

Goods and Services

Making a claim under Part 3 of the Disability Discrimination Act 1995 in Scotland

A Self Help Guide

Scotland

Addendum

Important changes to the Disability Discrimination Act 1995 which you need to be aware of

On 2 December 1996, the Disability Discrimination Act 1995 (the Act) brought in measures to prevent discrimination against disabled people. Part 3 of the Act, which deals with services and premises, was amended by the Disability Discrimination Act 2005 (the 2005 Act) to expand its scope.

Services

Part 3 of the Act in its original form prohibited discrimination in connection with the provision of goods, facilities and services to the public. It did not, therefore, apply to the provision of services by private clubs to their members, as they are not in law members of the public. Similarly, the Act did not apply to the exercise of certain functions by public authorities (such as arrests by the police) as these do not constitute the provision of a service to the public.

Discrimination in relation to these areas is now prohibited in specified circumstances under Part 3 of the Act.

Premises

Whilst discrimination in relation to premises has been covered by the Act from the start, no duty was imposed on those controlling premises to make reasonable adjustments. The Act has now been amended by the 2005 Act to introduce a duty to make certain adjustments in relation to let premises.

In addition, the Act contains a new Part 5B, which will assist certain tenants in England and Wales to make improvements to their dwelling houses unless it is reasonable for a landlord to withhold consent to these improvements. Parallel provisions also apply in relation to Scotland, under the Housing (Scotland) Act 2006.

Other Key Changes Introduced by the 2005 Act

Transport

s 19(5), s 21ZA, Disability Discrimination (Transport Vehicles) Regulations 2005 SI 2005/3190

The Act previously excluded any service so far as it consisted of the use of a means of transport. Following amendments by the 2005 Act, and Regulations made under it, the use of transport provided by means of certain vehicles is now covered by Part 3 of the Act. The duty to make adjustments applies in a slightly different way to vehicles – see the separate supplementary Code on provision and use of transport vehicles on the Equality and Human Rights Commission website.

Definition

The 2005 Disability Discrimination Act amended the DDA 1995 so that the definition of disability now includes people with MS, cancer and HIV from the point of diagnosis and removes the requirement that a mental impairment is 'clinically well-recognised' (which has never been necessary for physical impairment).

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1. Introduction

Under Part III (referred to in this Guide as Part 3) of the Disability Discrimination Act (DDA), it is against the law for a provider of goods, facilities or services, or a landlord or other person who is disposing of, or managing, premises, to discriminate against you because of your disability. The DRC Helpline (see the back cover for details) can give you advice and information about the DDA and about your claim. A local law centre, Citizens Advice Bureau or solicitor may also be able to give you legal advice and represent you. See paragraphs 13.1 to 13.8.

This booklet has been written to help you by giving you general advice and guidance about the law and how to make a claim in the courts.

2. Can I make a claim?

2.1 Goods, facilities, services and premises

Where to find the law

Part 3 of the Disability Discrimination Act contains the law relating to disability discrimination in relation to goods, facilities or services. The Disability Rights Commission has issued a Code of Practice (Code of Practice, Rights of Access, Goods, Facilities, Services and Premises) which describes the duties of those providing services to the public and those selling, letting or managing premises under Part 3 of the Act. Although it is not the law itself, the Code has to be taken into account by courts and tribunals where relevant. It is advisable that you consider the code before embarking on a claim under the Act. It is available to download from the DRC website (www.drc-gb.org) or can be purchased from The Stationery Office (0870 600 5522).

2.2 The DDA affects everyone who provides goods, facilities or services to the public, or to a section of the public in the United Kingdom. It does not matter whether the services are provided free or in return for payment.

2.3 Examples of goods, facilities and services covered by the Act include 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 stadiums, leisure centres, advice agencies, theatres, cinemas, hairdressers, shops, market stalls, petrol stations, telesales businesses, places of worship, courts, hospitals and clinics.

- 2.4 Private members' clubs are not covered by Part 3 of the Act because they do not provide services to the public or a section of the public. Simply calling a service a 'club' does not mean that the courts will consider it to be a private club – there must be a genuine process of selection, usually by a club committee operating the club rules. However, where a club does provide services to the public then the Act applies to those services.

For example

A private golf club refuses to admit a disabled golfer to membership. This is not covered by the Act. However, if the golf club hires out its facilities for a wedding reception, the Act applies to this service. If the club allows non-members to use the course, a refusal to allow a disabled golfer to play is likely to be subject to the Act.

- 2.5 Part 3 of the Act does not apply to education, which is covered by Part 4 of the Act. However, Part 3 does cover non-educational services such as school trips or conferences, which are provided by any school, college or university.
- 2.6 Any service involving the use of any means of transport (for example, taxis, hire cars, buses, coaches, trains, aircraft and ships) is also excluded from Part 3. However, services provided in transport premises or related to transport, such as timetables, access to telephone

information, booking facilities, waiting rooms etc at airports, ferry terminals and bus, coach or train stations would be covered by this part of the Act. Assistance at transport terminals, such as assistance from an airline check-in desk to the point of departure, would also fall within the Part 3 provisions.

Selling, letting or managing premises

2.7 The Act also covers landlords and other persons who are disposing ie selling or letting, or managing, premises. Premises includes land of any description. For example, dwelling houses, office blocks, flats, bed-sits, factory premises, industrial and commercial sites, and agricultural land are all covered.

2.8 There are two main exclusions from the premises provision of Part 3 of the Act:

- **Owner-occupier.** Where an owner-occupier sells or lets his or her premises privately.
- **Small dwellings.** This exemption applies where the owner of premises (or a close member of his or her family) lives on the premises and shares accommodation with others who are not members of his or her household. The premises must be 'small' ie:
 - only the owner (or a close relative) live in the accommodation and there is accommodation let on a separate tenancy, or similar agreement, for normally no more than two other households, or
 - there is not normally residential accommodation on the premises for more than six people (excluding the owner-occupier (or a close relative) and his or her family).

3. Am I protected by the Act?

3.1 The Act sets out the circumstances in which a person is 'disabled' and so can receive protection.

3.2 **It says you are disabled if you have:**

- a mental or physical impairment
- this has an adverse (ie bad) effect on your ability to carry out normal day-to-day activities
- the adverse effect is substantial ie not minor or trivial
- the adverse effect is long-term (meaning it has lasted for 12 months, or is likely to last for more than 12 months or for the rest of your life).

3.3 There are some **special provisions**, for example:

- Some impairments do not count as a disability, such as alcohol addiction and kleptomania.
- Severe disfigurements are counted, so are certified blindness and partial sight.
- If your disability has substantially affected your ability to carry out normal day-to-day activities, but doesn't any more, it will still be counted as having that effect if it is likely to do so again.
- If you have a progressive condition such as HIV or multiple sclerosis or arthritis, which is likely to be increasingly debilitating, you will be treated as having a disability from the point when you first experience symptoms which affect your ability to carry out normal day-to-day activities.
- Past disabilities are covered.

3.4 Normal day-to-day activities

The impairment must have an adverse effect on 'normal day-to-day activities'. At least one of these areas must be substantially affected:

- mobility
- manual dexterity
- physical coordination
- continence
- ability to lift, carry or move everyday objects
- speech, hearing or eyesight
- memory or ability to concentrate, learn or understand
- understanding of the risk of physical danger.

3.5 It is really important to think about the effect of your impairment without treatment. The Act says that any treatment or correction should not be taken into account, including medical treatment or the use of a prosthesis or other aid (for example, a hearing aid). The only things which are taken into account are glasses and contact lenses.

3.6 The important thing is to work out exactly how your impairment affects you. Remember to concentrate on the things that you cannot do or can only do with difficulty, rather than on the things that you can do.

3.7 For example, if you have a hearing impairment, being unable to hold a conversation with someone talking normally in a moderately noisy place would be an

adverse effect. Being unable to hold a conversation in a very noisy place such as a busy intercity railway booking office would not.

- 3.8 If your impairment affects your mobility, being unable to travel a short journey as a passenger in a vehicle would be an adverse effect. So would only being able to walk slowly or with unsteady or jerky movements. But having difficulty walking without help for 1.5 kilometres or a mile without having to stop would not.
- 3.9 **Medical evidence.** If the service provider or landlord does not agree that you are disabled, it is useful to get some evidence from your GP or Consultant about your disability, the treatment for it, and the likely effect of your disability if you were not having treatment.

4. Have I been discriminated against?

Have I been discriminated against in accessing goods, facilities and services?

4.1 It is against the law for a service provider to discriminate against a disabled person:

- by refusing to provide (or deliberately not providing) any service which it provides (or is prepared to provide) to members of the public
- in the standard of service which it provides to the disabled person or the manner in which it provides it
- in the terms on which it provides a service to the disabled person
- by failing to make a reasonable adjustment in circumstances which make it impossible/unreasonably difficult to use the service.

Have I been discriminated against by a landlord or other person who is disposing of (ie renting, leasing or selling), or managing, property?

4.2 It is against the law for a person with power to dispose of any premises to discriminate against a disabled person:

- in the terms on which he or she offers to dispose of those premises to the disabled person

- by refusing to dispose of those premises to the disabled person
- in his or her treatment of the disabled person in relation to any list of persons in need of premises of that description.

4.3 It is against the law for a person managing any premises to discriminate against a disabled person occupying those premises:

- in the way he or she permits the disabled person to make use of any benefits or facilities
- by refusing (or deliberately omitting) to permit the disabled person to make use of any benefits or facilities
- by evicting the disabled person or subjecting the disabled person to any other detriment such as harassment.

It is also against the law for any person whose licence or consent is required for the disposal of any leased or sub-let premises to discriminate against a disabled person by withholding that licence or consent for the disposal of the premises to the disabled person.

4.4 **What does 'discriminate' mean?**

For your claim to succeed, a court will have to decide whether you were discriminated against. There are two main types of disability discrimination: (a) less favourable treatment, and (b) failure to make a reasonable adjustment. Both types can apply in the case of service provision; only the first type can apply in respect of premises that are being let, sold or managed.

4.5 Less favourable treatment

A service provider or landlord discriminates against a disabled person if it:

- treats the disabled person less favourably than other people (for a reason related to his or her disability) and cannot justify the treatment (see below).

For example

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 coordinating his movements. No other visiting supporter is refused entry. This would amount to less favourable treatment for a reason related to his disability and, unless the football club can justify its actions, would be an unlawful refusal of service. It would be irrelevant that another supporter who cannot control his movements (for example, because he is drunk) would be treated in the same way. The treatment in this case is for a reason relating to his disability and so there will be discrimination unless the treatment can be justified.

For example

A landlord asks a deaf person for a non-refundable deposit as a condition of her renting a flat. Other tenants are simply asked for a refundable deposit. This is less favourable treatment for a reason relating to her disability. Unless justified, this is likely to be unlawful.

4.6 Duty to make reasonable adjustments

Service providers also discriminate if:

- without being able to justify it, they fail to comply with a duty to make reasonable adjustments imposed on them in relation to the disabled person.

4.7 There are three main types of reasonable adjustment which the service provider has to consider:

1. Changes to practices, policies and procedures which make it impossible or unreasonably difficult for disabled people to make use of its services.

For example

A DIY store has a policy of not allowing dogs onto the 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 store. The store 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 store to have to take.

2. Overcoming a physical feature making it impossible or unreasonably difficult for disabled people to make use of the services by:
 - providing a reasonable alternative method of making its services available to disabled people; or
 - from **1 October 2004**, removing, altering, or providing a reasonable means of avoiding the feature.

Physical features will include steps, stairways, 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).

For example

- A theme park includes, as an attraction, a lakeside walk. However, a stile prevents access to the lakeside walk for those with mobility difficulties. The owners of the theme park remove the stile and replace it with an accessible gate. This is likely to be a reasonable step for the service provider to have to take.
- A small self-service pharmacist's shop has goods displayed on high shelving separated by narrow aisles. It is not practicable to alter this arrangement. The goods are not easily accessible to many disabled people. The shop decides to provide a customer assistance service. On request, a member of staff locates goods and brings them to the cash till for a disabled customer. This is the provision of a service by an alternative method, which makes the service accessible for disabled people and is likely to be a reasonable step for the shop to have to take.

3. Provision of auxiliary aids and services if they would enable (or make it easier for) disabled people to make use of its services.

For example

A bank provides information on audio tape about its savings accounts. A customer with a visual impairment can use the audio tape at home or in a branch to decide whether to open an account.

5. Can the discrimination be justified?

5.1 Discrimination in access to goods, facilities, services or premises can be justified on certain grounds. Where this is so, your claim will not succeed.

5.2 **Goods, facilities and services.** Treating a disabled person less favourably for a reason related to disability or failure to make a reasonable adjustment is justified where the service provider reasonably believes that one or more of the following conditions is satisfied:

- the treatment was necessary in order not to endanger the health and safety of any person, including the disabled person.

For example

An amusement park operator refuses to allow a person with muscular dystrophy onto a physically demanding high speed ride. Because of her disability, the disabled person uses walking sticks and cannot stand unaided. The ride requires users to brace themselves using their legs. The refusal is based on genuine concerns for the health and safety of the disabled person and other users of the ride.

- The disabled person is incapable of entering into an enforceable agreement, or of giving informed consent.

For example

A person with senile dementia applies for a mortgage loan from a building society to finance the purchase of a house. Although she has the means of keeping up with the mortgage loan repayments, the building society has sound reasons for believing that the disabled person does not understand the nature of the legal agreement and obligations involved. The building society refuses the application. This is likely to be justified.

- The refusal to provide (or deliberately not providing) a service to the disabled person was necessary because the service provider would otherwise be unable to provide the service to other members of the public.

For example

A tour guide refuses to allow a person with a severe mobility impairment on a group tour of old city walls because he has well-founded reasons to believe that the extra help that he would have to give the disabled person would prevent the party from completing the tour. This is likely to be justified.

- The inferior service the disabled person received was necessary in order to be able to provide the service to that person or other members of the public.

For example

A hotel restricts a wheelchair user's choice of bedrooms to those with level access to the lifts. Those rooms tend to be noisier and have restricted views. The disabled person would otherwise be unable to use the hotel. The restriction is necessary in order to provide the service to the disabled guest. This is likely to be justified.

- The disabled person was charged more than other people because of the greater cost in providing the service to the disabled person. This does not, however, apply where the extra cost results from the provision of a reasonable adjustment.

For example

A disabled customer orders a bed which is specifically made to accommodate her disability. The store charges more for the bed than it does for a standard one, as the specially made bed costs more to make. This is likely to be justified.

5.3 Special rules apply to the provision of insurance services, guarantees and deposits, see below.

5.4 Premises

Similar justification grounds apply in respect of premises. Treating a disabled person less favourably for a reason related to disability may be justified where the alleged discriminator reasonably believes that one or more of the following conditions are satisfied:

- the treatment is necessary so as not to endanger the health or safety of any person, including the disabled person.

For example

A landlord refuses to let a third floor flat to a disabled person who has had a stroke resulting in mobility problems and who lives alone. The disabled person is clearly unable to negotiate the stairs in safety or use the fire escape or other escape routes in an emergency. The landlord reasonably believes that there is a health and safety risk to the disabled person. The reason is likely to be justified.

- The disabled person is incapable of entering into an enforceable agreement, or of giving informed consent.

For example

The owner of a lock-up garage refuses to rent it to a person with a severe learning disability. Despite the owner attempting to explain that she expects to be paid a weekly rent for the garage, the disabled person appears incapable of understanding the legal obligation involved. The garage owner reasonably believes that the disabled person is incapable of entering into an enforceable agreement. The refusal to rent the garage is likely to be justified.

- In a case of alleged discrimination by a person managing premises:
 - in the way a disabled person occupying the premises is permitted to make use of any benefit or facility; or
 - by refusing (or deliberately omitting) to permit a disabled person occupying the premises to make use of any benefit

where the treatment is necessary for the disabled person or occupiers of other premises forming part of the building to make use of the benefit or facility.

For example

A landlord refuses to allow a disabled tenant with a severe learning disability to use the shared laundry facilities in a block of flats because the disabled tenant frequently breaks the washing machines. She does not understand the instructions. The landlord's refusal is likely to be justified.

Special rules apply to deposits, see below.

5.5 Insurance

Disability-related less favourable treatment in the provision of insurance services is justified if all the following conditions are satisfied:

- it is in connection with insurance business carried on by the service provider
- it is based on information which is relevant to the assessment of the risk to be insured

- the information is from a source on which it is reasonable to rely; and
- the less favourable treatment is reasonable having regard to the information relied on and any other relevant factors.

For example

A disabled person with a history of cancer applies for a life insurance policy. On the basis of clear medical evidence from a cancer specialist that the applicant is unlikely to live for more than six months, the insurance company refuses to provide life insurance. In the circumstances, the refusal of insurance is likely to be justified because all the conditions above are satisfied.

5.6 Guarantees

A service provider will be justified in refusing to provide a replacement, repair or refund under a guarantee if the item covered has been damaged for a reason related to a person's disability and the damage is beyond the level at which the guarantee would normally be honoured. The refusal must also be reasonable in all the circumstances of the case.

For example

A disabled person with a mobility impairment buys a pair of shoes from a shoe shop. He wears out the left shoe after a few months because his left foot has to bear most of his weight. The store refuses to provide a new pair of shoes because the old pair has undergone abnormal wear and tear. This is likely to be justified.

5.7 Deposits

A service provider or a person with power to dispose of any premises will be justified in refusing to refund some or all of a deposit if a disabled person causes damage for a reason related to that person's disability and the damage is above the level at which the provider or landlord would normally refund the deposit in full. The refusal to refund all or some of the deposit must also be reasonable in all the circumstances.

For example

A disabled person hires an evening suit from a menswear hire shop. The hire shop requires all customers to pay a deposit against damage to the hired clothing. Because of the nature of his disability, the disabled person wears a leg calliper. This causes abnormal wear and tear to the suit. When the suit is returned, the hire shop retains part of the deposit against the cost of repairing the damage. This is likely to be justified.

6. Victimisation

Anyone, not only people with disabilities, can claim victimisation if they have been treated less favourably because of something they have done in connection with the DDA. For example:

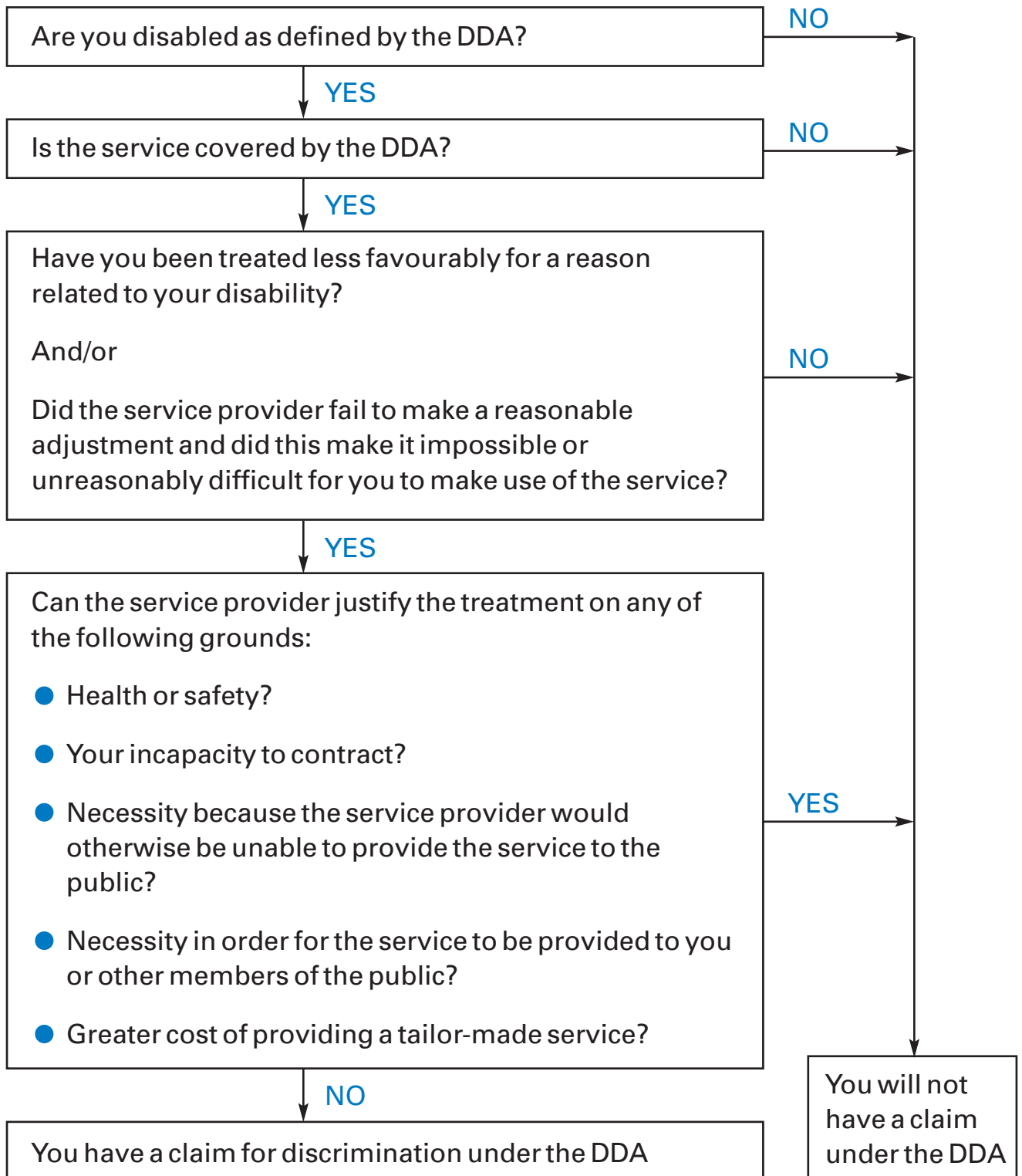
- bringing proceedings under the Act
- giving evidence or information in connection with such proceedings.

For example

A non-disabled person acts as a witness in a complaint by a disabled person of disability discrimination by a police officer. Later, in retaliation, other police officers refuse to provide to the non-disabled person local crime prevention services which the police provide to the public. This victimisation is likely to be unlawful.

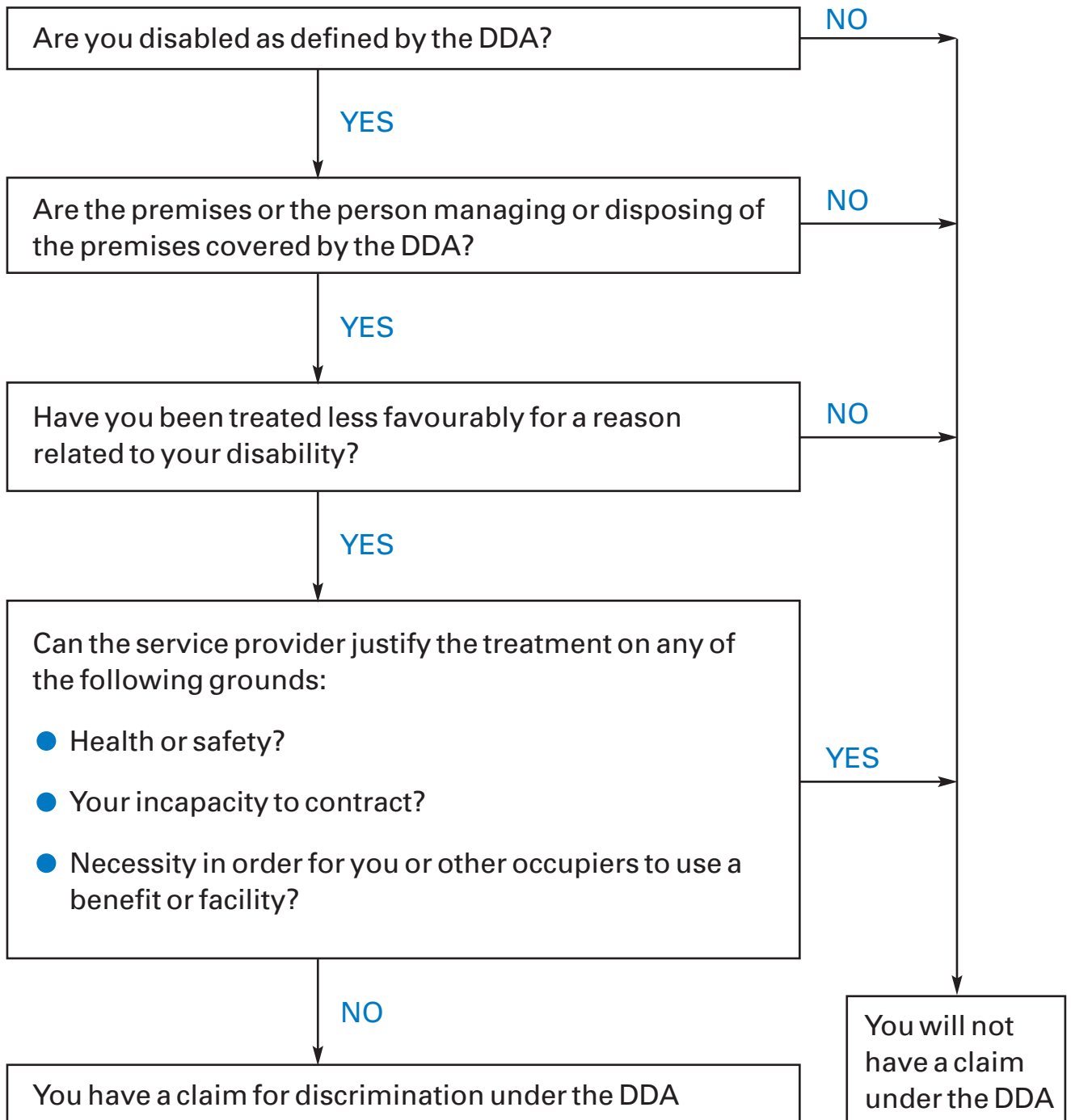
Who can make a claim?

Goods, facilities and services



Who can make a claim?

Management and disposal of premises



7. Introduction to bringing a court case in Scotland for disability discrimination

- 7.1 **Introduction.** Where someone has discriminated against a person in the supply of goods, facilities and services or premises, a complaint about that can be taken to court. It cannot be taken to the employment tribunal. In Scotland, the court used is the sheriff court. There have been very few of these cases so far in Scotland.
- 7.2 **Use of lawyer.** In general, it is highly advisable to use a lawyer when taking any form of legal action. This is because court procedures are designed with lawyers in mind and a lawyer is best qualified to operate court procedures. Even the small claims procedure is relatively formal and can be difficult for a person who is not legally qualified to use. In addition, because discrimination cases are so unusual in the sheriff court, you cannot rely on anyone knowing anything about the law or the reality of such cases!

- 7.3 **Self-representation.** However, there may be many reasons why someone who wants to take legal action in the court cannot get legal representation. It is always open to a person to represent themselves in court, no matter which court procedure is used.
- 7.4 **This part of the Guide.** This part of the Guide is designed to be used by anyone who wants to take a disability discrimination case to court in Scotland. It is addressed to the person who is taking the case. It assumes that the person has no legal training or specialist legal knowledge at all and has never taken a case of any kind to court at all.
- 7.5 **Other help available?** Taking your own case through the courts is not an easy thing to do. Before the decision is taken to do this, you are strongly advised to exhaust any other means of dealing with the dispute, and obtain legal representation.
- 7.6 **General guidance.** This Guide cannot attempt to provide a comprehensive account of all aspects of taking a disability discrimination case to court. All that is attempted here is some general guidance and pointers to the most important aspects of taking a case to court. Further details can be obtained from the sources of help noted at paragraphs 13.1 to 13.9 of this Guide.

8. Pre-court action

- 8.1 **Last resort.** Taking court action should normally be the last resort. This is because court action will normally only be required where you have tried to obtain what you want from the opponent but you and the opponent are unable to agree on a settlement of your claim. One way in which you could try to achieve settlement of the claim is by using the conciliation service offered by the Disability Rights Commission. If you have used a solicitor, or lay advisor, s/he will normally have made a claim against the opponent and may have attempted to achieve some form of settlement. If that has failed, legal action may be the only way forward.
- 8.2 **Get advice and assistance.** You should seek advice and assistance in the preparation of your case. See paragraphs 13.1 to 13.9 of this Guide for sources of help.
- 8.3 **Do you have a legal case?** You will need to be sure that you have a case in law. In other words, you will have to check the law to see if it is on your side. See paragraphs 1 to 6 of this Guide for more about the law.
- 8.4 **Evidence.** You will need to gather as much evidence as possible to support your case. Evidence includes letters written to you by the opponent, other documentary evidence such as contracts, brochures, photographs or the actual object that was sold to you. You may need medical reports about your condition if there is any dispute about whether you are a disabled person. If there is evidence that you need which you don't have (for example reports of documents prepared by your

opponent) you may be able to get them during the course of the legal proceedings by a special procedure. See below at paragraph 10.7 for details. You will also need to consider whether there are any witnesses who will help your case. You should identify who they are at an early stage and find out what they can say about the discrimination you are complaining about.

8.5 Compensation. You will need to decide what you want from the court. Most claims seek payment of compensation (damages) for the wrongful discrimination. If that is what you want, then you will need to estimate the worth of your case. This is because there are three types of procedures that can be used in the sheriff court depending on the amount that is sued for.¹ It is not easy to estimate the value of a claim. See the next paragraph for more information about the awards of compensation that can be made by the courts and tribunals. The compensation you are entitled to is the loss that is directly caused by the discrimination. If, for example, you were not allowed to stay in a hotel because of your disability and you had to stay in a more expensive one as a result, your losses would include the difference in the price between the two hotels.

8.6 Compensation for injury to feelings. In addition, in practically all discrimination cases, the disabled person will have suffered injury to their feelings. Compensation can also be awarded for this. As a rule of thumb, the minimum that the courts will award for this is £750.² In more severe cases,³ the awards can be much higher, up to around £25,000 in the very worst of cases although awards this high have only ever been made in

¹ See paragraph 10 below for details.

² *Purves v Joystick Ltd* 2003 SLT (Sh. Ct.) 63.

³ See *Armitage v Johnson* [1997] IRLR 162; *ICTS (UK) Ltd v Tchoula* [2000] IRLR 643; and *Doshoki v Draeger Ltd* [2002] IRLR 340.

employment cases. Injury to feelings should be distinguished from situations where there has been psychiatric damage caused by the discrimination (ie you have been made mentally unwell in a medical sense). In those cases, medical evidence will be required to prove the psychiatric damage.

- 8.7 **Declarator.** If you want to get the court to make a declarator (a declaration that you have been discriminated against), there is only one procedure that can be used which is the ordinary cause procedure: see paragraph 12 below. That is also the case if you want to obtain an interdict (an order from the court forbidding someone from doing something).
- 8.8 **Specific implement.** If you want the court to order that something be done (an 'order for specific implement'), it is normal also to ask the court to order payment of a sum of money if the thing is not done as an alternative. The amount of the alternative sum determines which procedure is to be used. If no alternative sum is specified, ordinary cause procedure must be used. This alternative sum is over and above any damages that might be claimed for the discrimination.
- 8.9 **Time limits.** You will need to check the time limits for raising a court action.⁴ The court action must be started before the end of the period of six months beginning when the act (or omission) complained of was done. So, if the act of discrimination happened on 1 January, the court action must be lodged in court and served on the opponent by 30 June at the latest. Serving the court papers on the opponent may take a while so make sure that you leave enough time before the six months is up

⁴ See schedule 3(6) to the DDA 1995.

to do this. If the act of discrimination (or omission) is continuing, the time period does not begin until the act (or omission) stops. If the discrimination is caused by a term in a contract, the discrimination is treated as continuing throughout the life of the contract. If before the end of the six-month period, you or your opponent try to use the conciliation procedures operated through the DRC, the six-month time limit is extended to eight months. If the claim is lodged late in court, the court has the discretion to allow the claim to proceed if it is satisfied that it is 'just and equitable' to do so.

8.10 Who is your opponent? Before raising the court action, you will need to be careful to identify exactly who your opponent is. This may not always be obvious. If the person is an individual and not an employee, you will need to establish his/her name and address. If the person is an employee, you will probably want to sue his/her employer. If so, you will need to identify the correct employer and the exact name of the company.⁵ You may be suing more than one opponent: if for example your case is that person X assisted person Y to discriminate. You may also want to consider whether the opponent has any assets. If the discriminator is a person with little assets or a company in liquidation, it is unlikely that you would ever see the compensation. Neither would you be able to recover the court fees and your legal expenses.

8.11 Which sheriff court? You will also need to be sure about which sheriff court you should use for the case. Usually, the right sheriff court will be the sheriff court for the area where the discrimination happened. See the next section for more details on sheriff courts.

⁵ It is also possible to sue both the employee and the company who employed him/her.

9. The sheriff court

- 9.1 **Introduction.** The sheriff court is the main court in the Scottish legal system. It is used for a wide variety of claims. The court deals with both criminal and civil cases (such as claims of discrimination). There are 49 sheriff courts. They are organised into groups called sheriffdoms. A complete list of the courts, their addresses and telephone numbers is on the Scottish courts website: www.scotcourts.gov.uk. Alternatively, your local sheriff court will be able to help (addresses are in the phone book). Each sheriff court has one or more sheriffs (judges) sitting there. The court day usually starts at 10 am and finishes at 4 pm although some cases start and finish earlier. The administration of the courts and cases is done by sheriff clerks. They are usually extremely helpful and a very good source of information especially to those who do not have legal representation.
- 9.2 **Accessibility.** Unfortunately, many of the courts are located in old buildings and are not easily accessible. The court can arrange to hear your case in another building if you have difficulty in accessing and using the court because of your disability. If you need any other adjustment, for example you are deaf or hard of hearing and need a lipspeaker or BSL interpreter, then the court should provide this for you. Ask the sheriff clerk about this.

- 9.3 **Formality.** The sheriff court tends to be rather more formal than tribunals, such as the employment tribunal where most discrimination claims are heard. Sheriffs and lawyers will normally wear formal court dress (including wigs for the sheriffs and advocates). Often, however, in the small claims procedure, sheriffs will try to adopt a more informal procedure.
- 9.4 **Jargon.** A certain amount of jargon is used. See the glossary at paragraph 14 of this Guide for an explanation of the most commonly used jargon.
- 9.5 **Public hearing.** The courts are open to the public and most cases are heard in public. It is a good idea to go to the court and sit in on a few civil cases to get an idea of what happens. It is very unlikely that you will be able to sit in on a disability discrimination case, as there are not many of these in Scotland.
- 9.6 **Sheriff court procedures.** The sheriff can make a number of orders during and at the end of a case. See further paragraphs 8.5 to 8.8 above. The court procedure used depends on what you want from the court. Confusingly, there are three main procedures. They are called a) small claims procedure, b) summary cause procedure and c) ordinary cause procedure. They are more fully explained below.

10. Making a small claim in the sheriff court

- 10.1 **What is this for?** This is for claims of compensation (damages) of up to £750. It is also used where you want the court to order the opponent to do something (called an order for specific implement) if there is an alternative claim for compensation for up to £750. It is likely that this figure will change some time in 2004 or 2005 so check the current figure before you start the action. This is the simplest procedure. The rules of procedure are called the Small Claims Rules 2002. These are on the Scottish Courts website (www.scotcourts.gov.uk) or they can be consulted at your local sheriff court.
- 10.2 **How to start the action.** From the sheriff court, get a small claims summons form together with the service copy (which is served on your opponent by the sheriff clerk). There are two types of service copies depending on whether the defender is an individual or a company. You can get the forms from either the Scottish Courts website (www.scotcourts.gov.uk) or from your local sheriff court. Fill in both the small claims summons and the service copy. See Appendix 1 for an example of how this is done. Take or send them to the correct sheriff court. If you receive certain welfare benefits (including disability living allowance, incapacity benefit and income support) there is no fee. Otherwise the fee is £39. The sheriff clerk will then check the forms and serve

the service copy on the defender and give you a copy. Remember that the service copy must be served on the defender before the six-month time limit is up so allow plenty of time for this to happen. The sheriff clerk will fix a 'return date' (which is the date by which the defender has to reply) and a date for the first hearing of the case.

10.3 Documents. You should also at this time collect any documents that you intend to use in your case. Put them in order, put a sheet of paper at the front with the name of the case, the court reference number and a list of the documents in that bundle. Head the list 'Inventory of Productions for the Pursuer'. Send this to the court with a letter asking the sheriff clerk to lodge them as productions. Send a copy to the defender and keep a copy for yourself. If you are not able to do this at this time, it can be done later.

10.4 The hearing. By the time that the case has its first hearing, you should know what the response of the defender is going to be. This is because the defender is meant to return a form stating this to the court. That should be copied to you. You should appear at the court on the day of the hearing. At this hearing, the sheriff will decide what to do with the case. The sheriff will not hear evidence. There are a number of possible things that the sheriff can do at this stage.

10.5 If there has been no response by the defender, or the defender admits the claim, he can make an order giving you everything that you have asked for. If the defender does not admit the claim and wants to defend the case, the sheriff will usually fix a date for a further hearing. The sheriff is supposed to try and negotiate settlement of the action at this stage, but in practice few sheriffs will do so.

- 10.6 If the sheriff cannot negotiate a settlement, the sheriff should note the disputed facts and law on the summons. If (as will usually be the case), the sheriff decides that the facts are not agreed by the pursuer and the defender, the sheriff will fix a further hearing when the evidence will be heard.
- 10.7 **Incidental procedure.** Between the first hearing and the final decision, there may be other procedures. For example, the pursuer may want to obtain documents (a 'specification of documents') which are held by the defender or some other person. Or one side may want to halt proceedings ('sist') for a temporary period (for example to carry out investigations or to get more time to prepare). The court must decide these things. The person who wants a particular order makes an application to the court for this. The application to the court is done by lodging (giving or sending) an 'incidental application' with the request contained in it. The sheriff clerk will then serve a copy on the other side. If the application is opposed, there will be a hearing to decide the matter. If it is not opposed, usually the application will be granted without a hearing and the clerk will tell the parties what has happened. Incidental applications may be used for a variety of purposes. The sheriff clerk will give advice on what should go into the incidental application and what it should look like.
- 10.8 **Hearing on evidence.** The hearing on evidence is when the court hears the evidence as to what happened. The small claims rules state that the sheriff is meant to take an active part in the hearing, asking questions and directing the proceedings, especially where one or both parties are unrepresented.

- 10.9 The pursuer usually starts. Usually, the first witness will be the pursuer. The witness gives his/her evidence as to what happened. The witness should refer to any documents which have been lodged which are relevant to the pursuer's case. The witness will then be cross-examined by the defender and the sheriff may ask some questions. The pursuer then calls any other witnesses that s/he has. The pursuer 'examines' the witnesses. This means that the witness is asked a series of questions which will enable the witness to tell the court what s/he knows about the discrimination alleged. Again, any documents that are relevant are put to the witness and the witness will be cross-examined by the defender and may be asked questions by the sheriff.
- 10.10 Once the pursuer has finished leading his/her evidence, the defender does the same thing. The pursuer has the opportunity of cross-examining each witness. The purpose of cross-examination is to undermine those parts of the witness's evidence which are favourable to the other side and to bring out matters which are favourable to the cross-examiner's side. Matters which are not in dispute should not be cross-examined. Neither should cross-examination simply enable the witness to repeat what the witness has already said.
- 10.11 **Submissions.** Once all the evidence has been taken, each side (usually beginning with the pursuer) makes submissions. This means each side tells the sheriff why s/he should decide the case in their favour, referring to the evidence that has been heard and the law.

- 10.12 **The decision.** The sheriff will then consider his/her decision. The sheriff may give the decision immediately. Often however, the sheriff will want time to consider the decision and will give the decision later in writing. This is called 'making avizandum'.
- 10.13 **Legal expenses.** The winning party is usually awarded his/her legal expenses against the other side. In small claims actions, the maximum legal expenses that can be awarded is usually £75. However, if the action was not defended, or if the sheriff decides that the losing party has acted unreasonably, the £75 limit is lifted and legal expenses are awarded as if the action were a summary cause action (see paragraph 11.3 below).
- 10.14 **Appeal.** The unsuccessful party has a right of appeal to the sheriff principal on a point of law. That means that the reason for the appeal must be that the sheriff has misunderstood the law in some way or the procedure adopted by the sheriff has been unlawful in some way. There is no right of appeal simply on the ground that a party does not agree with the decision of the sheriff. There is no further right of appeal.

11. Making a summary cause claim in the sheriff court

- 11.1 **What is this for?** This is for claims of compensation (damages) of between £751 and £1,500. It is also used where you want the court to order the opponent to do something (called an order for specific implement) and there is an alternative claim for compensation for between £751 and £1,500. It is likely that this figure will change some time in 2004 or 2005 so check the current figure before you start the action.
- 11.2 **Similarities with small claims procedure.** Summary cause procedure is very similar to small claims procedure. Everything that is said in Part 10 above about small claims procedure applies equally to summary cause procedure with the differences noted in the next paragraph. The design of the summary cause summons is similar to the design of the small claims summons, and should be completed in the same way.
- 11.3 **Differences between summary cause and small claims procedure.** The summary cause procedure is a little more formal than small claims. The sheriff has less of a proactive role. There is no £75 limit on the award of expenses. Instead, if expenses are awarded, they are awarded on a fixed scale depending on the various steps of procedure that have taken place and the length of the hearings. In a case that has gone to a hearing on

the evidence, the legal expenses could easily be measured in thousands of pounds. There is a further right of appeal from the sheriff principal to the Court of Session on a point of law but only if the sheriff principal agrees that the case is suitable for appeal.

12. Making a claim by ordinary cause action in the sheriff court

- 12.1 **What is this for?** This is for claims of compensation (damages) of over £1,500. It is also used where you want the court to order the opponent to do something (called an order for specific implement) and there is an alternative claim for compensation for over £1,500 (or no alternative claim at all). It is likely that this figure will change some time in 2004 or 2005 so check the current figure before you start the action. It is also used where you want to get a declarator of your rights in a particular situation. It is also used where you want to get an interdict (an order that a person should not do something). It is easily the most complicated form of procedure. It is very difficult for a non-lawyer to use ordinary cause procedure successfully. It is impossible in this short Guide to explain anything more than the basic procedure. The texts dealing with ordinary cause procedure in detail are listed in paragraph 13.9 of the Guide. The rules of procedure are the Ordinary Cause Rules 1993 (as amended). There is a copy of the rules on the Scottish courts website.
- 12.2 **Starting the action.** An ordinary cause action is started by initial writ. There is no court form supplied for this. It is a court document that you have to prepare by

yourself. It is done on ordinary paper according to a particular style and must contain certain legal phrases. See Ordinary Cause Rule 3.1 and Form G1 (which is not really a form but a guide) in the same rules for more about this.

- 12.3 **Lodging the initial writ.** The initial writ is then lodged with the sheriff clerk. There is a fee for doing this: see paragraph 12.9 below. With the initial writ must be lodged a 'process'. This is a collection of formal court papers which are used during the case. See Ordinary Cause Rule 11.1 for more about this. The sheriff clerk then 'warrants' the writ, which then allows you to serve the writ on the defender. This has to be done by a sheriff officer who you have to instruct and pay for.
- 12.4 **Defences.** If the defender is to defend the action, it must lodge defences with the court and also send you a copy. The sheriff clerk will then send all the parties a timetable for the action. The timetable will state the period during which adjustments are allowed in the case and when the open record is to be lodged and the date of the options hearing (see below for more on these terms).
- 12.5 **Adjustment.** The parties are allowed to 'adjust' their cases during the adjustment period. This means that you can answer what the defender has said in the defences and change or add to anything that you have said in the initial writ. This is done in writing showing the adjustments on the original pleadings. The adjustments are sent direct to the other party and not to the court.

12.6 **Record.** At the end of the adjustment period, the pursuer makes up an 'open record'. This is a single document comprising the whole of the pursuer's pleadings (as adjusted) and the defender's pleadings (as adjusted) with each article of the 'condescendence' (what you have said) followed by the corresponding 'answer' (from the defences). This is then sent to the court and to the other side at least three days before the options hearing.

12.7 **Options hearing.** This is usually the first hearing in the case (sometimes it is continued for four weeks). The purpose of the hearing is for the sheriff to decide what is to happen to the case. There are a number of possibilities. The most common ones are as follows. The sheriff 'closes the record'. That is, s/he finalises the written pleadings stage and the pursuer is then obliged to produce a new document called the 'closed record'. The sheriff may then fix a 'proof' or 'proof before answer' at which all the evidence will be heard followed by submissions. The basic procedure is along the lines of the hearing on evidence noted above at paragraph 10.8 but it is much more formal and complicated than a small claims action. Following a proof or proof before answer, the sheriff may give his/her decision immediately, but will usually reserve the decision ('make avizandum'). Another possibility is that the sheriff fixes a 'debate'. At a debate, there is no evidence led. Instead, the parties make submissions about whether the case makes sense legally and factually on paper. Following the debate, the sheriff may dismiss the action, grant decree, allow amendments to the closed record or fix a proof or proof before answer.

- 12.8 **Incidental procedure.** During the course of the case, either side may want to make application to the court to do various things (see paragraph 10.7 above which gives an idea of the sort of things that are sometimes sought). This is done by making a written motion to the court. See chapter 15 of the Ordinary Cause Rules for more about this.
- 12.9 **Court fees.** Court fees are due for each stage in the procedure. For example, the fee for warranting the initial writ is £50 and the fee for lodging a motion is £26. However, those who are on certain state benefits (including income support, disability living allowance and incapacity benefit) are exempt.
- 12.10 **Legal expenses.** The court will normally award the legal expenses ('judicial expenses') of the winning party against the losing party. These fees are assessed according to a set scale of fees. In a case that has gone to proof, the fees are certain to be many thousands of pounds.
- 12.11 **Appeal.** There is an appeal to the sheriff principal on a point of law (see paragraph 10.14 above) and from there to the Court of Session (also on a point of law).

13. Sources of further help concerning self-representation

- 13.1 **Disability Rights Commission.** The DRC offers free advice via its Helpline and will also consider whether it can offer any assistance to those who believe that they have suffered from discrimination on the grounds of their disability. Unfortunately, it is not able to offer legal representation to all those who ask for it. The DRC also publishes a range of useful material on your rights as a disabled person. It also offers a conciliation service as an alternative to legal action. If it cannot offer representation, it can refer you to private solicitors who may be able to offer representation. See the back cover for our Helpline contact details. The website www.drc-gb.org contains a wealth of useful information including copies of the legislation and the Code of Practice.
- 13.2 **Solicitors and advice and assistance.** A solicitor may be able to offer advice, assistance and representation under the legal aid scheme. The legal aid scheme permits solicitors to provide free or low cost legal advice and assistance to those on a low income (including most people whose only income comprises welfare benefits). That advice and assistance can include help with preparation of the case, obtaining a legal opinion from an advocate on how good the case is, gathering evidence and preparation of the court forms.

- 13.3 **Civil legal aid.** Another kind of legal aid may be available to pay for the actual court representation itself. This is called civil legal aid. It is to pay for full legal representation in the courts. It is not available for the small claims procedure. It is available to those on a low income, who have no other way of getting legal representation if they have a case in law and the Scottish Legal Aid Board consider that it is reasonable to make legal aid available. It can only be applied for through a solicitor. The legal aid can pay for the representation of a solicitor or, in complex cases, representation by an advocate. The website of the Scottish Legal Aid Board is www.slab.org.uk, telephone 0131 226 7061.
- 13.4 **Law centres.** Be sure to check at the outset that the solicitor is confident about being able to properly advise you in the area of discrimination law. Law centres, all of which employ solicitors, will usually be able to advise and represent in disability discrimination cases. The website of the Scottish Association of Law Centres is www.govanlc.com/salc. The Association is administered through Govan Law Centre, telephone 0141 440 2503.
- 13.5 **Advice agencies.** Some advice agencies, such as Citizens Advice Bureaux, may be able to offer some help including information about the law of discrimination. However, most such agencies do not offer representation even in the small claims procedure. Neither can their workers, not being legally qualified, represent in defended summary cause actions or in ordinary cause actions. The website of Citizens Advice Scotland is www.cas.org.uk, telephone 0131 550 1000.

- 13.6 **Scottish Courts Administration.** The Scottish Courts Administration publishes a guide to small claims procedure as well as a leaflet. They are available on the Scottish courts website and from sheriff courts. They are free. The Scottish courts website has other information about the sheriff court as well as copies of the court rules and some forms: www.scotcourts.gov.uk.
- 13.7 **HMSO.** Her Majesty's Stationery Office supplies copies of all legislation and all official government publications. Its website contains all Acts of Parliament and statutory instruments (regulations) passed since 1988. Its website address is www.hmso.gov.uk.
- 13.8 **Other organisations.** Here are some details of some organisations who might be able to help you.
- **British Council of Disabled People (BCODP)**
www.bcodp.org.uk
National umbrella organisation with 130 full member organisations of disabled people.
Telephone: 01332 295 551 (textphone: 01332 295 581)
 - **Disability Law Service**
The Disability Law Service offers free legal advice to people with disabilities.
Telephone: 020 7791 9800 (textphone: 020 7791 9801)
 - **Royal National Institute of the Blind (RNIB) Scotland**
Telephone : 0131 311 8500
 - **Royal National Institute for Deaf People (RNID) Scotland**
Telephone: 0141 554 0053 (textphone: 0141 550 5750)

13.9 **Books.** A useful text on this subject is called **Small Claims Handbook (2nd edition)** by Cowan Ervine published by Greens in 2003. Try also **Summary Cause Procedure in the Sheriff Court** by Richard Mays published by Butterworths in 1995 (now a bit out of date). The best book on ordinary cause procedure (written for lawyers) is called **Sheriff Court Practice (2nd edition)** by Sheriff Principal I.D. MacPhail and is published by W. Green. That book (in Volume 2) also has chapters on small claims and summary cause procedure. All these books may be obtained from a public library.

14. Glossary of legal words and phrases

Unfortunately, there is a lot of legal jargon used in the courts. Some of the jargon has been used in this Guide. It is a good idea to understand the jargon so that you can have a better understanding of what is being said. There is a longer list of legal jargon in Appendix 2 of both the summary cause rules and the small claims rules.

Word or phrase	Meaning
Advocate	A lawyer who is a specialist in pleading court cases: called a barrister in England and Wales.
Avizandum (to make)	When a sheriff or judge does not give the decision immediately.
Damages	Compensation for breach of some legal duty.
Decree	Final decision of the court.
Defender	The person or body defending the claim.
Diet	Date for a court hearing.
Dismissal	Where the court throws out a case.
Expenses	The costs of a court case.

Word or phrase	Meaning
Incidental application	An application that can be made in the course of summary cause or small claims action asking the court to do something.
Initial writ	The legal document prepared by the pursuer that begins an ordinary action.
Lodge (to)	To put some official document into the court process.
Motion	An application requesting the court to do something (in ordinary cause).
Options hearing	Preliminary stage in ordinary cause procedure.
Ordinary cause	The normal court procedure used for medium to large claims.
Party	Someone who is part of the case: eg, pursuer or defender.
Process	The court file that contains all the documents in the court case.
Productions	The documents or articles lodged by any party which may be used in evidence.
Pursuer	The person or body making a claim.

Word or phrase	Meaning
Return day	The date by which the defender must reply to the court.
Serve/service	The formal sending of a court document to a party to the action.
Sheriff	A judicial figure in the sheriff court.
Sheriffdom	One of the areas into which Scotland is divided for the organisation of sheriff courts.
Sheriff principal	The senior sheriff in each sheriffdom.
Sist	To temporarily halt court proceedings.
Small claims	Simplified court procedure for small amounts.
Statement of claim	The part of the summons where the pursuer sets out the basis for the claim.
Summary cause	Simplified court procedure for larger amounts.
Summons	The form which the pursuer fills in to start the legal action in small claims and summary cause.

Appendix 1

Example of small claims summons

1. On page 54, below, is an example of a small claims summons in a case based on a real case. A copy of a real small claims summons is used. The example here is only a style and should be used simply as a guide. Every case is different and there are many styles possible. What is important in all cases is that the statement of claim should give fair notice of the case which the pursuer wants to make. That involves giving details of the facts of the discrimination, details of the facts about what loss has been suffered by the pursuer, and details of the legal basis of the claim. If there is not enough room on the summons form for everything, the pursuer can simply write the details on a separate piece of paper, which should then be attached securely to the summons. It is usual for the pursuer to be referred to in the third person rather than the first person (that is, 'the pursuer saw....' rather than 'I saw....') but it should not matter if you do not observe this convention.
2. Both the small claims summons and the defender's copy need to be filled in in the same way. The defender's copy is then served on the defender by the sheriff clerk. See paragraph 10.2 above.
3. It might help if there was an explanation given about how the statement of claim (question 7) has been prepared. In the fictional case, which is used here as an example, question 7 (which sets out the basis of the case) has been organised in the following way.

4. In the first paragraph, the pursuer sets out some of the basic essentials which she needs to establish in order to win her case. She says that she is a disabled person under the DDA. She states that the person who did the discrimination, the waiter, is an employee of the defender and that the defender is liable for the actions of the waiter. She identifies him. She also sets out the beginning of the story. She gives dates, times and places.
5. In the second paragraph, she sets out the meat of her case. She states what the discriminatory action by the defender's employee was. This is the thing that was done wrong. She sets out the facts in very summary form making sure at the same time that none of the essentials are missed out. She does not set out how she will prove what happened or who are the witnesses and should not. In this case, she says that there was direct discrimination by the restaurant against her on the grounds of her disability. In other cases, the discrimination may not be so blatant (but just as discriminatory). For example, many cases will involve the service provider failing to make reasonable adjustments. If that is the case, this is where the pursuer will say what happened, why, and what reasonable adjustments should have been made and what difference the adjustments would have made.
6. In the third paragraph, she then sets out the legal basis for her claim under the DDA. See Appendix 2 to this Guide. That will depend on the nature of the case. In cases concerning failure to make adjustments for example, reference should be made to section 21 of the DDA and in cases concerning premises, reference should be made to sections 22 to 24 of the DDA. She says why the facts of what happened (stated in the previous paragraph) constitute unlawful discrimination under the DDA.

She finishes by saying that her disability was the reason for the actions of the waiter and were it not for her disability, he would not have done what he did.

7. In the final paragraph, she sets out what has been the effect on her of the discrimination. In this case, she has suffered injury to her feelings only. She does not need to put a figure on it at this stage. In other cases, the pursuer may have suffered other consequences, for example increased costs. If so, that is where this should be stated. Again, the losses should be stated clearly and concisely without going into all the evidence.

FORM 1

**OFFICIAL USE
ONLY
SUMMONS No.**

Small Claims Summons

Action for/of **payment of money**
(state type e.g., payment of money)

Sheriff Court (name, address, e-mail and telephone no.)	1 Sheriff Clerk McTown Sheriff Court 6 High Street, McTown MC1 1AB Mctown@scotcourts.gov.uk				
Name and address of person making the claim (pursuer)	2 Mary McAndrew 51 Govan Road McTown MC5 5FG				
Name and address of person against whom claim made (defender)	3 Black Truffle Emporiums Ltd 54 George Square McTown MC6 2AB				
Claim (form of decree or other order sought)	4 The pursuer claims from the defender the sum of £750 with interest on that sum at the rate of 8% annually from the date of the service, together with the expenses of bringing the claim.				
Name, full address, telephone no. and e-mail address of pursuer's solicitor of authorised lay representative (if any) acting in the claim	5 None				
Fee Details (Enter these only if forms sent electronically to court)	5a N/A				
* <i>Sheriff Clerk to delete as appropriate</i>	6 <table border="0" style="width: 100%;"> <tr> <td>RETURN DAY</td> <td style="text-align: right;">20</td> </tr> <tr> <td>HEARING DATE</td> <td style="text-align: right;">20 at a.m.</td> </tr> </table> <p>The pursuer is authorised to serve a copy summons in Form *1a/1b, on the defender(s) not less than *21/42 days before the RETURN DAY shown in the box above. The summons is warrant for service, * arrestment on the dependence of witnesses to attend court on any future date at which evidence may be led.</p> <p>Sheriff clerk depute (name) _____ Date: _____ 20</p>	RETURN DAY	20	HEARING DATE	20 at a.m.
RETURN DAY	20				
HEARING DATE	20 at a.m.				
<i>Court Authentication</i>					

NOTE: The pursuer should complete boxes 1 to 5a, and the statement of claim on page 2. The sheriff clerk will complete box 6.

7. STATE DETAILS OF CLAIM HERE OR ATTACH A STATEMENT OF CLAIM

(To be completed by the pursuer. If space is insufficient, a separate sheet may be attached)

The details of the claim are:

1. The pursuer suffers from multiple sclerosis. The pursuer is a disabled person within the meaning of section 1 of the Disability Discrimination Act 1995 ('the Act'). She is a wheelchair user. On 20 January 2004 at about 8 pm, she went to the restaurant called Gobble which is located at 54 George Square, McTown. It is owned and operated by the defender. The pursuer was accompanied by her husband, James McAndrew. Mr McAndrew went into the restaurant alone and asked the head waiter, Mr Joe McTandy, whether he had a table for two free immediately. The restaurant was almost empty. Mr McTandy said that he had several tables free. Mr McAndrew then went to collect the pursuer so as to take a table. Mr McTandy is an employee of the defender. The defender is liable for the actions of Mr McTandy in terms of section 58 of the Act.
2. As the pursuer began to enter the restaurant, Mr McTandy turned and saw that the pursuer was coming into the restaurant in her wheelchair. He shouted that she could not come into the restaurant. He then rushed to the door in order to prevent the pursuer coming into the restaurant. He called to the other waiter to help him. He shouted at the pursuer that she could not come in as the restaurant was full.

He then closed and locked the door. He turned the sign on the door to 'Closed'.

3. The defender is a provider of services, being meals served in a restaurant, within the meaning of section 19 of the Act. In terms of sections 19 and 20, it had a duty not to discriminate against disabled persons, such as the pursuer, for a reason relating to their disability by refusing to allow her access to the restaurant and refusing to serve her a meal. The defender failed in that duty. The defender's head waiter discriminated against the pursuer by refusing to allow her into their restaurant, and thereby refusing her service of a meal on the grounds that she was in a wheelchair. That was a reason which related to her disability. If the pursuer had not been disabled, the defender would not have discriminated against her.
4. As a result of the defender's discrimination, the pursuer has suffered injury to her feelings. She was humiliated and distressed. The act was in public. She was embarrassed and felt ashamed. She felt distressed and upset for several weeks after the incident.

8. FOR OFFICIAL USE ONLY

Sheriff's notes as to:

1. Issues of fact and law in dispute
2. Facts agreed
3. Directions and guidance upon evidence to be led

Appendix 2

The Disability Discrimination Act 1995

Part III (that is, Part 3), sections 19-24 of the DDA relate to goods, facilities and services, and premises. These sections are reproduced here.

Goods, facilities and services

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 and 21
 - (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 [1973 c. 50.] 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) Except in such circumstances as may be prescribed, this section and sections 20 and 21 do not apply to
 - (a) education which is funded, or secured, by a relevant body or provided at
 - (i) an establishment which is funded by such a body or by a Minister of the Crown; or
 - (ii) any other establishment which is a school as defined in section 14(5) of the Further and Higher Education Act 1992 or section 135(1) of the Education (Scotland) Act 1980
 - (b) any service so far as it consists of the use of any means of transport; or
 - (c) such other services as may be prescribed.
- (6) In subsection (5) 'relevant body' means –
 - (a) a local education authority in England and Wales
 - (b) an education authority in Scotland
 - (c) the Funding Agency for Schools
 - (d) the Schools Funding Council for Wales
 - (e) the Further Education Funding Council for England
 - (f) the Further Education Funding Council for Wales
 - (g) the Higher Education Funding Council for England
 - (h) the Scottish Higher Education Funding Council
 - (i) the Higher Education Funding Council for Wales
 - (j) the Teacher Training Agency
 - (k) a voluntary organisation; or
 - (l) a body of a prescribed kind.

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
- (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 [1983 c. 20.] Mental Health Act 1983 are exercisable in relation to a disabled person's property or affairs; or
 - (c) powers are exercisable in Scotland in relation to a disabled person's property or affairs in consequence of the appointment of a curator bonis, tutor or judicial factor.
- (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

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 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.

Premises

22. Discrimination in relation to premises

- (1) It is unlawful for a person with power to dispose of any premises to discriminate against a disabled person
 - (a) in the terms on which he offers to dispose of those premises to the disabled person
 - (b) by refusing to dispose of those premises to the disabled person; or
 - (c) in his treatment of the disabled person in relation to any list of persons in need of premises of that description.

- (2) Subsection (1) does not apply to a person who owns an estate or interest in the premises and wholly occupies them unless, for the purpose of disposing of the premises, he
 - (a) uses the services of an estate agent; or
 - (b) publishes an advertisement or causes an advertisement to be published.

- (3) It is unlawful for a person managing any premises to discriminate against a disabled person occupying those premises
 - (a) in the way he permits the disabled person to make use of any benefits or facilities
 - (b) by refusing or deliberately omitting to permit the disabled person to make use of any benefits or facilities; or
 - (c) by evicting the disabled person, or subjecting him to any other detriment.

- (4) It is unlawful for any person whose licence or consent is required for the disposal of any premises comprised in, or (in Scotland) the subject of, a tenancy to discriminate against a disabled person by withholding his licence or consent for the disposal of the premises to the disabled person.

- (5) Subsection (4) applies to tenancies created before as well as after the passing of this Act.

- (6) In this section

'advertisement' includes every form of advertisement or notice, whether to the public or not

'dispose', in relation to premises, includes granting a right to occupy the premises, and, in relation to premises comprised in, or (in Scotland) the subject of, a tenancy, includes –

- (a) assigning the tenancy, and
- (b) sub-letting or parting with possession of the premises or any part of the premises; and 'disposal' shall be construed accordingly

'estate agent' means a person who, by way of profession or trade, provides services for the purpose of finding premises for persons seeking to acquire them or assisting in the disposal of premises; and

'tenancy' means a tenancy created

- (a) by a lease or sub-lease
- (b) by an agreement for a lease or sub-lease
- (c) by a tenancy agreement, or
- (d) in pursuance of any enactment.

(7) 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.

(8) This section applies only in relation to premises in the United Kingdom.

23. Exemption for small dwellings

(1) Where the conditions mentioned in subsection (2) are satisfied, subsection (1), (3) or (as the case may be) (4) of section 22 does not apply.

- (2) The conditions are that
 - (a) the relevant occupier resides, and intends to continue to reside, on the premises
 - (b) the relevant occupier shares accommodation on the premises with persons who reside on the premises and are not members of his household
 - (c) the shared accommodation is not storage accommodation or a means of access; and
 - (d) the premises are small premises.
- (3) For the purposes of this section, premises are 'small premises' if they fall within subsection (4) or (5).
- (4) Premises fall within this subsection if
 - (a) only the relevant occupier and members of his household reside in the accommodation occupied by him
 - (b) the premises comprise, in addition to the accommodation occupied by the relevant occupier, residential accommodation for at least one other household
 - (c) the residential accommodation for each other household is let, or available for letting, on a separate tenancy or similar agreement; and
 - (d) there are not normally more than two such other households.
- (5) Premises fall within this subsection if there is not normally residential accommodation on the premises for more than six persons in addition to the relevant occupier and any members of his household.

- (6) For the purposes of this section 'the relevant occupier' means
- (a) in a case falling within section 22(1), the person with power to dispose of the premises, or a near relative of his
 - (b) in a case falling within section 22(4), the person whose licence or consent is required for the disposal of the premises, or a near relative of his.

(7) For the purposes of this section

'near relative' means a person's spouse, partner, parent, child, grandparent, grandchild, or brother or sister (whether of full or half blood or by affinity); and

'partner' means the other member of a couple consisting of a man and a woman who are not married to each other but are living together as husband and wife.

24. Meaning of 'discrimination'

- (1) For the purposes of section 22, a person ('A') 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 this section, treatment is justified only if

- (a) in A's opinion, one or more of the conditions mentioned in subsection (3) are satisfied; and
 - (b) it is reasonable, in all the circumstances of the case, for him to hold that opinion.
- (3) 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 22(3)(a), the treatment is necessary in order for the disabled person or the occupiers of other premises forming part of the building to make use of the benefit or facility
 - (d) in a case falling within section 22(3)(b), the treatment is necessary in order for the occupiers of other premises forming part of the building to make use of the benefit or facility.
- (4) Regulations may make provision, for purposes of this section, as to circumstances in which
- (a) it is reasonable for a person to hold the opinion mentioned in subsection 2(a)
 - (b) it is not reasonable for a person to hold that opinion.
- (5) Regulations may make provision, for purposes of this section, as to circumstances (other than those mentioned in subsection (3)) in which treatment is to be taken to be justified.



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