



**Isle of Man**

*Ellan Vannin*

**AT 17 of 2006**

**DISABILITY DISCRIMINATION ACT 2006**





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## DISABILITY DISCRIMINATION ACT 2006

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**Isle of Man***Ellan Vannin*

## DISABILITY DISCRIMINATION ACT 2006

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**AN ACT** to make it unlawful to discriminate against disabled persons in connection with the provision of goods, facilities and services and the disposal or management of premises; and for connected purposes.

**GENERAL NOTE:** See SD352/09 Rules of the High Court of Justice 2009 Sch 15.1 para 3 reproduced below:

“3. In any statutory provision a reference to a petition of doleance shall be construed as an application to the court in accordance with —

- (a) Chapter 9 of Part 13 (review of detention),
- (b) rule 14.16 (appeal by way of case stated), or
- (c) Chapter 2 of Part 14 (review of lawfulness of decision etc.), as the case may require.”

### PART I – DISABILITY

#### 1 Meaning of “disability” and “disabled person”

[P1995/50/1]

- (1) Subject to the provisions of Schedule 1, a person has a disability for the purposes of this Act if they have a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.
- (2) In this Act “**disabled person**” means a person who has a disability.
- (3) The Department may by order amend the provisions of Schedule 1 to modify the definition of “disability” for the purposes of this Act.

## 2 Past disabilities

[P1995/50/2]

- (1) The provisions of this Part and Part II apply in relation to a person who has had a disability as they apply in relation to a person who has that disability.
- (2) Those provisions are subject to the modifications made by Schedule 2.
- (3) Any regulations or order made under this Act may include provision with respect to persons who have had a disability.
- (4) In any proceedings under Part II, the question whether a person had a disability at a particular time (“the relevant time”) shall be determined, for the purposes of this section, as if the provisions of, or made under, this Act in force when the act complained of was done had been in force at the relevant time.
- (5) The relevant time may be a time before the passing of this Act.

## 3 Guidance

[P1995/50/3]

- (1) The Department may issue guidance about the matters to be taken into account in determining —
  - (a) whether an impairment has a substantial adverse effect on a person’s ability to carry out normal day-to-day activities; or
  - (b) whether such an impairment has a long-term effect.
- (2) The guidance may, among other things, give examples of —
  - (a) effects which it would be reasonable, in relation to particular activities, to regard for purposes of this Act as substantial adverse effects;
  - (b) effects which it would not be reasonable, in relation to particular activities, to regard for such purposes as substantial adverse effects;
  - (c) substantial adverse effects which it would be reasonable to regard, for such purposes, as long-term;
  - (d) substantial adverse effects which it would not be reasonable to regard, for such purposes, as long-term.
- (3) When the High Court determines, for any purpose of this Act, whether an impairment has a substantial and long-term adverse effect on a person’s ability to carry out normal day-to-day activities, it shall take into account any guidance which appears to it to be relevant.
- (4) Before issuing any guidance, the Department shall consult such persons as it considers appropriate.

- (5) If the Department issues any guidance, it shall lay the guidance before Tynwald as soon as practicable after it has been made, and if Tynwald at the sitting at which the guidance is laid or at the next following sitting fails to approve it, the guidance shall cease to have effect.
- (6) The guidance shall come into operation on such date as the Department may appoint by order.
- (7) The Department may —
  - (a) from time to time revise the whole or part of any guidance and re-issue it;
  - (b) by order revoke any guidance.
- (8) In this section —

“guidance” means guidance issued by the Department under this section and includes guidance which has been revised and re-issued.

## PART II – DISCRIMINATION

### *Goods, facilities and services*

#### **4 Discrimination in relation to goods, facilities and services**

[P1995/50/19]

- (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 that person provides, or is prepared to provide, to members of the public;
  - (b) in failing to comply with any duty imposed on that person by section 6 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 is provided to the disabled person or the manner in which it is provided to the disabled person; or
  - (d) in the terms on which a service is provided to the disabled person.
- (2) For the purposes of this section and sections 5 and 6 —
  - (a) the provision of services includes the provision of any goods or facilities;
  - (b) a person is “**a provider of services**” if that person is concerned with the provision 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 5 and 6 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) access to and use of public passenger vehicles, public service vehicles and rail vehicles;
  - (e) accommodation in a hotel, boarding house or other similar establishment;
  - (f) facilities by way of banking or insurance or for grants, loans, credit or finance;
  - (g) facilities for entertainment, recreation or refreshment;
  - (h) training facilities provided by employment agencies or other businesses;
  - (i) the services of any profession or trade, or any public authority;
  - (j) facilities for the provision of education or other associated services.
- (4) The Department may by regulations prescribe services which are, or services which are not, to be regarded for the purposes of subsection (3)(j) as being –
- (a) education; or
  - (b) an associated service.
- (5) In the case of an act which constitutes discrimination by virtue of section 15 (victimisation), this section also applies to discrimination against a person who is not disabled.
- (6) Except in such circumstances as may be prescribed, this section and sections 5 and 6 do not apply to such services as may be prescribed.

## 5 Meaning of “discrimination”

[P1995/50/20]

- (1) For the purposes of section 4, a provider of services discriminates against a disabled person if –
- (a) for a reason which relates to the disabled person’s disability, that person treats the disabled person less favourably than he or she treats or would treat others to whom that reason does not or would not apply; and
  - (b) he or she cannot show that the treatment in question is justified.



- (2) For the purposes of section 4, a provider of services also discriminates against a disabled person if —
  - (a) that person fails to comply with a section 6 duty which is imposed in relation to the disabled person; and
  - (b) that person cannot show that his or her 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 that person 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 4(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 4(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 4(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 6 duty shall be disregarded for the purposes of subsection (4)(e).
- (6) Regulations may make provision, for the 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; or
  - (b) functions conferred by or under Part 7 of the *Mental Health Act 1998* are exercisable in relation to a disabled person's property or affairs.
- (8) Regulations may make provision, for the 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 6 duty.

## 6 Duty of providers of services to make adjustments

[P1995/50/21]

- (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 that person provides, or is prepared to provide, to other members of the public, it is that person's duty to take such steps as it is reasonable, in all the circumstances of the case, 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 that person 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 that person 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 that person’s trade, profession or business.
  - (7) Nothing in this section requires a provider of services to take any steps which would cause that person 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*

**7 Discrimination in relation to premises**

[P1995/50/22]

- (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 that person 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 that person's 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, that person —
- (a) uses the services of a registered 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 that person 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 or her 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 a tenancy to discriminate against a disabled person by withholding that 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 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;

“registered estate agent” has the meaning given to it by the *Estate Agents Act 1975*; 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 15 (victimisation), this section also applies to discrimination against a person who is not disabled.

## 8 Exemption for small dwellings

[P1995/50/23]

- (1) Where the conditions mentioned in subsection (2) are satisfied, subsection (1), (3) or (as the case may be) (4) of section 7 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 or her 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 that person’s household reside in the accommodation occupied by the relevant occupier;
  - (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 2 such other households.
- (5) Premises fall within this subsection if there is not normally residential accommodation on the premises for more than 6 persons in addition to the relevant occupier and any members of the relevant occupier's household.
- (6) For the purposes of this section "the relevant occupier" means —
- (a) in a case falling within section 7(1), the person with power to dispose of the premises, or a near relative of that person;
  - (b) in a case falling within section 7(4), the person whose licence or consent is required for the disposal of the premises, or a near relative of that person.
- (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.

## 9 Meaning of "discrimination"

[P1995/50/24]

- (1) For the purposes of section 7, a person ("A") discriminates against a disabled person if —
- (a) for a reason which relates to the disabled person's disability, A treats that person less favourably than A treats or would treat others to whom that reason does not or would not apply; and
  - (b) A 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 A 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 7(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 7(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 the 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.

*Enforcement, etc.*

## 10 Enforcement, remedies and procedure

[P1995/50/25 and Sch 3 pt II]

- (1) A claim by any person that another person —
- (a) has discriminated against him or her in a way which is unlawful under this Part; or
  - (b) is by virtue of section 16 (aiding unlawful acts) or 17 (liability of employers and principals) to be treated as having discriminated against him or her in such a way,
- may be made the subject of civil proceedings in the same way as any other claim in tort.
- (2) For the avoidance of doubt it is hereby declared that damages in respect of discrimination in a way which is unlawful under this Part may include compensation for injury to feelings whether or not they include compensation under any other head.
- (3) The remedies available in such proceedings are those which are available in the High Court.
- (4) Schedule 3 makes further provision about the enforcement of this Part and about procedure.

## 11 Non-discrimination orders

[2004/6/13]

- (1) A non-discrimination order is an order of the High Court requiring the person concerned —
  - (a) not to commit any act mentioned in subsection (2); and
  - (b) where compliance with paragraph (a) involves changes in any of that person's practices or other arrangements —
    - (i) to inform the Attorney General that he or she has effected those changes and what those changes are; and
    - (ii) to take such steps as are required by the order for the purpose of affording that information to other persons concerned; and
  - (c) to furnish the Attorney General with such other information as may reasonably be required by the Attorney General in order to verify that the order has been complied with.
- (2) This section applies to any act which is unlawful by virtue of this Part or section 15 (victimisation).
- (3) If the Attorney General, after such inquiry as he or she thinks appropriate in the circumstances of the case, has reasonable grounds to believe that a person is committing, or has committed, any act to which this section applies, the Attorney General may serve on that person a notice that he or she is minded to apply to the High Court for a non-discrimination order.
- (4) A notice under subsection (3) shall —
  - (a) specify the grounds on which the Attorney General contemplates the application; and
  - (b) offer that person the opportunity to make oral or written representations in the matter (or both oral and written representations if that person wishes) within a period of not less than 28 days specified in the notice.
- (5) After taking into account any representations made by the person concerned, the Attorney General may apply to the High Court for a non-discrimination order.
- (6) If, after the expiry of a period of 6 weeks from the date on which the non-discrimination order was made, the Attorney General has reasonable grounds to believe that any of the requirements of that order have not been complied with, the Attorney General may, at any time, report the circumstances to the High Court.
- (7) The references in this section to a person who is committing, or has committed, any act to which this section applies include references to a person who is by virtue of section 16 (aiding unlawful acts) or 17



(liability of employers and principals) to be treated as having committed an act to which this section applies.

- (8) This section applies to the acts mentioned in subsection (2) whether or not other proceedings have been brought in respect of the act.
- (9) This section does not prejudice any other power of the Attorney General to enforce the law of the Island.

## **12 Validity and revision of certain agreements**

[P1995/50/26]

- (1) Any term in a contract for the provision of goods, facilities or services or in any other agreement is void so far as it purports to —
  - (a) require a person to do anything which would contravene any provision of, or made under, this Part,
  - (b) exclude or limit the operation of any provision of this Part, or
  - (c) prevent any person from making a claim under this Part.
- (2) Paragraphs (b) and (c) of subsection (1) do not apply to an agreement settling a claim to which section 10 (enforcement and remedies) applies.
- (3) On the application of any person interested in an agreement to which subsection (1) applies, the High Court may make such order as it thinks just for modifying the agreement to take account of the effect of subsection (1).
- (4) No such order shall be made unless all persons affected have been —
  - (a) given notice of the application; and
  - (b) afforded an opportunity to make representations to the court.
- (5) Subsection (4) applies subject to any rules of court providing for that notice to be dispensed with.
- (6) An order under subsection (3) may include provision as respects any period before the making of the order.

## **13 Alterations to premises occupied under leases**

[P1995/50/27 and Sch 4 pt II]

- (1) This section applies where —
  - (a) a provider of services (“the occupier”) occupies premises under a lease;
  - (b) but for this section, the occupier would not be entitled to make a particular alteration to the premises; and
  - (c) the alteration is one which the occupier proposes to make in order to comply with a section 6 duty.
- (2) Except to the extent to which it expressly so provides, 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;
  - (b) for the occupier to have to make a written application to the lessor for consent if the occupier wishes to make the alteration;
  - (c) if such an application is made, for the lessor not to withhold consent unreasonably; and
  - (d) for the lessor to be entitled to give 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
- “sub-lease” and “sub-tenancy” have such meaning as may be prescribed.
- (4) If the terms and conditions of a lease —
- (a) impose conditions which are to apply if the occupier alters the premises, or
  - (b) entitle the lessor to impose conditions when consenting to the occupier’s altering the premises,
- the occupier is to be treated for the purposes of subsection (1) as not being entitled to make the alteration.
- (5) Schedule 4 supplements the provisions of this section.

## 14 Advice and assistance

[P1995/50/28]

- (1) The Department shall make arrangements for the provision of advice and assistance to persons with a view to promoting the settlement of disputes arising under this Part otherwise than by recourse to the High Court.
- (2) Any person appointed by the Department in connection with arrangements made under subsection (1) shall have such duties as the Department may direct.
- (3) The Department may pay to any person so appointed such allowances and compensation for loss of earnings as it considers appropriate.
- (4) The Department may make such payments, by way of grants, in respect of expenditure incurred, or to be incurred, by any person exercising functions in accordance with arrangements made by the Department under this section as it considers appropriate.
- (5) The approval of the Treasury is required for any payment under subsection (3) or (4).

## PART III – SUPPLEMENTAL

### 15 **Victimisation**

[P1995/50/55]

- (1) For the purposes of this Act, a person (“A”) discriminates against another person (“B”) if –
  - (a) A treats B less favourably than A treats or would treat other persons whose circumstances are the same as B’s; and
  - (b) A does so for a reason mentioned in subsection (2).
- (2) The reasons are that –
  - (a) B has –
    - (i) brought proceedings against A or any other person under this Act; or
    - (ii) given evidence or information in connection with such proceedings brought by any person; or
    - (iii) otherwise done anything under this Act in relation to A or any other person; or
    - (iv) alleged that A or any other person has (whether or not the allegation so states) contravened this Act; or
  - (b) A believes or suspects that B has done or intends to do any of those things.
- (3) Where B is a disabled person, or a person who has had a disability, the disability in question shall be disregarded in comparing B’s circumstances with those of any other person for the purposes of subsection (1)(a).
- (4) References in subsection (2) to B include references to –
  - (a) a person who is B’s parent; and
  - (b) a sibling of B.
- (5) Subsection (1) does not apply to treatment of a person because of an allegation made by that person if the allegation was false and not made in good faith.

### 16 **Aiding unlawful acts**

[P1995/50/57]

- (1) A person who knowingly aids another person to do an unlawful act is to be treated for the purposes of this Act as doing the same kind of unlawful act.
- (2) For the purposes of subsection (1), an employee or agent for whose act the employer or principal is liable under section 17 (or would be so liable

but for section 17(5)) shall be taken to have aided the employer or principal to do the act.

- (3) For the purposes of this section, a person does not knowingly aid another to do an unlawful act if —
  - (a) that person acts in reliance on a statement made to him or her by that other person that, because of any provision of this Act, the act would not be unlawful; and
  - (b) it is reasonable for that person to rely on the statement.
- (4) A person who knowingly or recklessly makes such a statement which is false or misleading in a material respect is guilty of an offence.
- (5) Any person guilty of an offence under subsection (4) shall be liable on summary conviction to a fine not exceeding £5,000.
- (6) “**Unlawful act**” means an act made unlawful by any provision of this Act.

## 17 Liability of employers and principals

[P1995/50/58]

- (1) Anything done by a person in the course of his or her employment shall be treated for the purposes of this Act as also done by that person’s employer, whether or not it was done with the employer’s knowledge or approval.
- (2) Anything done by a person as agent for another person with the authority of that other person shall be treated for the purposes of this Act as also done by that other person.
- (3) Subsection (2) applies whether the authority was —
  - (a) express or implied; or
  - (b) given before or after the act in question was done.
- (4) Subsections (1) and (2) do not apply in relation to an offence under section 16(4).
- (5) In proceedings under this Act against any person in respect of an act alleged to have been done by that person’s employee, it shall be a defence for that person to prove that such steps as were reasonably practicable were taken to prevent the employee from —
  - (a) doing that act; or
  - (b) doing, in the course of employment, acts of that description.

## 18 Statutory authority and national security etc

[P1995/50/59]

- (1) Nothing in this Act makes unlawful any act done —
  - (a) in pursuance of any enactment; or

- (b) in pursuance of any instrument made under any enactment; or
  - (c) to comply with any condition or requirement imposed by a Department or Statutory Board (whether before or after the passing of this Act) by virtue of any enactment.
- (2) In subsection (1) “enactment” includes one passed or made after the date on which this Act is passed and “instrument” includes one made after that date.
  - (3) Nothing in this Act makes unlawful any act done for the purpose of safeguarding national security.

## PART IV – MISCELLANEOUS

### 19 Codes of practice prepared by the Department

[P1995/50/53A; P2001/10/36]

- (1) The Department may, after consultation with the Tynwald Advisory Council for Disabilities (“the Advisory Council”), prepare codes of practice giving practical guidance on how to avoid discrimination, or on any other matter relating to the operation of Part II of this Act to providers of services.
- (2) The Department may also prepare and issue codes of practice giving practical guidance to any persons on any other matter, after consultation with the Advisory Council, with a view to —
  - (a) promoting the equalisation of opportunities for disabled persons and persons who have had a disability; or
  - (b) encouraging good practice in the way such persons are treated, in any field of activity regulated by Part II.
- (3) The Department shall lay any code of practice before Tynwald.
- (4) Codes of practice shall come into operation on such date as the Department may appoint by order.
- (5) The Department may by order revoke a code.

### 20 Appointment by Department of advisors

[P1995/50/60]

- (1) The Department shall appoint such persons as it thinks fit to advise or assist it in connection with matters relating to persons who have or have had a disability.
- (2) The Department may pay to any person appointed under this section such allowances and compensation for loss of earnings as it considers appropriate.

- (3) The approval of the Treasury is required for any payment under this section.

## 21 Application to Crown etc

[P1995/50/64]

For the avoidance of doubt, this Act applies —

- (a) to an act done by or for purposes of a Department or Statutory Board, or
- (b) to an act done on behalf of the Crown by a Department or Statutory Board or any other officer or body performing functions on behalf of the Crown,

as it applies to an act done by a private person.

## 22 Application to Tynwald

[P1995/50/65]

- (1) This Act applies to an act done by or for purposes of Tynwald as it applies to an act done by a private person.
- (2) Where the service in question is access to and use of any place in the precincts of Tynwald which members of the public are permitted to enter, the Clerk of Tynwald is the provider of that service.

## 23 Regulations and orders

[P1995/50/67]

- (1) Any power of the Department under this Act to make regulations or orders includes power —
  - (a) to make such incidental, supplemental, consequential or transitional provision as appears to the Department to be expedient; and
  - (b) to provide for a person to exercise a discretion in dealing with any matter.
- (2) Regulations or orders made under this Act shall not have effect until they have been approved by Tynwald.

## 24 Interpretation

[P1995/50/68]

In this Act —

“**act**” includes a deliberate omission;

“**the Department**” means the Department of Social Care;<sup>1</sup>

“**disability**” and “**disabled person**” have the meanings given in section 1;

“**mental impairment**” does not have the same meaning as in the *Mental Health Act 1998* but the fact that an impairment would be a mental impairment for the purposes of that Act does not prevent it from being a mental impairment for the purposes of this Act;

“**premises**” includes land of any description;

“**prescribed**” means prescribed by regulations made by the Department;

“**profession**” includes any vocation or occupation;

“**provider of services**” has the meaning given in section 4(2)(b);

“**public authority**” has the meaning given to it in section 6 of the *Human Rights Act 2001*;

“**public passenger vehicle**” means a registered passenger vehicle operator registered in accordance with section 3 of the *Road Transport Act 2001* but does not include a public passenger vehicle which is drawn by a horse;

“**public service vehicle**” means a passenger vehicle within the meaning of section 4 of the *Road Transport Act 2001* which is used commercially and adapted for the carriage of more than 8 passengers;

“**rail vehicle**” means a vehicle —

- (a) constructed to carry passengers on any railway; and
- (b) first brought into use, or belonging to a class of vehicle brought into use, after such date as the Department may prescribe first by regulation;

“**regulations**” means regulations made by the Department;

“**trade**” includes any business;

“**Tynwald Advisory Council for Disabilities**” means the Advisory Council of that name established by section 9 of the *Chronically Sick and Disabled Persons Act 1981*, as amended by this Act, and formerly known as the Chronically Sick and Disabled Persons Committee, and “the Advisory Council” shall be construed accordingly.

## 25 Financial provisions

[P1995/50/69]

There shall be paid out of money provided by Tynwald —

- (a) any expenditure incurred by a Department under this Act;
- (b) any increase attributable to this Act in the sums payable out of money so provided under or by virtue of any other enactment.

## 26 Amendments and repeals

- (1) The enactments specified in Schedule 5 are amended in accordance with that Schedule.

- (2) The enactments specified in Schedule 6 are repealed to the extent specified in column 3 of that Schedule.

## **27 Short title, commencement, etc**

[P1995/50/70]

- (1) This Act may be cited as the Disability Discrimination Act 2006.
- (2) This Act shall come into operation on such day or days as the Department may by order appoint and different days may be so appointed for different provisions and different purposes.
- (3) Consultations which are required by any provision of this Act to be held by the Department may be held by it before the coming into force of that provision.<sup>2</sup>



## SCHEDULE 1

### PROVISIONS SUPPLEMENTING SECTION 1

#### Section 1(1)

#### *Impairment*

1. (1) “**Mental impairment**” includes an impairment resulting from or consisting of a mental illness only if the illness is a clinically well-recognised illness.
- (2) Regulations may make provision, for the purposes of this Act —
  - (a) for conditions of a prescribed description to be treated as amounting to impairments;
  - (b) for conditions of a prescribed description to be treated as not amounting to impairments.
- (3) Regulations made under sub-paragraph (2) may make provision as to the meaning of “condition” for the purposes of those regulations.

#### *Long-term effects*

2. (1) The effect of an impairment is a long-term effect if —
  - (a) it has lasted at least 12 months;
  - (b) the period for which it lasts is likely to be at least 12 months; or
  - (c) it is likely to last for the rest of the life of the person affected.
- (2) Where an impairment ceases to have a substantial adverse effect on a person’s ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur.
- (3) For the purposes of sub-paragraph (2), the likelihood of an effect recurring shall be disregarded in prescribed circumstances.
- (4) Regulations may prescribe circumstances in which, for the purposes of this Act —
  - (a) an effect which would not otherwise be a long-term effect is to be treated as such an effect; or
  - (b) an effect which would otherwise be a long-term effect is to be treated as not being such an effect.

#### *Severe disfigurement*

3. (1) An impairment which consists of a severe disfigurement is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities.

(2) Regulations may provide that in prescribed circumstances a severe disfigurement is not to be treated as having that effect.

(3) Regulations under sub-paragraph (2) may, in particular, make provision with respect to deliberately acquired disfigurements.

*Normal day-to-day activities*

4. (1) An impairment is to be taken to affect the ability of the person concerned to carry out normal day-to-day activities only if it affects one of the following —

- (a) mobility;
- (b) manual dexterity;
- (c) physical co-ordination;
- (d) continence;
- (e) ability to lift, carry or otherwise move everyday objects;
- (f) speech, hearing or eyesight;
- (g) memory or ability to concentrate, learn or understand; or
- (h) perception of the risk of physical danger.

(2) Regulations may prescribe —

- (a) circumstances in which an impairment which does not have an effect falling within sub-paragraph (1) is to be taken to affect the ability of the person concerned to carry out normal day-to-day activities;
- (b) circumstances in which an impairment which has an effect falling within sub-paragraph (1) is to be taken not to affect the ability of the person concerned to carry out normal day-to-day activities.

*Substantial adverse effects*

5. Regulations may make provision for the purposes of this Act —

- (a) for an effect of a prescribed kind on the ability of a person to carry out normal day-to-day activities to be treated as a substantial adverse effect;
- (b) for an effect of a prescribed kind on the ability of a person to carry out normal day-to-day activities to be treated as not being a substantial adverse effect.

*Effect of medical treatment*

6. (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 measures are being taken to treat or correct it, is to be treated as having that effect.

(2) In sub-paragraph (1) “measures” includes, in particular, medical treatment and the use of a prosthesis or other aid.

- (3) Sub-paragraph (1) does not apply —
- (a) in relation to the impairment of a person’s sight, to the extent that the impairment is, in that case, correctable by spectacles or contact lenses or in such other ways as may be prescribed; or
  - (b) in relation to such other impairments as may be prescribed, in such circumstances as may be prescribed.

*Persons deemed to be disabled*

7. (1) Sub-paragraph (2) applies to any person whose name is when this paragraph comes into force, in the register of disabled persons maintained under section 6 of the *Disabled Persons (Employment) Act 1946*.

- (2) That person is to be deemed —
- (a) during the initial period, to have a disability, and hence to be a disabled person; and
  - (b) afterwards, to have had a disability and hence to have been a disabled person during that period.

(3) A certificate of registration shall be conclusive evidence, in relation to the person with respect to whom it was issued, of the matters certified.

(4) Unless the contrary is shown, any document purporting to be a certificate of registration shall be taken to be such a certificate and to have been validly issued.

(5) Regulations may provide for prescribed descriptions of person to be deemed to have disabilities, and hence to be disabled persons, for the purposes of this Act.

(6) Regulations may prescribe circumstances in which a person who has been deemed to be a disabled person by the provisions of sub-paragraph (1) or regulations made under sub-paragraph (5) is to be treated as no longer being deemed to be such a person.

- (7) In this paragraph —
- “certificate of registration” means a certificate issued under regulations made under section 6 of the Act of 1946; and
- “initial period” means the period of 3 years beginning with the date on which this paragraph comes into force.

*Progressive conditions*

8. (1) Where —

- (a) a person has a progressive condition (such as cancer, multiple sclerosis or muscular dystrophy or infection by the human immunodeficiency virus),
  - (b) as a result of that condition, that person has an impairment which has (or had) an effect on his or her ability to carry out normal day-to-day activities, but
  - (c) that effect is not (or was not) a substantial adverse effect,  
he or she shall be taken to have an impairment which has such a substantial adverse effect if the condition is likely to result in that person having such an impairment.
- (2) Regulations may make provision, for the purposes of this paragraph —
- (a) for conditions of a prescribed description to be treated as being progressive;
  - (b) for conditions of a prescribed description to be treated as not being progressive.

## SCHEDULE 2

### PAST DISABILITIES

#### Section 2(2)

1. The modifications referred to in section 2 are as follows.
2. References in Part II to a disabled person are to be read as references to a person who has had a disability.
3. Schedule 1 is modified for the purposes of this Schedule to the following extent —

For paragraph 2(1) to (3) of Schedule 1, substitute —

“(1) The effect of an impairment is a long-term effect if it has lasted for at least 12 months.

(2) Where an impairment ceases to have a substantial adverse effect on a person’s ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect recurs.

(3) For the purposes of sub-paragraph (2), the recurrence of an effect shall be disregarded in prescribed circumstances.”

## SCHEDULE 3

### ENFORCEMENT AND PROCEDURE

#### Section 10(4)

*Restriction on proceedings for breach of Part II*

1. (1) Except as provided by section 10 and 11 no civil or criminal proceedings may be brought against any person in respect of an act merely because the act is unlawful under Part II.

(2) Sub-paragraph (1) does not prevent the making of an application for judicial review by petition of dolence.<sup>3</sup>

*Period within which proceedings must be brought*

2. (1) The High Court shall not consider a claim under section 10 or 11 unless proceedings in respect of the claim are instituted before the end of the period of 6 months beginning when the act complained of was done.

(2) Where, in relation to proceedings or prospective proceedings under section 10 or 11, a person appointed in connection with arrangements under section 14 (advice and assistance) is approached before the end of the period of 6 months mentioned in sub-paragraph (1), the period allowed by that sub-paragraph shall be extended by 2 months.

(3) The High Court may consider any claim under section 10 or 11 which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.

(4) For the purposes of sub-paragraph (1) —

(a) where an unlawful act of discrimination is attributable to a term in a contract, that act is to be treated as extending throughout the duration of the contract;

(b) any act extending over a period shall be treated as done at the end of that period; and

(c) a deliberate omission shall be treated as done when the person in question decided upon it.

(5) In the absence of evidence establishing the contrary, a person shall be taken for the purposes of this paragraph to decide upon an omission —

(a) when that person does an act inconsistent with doing the omitted act; or

(b) if that person has done no such inconsistent act, when the period expires within which he or she might reasonably have been expected to do the omitted act if it was to be done.

*Compensation for injury to feelings*

3. In any proceedings under section 10, the amount of any damages awarded as compensation for injury to feelings shall not exceed the prescribed amount.

*Evidence*

4. (1) In any proceedings under section 10 or 11, a certificate signed by or on behalf of the Department and certifying —

- (a) that any conditions or requirements specified in the certificate were imposed by the Department and were in operation at a time or throughout a time so specified, or
- (b) that an act specified in the certificate was done for the purpose of safeguarding national security,

shall be conclusive evidence of the matters certified.

(2) A document purporting to be such a certificate shall be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.

**SCHEDULE 4****PREMISES OCCUPIED UNDER LEASES BY PROVIDER OF SERVICES**

## Section 13(5)

*Failure to obtain consent to alteration*

1. If any question arises as to whether the occupier has failed to comply with the section 6 duty, by failing to make a particular alteration to premises, any constraint attributable to the fact that the occupier occupies the premises under a lease is to be ignored unless the occupier has applied to the lessor in writing for consent to the making of the alteration.

*Reference to court*

2. (1) If the occupier has applied in writing to the lessor for consent to the alteration and —

- (a) that consent has been refused, or
- (b) the lessor has given 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 the High Court.

(2) 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.

(3) If the court determines —

- (a) that the lessor's refusal was unreasonable, or
- (b) that the condition is, or any of the conditions 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.

(4) An order under sub-paragraph (3) may require the occupier to comply with conditions specified in the order.

*Joining lessors in proceedings under section 10*

3. (1) In any proceedings on a claim under section 10, in a case to which this Schedule applies, the plaintiff, or the occupier concerned may ask the court to direct that the lessor be joined or assisted as a party to the proceedings.

(2) The request shall be granted if it is made before the hearing of the claim begins.

(3) The court may refuse the request if it is made after the hearing of the claim begins.

(4) The request may not be granted if it is made after the court has determined the claim.

(5) Where a lessor has been so joined or assisted as a party to the proceedings, the court may determine —

(a) whether the lessor has —

(i) refused consent to the alteration, or

(ii) consented subject to one or more conditions, and

(b) if so, whether the refusal or any of the conditions was unreasonable.

(6) If, under sub-paragraph (5), the court determines that the refusal or any of the conditions was unreasonable it may take one or more of the following steps —

(a) make such declaration as it considers appropriate;

(b) make an order authorising the occupier to make the alteration specified in the order;

(c) order the lessor to pay compensation to the complainant.

(7) An order under sub-paragraph (6)(b) may require the occupier to comply with conditions specified in the order.

(8) If the court orders the lessor to pay compensation it may not order the occupier to do so.

*Regulations*

4. Regulations may make provision as to circumstances in which —

(a) a lessor is to be taken, for the purposes of section 13 and this Schedule to have —

(i) withheld consent;

(ii) withheld consent unreasonably;

- (iii) acted reasonably in withholding consent;
- (b) a condition subject to which a lessor has given consent is to be taken to be reasonable;
- (c) a condition subject to which a lessor has given consent is to be taken to be unreasonable.

*Sub-leases etc.*

5. The Department may by regulations make provision supplementing, or modifying, the provision made by section 13 or any provision made by or under this Schedule in relation to cases where the occupier occupies premises under a sub-lease or sub-tenancy.

## SCHEDULE 5

### AMENDMENT OF ENACTMENTS

#### Section 26(1)

##### *Disabled Persons (Employment) Act 1946*

1. For section 1(1) substitute —

- “(1) In this Act, the expression “**disabled person**” has the meaning given to it by section 1 of the *Disability Discrimination Act 2006* and “**disablement**”, in relation to any person, shall be construed accordingly.”.

##### *Chronically Sick and Disabled Persons Act 1981*

2. (1) [Substituted section 9(1).]

(2) [Amended section 9 by substituting “the Advisory Council” for “the Committee”.]

3. In section 9(2)(b) and (3), after “disabled persons” in each case insert- “,and persons who have had a disability,”.

4. After section 9(7) insert —

- “(8) For the purposes of this section —
  - (a) a person is a disabled person if he or she is a disabled person for the purposes of the *Disability Discrimination Act 2006*; and
  - (b) “**disability**” has the same meaning as in that Act.”.

5. In section 13 for the words after “that is to say” substitute ““chronically sick” and “chronic illness””.



6. In section 16, omit the words “the Committee” and substitute “the Advisory Council”.

*Road Traffic Regulation Act 1985*

7. For section 28(8) substitute —

“(8) In this section “**disabled**” has the meaning assigned to it by section 1 of the *Disability Discrimination Act 2006*.”

## SCHEDULE 6

### ENACTMENTS REPEALED

#### Section 26(2)

<i>Short title</i>	<i>Extent of repeal</i>
Disabled Persons (Employment) Act 1946.	Section 1(2).
Chronically Sick and Disabled Persons Act 1981.	Sections 1 to 8. In section 16 omit all the definitions except the definitions of — (i) “the Advisory Council”, (ii) “the Department”, and (iii) “severe learning difficulties”.
Chronically Sick and Disabled Persons (Amendment) Act 1992.	The whole of the Act except section 4 and 5(1) to (3).



## ENDNOTES

### Table of Legislation History

Legislation	Year and No	Commencement

### Table of Renumbered Provisions

Original	Current

### Table of Endnote References

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<sup>1</sup> Definition of “the Department” amended by SD155/10 Sch 6.

<sup>2</sup> Whole Act not yet operative except ADO (para 2 of Sch 5) 1/7/2009 (see SD116/09 - amendment to the Chronically Sick and Disabled Persons Act 1981 - name of advisory council).

<sup>3</sup> See General Note.