdrawing it from him or varying the terms on which he holds it;
 - (d) in the way it affords him access to any relevant services or facilities provided in connection with the conferment of an authorisation or qualification or by refusing or deliberately omitting to afford him access to them; or 15
 - (e) by subjecting him to any other detriment.
- (2) In this section—
- (a) “authorisation or qualification” includes recognition, registration, enrolment, approval and certification; 20
 - (b) “confer” includes renew or extend;
 - (c) “relevant services or facilities” includes the means of course delivery and assessment.
- (3) 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. 25
- (4) Sections 15A to 15C do not apply to the extent that a qualifying body is already subject to any provision in sections 28R to 28T.”

(2) In the 1995 Act, after section 15, insert—

“15B Meaning of “discrimination” in relation to qualifying bodies

- (1) For the purposes of section 15A, a qualifying body discriminates against a disabled person if— 30
- (a) for a reason which relates to his disability, it treats him less favourably than it treats, or would treat, others to whom that reason does not, or would not, apply; and
 - (b) it cannot show that the treatment in question is justified. 35
- (2) For the purposes of section 15A, a qualifying body also discriminates against a disabled person if—
- (a) it fails, to his detriment, to comply with section 15C; and
 - (b) it cannot show that its failure to comply is justified.

- (3) The taking of a particular step by a qualifying body in relation to a person does not amount to less favourable treatment if it shows that at the time in question it did not know, and could not reasonably have been expected to know, that he was disabled.
- (4) Subsections (5) to (7) apply in determining whether, for the purposes of this section—
- (a) less favourable treatment of a person, or
 - (b) failure to comply with section 15C,
- is justified.
- (5) Less favourable treatment of a person is justified if it is necessary in order to maintain necessary and appropriate professional or trade standards. 10
- (6) Otherwise less favourable treatment, or a failure to comply with section 15C, is justified only if the reason for it is both material to the circumstances of the particular case and substantial. 15
- (7) If, in a case falling within subsection (1)—
- (a) the responsible body is under a duty imposed by section 15C in relation to the disabled person, but
 - (b) fails without justification to comply with that duty,
- its treatment of that person cannot be justified under subsection (6) unless that treatment would have been justified even if it had complied with that duty.” 20
- (3) In the 1995 Act, after section 15, insert—

“15C Duty of qualifying body to make adjustments

- (1) A qualifying body must take such steps as it is reasonable for it to have to take to ensure that— 25
- (a) in relation to the terms on which it is prepared to confer authorisation or qualification, disabled persons are not placed at a substantial disadvantage in comparison with persons who are not disabled; and
 - (b) in relation to any relevant services and facilities provided in connection with the conferment of an authorisation or qualification, disabled persons are not placed at a substantial disadvantage in comparison with persons who are not disabled. 30
- (2) In considering whether it is reasonable for it to have to take a particular step in order to comply with its duty under subsection (1), a qualifying or awarding body must have regard to any relevant provisions of a code of practice issued under section 53. 35
- (3) This section imposes duties only for the purpose of determining whether a qualifying body has discriminated against a disabled person; and accordingly a breach of any such duty is not actionable as such.” 40

9 Extension of provisions to employers providing vocational training

(1) In the 1995 Act, after section 15, insert—

“15D Discrimination by employers in the provision of vocational training

- (1) It is unlawful for an employer who provides vocational training services or facilities to discriminate against a disabled person seeking or undergoing such training— 5
- (a) in the terms on which he affords him access to those services or facilities;
 - (b) in the manner in which he affords him access to those services or facilities;
 - (c) by refusing or deliberately omitting to afford him such access; or 10
 - (d) by terminating his training or subjecting him to any other detriment.
- (2) In this section “vocational training” means any work-related education or training including work-experience placements and work-based learning programmes for disabled persons in secondary, further or higher education by whomsoever arranged. 15
- (3) 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.”

(2) In the 1995 Act, after section 15, insert— 20

“15E Meaning of discrimination in section 15D

- (1) For the purposes of section 15D, an employer discriminates against a disabled person if—
- (a) for a reason which relates to the employee’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 25
 - (b) he cannot show that the treatment in question is justified.
- (2) For the purposes of section 15D, an employer also discriminates against a disabled person if—
- (a) he fails, to the employee’s detriment, to comply with section 15F; and 30
 - (b) he cannot show that his failure to comply is justified.
- (3) The taking of a particular step by an employer in relation to a person does not amount to less favourable treatment if he shows that at the time in question he did not know, and could not reasonably have been expected to know, that the employee was disabled. 35
- (4) Less favourable treatment, or a failure to comply with section 15F, is justified only if the reason for it is both material to the circumstances of the particular case and substantial.

- (5) If, in a case falling within subsection (1)—
- (a) an employer is under a duty imposed by section 15F in relation to the disabled person, but
 - (b) fails without justification to comply with that duty,
- his treatment of that person cannot be justified under subsection (4) unless that treatment would have been justified even if he had complied with that duty.” 5
- (3) In the 1995 Act, after section 15, insert—

“15F Duty to make adjustments

- (1) Where—
- (a) any arrangements made by or on behalf of an employer, or 10
 - (b) any physical feature of premises occupied by the employer,
- place the disabled person concerned at a substantial disadvantage in comparison with persons who are not disabled, it is the duty of the employer to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to prevent the arrangements or feature having that effect. 15
- (2) Subsection (1)(a) applies to—
- (a) arrangements for determining to whom work-related education or training should be offered, and
 - (b) any term, condition or arrangements on which work-related education or training services are offered or afforded. 20
- (3) In considering whether it is reasonable for him to have to take a particular step in order to comply with his duty under subsection (1), an employer must have regard to any relevant provisions of a code of practice issued under section 53A. 25
- (4) In this section “the disabled person concerned” means—
- (a) in the case of arrangements for determining to whom work-related education and training should be offered, any disabled person who is, or has notified the employer that he may be, seeking such education and training; and 30
 - (b) in any other case, a disabled person who is undergoing such education and training.
- (5) This section imposes duties only for the purpose of determining whether an employer has discriminated against a disabled person; and accordingly a breach of any such duty is not actionable as such.” 35

10 Power of tribunals to order reinstatement or make recommendations

- (1) The 1995 Act is amended as follows.
- (2) At the end of section 8(2)(c) insert “and to promote the equalisation of opportunities for disabled people”.

- (3) After subsection (2)(c) insert—
 “(d) ordering reinstatement of the complainant by the respondent; and
 (e) ordering the re-engagement of the complainant by the respondent”.
- (4) After section 8, insert the following section—
- “8A Order for reinstatement”** 5
- (1) In exercising its discretion under section 8(2)(d) the tribunal shall first consider whether to make an order for reinstatement and in so doing shall take into account—
- (a) whether the complainant wishes to be reinstated,
 (b) whether it is practicable for the employer to comply with an order for reinstatement, and 10
 (c) where the complainant caused or contributed to some extent to the dismissal, whether it would be just to order his reinstatement.
- (2) If the tribunal decides not to make an order for reinstatement it shall then consider whether to make an order for re-engagement and, if so, on what terms. 15
- (3) In so doing the tribunal shall take into account—
- (a) any wish expressed by the complainant as to the nature of the order to be made, 20
 (b) whether it is practicable for the employer (or a successor or an associated employer) to comply with an order for re-engagement, and
 (c) where the complainant caused or contributed to some extent to the dismissal, whether it would be just to order his re-engagement and (if so) on what terms. 25
- (4) An industrial tribunal may make an award of compensation, to be paid by the employer to the employee, if—
- (a) an order under section 8 is made and the complainant is reinstated or re-engaged, but 30
 (b) the terms of the order are not fully complied with.
- (5) The amount of the compensation shall be such as the tribunal thinks fit having regard to the loss sustained by the complainant in consequence of the failure to comply fully with the terms of the order.”
- 11 Application of access to goods and services provisions to educational institutions** 35
- (1) The 1995 Act is amended as follows.
- (2) In section 19(5A) after “provision of a service” insert “to disabled pupils or students”.
- (3) In section 19(5A) at end insert “but this Part does apply in respect of services provided by an educational institution to disabled persons who are not pupils or students”. 40

- (4) In this section—
 “disabled pupils” has the same meaning as in section 28Q (2) and (3); and
 “disabled students” has the same meaning as in section 31A (2) and (3).

12 Examination, test and assessment services

- (1) The 1995 Act is amended as follows. 5
- (2) In section 19 after subsection (3)(h) insert—
 “(i) the provision of examination, test and assessment services in relation to education and training by an awarding or other body.”
- (3) After subsection (3) insert—
 “(3A) In subsection (3)(i)— 10
 “awarding body” means any body involved in awarding general, vocational or other qualifications not directly linked to entry to a particular trade or profession and which is not a responsible body for the purposes of Part 4;
 “other body” includes bodies such as the Qualifications and Curriculum Authority for England which provide statutory assessment test papers for disabled learners.” 15

13 Extension of the 1995 Act to transport

In section 19 of the 1995 Act, subsection (5)(b) is omitted.

14 Extension of the 1995 Act to polling stations and electoral services 20

- (1) The 1995 Act is amended as follows.
- (2) In section 19, after subsection (3)(h) insert—
 “(i) access to and use of electoral services and facilities”.
- (3) After section 21, insert—

“21B Elections accessibility strategy

- (1) It is the duty of each local authority to prepare and implement an elections accessibility strategy. 25
- (2) An elections accessibility strategy is a strategy for, over a prescribed period, ensuring that disabled voters are able to participate fully and equally in all aspects of the registration system and electoral procedures and facilities for parliamentary, local government and European parliamentary elections by— 30
- (a) ensuring the physical accessibility of polling stations for disabled voters;
- (b) ensuring the accessibility of electoral registration and electoral procedures for disabled voters; 35
- (c) ensuring the accessibility of postal voting information and procedures for disabled people;

- (d) ensuring the delivery to disabled voters—
 - (i) within a reasonable time, and
 - (ii) in ways which are determined after taking into account their disabilities and any preferences expressed by them, of information about electoral services, procedures and facilities which is provided to non-disabled voters or which concerns arrangements for securing their access to electoral services, procedures and facilities; and
 - (e) taking steps to ensure any pilot schemes including arrangements for e-voting are fully accessible to disabled voters.
- (3) An elections accessibility strategy must be in writing.
- (4) Each local authority must keep their elections accessibility strategy under review during the period to which it relates and, if necessary, revise it.
- (5) In preparing and revising their elections accessibility strategy a local authority must consult—
- (a) disabled people in the local authority area, and
 - (b) organisations representing disabled people in the area.
- (6) A local authority must have regard to any guidance issued as to compliance with the requirements of this section.
- (7) In preparing their elections accessibility strategy, a local authority must have regard to—
- (a) the need to allocate adequate resources for implementing the strategy; and
 - (b) any guidance issued as to—
 - (i) the content of an accessibility strategy;
 - (ii) the form in which it is to be produced; and
 - (iii) persons who must be sent copies of the strategy.
- (8) As soon as practicable after any occasion when they prepare a new strategy or alter their strategy, the local authority must—
- (a) publish the strategy or the strategy as altered in such manner as they think fit; and
 - (b) send a copy of it to the Secretary of State (in the case of an authority whose area is in England) or the National Assembly for Wales (in the case of an authority whose area is in Wales) and to such other persons (if any) as may be specified in guidance.
- (9) The authority must also—
- (a) cause a copy of their elections accessibility plan to be made available for inspection (at all reasonable hours) at such places as they think fit;
 - (b) give notice, by such means as they think expedient for bringing it to the attention of the public, as to the places at which a copy of it may be inspected; and

- (c) supply a copy of it (or any part of it) to any person on request, either free of charge or at a charge representing no more than the cost of providing the copy.
- (10) Guidance under this section may be issued—
 - (a) for England, by the Secretary of State; and 5
 - (b) for Wales, by the National Assembly.
- (11) In this section—
 - “prescribed” in relation to Wales means prescribed in regulations made by the National Assembly;
 - “disabled voter” means a disabled person who is entitled to vote as an elector at parliamentary, local government or European parliamentary elections.” 10

15 Carrying of guide dogs, hearing dogs and other assistance dogs

- (1) The 1995 Act is amended as follows.
- (2) In Part V, after section 37, insert— 15

“37A Carrying of guide dogs, hearing dogs and other assistance dogs

- (1) This section imposes duties on the driver of a private hire vehicle which has been hired—
 - (a) by or for a disabled person who is accompanied by his guide dog, hearing dog or other assistance dog, or
 - (b) by a person who wishes such a disabled person to accompany him in the private hire vehicle. 20
- (2) The disabled person is referred to in this section as “the passenger”.
- (3) The duties are—
 - (a) to carry the passenger’s dog and allow it to remain with the passenger; and 25
 - (b) not to make any additional charge for doing so.
- (4) A driver of a private hire vehicle who fails to comply with any duty imposed on him by this section is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale. 30
- (5) If the licensing authority is satisfied that it is appropriate on medical grounds to exempt a person from the duties imposed by this section it shall issue him with a certificate of exemption.
- (6) In determining whether to issue a certificate of exemption, the licensing authority shall, in particular, have regard to the physical characteristics of the private hire vehicle which the applicant drives or those of any kind of private hire vehicle in relation to which he requires the certificate. 35

- (7) A certificate of exemption shall be issued—
- (a) with respect to a specified private hire vehicle or a specified kind of private hire vehicle; and
 - (b) for such period as may be specified in the certificate.
- (8) The driver of a private hire vehicle is exempt from the duties imposed by this section if—
- (a) a certificate of exemption issued to him under this section is in force with respect to the private hire vehicle; and
 - (b) the prescribed notice of his exemption is exhibited on the private hire vehicle in the prescribed manner.
- (9) In this section—
- “guide dog” means a dog which has been trained to guide a blind person;
- “hearing dog” means a dog which has been trained to assist a deaf person;
- “assistance dog” means a dog which—
- (a) is trained by a specified charity to assist a disabled person with a physical impairment for the purpose of section 1 of the Disability Discrimination Act 1995 which—
 - (i) consists of epilepsy; or
 - (ii) otherwise affects his mobility, manual dexterity, physical co-ordination or ability to lift, carry or otherwise move everyday objects; and
 - (b) at the time that the disabled person whom it is assisting hires a private hire vehicle, is wearing a yellow jacket inscribed with the name of a specified charity.
- “Specified charity” means any charity specified by the Secretary of State by order made by statutory instrument.”
- (3) In section 38(1) of the 1995 Act, for “section 36 or 37” there is substituted “section 36, 37 or 37A.”
- (4) Section 49 of the 1995 Act is amended as follows—
- (a) In subsection (1)(a) at end there is inserted “or 37A”.
 - (b) In subsection (1)(b) at end there is inserted “or 37A (8)(b)”.
- (5) Section 68 of the 1995 Act (interpretation) is amended as follows—
- (a) In the definition of “licensing authority”, at end there is inserted, “(c) for the purposes of section 37A, the authority responsible for licensing private hire vehicles in any area of England and Wales.”
 - (b) After the definition of “prescribed” there is inserted—

““private hire vehicle” means a vehicle constructed or adapted to seat fewer than nine passengers which is made available with a driver to the public for hire for the purpose of carrying passengers, other than a licensed taxi or a public service vehicle;”.

16 Extension of the 1995 Act to certain public functions

After section 19 of 1995 Act, insert the following section—

“19B Public functions

- (1) It is unlawful for a public authority in carrying out any functions of the authority to do any act which constitutes discrimination. 5
- (2) In this section, “public authority”—
 - (a) includes any person certain of whose functions are functions of a public nature; but
 - (b) does not include any person mentioned in subsection (3).
- (3) The persons mentioned in this section are— 10
 - (a) the Security Service;
 - (b) the Secret Intelligence Service;
 - (c) the Government Communications Headquarters;
 - (d) any unit or part of a unit of any of the naval, military or air forces of the Crown which is for the time being required by the Secretary of State to assist the Government Communications Headquarters in carrying out its functions. 15
- (4) In relation to a particular act, a person is not a public authority by virtue only of subsection (2)(a) if the nature of the act is private.
- (5) Nothing in this section makes unlawful any act of discrimination which— 20
 - (a) is made unlawful by virtue of any other provision of this Act; or
 - (b) would be so made but for any provision made by or under this Act.
- (6) This section does not apply to— 25
 - (a) any judicial act (whether done by a court, tribunal or other person); or
 - (b) any act done on the instructions or on behalf of a person acting in a judicial capacity.
- (7) This section does not apply to any act of, or relating to, making, confirming or approving any enactment or Order in Council or any instrument made by a Minister of the Crown under an enactment. 30
- (8) This section does not apply to—
 - (a) a decision not to institute criminal proceedings and, where such a decision has been made, any act done for the purpose of enabling the decision whether to institute criminal proceedings to be made; 35
 - (b) where criminal proceedings are not continued as a result of a decision not to continue them, the decision and, where such a decision has been made; 40
 - (c) any act done for the purpose of enabling the decision whether to continue the proceedings to be made; and

- (d) any act done for the purpose of securing that the proceedings are not continued.”

17 General duty to promote equal opportunities for disabled people

After section 53 of the 1995 Act, insert—

“53B Duty to promote equal opportunities 5

- (1) The Secretary of State may by order designate specific bodies or bodies of a description falling within that order which shall, in carrying out their functions, have due regard to the need—
- (a) to eliminate unlawful disability discrimination; and
 - (b) to promote equality of opportunity and good relations between disabled persons and those who are not disabled. 10
- (2) The Secretary of State may by order impose, on such persons as may be prescribed, such duties as he considers appropriate for the purpose of ensuring the better performance by those persons of their duties under subsection (1). 15
- (3) Before making an order under subsection (2), the Secretary of State shall consult the Commission.
- (4) This section is subject to sections 53C and 53D and is without prejudice to the obligation of any person to comply with any other provision of this Act. 20

53C Scotland and Wales

- (1) For the purposes of the Scotland Act 1998 (c. 46), subsections (2) to (4) of section 71 (and sections 71(6) and 74 so far as they apply to the power conferred by subsection (2) of section 71) shall be taken to be pre-commencement enactments within the meaning of that Act. 25
- (2) Before making an order under section 53B(2) in relation to functions exercisable in relation to Wales by a person who is not a Welsh public authority, the Secretary of State shall consult the National Assembly for Wales.
- (3) The Secretary of State shall not make an order under section 53B(2) in relation to functions of a Welsh public authority except with the consent of the National Assembly for Wales. 30
- (4) In this section “Welsh public authority” means any person whose functions are exercisable only in relation to Wales and includes the National Assembly for Wales. 35

53D Codes of practice

- (1) The Commission may issue codes of practice containing such practical guidance as the Commission thinks fit in relation to the performance by persons of duties imposed on them by virtue of section 53B(1) and (2).

- (2) Where the Commission propose to issue a code of practice under this section, they—
 - (a) shall prepare and publish a draft of a code;
 - (b) shall consider any representations made to them about the draft; and
 - (c) may modify the draft accordingly.5
- (3) In the course of preparing any draft code of practice under this section, the Commission shall consult such organisations or bodies as appear to the Commission to be appropriate having regard to the content of the draft code. 10
- (4) If the Commission determine to proceed with a draft code of practice, they shall transmit the draft to the Secretary of State who shall consult the Scottish Ministers and the National Assembly for Wales.
- (5) After consulting the Scottish Ministers and the National Assembly for Wales, the Secretary of State shall—
 - (a) if he approves of the draft code, lay it before both Houses of Parliament; and
 - (b) if he does not approve of it, publish details of his reasons for withholding approval.15
- (6) If, within the period of forty days beginning with the day on which a copy of a draft code of practice is laid before each House of Parliament, or, if such copies are laid on different days, with the later of the two days, either House so resolves, no further proceedings shall be taken on the draft code of practice but without prejudice to the laying before Parliament of a new draft. 20
25
- (7) In reckoning the period of forty days referred to in subsection (6), no account shall be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.
- (8) If no such resolution is passed as is referred to in subsection (6), the Commission shall issue the code in the form of the draft and the code shall come into effect on such day as the Secretary of State may, after consulting the Scottish Ministers and the National Assembly for Wales, by order appoint. 30
- (9) The Commission may revoke, or from time to time revise, the whole or any part of a code of practice issued under this section; and where they revise the whole or any part of such a code, they shall issue the revised code and subsections (2) to (8) shall apply (with appropriate modifications) to such a revised code as they apply to the first issue of a code. 35
40

(10) A failure on the part of any person to observe any provision of a code of practice shall not of itself render that person liable to any proceedings; but any code of practice issued under this section shall be admissible in evidence in any legal proceedings and, if any provision of such a code appears to the court or tribunal concerned to be relevant to any question arising in the proceedings it shall be taken into account in determining that question. 5

(11) Without prejudice to subsection (1), a code of practice issued under this section may include such practical guidance as the Commission think fit as to what steps it is reasonably practicable for persons to take for the purpose of preventing their staff from doing in the course of their duties acts made unlawful by this Act. 10

53E Compliance notices

(1) If the Commission are satisfied that a person has failed to comply with, or is failing to comply with, any duty imposed by an order under section 53B(2), the Commission may serve on that person a notice (“a compliance notice”). 15

(2) A compliance notice shall require the person concerned—
 (a) to comply with the duty concerned; and
 (b) to inform the Commission, within 28 days of the date on which the notice is served, of the steps that the person has taken or is taking to comply with the duty. 20

(3) A compliance notice may also require the person concerned to furnish the Commission with such other written information as may be reasonably required by the notice in order to verify that the duty has been complied with. 25

(4) The notice may specify—
 (a) the time (no later than three months from the date on which the notice is served) at which any information is to be furnished to the Commission;
 (b) the manner and form in which any such information is to be so furnished. 30

(5) A compliance notice shall not require a person to furnish information which the person could not be compelled to furnish in evidence in civil proceedings before the High Court or the Court of Session. 35

53F Order for information

(1) The Commission may apply to a designated county court or, in Scotland, a sheriff court for an order requiring a person falling within Schedule 1A to furnish any information required by a compliance notice if—
 (a) the person fails to furnish the information to the Commission in accordance with the notice; or
 (b) the Commission have reasonable cause to believe that the person does not intend to furnish the information. 40

- (2) If the Commission consider that a person has not, within three months of the date on which a compliance notice was served on that person, complied with any requirement of the notice for that person to comply with a duty imposed by an order under section 53B, the Commission may apply to a designated county court, or, in Scotland, a sheriff court for an order requiring the person to comply with the requirement of the notice. 5
- (3) If the court is satisfied that the application is well founded, it may grant the order in the terms applied for or in more limited terms.
- (4) The sanctions in section 53E and this section shall be the only sanctions for breach of any duty imposed by an order under section 53B, but without prejudice to the enforcement of any other provision of this Act (where the breach is also a contravention of that provision).” 10

18 Meaning of discrimination in section 22 of the 1995 Act

- In section 24(1) of the 1995 Act, at end insert— 15
- “(c) he fails to comply with a section 22A duty in circumstances in which the effect of that failure is to place the disabled person at a substantial disadvantage.”

19 Reasonable adjustments to premises

After section 22 of the 1995 Act, insert the following section— 20

“22A Reasonable adjustments

- (1) Where a person managing any premises has a practice, policy or procedure which places disabled persons occupying or seeking to occupy those premises at a substantial disadvantage, it is his duty to take such steps as are reasonable under all the circumstances of the case, for him to have to take in order to change that policy, procedure or practice so that it no longer has that effect. 25
- (2) Where an auxiliary aid or service (for example, the provision of information on audio tape or of a sign language interpreter) would facilitate communication with disabled persons occupying or seeking to occupy the premises, it is the duty of the person managing those premises 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 aid or service. 30
- (3) This section imposes duties only for the purpose 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.” 35

20 Leasehold premises: alterations

After section 23 of the 1995 Act, insert—

“23A Alterations

- (1) This section applies where—
 - (a) a disabled person occupying any premises under a lease is placed at a substantial disadvantage by a physical feature (for example, one arising from the design or construction of a building or the approach or access to premises); 5
 - (b) that disabled person proposes to make an alteration to the premises to remove or reduce that substantial disadvantage; and 10
 - (c) but for this section he would not be entitled to make that alteration.
- (2) The lease shall have effect by virtue of this subsection as if it provided—
 - (a) for the occupier to be entitled to make the alteration with the written consent of the lessor; 15
 - (b) for the occupier to have to make a written application to the lessor for consent if he wishes to make the alteration;
 - (c) if such an application is made, for the lessor not to withhold his consent unreasonably; and 20
 - (d) for the lessor to be entitled to make his consent subject to reasonable conditions.
- (3) In this section—

“lease” includes a tenancy sub-lease or sub-tenancy and an agreement for a lease, tenancy sub-lease or sub-tenancy; and 25

“sub-lease” and “sub-tenancy” have such meaning as may be prescribed.

23B Reference to court

- (1) If the occupier has applied in writing to the lessor for consent to the alteration and— 30
 - (a) that consent has been refused, or
 - (b) the lessor has made his consent subject to one or more conditions,

the occupier or a disabled person who has an interest in the proposed alteration to the premises being made, may refer the matter to a county court or, in Scotland, to the sheriff. 35
- (2) In the following provisions of this section, “court” includes “sheriff”.
- (3) On such a reference the court shall determine whether the lessor’s refusal was unreasonable or (as the case may be) whether the condition is, or any of the conditions are, unreasonable. 40
- (4) If the court determines—
 - (a) that the lessor’s refusal was unreasonable, or

- (b) that the condition is, or any of the conditions specified in the order, are unreasonable
it may make such declaration as it considers appropriate or an order authorising the occupier to make the alteration specified in the order.
- (5) An order made under subsection (4) may require the occupier to comply with conditions specified in the order. 5

23C Regulations

- Regulations may make provision as to circumstances in which—
- (a) a lessor is to be taken, for the purposes of this section and section 27 to have— 10
- (i) withheld his consent;
 - (ii) withheld his consent unreasonably;
 - (iii) acted reasonably in withholding his consent;
- (b) a condition subject to which a lessor has given his consent is to be taken to be reasonable; 15
- (c) a condition subject to which a lessor has given his consent is to be taken to be unreasonable.”

21 Extension of questionnaire procedure

- (1) Section 56 of the 1995 Act is amended as follows.
- (2) In subsection (1)(a), after “Part II” is inserted “or Part III”. 20
- (3) In subsection (1)(b), after “Part II” is inserted “or Part III”.
- (4) In subsection (3)(a), after “Part II” is inserted “or Part III”.
- (5) In subsection (3)(b) after “tribunal” is inserted “or court”.
- (6) In subsection 3(b)(ii) after “Part II” is inserted “or Part III”.
- (7) In subsection (5) after “tribunal” is inserted “or court”. 25

22 Enforcement

- (1) For section 25 of the 1995 Act (enforcement) there is substituted—
- “25 Enforcement
- (1) A claim by any person that another person— 30
- (a) has discriminated against him in a way which is unlawful under this Part; or
 - (b) is by virtue of section 57 or 58 to be treated as having discriminated against him in such a way,
may be presented to an employment tribunal.

- (2) Where an employment tribunal finds that a complaint presented to it under this section is well-founded, it shall take such of the following steps as it considers just and equitable—
- (a) making a declaration as to the rights of the complainant and the respondent in relation to the matters to which the complaint relates; 5
 - (b) ordering the respondent to pay compensation to the complainant;
 - (c) recommending that the respondent take, within a specified period, action appearing to the tribunal to be reasonable in all the circumstances of the case, for the purpose of obviating or reducing the adverse effect on the complainant of any matter to which the complaint relates. 10
- (3) Where a tribunal orders compensation under subsection (2)(b), the amount of the compensation shall be calculated by applying the principles applicable to the calculation of damages in claims in tort or (in Scotland) in reparation for breach of statutory duty. 15
- (4) For the avoidance of doubt, it is hereby declared that compensation in respect of discrimination in a way which is unlawful under this Part may include compensation for injury to feelings whether or not it includes compensation under any other head. 20
- (5) If the respondent to a complaint fails, without reasonable justification, to comply with a recommendation made by an employment tribunal made under subsection (2)(c) the tribunal may, if it thinks it just and equitable to do so— 25
- (a) increase the amount of compensation required to be paid to the complainant in respect of a complaint where an order was made under subsection (2)(b);
 - (b) make an order under subsection (2)(b); or
 - (c) refer the case to the county or sheriff's court in order that it may impose an injunction or interdict upon the respondent to ensure that such recommendations are complied with. 30
- (6) Regulations may make provision—
- (a) for enabling a tribunal, where an amount of compensation falls to be awarded under subsection (2)(b), to include in the award interest on that amount; and 35
 - (b) specifying, for cases where a tribunal decides that an award is to include an amount in respect of interest, the manner in which and the periods and rate by reference to which the interest is to be determined. 40
- (7) Part II of Schedule 3 makes further provision about the enforcement of this Part and about procedure.
- (2) In paragraph 6(1) of Schedule 3 to the 1995 Act, for “county court or a sheriff court” there is substituted “an employment tribunal”.
- (3) In paragraph 6(3) of Schedule 3 to the 1995 Act, for “court” there is substituted “an employment tribunal”. 45

23 Short title, commencement and extent

- (1) This Act may be cited as the Disability Discrimination (Amendment) Act 2002.
- (2) The Act comes into force on such day as the Secretary of State may by order appoint and different days may be appointed for different purposes.
- (3) This Act extends to Northern Ireland.
- (4) Consultations which are required by any provision of this Act to be held by the Secretary of State may be held by him before the coming into force of that provision.

Disability Discrimination (Amendment) Bill [HL]

A

B I L L

[AS AMENDED IN COMMITTEE]

To amend the Disability Discrimination Act 1995 and the Disability Rights Commission Act 1999.

The Lord Ashley of Stoke

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