

Disability Discrimination Act 2005

Regulatory Impact Assessment

**The draft Disability Discrimination (Private Clubs etc.)
Regulations 2005**

1. Title

Full Regulatory Impact Assessment

1.1 DISABILITY DISCRIMINATION ACT 2005 (DDA 2005): The draft Disability Discrimination (Private Clubs etc.) Regulations 2005.

1.2 A partial Regulatory Impact Assessment (RIA) was published in December 2004 in support of a Department for Work and Pensions consultation (Cm 6402) on the Government's proposals for using certain regulation-making powers under what was then the Disability Discrimination Bill. This included proposals for duties on private clubs. The Government undertook the consultation exercise to help ensure that the Regulations would operate properly and coherently and best support the Bill's framework of duties towards private clubs. This RIA takes account of the outcome of that consultation as announced by the Minister for Disabled People on 21 July and subsequently set out in the draft Regulations.

1.3 An RIA to support the Disability Discrimination Act 2005, which gained Royal Assent on 7 April, was published in July 2005.

1.4 The consultation document (Cm 6402 - Disability Discrimination Bill: Consultation on Private clubs; premises; the definition of disability and the questions procedure) is available from:

TSO Customer Services
Telephone: 0870-600-5522
Fax: 08457-622-644

This publication can also be accessed on the internet at www.dwp.gov.uk/publications.

2. Purpose and intended effect of measures

The objective

2.1 The Disability Discrimination Act 2005, makes a wide range of amendments to the Disability Discrimination Act 1995 (DDA

1995). This includes provisions which bring within scope of Part 3 of the DDA (i.e. dealing with access to goods, services and facilities) private clubs with twenty five or more members;

2.2. These provisions include specific regulation-making powers that allow the Government to introduce the duties of reasonable adjustment necessary to implement the framework of duties provided for by the Act.

2.3 The consultation document set out the Government's proposals for using the regulation-making powers. The following issues were considered in the consultation document:

Whether private clubs should be subject to broadly similar duties as already apply to other providers of goods, services and facilities under the DDA 1995. The consultation document set out arguments and sought views on:

- Whether the “trigger” for the duty should be the point at which it is *impossible or unreasonably difficult* for the disabled person to use the benefits, facilities or services provided by the club for its members;
- Making the duty to make reasonable adjustments *anticipatory*;
- Setting out the same limited range of defences to justify not making a reasonable adjustment as currently applies to service providers (see chapter 4 of this RIA).
- Whether the practical duties to make reasonable adjustments should be modified, and if so how, in respect of political associations
- Introducing the duty to make reasonable adjustments from December 2006.

The background

2.4 On 3 December 2003, the Government published a draft Disability Discrimination Bill which underwent pre-legislative scrutiny by a Joint Committee of both Houses of Parliament. The draft Bill included provisions to bring private clubs within the scope

of the Disability Discrimination Act. The Disability Discrimination Bill was introduced into the House of Lords on 25 November 2004, and gained Royal Assent on 7 April 2005.

Risk Assessment

2.5 The measures in the Disability Discrimination Act 2005, the Disability Discrimination Bill as was, create new or improved civil rights for around 10 million disabled people in Great Britain who may potentially be covered by the DDA 1995, which the 2005 Act amends. They address a number of current omissions in the 1995 Act and help to tackle discrimination and barriers that disabled people face in accessing services and facilities.

2.6 The specific proposals in the consultation document were intended to ensure that, in complying with the new duties in what was then the Disability Discrimination Bill, private clubs and others with an interest were given the opportunity to understand the new rights and duties and comment on the key concepts and detailed requirements that private clubs would be obliged to meet. Without the certainty provided by the Regulations it would not be possible for those with rights under the Act to secure them, and those with duties to ensure they are fully meeting them. The Regulations also bring clarity for courts required to adjudicate on cases under the Bill's provisions relating to private clubs.

3. Options

3.1 In general the options are:

- a. leave in abeyance the regulation-making powers and rely on the DDA 2005's main duties. However, this would mean that private clubs had no duty to make reasonable adjustments as that duty is not on the face of the Act;
- b. use regulation-making powers in the Act to ensure that private clubs have equivalent duties to other bodies covered under Part 3 of the DDA 1995 – which was broadly the Government's proposals;
- c. adapt some of the Government's proposals depending upon the outcome of consultation.

3.2 Option a. is not viable. It would not fulfil the Government's commitment to place private clubs under a duty of reasonable adjustment. Option b. would ensure greatest clarity for those affected, including the courts, and introduce consistency of approach for private clubs where they may already be under DDA 1995 duties in respect of any goods, services or facilities they provide to the public or a section of the public. In respect of option c., the consultation exercise showed that, in the main, there was majority support for nearly all of the Government's specific proposals and the Government has therefore produced regulations on that basis. The analysis of the consultation exercise so far as it relates to private clubs is at **Annex B.**

4. Costs and Benefits

The DDA 2005 RIA

4.1 The DDA 2005 RIA (paragraph 1.3 above) outlines the intention of the policy in relation to private clubs, including qualitative analysis of the likely benefits and costs from implementing the policy. However, it acknowledges the problems in providing specific costings due to insufficient data which would allow a robust estimate of how many clubs would be within scope of the legislation. Even so, benefits are likely to accrue to disabled people through wider access to facilities and leisure activities currently enjoyed by non-disabled people. In addition, many clubs would benefit from a broader membership base, which also brings in extra subscription and other income. The DDA 2005 RIA also emphasised the point that the majority of clubs are already likely to be covered as they are providing services to members of the public or a section of the public. Finally, the DDA 2005 RIA specifies where costs are likely to arise for private clubs:

- where some extra facilities and adaptations may be required; and
- where small additional administrative costs might arise.

4.2 In respect of the Government, the DDA 2005 RIA argues that there will be some extra costs where additional work is required of the DRC in handling complaints and providing guidance on the new legislation.

New costing

4.3 The intention of the Regulations, which follow closely the proposals set out in the Government's December 2004 consultation document, is to provide detail around what exactly will be required of clubs and who might be affected. In the light of the developed policy and following consideration of the outcome of the consultation, a fuller costing has been prepared. It should be noted that this costing is consistent with the underlying assumptions already provided in the DDA 2005 RIA and no response to the consultation exercise provided data or sound evidence which called this into question. In addition, the majority of respondents agreed with an implementation date of December 2006 for reasonable adjustments.

4.4 It is estimated that 9,000 clubs will be affected by the new legislation and Regulations. To prepare the costing, it has been assumed that there is an average club membership of 75 people. Assuming that club membership reflects the proportion of DDA 1995 disabled people in the general adult population (around 20%), this works out to around 15 disabled members per club; it is not possible to calculate how many potential members could be affected. This is an average – it is expected that the number of disabled members will vary from club to club, and in many clubs it could be lower.

4.5 These clubs are active in a wide range of areas, including:

- Sports clubs
- Social clubs (including the large London Clubs and their equivalents in many of the larger cities in Great Britain)
- Working men's clubs
- National and local interest groups such as family history societies
- Political associations and parties

4.6 The estimate of the number of clubs assumes that of the total known clubs in a particular category (e.g. the DDA 2005 RIA notes that there are around 150,000 voluntary sports clubs and it has since been established that of the 22,000 social clubs there are just under 5,400 social clubs affiliated to the main representative body – CORCA (Committee of Registered Clubs

Associations)), only around 10% will be affected by the new duties, as the majority of them do not operate membership selection on the basis of genuine personal criteria and so are likely to be service providers that are already covered under Part 3 of the DDA 1995. Of that 10% of known clubs, the costing assumes that a further 50% are already making the necessary adjustments as part of accommodating the needs and desires of their members or incorporating adjustments into planned refurbishments and therefore should not be included in the costing.¹

4.7 The costs of the Regulations can be broken down into the broad categories of 'physical' adjustments and 'process' adjustments. The physical adjustments will largely be one-off, as the duty will be anticipatory i.e. the club would have to 'anticipate' what access requirements a disabled person may need. While there are also some one-off costs associated with the process adjustments, such as taking time to assess the needs of disabled members, a significant proportion of these costs will be on-going. As the DDA 2005 RIA makes clear, private clubs will only have to do what is reasonable in all the circumstances – taking account of factors like their size and resources – to meet the detailed requirements.

4.8 The costings which follow are not and cannot be the actual costs of complying with the duties to make reasonable adjustments. This is because there is no authoritative data on the numbers of clubs that will meet the definition of a "private club" in the DDA 2005. Nor is there relevant data on adjustments already made or likely to be needed. The costings, therefore, are based on what could be regarded as realistic scenarios about the impact of the new duties to be placed on private clubs and are illustrative rather than exhaustive. They contain a significant degree of uncertainty.

4.9 The estimated cost of physical adjustments for private clubs by complying with the Regulations is £3.45 million. This is largely made up of three different physical adjustments relating to wheelchair users:

- Widening of doorways;

¹ Anecdotal evidence from the focus groups on the draft Disability Discrimination Bill showed that around half of the clubs were already incorporating adjustments for disabled people into planned works.

- Installing a wheelchair accessible toilet; and
- Purchasing a portable wheelchair ramp.

4.10 In addition, the estimated cost of physical adjustments also includes the cost of installing hand rails, which may be alongside steps or alternatively along corridors for example, as well as the opportunity cost of time spent rearranging furniture or furnishings, for example, to remove obstacles for a person with a sight impairment.

4.11 In deriving these scenario-based costs, it is important to bear in mind that they will be the maximum costs likely. Having assumed that the average membership of clubs is around 75 this is likely to mean that it is not going to be reasonable for many of these clubs to make adjustments which are themselves intrinsically expensive.

4.12 The estimated cost of process adjustments is £2.22 million. The bulk of this cost relates to time spent explaining application forms and procedures for new members, as well as time spent assessing needs of new and existing disabled members. These costs will be largely one-off. Other on-going process costs include:

- Large print or Braille application forms, newsletters and annual reports for people with sight impairments;
- Large print menus;
- Hiring of portable induction loops and/or British Sign Language interpreters for people with hearing impairments.

4.13 Therefore, the total estimated illustrative costs are £5.13 million of one-off costs and £543,000 ongoing annual costs. Assuming an average club membership of 75 as outlined above, average ongoing costs work out to around £0.80 per member per year. Average cost per member for the 9,000 clubs directly affected (see paragraph 4.4) is £7.56.

4.14 The total estimated illustrative costs are based on the assumption that 25% of the circa 9,000 clubs directly affected would be required to make reasonable adjustments. The costs are broken down as follows:

Physical adjustments (based on maximum costs):

Widening of doorways (assuming unit cost of £450) is estimated at £763,000:

Installing a wheelchair accessible toilet (assuming unit cost of £1,000) estimated at £1,699,000

Purchasing a portable wheelchair ramp (assuming unit cost of £100) is estimated at £169,000

Fitting a handrail (assuming unit cost of £316) is estimated at £714,000

Process adjustment (based on maximum costs):

Large print (assuming unit cost of £2.80) or Braille (assuming unit cost of £50), application forms newsletters and annual reports for people with sight impairments is estimated at £55,000;

Large print menus (assuming unit cost of £2) is estimated at £18,000;

Hiring of portable induction loops (assuming unit cost of £150) and/or British Sign Language interpreters (assuming unit cost of £93) for people with hearing impairments is estimated at £514,000;

Explanation time and time required to determine needs (assuming unit cost of £12) is estimated at £1,628,000.

There are also opportunity costs (assuming unit cost of £12), e.g. re-arranging physical features, estimated at £108,000.

Note: Costings provided are rounded up or down.

Risks/sensitivity of new costing

4.15 The costing is intended to provide a useful guide as to the level of costs that are potentially involved from implementing the DDA 2005 and the Regulations. However, as acknowledged in the DDA 2005 RIA, it is virtually impossible to accurately estimate the

number of clubs that might be affected and therefore the costing is subject to a significant degree of uncertainty. Given the necessity for private clubs to operate a policy of membership exclusivity to be covered under the DDA 2005, it is believed that the number of clubs used in the costing (i.e. 9,000) is likely to be at the high end of those affected in reality.

4.16 There are other aspects that may influence the cost of the proposals for Regulations, which include:

- How many of the clubs are service providers and therefore already covered under Part 3 and so have already made many of the adjustments that might be required for members;
- How many clubs own their own facilities. It is difficult to estimate this and the cost of physical adjustments will be far reduced if a significant proportion of clubs do not own their own premises because instead of making adjustments they might chose to relocate elsewhere for meetings where disability access is already provided;
- If the average club membership varies from what is assumed; and
- The extent to which it is reasonable to make any particular adjustment given the size and resources of the club concerned.

5. Consultation with small business: the small firms' impact test

5.1 Some private clubs may be small businesses. The DWP carried out a series of focus groups to gauge views on the overall impact of the Bill when it was published in draft. One group comprised representatives of nine private clubs from the Doncaster area. The findings, conclusions and action arising from this Group are at paragraphs 10.2 to 10.5 below.

6. Competition Assessment

6.1 The Competition Assessment Filter Test has been applied to the measures considered in this RIA and it has been concluded that no private sector competition issues arise. The measures concerned apply equally across all private sector industries.

Furthermore, the measures do not impose disproportionate costs or burdens on business start-ups, compared to existing firms, nor do they affect the ability of firms to choose the price, quality, range or location of their products.

7. Equity and Fairness

7.1 The Regulations which this RIA supports will have a positive impact on disabled people across a wide range of areas.

7.2 By building on the framework of main duties laid down in the DDA 2005, the Regulations will help to ensure that disabled people have greater access to private clubs.

7.3 There will also be costs arising in respect of the draft Regulations on private clubs. However, the Government believes that these costs are counter-balanced by the need to ensure that barriers and discrimination faced by disabled people are overcome. This is a pivotal aspect of the Government's policy for ensuring equality of opportunity for all.

7.4 The regulations do not have any impact on race equality issues. People from minority ethnic groups who are disabled will be fully covered under the Act's duties and the draft regulations that this RIA supports. Similarly, the Regulations do not have a disproportionate impact on rural areas or specific geographical locations in Great Britain.

8. Enforcement and sanctions

8.1 Enforcement and sanctions are, in the main, already laid down in the DDA 1995 and the Disability Rights Commission Act 1999. The county courts (and in Scotland, the Sheriff Courts) continue to be the means for individuals to obtain legal redress. The DRC continues to have enforcement powers and can support individual disabled people with legal complaints.

9. Monitoring and review

9.1 The DRC, as part of its overall duty to monitor the DDA 1995, will keep the legislative framework under review and come forward with proposals for change as and when it believes they are

required. The DRC publishes an annual strategy document setting out its priorities for the proceeding three year period.

9.2 The Department for Work and Pensions will continue to monitor and review the operation of the Act, including by commissioning and disseminating appropriate research. The Department is currently undertaking a programme of research to examine how those with responsibilities under the DDA are responding to their duties. That programme will be extended to monitor how the new duties introduced through the Disability Discrimination Act 2005 are implemented and the impact on those affected.

10. Consultation

10.1 The Department for Work and Pensions consulted on the proposals for using regulation-making powers in Cm 6402 (see paragraph 1.4 above). The consultation ran from 16 December 2004 until 18 March 2005. The document was produced in a range of accessible formats.

10.2 The outcome of the Focus Group held in relation to the small firms' impact test (paragraph 5.1 above) held in May 2004 identified a number of themes:

- a general lack of awareness of the Draft Disability Discrimination Bill and limited understanding of the DDA 1995;
- support for the moral and ethical objectives underpinning the Government's aim to extend civil rights and inclusion to enable disabled people to participate fully in all areas of society;
- concern about how the draft Disability Discrimination Bill would fit with the cost effectiveness of their individual clubs and the extent of reasonable adjustments that might have to be made;
- existing positive experiences of making adjustments to accommodate disabled people.

10.3 The Department also recognised that throughout the group, there were concerns about the health and safety implications associated with disabled people, and any increased liability that may arise. Participants were unclear about the term 'reasonable adjustments' and were keen to understand how the test of reasonableness would be applied. All participants agreed that a Code of Practice would be helpful.

10.5 The Department has taken note of these issues, which are largely matters for guidance. Codes of Practice are a matter for the Disability Rights Commission (DRC). The Department is working closely with the DRC during its development of new Codes in relation to the issues identified by the Focus Group. Full consultation is being undertaken by the DRC on revised Guidance and Codes of Practice.

11. Summary

11.1 This RIA supports the Government's regulations. It identifies possible costs and benefits arising from the Regulations. It should be read in conjunction both with the Consultation Document and the main RIA on the DDA 2005.

12. Declaration

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs

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Annex A

This table summarises the relevant scenario costs arising from the draft Regulations.

Regulation	One-off costs	On-going annual costs	coverage
Private clubs	£5.13 million	£543,000	9,000 clubs with a total of 135,000 disabled members

Annex B

Implementation of the Disability Discrimination Act 2005 (DDA 2005)

Outcomes of: "Disability Discrimination Bill: (Cm 6402) in relation to consultation on private clubs.

Introduction

1. This annex provides information on the outcomes of a public consultation exercise carried out by the Government between 16 December 2006 and 18 March 2005 in respect of private clubs. The consultation document sought views on the Government's proposals for using the regulation-making powers in the Disability Discrimination Act 2005, which gained Royal Assent on 7 April 2005, in respect of the Act's provisions on private clubs.

2. The document was sent to around 500 organisations including a wide range of professional and representative bodies with an interest in private clubs as well as disability organisations and others.

Proposals in the consultation document:

3. In broad terms, the consultation document set out the following Government proposals in respect of private clubs:

4. The document proposed that private clubs – being brought within scope of civil rights legislation for the first time - should be subject to broadly similar duties as already apply to other providers of goods, services and facilities under the Disability Discrimination Act 1995 (DDA 1995). Specific issues consulted upon were:

- Setting the “trigger” for the duty at the point where it is *impossible or unreasonably difficult* for the disabled person to use the benefits, facilities, services etc provided by the club for its members;
- Making the duty to make adjustments *anticipatory*;
- Setting out the same limited range of defences to justify not making a reasonable adjustment as currently applies to service providers;

- Whether duties to make reasonable adjustments should be modified in special circumstances, particularly in respect of political associations
- The implementation timetable for reasonable adjustments
- The likely regulatory impact of the Government's proposals and information on the costs of training associated with compliance for these proposed new duties

Outcomes of the consultation:

5. The table represents the outcomes of the consultation relating to private clubs. It was not only private clubs or their representative organisations that responded to the questions on private clubs. Response rates vary and, in many instances, respondents did not provide direct answers to the specific questions posed. Other than in respect of one response (see below) support for the Government's proposals, on those questions where respondents were asked to indicate if they agreed or disagreed, ranged from 58%-94%.

6. The response rate to the seventh proposal in the table was ambiguous. Respondents were asked to say if they agreed with the regulatory impact proposals and in particular the costs of compliance training. Twenty-eight (28) per cent of respondents agreed with the regulatory impact assessment. While no respondent disagreed, 72% (i.e. 13 respondents) expressed views which did not directly answer the questions posed: e.g. 5 said that costs would be difficult to quantify; 3 that many clubs were run by volunteers; 2 that the costs would be too high; and 2 that many adjustments would cost very little. Only one reply expressed any quantified view on costs. No further information was forthcoming on training costs to comply with the proposed new duties

7. Responses to the consultation document indicated support for the Government's proposals to place broadly similar duties on private clubs with 25 or more members as already apply to other providers of goods, services and facilities under Part 3 of the Disability Discrimination Act.

Outcomes of consultation on using regulation-making powers under the DDA 2005's duties on private clubs, premises, definition of disability and questions procedure

	PROPOSAL	NUMBER OF RESPONSES	AGREE		DISAGREE		OTHER VIEWS		
			No.	%	No.	%	No.	%	
Private clubs	1	Do you agree that that the duties to make "reasonable adjustments" to be applied to private clubs should be framed in the same way as those for service providers?	33	31	94	2	6	0	0
	2	Do you agree that, for private clubs, the trigger point for the duty to make reasonable adjustments should be the same as for service providers?	27	21	78	4	15	2	7
	3	Do you agree that the duty on private clubs to make reasonable adjustments should be anticipatory, as it is for service providers?	32	26	81	3	9	3	9
	4	Do you agree that justifications for not making reasonable adjustments should be the same as for service providers?	30	19	63	2	7	9	30

		PROPOSAL	NUMBER OF RESPONSES	AGREE		DISAGREE		OTHER VIEWS	
				No.	%	No.	%	No.	%
Private clubs	5	Do you agree with the implementation timetable for the duty to make reasonable adjustments? (Dec 2006)	27	16	59	6	22	5	19
	6	Do you agree with the proposed modifications of the reasonable adjustment duty under special circumstances, particularly in respect of political associations?	19	11	58	0	0	8	42
	7	Do you agree with the regulatory impact proposals?	18	5	28	0	0	13	72

RESPONDENT TYPE

DISABILITY GROUP	
REPRESENTATIVE BODY - OTHER	12
PUBLIC BODY	11
INDIVIDUAL	7
LANDLORD ASSOCIATION	6
REPRESENTATIVE BODY - PREMISES	5
SERVICE PROVIDER	4
REPRESENTATIVE BODY - CLUBS	4
PRIVATE CLUB	3
SOLICITOR	2
EMPLOYER	2