

## **New legal requirements - Disability Discrimination Act 1995 Part 3 Provision and use of transport vehicles - Statutory Code of Practice**

As of December 2006, people providing transport using taxis and private hire vehicles (“transport providers”) must actively avoid discrimination against disabled persons and must make reasonable adjustments to services that they offer. These services include timetables, booking facilities, tariffs, waiting rooms etc. at taxi offices, airports, ferry terminals, and bus, coach and rail stations.

The Government has not YET required accessible vehicles (as at November 2006) but we would recommend careful thought be given when considering buying a new vehicle for private or public hire use.

Disabled people are able to prosecute if they feel that they are discriminated against. There are two things to be done:

1. Ensure that all people having contact with customers are trained in customer service and disability awareness, and
2. Use “disability audits” to find (and then remove) barriers to access for disabled people, even where those barriers are less obvious or unintentional.

**These notes are not intended to be an exhaustive interpretation of the law: it is up to transport providers to seek professional advice. The code of practice supplement for transport providers can be downloaded from [www.drc-gb.org](http://www.drc-gb.org) : a copy can also be seen (by arrangement) at our offices in Pershore.**

### **What does the Act make unlawful?**

As with other providers of services to the public under Part 3, the Act makes it unlawful for a transport provider to discriminate against a disabled person by:

- refusing to provide (or deliberately not providing) any service which it offers or provides to members of the public; or
- providing service of a lower standard or in a worse manner; or
- providing service on worse terms; or
- failing to comply with a duty to make reasonable adjustments (under section 21 of the Act) if that failure has the effect of making it impossible or unreasonably difficult for the disabled person to make use of any such service.

### **What does the Act mean by ‘discrimination’?**

The Act says that discrimination against a disabled person occurs when a transport provider:

- (1) treats the disabled person less favourably (for a reason relating to the disabled person’s disability) than it treats (or would treat) others to whom that reason does not (or would not) apply and cannot show that the treatment is justified, or
- (2) fails to make ‘reasonable adjustments’ in relation to the disabled person, and cannot show that the failure is justified. Reasonable adjustments are outlined below (page 3).

## Who has rights under the Act?

An adult or child has protection from discrimination under the Act if he or she is a disabled person. A disabled person is someone who has a physical or mental impairment which has an effect on his or her ability to carry out normal day-to-day activities. That effect must be:

- ! substantial (that is, more than minor or trivial); and
- ! adverse; and
- ! long term (that is, it has lasted or is likely to last for at least a year or for the rest of the life of the person affected).

Physical or mental impairment includes sensory impairments (visual or hearing impairments, for example). Hidden impairments are also covered (for example, mental illness or mental health problems, learning disabilities and conditions such as diabetes or epilepsy). The Act also specifically covers anyone who has cancer, HIV or multiple sclerosis.

In considering its duties under the Act, a transport provider should not use any definition of 'disabled person' which is narrower than that in the Act.

People who have had a disability within the terms of the Act in the past are protected from discrimination even if they no longer have the disability.

For a fuller understanding of the concept of disability under the Act, reference should be made to the Part 3 Code and to the Government publication: 'Guidance on matters to be taken into account in determining questions relating to the definition of disability'. Where relevant, both the Guidance and the Part 3 Code must be taken into account in any legal proceedings.

A transport provider may have treated a disabled person less favourably for a reason related to their disability even if it did not know the person was disabled. The test which has generally been adopted by the courts is whether, as a matter of fact, this was the reason why the disabled person was less favourably treated.

Example - A PHV driver orders a passenger with a severe speech impediment to leave the vehicle because he assumes she has had too much to drink. However, the passenger's speech is slurred as a result of a disability rather than alcohol consumption. The refusal of further service is for 'a reason which relates to the disabled person's disability'. This will be unlawful unless the transport provider is able to show that the treatment in question is justified, as defined by the Act

Transport providers seeking to avoid discrimination, therefore, should instruct their staff that their obligations under the Act extend to everyone who falls within the definition of 'disability' and not just to those who appear to be disabled. They may also decide that it would be prudent to instruct their staff not to attempt to make a fine judgement as to whether a particular individual falls within the statutory definition, but that they should focus instead on meeting the needs of each customer.

Example - A licensed taxi driver who stops at a taxi rank pretends not to see a visually impaired person with a long cane who is clearly at the front of the queue, but instead offers service to the next person waiting in line. This is a non-provision of a service and is likely to be unlawful.

A transport provider cannot refuse to provide (or deliberately not provide) a service to a disabled person which it offers to other people, unless the refusal (or non-provision) can be justified.

A transport provider must not offer a disabled person a lower standard of service than it offers other people or serve a disabled person in a worse manner, without justification. A lower standard of service might include harassment of a disabled customer or being offhand or rude towards them.

Example - A train manager tells a person with a severe facial disfigurement that he must sit in an empty part of the train, away from other passengers. This is likely to be unlawful.

### **Terms of service**

A transport provider should not provide a service to a disabled person on terms which are worse than the terms offered to other people, without justification. Worse terms include charging more for services or imposing extra conditions for using a service.

Example - A person who has Usher's syndrome (and who, as a consequence, is deafblind) has booked a PHV. When the PHV arrives, the driver asks the disabled passenger to pay the journey fare in advance, something which he would not require from other passengers. The driver believes, without good reason, that because of her disability she is less likely to be able to pay. This is likely to be unlawful.

### **Reasonable adjustments**

Reasonable adjustments should be made to provide access to a service as close as it is reasonably possible to get to the standard normally offered to the public at large. This goes beyond simply avoiding treating disabled people less favourably for a disability-related reason.

*The power exists for Regulations to specify the physical fabric of Taxis and PHV's - but no such access standards have been introduced (November 2006). See "Access Standards" below.*

A transport provider should be able to identify the more obvious barriers to disabled people in accessing its services. Regularly reviewing the way in which it provides its services to the public, for example via periodic disability audits, might help a transport provider identify any less obvious or unintentional barriers to access for disabled people.

Obtaining the views of disabled passengers and customers, as well as disabled employees, will also assist a transport provider. Disabled people know best what hurdles they face in trying to use the services provided. They can identify difficulties in accessing services and might also suggest solutions involving the provision of reasonable adjustments. In addition, local and national disability groups or organisations of disabled people have extensive experience which transport providers can draw on. Listening carefully and responding to what disabled people really want helps transport providers find the best way of meeting disabled people's requirements and expectations.

Employee training is also an important factor in providing reasonable adjustments. Employees should be generally aware of the requirements of disabled passengers and potential passengers and should appreciate how to respond appropriately to requests for a reasonable adjustment. They should know how to provide an auxiliary service and how to use any auxiliary aids (e.g. ramps) which the transport provider offers. Employees could also be

encouraged to acquire additional skills in serving disabled people; for example, communicating with hearing impaired people and those with speech impairments.

### **Cost of providing reasonable adjustments**

The Act does not allow a transport provider to pass on the additional costs of complying with the duty to make reasonable adjustments to disabled customers alone. The costs of providing reasonable adjustments are part of the transport provider's general expenses, as in the case of compliance with other legislation.

Example - on top of the standard journey fare, a taxi driver charges a disabled passenger extra for conveying her wheelchair. This is unlikely to be within the law.

### **What happens if the duty to make reasonable adjustments is not complied with?**

A transport provider must comply with the duty to make reasonable adjustments in order to avoid committing an act of unlawful discrimination. A disabled person is able to make a claim against a transport provider if:

- ! the transport provider fails to do what is required; and
- ! that failure makes it impossible or unreasonably difficult for that disabled person to access any services provided by the transport provider to the public; and
- ! the transport provider cannot show that such a failure is justified in relation to the disabled person.

There is no requirement at present for taxis and PHV's to have to be replaced by "accessible" vehicles – see "Access Standards" section below.

In any event, transport providers should ensure that any auxiliary aids they provide are carefully chosen and properly maintained.

A wheelchair user waits at a taxi rank. A taxi arrives which is accessible to wheelchair users via a portable manual ramp. However, when the driver takes the ramp out of the boot (where it is stored when not required) he discovers that it is damaged and cannot be used. Although the taxi driver has provided an auxiliary aid, his failure to check that the ramp is in working order means that the taxi driver is unlikely to have taken reasonable steps to enable disabled passengers to use his taxi.

The Part 3 Code contains a list of some of the auxiliary aids or services which it might be reasonable to provide.

The DDA does not over-ride other legislation – for example, health and safety.

1. An electric wheelchair user cannot manoeuvre their wheelchair into the space in a taxi so as to allow them to be properly secured and to travel facing forwards or rearwards as appropriate. He wants to travel facing sideways instead.

However, this position has been shown to be intrinsically unsafe and so the taxi driver refuses to carry the wheelchair user. This refusal is based on genuine concerns for the health or safety of the disabled person. In these circumstances, the taxi driver's belief is likely to be reasonably held, and the refusal is therefore likely to be justified.

2. A taxi driver turns away a disabled person who uses a wheelchair powered by a battery because he assumes, without checking, that the contents of the battery may leak and thus present a hazard. However, the wheelchair is fitted with a dry cell battery which presents no danger as it contains no liquid. Although the taxi driver genuinely believes that refusing admission to this passenger is necessary in order not to endanger the health or safety of anyone, he has not made enquiries into this particular situation.

His belief is therefore unlikely to be reasonably held. In these circumstances, refusing to allow the disabled passenger to travel is unlikely to be justified.

- 3 A taxi driver refuses to allow a person with a learning disability to travel in his taxi. He claims that she will not understand the nature of the transaction when paying her fare. This is even though she clearly states her intended destination and is able to pay the fare. This is unlikely to be justified.

### **Access standards Trains, buses, coaches and taxis**

Part 5 allows the Government to set access standards for buses, coaches, trains, trams and taxis. Aside from the provisions set out in the paragraph below, the Part 5 regulations for the most part comprise highly detailed access design standards which trains, buses, coaches (and, in due course, taxis) must meet in order to comply with this part of the Act.

These technical standards deal specifically with aspects of design or operation of the vehicles concerned. The requirements under these standards are different from the duties on transport providers under Part 3. There is, moreover, no right of redress on the part of individual disabled people for breach of these standards, as is the case under Part 3.

### **Taxis/ Private hire vehicles (PHVs) and the carriage of assistance dogs**

Since 31 March 2001 it has been unlawful under Part 5 for licensed taxis to refuse to carry, or to make any extra charge for, an assistance dog accompanying a disabled passenger, or not to allow the dog to remain with the passenger.

Similar provisions also apply to the drivers of PHVs, and to the PHV operators as well. It is also unlawful not to allow the dog to remain with the disabled passenger. A driver who fails to comply with any of these duties may be guilty of a criminal offence and subject to a fine and/or suspension of their licence.

Taxis and PHV operators will also have duties in respect of disabled passengers (including assistance dog users) under Part 3 of the Act, as amended by the 2005 Act and the 2005 Regulations. They will thus also be subject to the duties set out in this Code.

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