



## **The Disability Discrimination Act 2005 and its effect on your club**

The DDA applies to private members clubs with 25 or more members. Responsibility for compliance will rest with the officers of the club.

Under the legislation the following people have rights:

- Applicants for membership;
- Existing members;
- Associate members;
- Guests of the club and/or its members;
- People eligible to be guests of the club;
- Non-disabled support persons – that is people who support disabled persons, in circumstances where they may be treated less favourably due to their giving support to a disabled person.

The Act makes it unlawful for a private club to discriminate against a disabled person and this involves two elements:

- A disabled person must not be treated less favourably for a reason relating to their disability compared to a person who is not disabled where there is no justification for doing so.
- Private clubs must not fail to make reasonable adjustments to policies, practices, procedures, provision of auxiliary aids and the physical features of premises without justification.

The trigger point to make reasonable adjustments is the point at which a policy, practice or procedure applied by a club or physical features of the premises makes it impossible or unreasonably difficult for a disabled person to use the premises, service or facility.

The duty is an anticipatory one and is therefore proactive rather than reactive. The DWP's consultation document states that *'anticipating needs does not necessarily mean taking extensive or expensive provisions in advance, but should involve thinking in advance about what the needs of disabled members might be and deciding how they can be reasonably met.'* For example, if your club is planning to refurbish its premises it should consider what appropriate adjustments it can incorporate into the refurbishment for disabled users prior to putting in plans for the refurbishment.

Clubs will be required to make adjustments that are 'reasonable', taking into account the specific circumstances of the case, including the cost, the size of the club and the resources available to the club. When considering reasonable adjustments for guests, the club may take into account the frequency of occasions when guests are invited.

Clubs in rented accommodation must seek permission from landlords before making changes to physical features. Landlords are obliged not to refuse such consent unreasonably.

There are justifications for not making reasonable adjustments. Namely:

- Less favourable treatment of a disabled person is necessary to avoid endangering the health or safety of the disabled person or any other person.
- The disabled person is incapable of entering into an enforceable agreement or giving informed consent.
- The treatment of the disabled person is necessary to be able to afford members, associates, guests or the disabled person access to a benefit, facility or service.

*For Example:*

*'A tour guide refuses to allow a person with a severe mobility impairment on a tour of old city walls because he has a well founded belief that the extra help that the guide would have to give to the disabled person would prevent the rest of the party from completing the tour'*

- The association would otherwise be unable to afford members, associates or guests access to a benefit, facility or service.

The above two justifications will allow a club NOT to make reasonable adjustments where to do so would jeopardise the clubs ability to provide its services to its members, associates, guests or to the disabled person themselves.

- Cost to the club of affording a disabled person membership/associate/guest status is disproportionate to the cost of affording such a benefit to a non-disabled person.

The club may be able to charge the disabled person more for the services it provides where the cost of affording the disabled person access to a benefit facility or service is greater than it is for non-disabled people, so long as the services provided were 'bespoke' to the disabled person. However, it is not possible for a club to charge a disabled person more where the service in question is provided to all members of the club, in such circumstances, the cost must be shared across all the members etc..

*For example, a club would not be able to charge a disabled person more than it would an able bodied person for putting a boat into the water whereas it may be entitled to levy a charge for the hoisting of disabled persons into a boat.*

### **What is 'Reasonable':**

The obligation to do what is termed 'reasonable' is the real crux for clubs. Your club will need to plan ahead for disabled users, consider the likelihood of persons with disabilities wanting to join the club, attend special events etc... If the club plans to carry out improvements to its premises it will need to consider possible adjustments for potential disabled users. We advise clubs to carry out an assessment/audit considering the reasonable needs of disabled persons and possible improvements to its premises and keep a written record of its considerations so that it may prove, if necessary, that such matters have been taken into account and either actioned or not. As stated above clubs are required to do what is 'reasonable' and what is 'reasonable' will depend on a number of issues including the size of the club, its financial resources, the cost of the adjustment(s) and the particular circumstances of the case. Generally speaking, depending upon size and financial resources, clubs will not be expected to make adjustments that are disproportionately expensive.

*It is worth bearing in mind that positive adjustments for one category of disability may be detrimental to another category of disability.*

Many clubs will already be subject to the duties under the Disability Discrimination Act because they provide services to the public or employ staff.

The Act extends the definition of disability to cover those who have cancer, HIV or Multiple Sclerosis from point of diagnosis. It imposes a Questions Procedure whereby a person who believes he has been discriminated against can put questions to the alleged discriminator.

It broadens the existing duties on Landlords and managers of rented premises.

**Timescale:**

The duty not to treat disabled persons less favourably came into effect on 5<sup>th</sup> December 2005; and the duty to make reasonable adjustments came into effect on 4<sup>th</sup> December 2006.

**Estimated Costs of complying with the Section 12 of the DDB:**

The Government has produced a Regulatory Impact Assessment. The issues canvassed are the cost of training staff/volunteers, the cost of physical adjustments and the legal costs arising from a dispute under the Act. There will no doubt be some adjustments, such as process adjustments, that will not involve any cost.

***How RYA Sailability can help practically:***

*RYA Sailability provides assistance to clubs in complying with the duty of 'reasonableness'.*

*Many clubs are already trying to become more accessible in terms of physical access, sensory improvements and also by attending disability/equity awareness training. This goes a long way into making more sites accessible. They become foundation sites. RYA Sailability ask all its groups, clubs, organisations to complete a Foundation questionnaire: this is an accreditation process to determine their level of accessibility for different categories of disability. The questionnaire (with guidelines on how to complete) takes you through a virtual journey into the building and surrounding area.*

*RYA Sailability have a leaflet called : '**Are your premises welcoming to disabled people**', which explains the reasons behind the changes and why they are so desirable. This is backed up by a series of leaflets called '**brief guidelines**'. Concentrating on areas such as pontoons & landing stages, accessible showers and toilets, ramps and stairways and finally car parks and pathways. All written in user friendly language.*

*Many clubs are finding it hard to recruit new members, including disabled people in your club can help to raise membership numbers, if you are interested in becoming a Sailability Foundation Club or site and actively promoting sailing to disabled people.*

*RYA Sailability may be able to arrange for a member of its Team or Regional Organiser to visit your club/school to provide advice on what may be needed at your premises and how other bodies may assist.*

*Disability Awareness courses are held throughout the UK, provided by teams of volunteers. For dates and locations of courses and for copies of leaflets contact: Debbie Blachford on 02380 604246 or email [debbie.blachford@ryasailability.org](mailto:debbie.blachford@ryasailability.org)*

*It may be the case that clubs are fearful of the subject, however; the RYA and RYA Sailability believe that we can do much to allay your fears and point you in the direction of solutions.*

*We hope that together we can help your club to achieve the aims of the legislation.*

## **Contacts:**

You can download the Act from the following website  
[www.opsi.gov.uk](http://www.opsi.gov.uk).

You can access the Disability Rights Commission website by following this link, where you will find [www.dcr-gb.org](http://www.dcr-gb.org) information and guidance on the Act together with a Code of Practice which can be found at [www.dcr-gb.org/library/publications/services\\_and\\_transport/code\\_of\\_practice\\_rights\\_of\\_ac.aspx](http://www.dcr-gb.org/library/publications/services_and_transport/code_of_practice_rights_of_ac.aspx). This is a comprehensive guide to the duties owed under the Act and gives an overview of the legal principles which underpin those duties and gives examples of what would be deemed to be compliance with the Act. This is a revision of the previous Code of Practice which has been approved by Parliament and provides helpful guidance on the application of the Act, in relation to provisions of the Disability Discrimination Act 2005 that came into force on 4<sup>th</sup> December 2006. It revises the guidance for providers of goods, services and facilities to include the new duties on public authorities, landlords and private members clubs.

The Code of Practice is available for downloading off the DRC website only until September 2006 at which time hard copies will be available.

You can contact the Disability Rights Commission for further advice on your specific issues. The telephone number is 08457 622 633.

You may also find useful information on the following website:  
[www.drc.org.uk/open4all/](http://www.drc.org.uk/open4all/)

For further information contact the Legal Department on 0845  
3450373 [legal@rya.org.uk](mailto:legal@rya.org.uk)

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