

Disability Discrimination Act 1995

Provision and use of transport vehicles

Statutory Code of Practice

**Supplement to Part 3 Code of
Practice**

Disability Rights Commission

Provision and use of transport vehicles

Statutory Code of Practice

**Supplement to Part 3 Code of
Practice**

London: TSO

© Disability Rights Commission 2006

All rights reserved.

The information contained in this publication is believed to be correct at the time of manufacture. While care has been taken to ensure that the information is accurate, the publisher can accept no responsibility for any errors or omissions or for changes to the details given.

First published 2006

10 digit ISBN 0 11 703632 3

13 digit ISBN 978 0 11 703632 1

Printed in the United Kingdom for The Stationery Office

Foreword

The Disability Rights Commission (DRC) has written and produced this Code of Practice on the provision and use of transport vehicles. The duties outlined in this Code are introduced under Part 3 of the Disability Discrimination Act 1995, as amended by the Disability Discrimination Act 2005, and its supporting Regulations. These new duties come into force in December 2006.

We welcome the Government's drive to implement these new duties. While other aspects of service provision have been in force since 1996, it has long been a concern for disabled people that access to transport vehicles was not covered by Part 3 of the Disability Discrimination Act. The introduction of these duties governing the provision and use of transport vehicles rectifies this situation, and clarifies the position for all concerned.

Access to transport is fundamental to full and independent participation in society as a whole. I firmly believe that these changes will not only make a real difference to disabled people themselves, but will also benefit transport providers in their determination to offer the highest quality of service to all passengers.

Bert Massie CBE

Chairman,
Disability Rights Commission

Contents

Introduction	1	1
Background	1	
Purpose of the Code	2	
Status of the Code	3	
How to use the Code	3	
Examples in the Code	4	
References in the Code	4	
Changes to the legislation	5	
Further information	5	
Scope of the Code	7	2
Narrowing and lifting the transport exemption	7	
What is the effect of the 2005 Regulations?	8	
Provision or use of a vehicle	8	
What is a 'vehicle'?	9	
Which modes of transport are covered by the 2005 Regulations?	10	
Breakdown recovery vehicles	10	
Hire (or rental) vehicles	10	
Private hire vehicles	11	
Public service vehicles	11	
Rail vehicles	12	
Taxis	12	

2	Guided transport	12
	Modes of transport not currently covered by the Act	12
	Other issues the Code does not cover	13
3	What does the Act say about providing services and how does this affect transport providers?	15
	Introduction	15
	What is a 'transport provider'?	15
	What does the Act make unlawful?	16
	What does the Act mean by 'discrimination'?	17
	Who has rights under the Act?	18
	What happens if a dispute arises under the Act?	19
4	The transport provider's duty not to treat a disabled person less favourably	21
	Introduction	21
	What is unlawful?	21
	Less favourable treatment	22
	Must a transport provider know that a person is disabled?	25
	A transport provider's legal liability for its employees	27
	What steps should a transport provider consider?	27
	Refusal or non-provision of service	29
	Standard or manner of service	30
	Terms of service	30
Can transport providers treat a disabled person more favourably?	31	

Making changes for disabled people: the transport provider's duty to make reasonable adjustments in relation to transport vehicles	33
Introduction	33
What does the Act say?	33
What is the transport provider's duty to make reasonable adjustments in relation to the provision or use of a vehicle?	34
Rental vehicles	36
Breakdown recovery vehicles	36
General approach to making reasonable adjustments	37
Use of reasonable adjustment examples	38
To whom is the duty to make reasonable adjustments owed?	38
At what point does the duty to make reasonable adjustments arise?	39
Does the duty of reasonable adjustment apply even if the transport provider does not know that the person is disabled?	40
Must transport providers anticipate every barrier?	40
How long does the duty continue?	41
What is meant by 'reasonable steps'?	42
Protecting the fundamental nature of a business or service	49
Cost of providing reasonable adjustments	50
What is 'unreasonably difficult'?	50
What happens if the duty to make reasonable adjustments is not complied with?	51

Reasonable adjustments in practice	53
Introduction	53
Practices, policies and procedures	54

6	What is the duty to change a practice, policy or procedure?	54
	What are practices, policies and procedures?	55
	What are 'reasonable steps' in relation to practices, policies and procedures?	57
	Auxiliary aids and services	59
	What is the duty to provide auxiliary aids or services?	59
	What is an auxiliary aid or service?	59
	What are 'reasonable steps' in relation to auxiliary aids or services?	62
	Using auxiliary aids or services to improve communication	64
	Provision for people with a hearing disability	65
	Provision for people with a visual impairment	66
	Provision for people with other disabilities or multiple disabilities	67
	Overcoming barriers created by physical features	68
	Rental vehicles	68
	What is the duty to make reasonable adjustments in relation to physical features?	69
	What is a 'physical feature'?	69
	Breakdown recovery vehicles	71
	What is the duty to make reasonable adjustments in relation to physical features?	71
	What is a 'physical feature'?	71

7	Can a transport provider justify less favourable treatment or a failure to make reasonable adjustments?	73
	Introduction	73
	Less favourable treatment	73

Failure to make reasonable adjustments	74
The general approach to justification	75
Health or safety	76
Incapacity to contract	78
Transport provider otherwise unable to provide the service in respect of provision or use of a vehicle to the public	80
To enable the transport provider to provide the service to the disabled person or other members of the public	81
Greater cost of providing a tailor-made service	82
Further limitations on duty not to discriminate	83

Appendix	85
Part 5 of the Act: public transport regulations	85
Introduction	85
Trains, buses, coaches and taxis	85
Taxis/private hire vehicles (PHVs) and the carriage of assistance dogs	86
Changes to Part 5: rail vehicles	86
Index	88

1 Introduction

1.1 This chapter outlines the way in which transport has been dealt with by the Disability Discrimination Act 1995 ('the Act'). It describes the position when the Act was passed, and the changes subsequently introduced by the Disability Discrimination Act 2005 ('the 2005 Act') and its supporting regulations. This chapter also explains the purpose and status of this Code of Practice ('the Code'), providing guidance on how to use it.

Background

- 1.2 The Act aims to eliminate discrimination against disabled people. It is divided into several Parts dealing with, for instance, the meaning of disability (Part 1), employment and occupation (Part 2), and education (Part 4). It also contains a duty on public bodies, such as local authorities, to promote disability equality.
- 1.3 Two Parts of the Act have a particular relevance to transport: Part 3 which deals, amongst other things, with access to services, and Part 5 which allows access standards to be set for certain types of vehicle.
- 1.4 When the Act was passed in 1995, any service so far as it consisted of the use of a means of transport, was exempted from Part 3 of the Act.

1.5 However, not all services associated with transport fell within the exemption. Those associated with transport infrastructure, for example, were covered by Part 3 and were thus dealt with in the same way as with other services. This means that most transport providers have always been subject to Part 3 in respect of certain services provided to the public, for example, services at stations and airports, or information and timetabling services.

s 21ZA

1.6 The Act has since been amended by the 2005 Act to clarify the scope of the exemption and enable it to be lifted.

SI 2005/3190

1.7 Regulations made under the 2005 Act lift this Part 3 exemption in respect of certain types of transport vehicle. These Regulations come into force on 4 December 2006.

Purpose of the Code

1.8 The purpose of this Code is to explain these changes in the law.

1.9 This Code is a **supplement** to the Code of Practice for Part 3 of the Act: Rights of Access to Goods, Facilities, Services and Premises ('the Part 3 Code'). The Part 3 Code explains the duties on those who provide services to the public.

s 53A

1.10 The Disability Rights Commission (DRC) has prepared and issued this Code under the Act on the basis of a request by the Secretary of State for Transport. It applies to England, Wales and Scotland.

Status of the Code

- 1.11 As it is supplemental to the Part 3 Code, it is essential that this Code is read in conjunction with the **Part 3 Code**.
- 1.12 As with the Part 3 Code, this Code does not impose legal obligations. Nor is it an authoritative statement of the law – that is a matter for the courts. It is, however, a statutory Code. This means that it has been approved by Parliament, and it is admissible in proceedings under the Act. Courts must take into account any part of this Code and the Part 3 Code that appears to them relevant to any question arising in those proceedings. If transport providers follow the guidance in the Code, it may help to avoid an adverse judgment by a court in any proceedings.

s 53A(8),
s 53A(8A)

How to use the Code

- 1.13 This chapter gives a general introduction to the Code and to Part 3. **Chapter 2** sets out the scope of the Code. **Chapters 3–7** deal with the new duties of transport providers, including a description of the duty to make reasonable adjustments for disabled people. The **Appendix** provides an overview of the provisions of Part 5 of the Act which, as mentioned above, has a particular relevance to transport, but which is not covered by this Code.
- 1.14 As with the Part 3 Code, this Code should not be read too narrowly or literally. It is intended to explain the principles of the law, to illustrate how the Act might operate in certain situations and to provide general guidance on good practice. There are some questions which the Code cannot resolve and which must await the authoritative interpretation of the courts. The Code is not

intended to be a substitute for taking appropriate advice on the legal consequences of particular situations.

Examples in the Code

- 1.15 As in the Part 3 Code, examples of good practice and how the Act is likely to work are given in boxes. They are intended simply to illustrate the principles and concepts used in the legislation and should be read in that light. The examples should not be treated as complete or authoritative statements of the law.
- 1.16 While the examples refer to particular situations, they should be understood more widely as demonstrating how the law might be applied generally. They can often be used to test how the law might apply in analogous situations involving different disabilities, services or transport providers. They attempt to use as many different varieties of disabilities and services as possible to demonstrate the width and scope of the Act. References to male or female disabled people are given for realism and could, of course, apply to either sex.

References in the Code

- 1.17 Unless otherwise stated, future references to 'the Act' are to the Act as amended by the 2005 Act.
- 1.18 References to the Act are shown in the margins. For example, s 1(1) means section 1(1) of the Act and Sch 1 means Schedule 1 to the Act. Where reference is made to regulations made under the Act, the Statutory Instrument number is shown in the margin (for example, SI 2005/2901). Where marginal or textual references are made to sections 19 to 21 of the Act, these should be read

in conjunction with section 21ZA of the 2005 Act, and the Disability Discrimination (Transport Vehicles) Regulations 2005 ('the 2005 Regulations'). References to Part 2, 3, 4 or 5 refer to the relevant Part of the Act.

Changes to the legislation

- 1.19 This Code refers to the Disability Discrimination Act as at 18 April 2006. There may be changes to the Act or to other legislation in the future which may have an effect on the duties explained in this Code or the Part 3 Code, and you will need to ensure that you keep up to date with any developments which may affect the Act's provisions. You can get information about this from the Disability Rights Commission (see paragraph 1.21 below for contact details).

Further information

- 1.20 Copies of the Act and regulations made under it can be purchased from The Stationery Office's bookshops (see back cover for details). Separate Codes covering other aspects of the Act, and guidance relating to the definition of disability, are also available from The Stationery Office. The text of all the DRC's Codes (including this Code) can also be downloaded free of charge from the DRC website (see below).
- 1.21 Free information about the Act is available on the DRC website. It can also be obtained by contacting the DRC Helpline. This information is available in accessible formats.

Website: www.drc-gb.org

Telephone: 08457 622 633

Textphone: 08457 622 644

Fax: 08457 778 878

Post: DRC Helpline
FREEPOST
MID 02164
Stratford upon Avon
CV37 9BR

You can email the DRC Helpline from the DRC
website: www.drc-gb.org

2 Scope of the Code

2.1 This chapter sets out the scope of the Code. It explains the effect of the changes in the Act and the terms used in the Code. It defines the vehicles brought within the Act and indicates what is not covered in the Code.

Narrowing and lifting the transport exemption

2.2 As explained in **Chapter 1**, Part 3 of the Act, which places duties on those who provide services to the public, contained an exemption for the use of any means of transport. The Act has been amended by the 2005 Act to clarify that the exemption only applies to transport services relating to the provision or use of the vehicle itself. This makes it clear that Part 3 already applies to the provision of infrastructure services, such as stations and airports. The Act now includes a regulation-making power to enable the Secretary of State to lift the exemption, wholly or partly, in respect of providers of transport services who provide those services through the use of certain types of vehicle.

2.3 The Disability Discrimination (Transport Vehicles) Regulations 2005 ('the 2005 Regulations') have been made under this power and are due to come into force on 4 December 2006.

s 21ZA

SI 2005/3190

What is the effect of the 2005 Regulations?

- 2.4 The 2005 Regulations effectively apply certain duties in Part 3 to the providers of transport services who provide such services through the use of specified vehicles. The extent to which the duties apply depends on the type of vehicle involved. This is explained in more detail in **Chapters 4, 5 and 6**.
- 2.5 Essentially, providers of transport services in respect of the provision or use of a vehicle covered by the 2005 Regulations, are now providers of services to the public for the purposes of Part 3. They must therefore comply with the relevant Part 3 duties.
- 2.6 The 2005 Regulations cover the following types of vehicle: buses and coaches (scheduled and leisure), private hire vehicles, taxis, trains, trams, light rail, vehicles used on modes of guided transport, rental vehicles and breakdown recovery services. For more detail on the vehicles specified by the Regulations, see paragraphs 2.13 to 2.21 below.

Provision or use of a vehicle

s 21ZA(4)

- 2.7 The Act refers to providers of transport services. A 'transport service' is a service involving transport of people by vehicle. A 'vehicle' is broadly defined (see paragraph 2.11 below) but the 2005 Regulations apply only to specified types of vehicle (see paragraphs 2.13 to 2.21 below).

s 21ZA(1),(2),
SI 2005/3190

- 2.8 In effect, the Act, as applied by the 2005 Regulations, sets out the scope of the duties as follows:

A transport provider must not discriminate against a disabled person:

- when providing, or not providing, a disabled person with a vehicle; or
- when providing, or not providing, a disabled person with services when he is travelling in a vehicle provided in the course of a transport service.

A transport provider also has a duty to make certain kinds of reasonable adjustments for disabled people in respect of the provision or use of a vehicle.

2.9 Provision of a vehicle in the context of these duties means provision of the vehicle itself; it does not include any services ancillary to the vehicle (for example, arrangements for buying a ticket for travel or accessing the office of a vehicle rental operator).

2.10 In this Code the provision of, boarding, travelling on and alighting from a vehicle covered by the 2005 Regulations is referred to for convenience as the **'provision or use of a vehicle'**.

What is a 'vehicle'?

2.11 A vehicle is defined in the Act as being a vehicle for transporting people by land, air or water, including a vehicle without wheels and a vehicle carrying passengers by guided transport. However, the exemption has not been lifted for all forms of vehicle.

2.12 Unless otherwise stated, references in the Code to a **'vehicle'** mean one that is covered by the 2005 Regulations (see below).

Which modes of transport are covered by the 2005 Regulations?

2.13 The 2005 Regulations apply to the following:

- breakdown recovery vehicles
- hire (or rental) vehicles
- private hire vehicles
- public service vehicles
- rail vehicles
- taxis; and
- vehicles used on a system using a mode of guided transport.

Reg 2

2.14 The Regulations set out details of the types of vehicle covered. These are explained below.

Breakdown recovery vehicles

2.15 Breakdown recovery vehicles are those deployed by a breakdown or recovery operator, whether or not through a third party, the sole or partial purpose of which is to transport the driver and occupants of a broken-down vehicle from the scene of an accident or breakdown. 'Breakdown or recovery operator' means a provider of roadside assistance services for the purpose of recovering or repairing a broken-down vehicle.

Hire (or rental) vehicles

2.16 This covers vehicles up to a certain size, which are hired out by a person who does so in the course of a business. All vehicles in categories M1, M2 and N1 are included. These are defined as follows:

- M1 vehicles are those constructed to carry passengers, with no more than eight seats in addition to the driver's seat
- M2 vehicles are those constructed to carry passengers, with more than eight seats in addition to the driver's seat, and with a maximum weight of 5 tonnes; and
- N1 vehicles are those constructed to carry goods, with a maximum weight of 3.5 tonnes.

To avoid confusion with private hire vehicles, hire vehicles are referred to as **rental vehicles** in the Code.

Private hire vehicles

- 2.17 This covers all licensed private hire vehicles. A private hire vehicle (PHV) is a vehicle which carries fewer than nine passengers and which is available, with a driver, to the public for hire for the purpose of carrying passengers. PHVs are different to taxis in that they must be pre-booked and cannot be hailed in the street or picked up at a rank. The 2005 Regulations include in this category vehicles providing equivalent services in Scotland, as defined in Scottish legislation.

Public service vehicles

- 2.18 This covers buses and coaches which can carry more than eight passengers, and which are used for hire and reward. It covers such vehicles used for local and scheduled services, as well as those used for leisure and tourism purposes.

Rail vehicles

- 2.19 This includes all rail vehicles (including those operating underground) that run on a railway with a gauge of at least 350 millimetres, and all trams.

Taxis

- 2.20 This covers all licensed taxis including, in addition to motor-driven vehicles, taxis drawn by one or more persons, horse or other animal. So this will include vehicles such as licensed horse-drawn carriages and licensed rickshaws. The 2005 Regulations include in this category vehicles providing equivalent services in Scotland, as defined in Scottish legislation.

Guided transport

- 2.21 Guided transport means transport by a vehicle which is guided by external means. This includes vehicles used on systems such as monorails, magnetic levitation systems and guided buses.

Modes of transport not currently covered by the Act

- 2.22 The Act empowers the Government to lift the transport exemption in respect of any form of transport service. This could include aircraft and shipping vessels, but these modes of transport are not specified in the 2005 Regulations. However, it is recommended that airline and shipping operators take account of the duties outlined in this Code and the Part 3 Code as a matter of good practice in all their operations. There are also separate non-statutory codes available for reference on many aspects of good practice.

- 2.23 It must in any case be remembered that airline and shipping operators are not wholly exempt from Part 3. They still have a duty to avoid discrimination against disabled people and to make reasonable adjustments for them in respect of matters such as timetables, booking facilities and waiting rooms at airports and ferry terminals.

A wheelchair user has no protection under Part 3 of the Act if a ferry on which he wishes to travel is not accessible. However, if he is refused service in the buffet bar of the ferry terminal because of his disability, this is likely to be unlawful.

Other issues the Code does not cover

- 2.24 Services which fall outside the scope outlined in paragraphs 2.7 to 2.10 above, such as services associated with transport infrastructure (access to premises such as stations and bus stops, and timetabling services, for example) are already covered by the provisions set out in the Part 3 Code. They are not therefore addressed in this Code.
- 2.25 The Code does not deal with transport arrangements which fall outside the remit of Part 3. For example, some employers may make transport arrangements for their employees to travel to and from work. The provision of such arrangements falls under the remit of Part 2 of the Act. Further information is available in the Codes of Practice on Part 2.
- 2.26 The Code does not deal with the disability equality duty placed on public authorities, such as taxi licensing authorities. This duty, which requires public authorities to have due regard to the

elimination of unlawful discrimination and to the promotion of equality of opportunity for disabled people, is explained in the Disability Equality Duty Codes of Practice for England and Wales, and for Scotland.

2.27 This Code does not deal with the general meaning and operation of the provisions in Part 5 of the Act. Part 5, which deals with public transport, has two purposes:

- it enables regulations to be made setting access standards for taxis, public service vehicles (buses and coaches) and rail vehicles; and
- it imposes duties on taxis and PHVs in respect of the carriage of assistance dogs.

More information on the Part 5 provisions and regulations can be found in the **Appendix** to this Code. It should be noted that taxi and PHV operators also have duties under Part 3 in respect of the carriage of disabled people (including assistance dog users).

3 What does the Act say about providing services and how does this affect transport providers?

Introduction

3.1 This chapter provides an overview of the provisions of Part 3 relating to the provision of services to the public, and explains how they relate to transport providers. It also describes those people who have rights under the Act.

What is a 'transport provider'?

3.2 For convenience the Code uses the term **'transport provider'** to refer to a provider of transport services in respect of the provision or use of a vehicle. As explained in **Chapter 2**, providers of vehicles are now regarded as providers of services to the public for the purposes of Part 3. A provider of services to the public under Part 3 is anyone who provides a service in the United Kingdom to the public, or to a section of the public. A 'transport provider', therefore, is anyone providing a service in respect of the provision or use of a vehicle in the United Kingdom to the public, or to a section of the public.

3.3 Although there are some differences in the way Part 3 applies in respect of vehicles (see **Chapters 4 and 5**), for the most part transport providers have the same duties as other providers of services under Part 3.

3.4 The provision of services is dealt with in more detail, with examples, in the Part 3 Code. It is

s 19(2)

important that this supplementary Code is read in conjunction with the Part 3 Code.

- 3.5 All those involved in providing services are affected – from the most senior director or manager to the most junior employee, whether full- or part-time, permanent or temporary. It does not matter whether the services in question are being provided by a sole operator, firm, company or other organisation, or whether the person involved in providing the services is self-employed or an employee, volunteer, contractor or agent.
- 3.6 Such services are covered whether they are provided free or in return for payment.
- 3.7 Where more than one transport provider is providing a service, both may have duties under the Act.

What does the Act make unlawful?

- 3.8 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:

s 19(1)(a)

- by refusing to provide (or deliberately not providing) any service which it provides (or is prepared to provide) to members of the public; or

s 19(1)(c)

- in the standard of service which it provides to the disabled person or the manner in which it provides it; or

s 19(1)(d)

- in the terms on which it provides a service to the disabled person.

References to providing a service include providing goods or facilities.

3.9 It is also unlawful for a transport provider to **discriminate** in:

s 19(1)(b)

- failing to comply with any duty imposed on it by section 21 (a duty to make reasonable adjustments), 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.

The reference to making use of a service includes using goods or facilities.

What does the Act mean by 'discrimination'?

3.10 The Act says that discrimination against a disabled person occurs in two possible ways.

s 20(1)

3.11 One way in which discrimination occurs is when a transport provider:

s 20(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**.

3.12 Making sure that a transport provider does not treat a disabled person less favourably is considered in more detail in **Chapter 4**. Whether and when a transport provider might be able to justify the less favourable treatment of a disabled person is considered in **Chapter 7**.

3.13 The other way in which discrimination occurs is when a transport provider:

- fails to comply with a duty imposed on it by section 21 (a duty to make '**reasonable adjustments**') in relation to the disabled person; **and**
- cannot show that the failure is **justified**.

3.14 The duty to make reasonable adjustments to the provision of services in relation to the provision or use of a vehicle is covered in greater detail in **Chapters 5 and 6**. Whether and when a transport provider might be able to justify a failure to make a reasonable adjustment is considered in **Chapter 7**.

3.15 It should be noted that transport providers are also subject to provisions covering victimisation and the aiding of unlawful acts. The Part 3 Code contains further details on these provisions.

Who has rights under the Act?

3.16 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).

- 3.17 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).
- 3.18 The Act also specifically covers anyone who has cancer, HIV or multiple sclerosis.
- 3.19 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.
- 3.20 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.
- 3.21 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.

What happens if a dispute arises under the Act?

- 3.22 Where a disabled person believes that they have been discriminated against contrary to Part 3, they can bring a claim against the transport provider in the county court (in England and Wales) or the sheriff's court (in Scotland). The Part 3 Code provides further details on the legal process.

4 The transport provider's duty not to treat a disabled person less favourably

Introduction

- 4.1 This chapter addresses the duty on transport providers to ensure that disabled people are not treated less favourably than other people when using their services in relation to the provision or use of a vehicle. It explains what is made unlawful by the Act and what is meant by 'less favourable treatment'.

What is unlawful?

- 4.2 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 s 19(1)
 - providing service of a lower standard or in a worse manner; or s 19(1)(a)
 - providing service on worse terms; or s 19(1)(c)
 - 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. s 19(1)(d)
s 19(1)(b)

The consequences of a failure to comply with a duty to make reasonable adjustments are considered in **Chapters 5, 6 and 7**.

Less favourable treatment

- 4.3 A transport provider discriminates against a disabled person if, for a reason which relates to the disabled person's disability, it treats the disabled person less favourably than it treats (or would treat) others to whom that reason does not (or would not) apply and it cannot show that the treatment in question is justified. This means that how the transport provider treats the disabled person is compared with how the transport provider treats (or would treat) other people to whom the reason for the treatment does not (or would not) apply. Whether and when a transport provider might be able to **justify** the less favourable treatment of a disabled person is considered in **Chapter 7** below.

A bus tour operator offers sightseeing bus tours to the public. However, one prospective passenger is refused access to the tour because he has cerebral palsy and has difficulty controlling and co-ordinating his movements. No other passenger is refused access. This would amount to less favourable treatment for a reason related to disability and, unless the bus tour operator can justify its actions, would be an unlawful refusal of service contrary to the Act.

- 4.4 If the treatment is caused by the fact that the person is disabled, that is treatment which 'relates to' the disability. This is the case even if some non-disabled people are also treated unfavourably for a broadly similar reason. Generally, this means that a disabled person will have been treated less favourably if they would not have received the treatment but for their disability.

- 4.5 Bad treatment is not necessarily the same as less favourable treatment although, where a transport provider acts unfairly or inflexibly, a court might draw inferences that discrimination has occurred.

Because the sightseeing bus in the example in paragraph 4.3 above is already full, all the passengers waiting at a particular stop are refused entry to the sightseeing bus tour by the tour operator. A passenger with cerebral palsy is being treated no differently from all the other passengers. He has not been subjected to any less favourable treatment for a reason related to disability. However, if the sightseeing bus tour operator refused access to all the passengers waiting at a particular stop because one of them has cerebral palsy, that is likely to amount to unlawful discrimination against the disabled passenger.

- 4.6 The comparison can also be between the way in which one disabled person is treated compared to the way in which people with other disabilities are treated.

The sightseeing bus tour operator in the example in paragraph 4.3 above refused access to the disabled man with cerebral palsy. It cannot claim that it did not discriminate simply because people with other disabilities were allowed access. The passenger with cerebral palsy has been less favourably treated in comparison with other members of the public, including the people with other disabilities.

- 4.7 A disabled person does not have to show that others were treated more favourably than they

were. It is still less favourable treatment if others would have been treated better.

A disabled passenger with learning disabilities is travelling on a train. He happens to be the sole passenger in the carriage for the duration of the journey. During the routine ticket check, the passenger requests confirmation that he is on the right train. Due to his disability, he takes some time to ask the question. The inspector becomes rude and abusive at the length of time taken, thereby providing the passenger with worse service than normal. The fact that there are no other passengers in the carriage does not mean that the disabled passenger has not been treated less favourably than other passengers. Other passengers would not have been treated in this way.

4.8 There must be a connection between the less favourable treatment and a reason related to the disabled person's disability.

A taxi driver pulling up to a taxi rank refuses to pick up a disabled person whom he knows has epilepsy. Although she is clearly the next person in the queue, the driver gives her no reason for refusing to serve her, but picks up another customer instead. A court is likely to draw an inference of discrimination in the absence of a reasonable explanation. However, if the ground for refusing her service is because she has refused to pay in the past, then the treatment is not for a reason which is related to the disabled person's disability.

- 4.9 Treating a disabled person less favourably for a reason related to their disability cannot be excused on the basis that another customer who behaved similarly (but for a reason not related to disability) would be treated in the same way.

A group of deaf people who use British Sign Language (BSL) is ordered to leave a bus. The bus driver assumes that other passengers might mistake communication using BSL as threatening gestures. This refusal of service is for a reason related to disability. It is likely to be unlawful even though the bus driver would have ejected any other passengers who made similar gestures.

- 4.10 Nevertheless, the Act cannot be used as a pretext for disruptive or anti-social behaviour unrelated to a person's disability.

A taxi driver ejects a person with an artificial arm because he has drunk too much and has become abusive and disorderly. The taxi driver would have ejected any other passenger in similar circumstances. The refusal of service is not for a reason related to the disabled person's disability and is likely to be lawful.

Must a transport provider know that a person is disabled?

- 4.11 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.

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.

4.12 As explained in **Chapter 3**, the Disability Discrimination Act only protects those who fall within the Act's definition of 'disabled person'. This definition has been the subject of developing interpretation by the courts and, more recently, the definition in the Act itself has been broadened. Moreover, some disabilities are not visible, or the extent of the impairment may be masked. It may not be practicable for transport providers, or their employees, to make accurate assessments as to whether particular individuals fall within the statutory definition.

A disabled person with a heart condition has booked assistance on a train with stowing his luggage and getting to his seat. Because the disabled passenger's disability is not visible, the train manager refuses to believe that he has a disability and offers no assistance. This is likely to be unlawful.

- 4.13 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.

A transport provider's legal liability for its employees

- 4.14 Under the Act, transport providers are legally responsible for the actions of their employees in the course of their employment. An employee who discriminates against a disabled customer will usually be regarded as acting in the course of their employment, even if the transport provider has issued express instructions not to discriminate.
- 4.15 However, in legal proceedings against a transport provider based on the actions of an employee, it is a defence that the transport provider took 'such steps as were reasonably practicable' to prevent such actions. A policy on disability which is communicated to employees is likely to be central to such a defence. It is not a defence for the transport provider simply to show that the action took place without its knowledge or approval.

s 58(1)

s 58(5),
s 58(1)

What steps should a transport provider consider?

- 4.16 Transport providers are more likely to be able to comply with their duties under the Act and prevent their employees from discriminating

against disabled customers if they consider the following steps:

- establishing a positive policy on the provision of services to ensure inclusion of disabled people and communicating it to all staff
- informing all staff dealing with the public that it is unlawful to discriminate against disabled people
- training staff to understand the transport provider's policy towards disabled people, their legal obligations and the duty of reasonable adjustments
- monitoring the implementation and effectiveness of such a policy
- providing disability awareness and disability equality training for all staff, including those who do not have direct contact with the public
- addressing acts of disability discrimination by staff as part of disciplinary rules and procedures
- having a customer complaints procedure which is easy for disabled people to use
- consulting with disabled customers, disabled staff and disability organisations
- regularly reviewing whether their services are accessible to disabled people
- regularly reviewing the effectiveness of reasonable adjustments made for disabled people in accordance with the Act, and acting on the findings of those reviews; and
- ensuring that staff attend regular training and, where appropriate, refresher training which is relevant to the adjustments to be made.

Refusal or non-provision of service

- 4.17 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.

s 19(1)(a)

A group of disabled students are making their way to the buffet car on a train. Without giving any explanation, the train customer services manager refuses to allow the students access to the buffet. This is a refusal of service and is likely to be unlawful.

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.

- 4.18 Although there is nothing unlawful about genuinely seeking to assist disabled people by informing them where they might get service more suited to their requirements, refusing to serve a disabled person may be unlawful irrespective of the intention or motive. For example, a transport provider cannot refuse to serve a disabled person simply on the ground that another transport provider caters better for disability-related requirements.

Without making further enquiries or considering the issues involved, a vehicle rental operator refuses to hire a vehicle to a disabled person, arguing that a nearby larger vehicle rental

operator can offer a better service to disabled people. This is a refusal of service and is likely to be unlawful.

- 4.19 Spurious reasons cannot be used to refuse to serve a disabled person – even if the transport provider thinks that serving the disabled person will upset or raise objections from other customers.

A disabled person with a learning disability wishes to travel on an express coach. The coach driver pretends that all seats are taken in order to turn away the disabled passenger because of his disability. This is likely to be unlawful.

Standard or manner of service

s 19(1)(c)

- 4.20 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.

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

s 19(1)(d)

- 4.21 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 (but see paragraphs 5.38 and 5.39 below).

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.

Can transport providers treat a disabled person more favourably?

- 4.22 The Act does not prohibit positive action in favour of disabled people (unless this would be unlawful under other legislation). Therefore, transport providers may provide services on more favourable terms to a disabled person.

A train company offers a seat in first class (which has more legroom) without extra charge to a person with a hearing impairment who is accompanied by an assistance dog on a crowded train. This is to allow more room for the dog. This is within the law.

5

Making changes for disabled people: the transport provider's duty to make reasonable adjustments in relation to transport vehicles

Introduction

- 5.1 This chapter is concerned with the principles of the duty to make reasonable adjustments for disabled people, while **Chapter 6** deals with the practical application of the duty in relation to the provision and use of a vehicle.
- 5.2 The duty to make reasonable adjustments is a cornerstone of the Act and requires transport providers to take positive steps to make their services in respect of vehicles accessible to disabled people. This goes beyond simply avoiding treating disabled people less favourably for a disability-related reason.
- 5.3 The policy of the Act is not a minimalist policy of simply ensuring that some access is available to disabled people; it is, so far as it is reasonably practicable, to approximate the access enjoyed by disabled people to that enjoyed by the rest of the public. Accordingly, the purpose of the duty to make reasonable adjustments is 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.

What does the Act say?

- 5.4 One of the ways in which a transport provider discriminates against a disabled person is where the transport provider:

s 21

s 20(2)

s 20(2)(a)

- fails to comply with a duty to make reasonable adjustments imposed on it in relation to the disabled person; **and**

s 20(2)(b)

- cannot show that the failure to comply with that duty is justified.

Whether and when a transport provider might be able to justify a failure to make a reasonable adjustment is considered in **Chapter 7**.

s 19(1)(b)

5.5 It is unlawful for a transport provider to discriminate in this way if the effect is to make it impossible or unreasonably difficult for the disabled person to make use of services which the transport provider offers to the public.

5.6 As explained in paragraphs 4.14 and 4.15 above, under the Act transport providers are legally responsible for the actions of their employees in the course of their employment. An employee who discriminates against a disabled customer or passenger will usually be regarded as acting in the course of their employment. This applies equally in respect of a failure by a transport provider's employees to comply with the duty to make reasonable adjustments.

What is the transport provider's duty to make reasonable adjustments in relation to the provision or use of a vehicle?

s 21

5.7 Where a transport provider offers services to the public, it has a legal duty to take reasonable steps, depending on all the circumstances of the case, to make its services accessible to disabled people. This duty is referred to as the duty to make reasonable adjustments.

5.8 Under Part 3, the duty to make reasonable adjustments in respect of services comprises a series of duties falling into three main areas:

- changing practices, policies and procedures
- providing auxiliary aids and services; and
- overcoming a physical feature by removing it, altering it, avoiding it or providing services by alternative methods.

The Part 3 Code explains these duties in more detail.

5.9 The extent to which the duty to make reasonable adjustments applies in respect of the provision or use of a vehicle is slightly different from the duty as set out above. There are also differences according to the type of vehicle involved.

5.10 All transport providers offering services in relation to the provision or use of a vehicle have a duty to take reasonable steps to:

- change a **practice, policy or procedure** which makes it impossible or unreasonably difficult for disabled people to make use of those services
- provide an **auxiliary aid or service** if it would enable (or make it easier for) disabled people to make use of those services.

s 21(1)

s 21(4)

5.11 However, the duty to overcome a physical feature (the third bullet point in paragraph 5.8 above) does not arise in relation to the provision or use of a vehicle, with two exceptions. In the case of rental vehicles, the full duty to overcome physical features applies (see 5.13 below). In the case of

SI 2005/3190

breakdown recovery vehicles, the duty applies only in part (see 5.14 below).

5.12 As stated in **Chapter 2**, providers of public service vehicles, rail vehicles and, in future, taxis should bear in mind that they have obligations in respect of the physical fabric of their vehicles under Part 5 (see **Appendix** for details).

Rental vehicles

5.13 In the case of a service offered in relation to the provision or use of a rental vehicle, a transport provider also has a duty to:

- overcome a **physical feature** which makes it impossible or unreasonably difficult for disabled people to make use of this service, by:
 - **removing** the feature; or
 - **altering** it; or
 - providing a reasonable means of **avoiding** it; or
 - providing a reasonable **alternative** method of making the service available.

Breakdown recovery vehicles

5.14 In the case of a service provided through a breakdown recovery vehicle, a transport provider similarly has a duty to overcome a **physical feature** which makes it impossible or unreasonably difficult for disabled people to make use of that service. However, the duty extends only to:

- providing a reasonable **alternative** method of making the service available.

Reg 6

5

s 21(2)(a)

s 21(2)(b)

s 21(2)(c)

s 21(2)(d)

Reg 5

s 21(2)(d)

General approach to making reasonable adjustments

- 5.15 A transport provider should be able to identify the more obvious barriers or impediments encountered by disabled people in accessing its services in respect of the provision or use of vehicles. 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.
- 5.16 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.
- 5.17 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 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.

Use of reasonable adjustment examples

s 21(1)

5.18 Section 21 of the Act requires a transport provider to take such steps as it is reasonable, in all the circumstances of the case, for it 'to have to take' to make its services accessible to disabled people. The examples in this Code use the same language by discussing whether the step in the example concerned is likely to be a reasonable step for the transport provider 'to have to take'. This is not intended to indicate that the step considered in the example is the only way in which the transport provider can meet its duty under the Act. In any particular case, the transport provider's duty to make reasonable adjustments might be discharged by taking a different step or steps.

To whom is the duty to make reasonable adjustments owed?

- 5.19 A transport provider's duty to make reasonable adjustments is a duty owed to disabled people at large. It is not simply a duty that is weighed up in relation to each individual disabled person who wants to access a transport provider's services in respect of a particular vehicle. Disabled people are a diverse group with different requirements which transport providers need to consider.
- 5.20 No single aspect of the way in which a service is delivered will obstruct access to the service for all disabled people, or, in most cases, for disabled people generally. A policy which obstructs access to a service for people with a particular type of disability may present no difficulties for others with a different disability. The phrase 'disabled persons', which is used in relation to the duty,

means that transport providers need to consider features that impede people with one or more kinds of disability – for example, those with visual impairments or those with mobility impairments.

At what point does the duty to make reasonable adjustments arise?

- 5.21 Transport providers should not wait until a disabled person wants to use a service they provide before they give consideration to their duty to make reasonable adjustments. They should be thinking ahead about the accessibility of their services to disabled people. Transport providers should be planning continually for the reasonable adjustments they need to make, whether or not they already have disabled customers or passengers. They should anticipate the requirements of disabled people and the adjustments that may have to be made for them. In many cases, it is appropriate to ask customers or passengers to identify whether they have any particular requirements and, if so, what adjustments may need to be made. Failure to anticipate the need for an adjustment may render it too late to comply with the duty to make the adjustment. Furthermore, it may not of itself provide a defence to a claim that it was reasonable to have provided one.

As part of general customer service information on its train services, a train operator indicates that if a passenger cannot access the train buffet for a disability-related reason, they are welcome to an at-seat service and should ask a member of the on-board staff for assistance. This helps to ensure that the train buffet services are accessible to disabled people.

Does the duty of reasonable adjustment apply even if the transport provider does not know that the person is disabled?

- 5.22 A transport provider owes a duty of reasonable adjustment to 'disabled persons' as defined by the Act. This is a duty to disabled people at large, and applies regardless of whether the transport provider knows that a particular member of the public is disabled or whether it currently has disabled customers or passengers.
- 5.23 For this reason, employees should be made aware that they may be discriminating unlawfully even if they do not know that a customer or passenger is disabled and they should be reminded that not all impairments are visible. As explained in this chapter and in **Chapter 6**, the duty of reasonable adjustment is best met by the transport provider trying to anticipate the types of problems which could arise, and by training its employees to enquire rather than act on assumptions. The aim should be that, when disabled customers or passengers request services in respect of the provision or use of a vehicle, the transport provider has already taken all reasonable steps to ensure that they can be served.

Must transport providers anticipate every barrier?

- 5.24 When considering the provision of a reasonable adjustment, a transport provider should be flexible in its approach. However, there may be situations where it is not reasonable for a transport provider to anticipate a particular requirement.
- 5.25 Once a transport provider has become aware of the requirements of a particular disabled person

who uses or seeks to use its services, it might then become reasonable for the transport provider to take a particular step to meet those requirements. This is especially so where a disabled person has pointed out the difficulty they face in accessing services, or has suggested a reasonable solution to that difficulty.

How long does the duty continue?

- 5.26 The duty to make reasonable adjustments is a continuing duty. Transport providers should keep the duty under regular review in the light of their experience with disabled people wanting to access their services. In this respect it is an evolving duty, and not something that needs simply to be considered once and once only, and then forgotten. What was originally a reasonable step to take might no longer be sufficient and the provision of further or different adjustments might then have to be considered.

A rail operator which runs a mainline station sets up a small team dedicated to assisting disabled passengers with boarding and alighting from trains. However, an increasing number of requests for those services means that the team can have difficulty in meeting demand. As a result some disabled passengers are likely to be left without assistance. The provision of the dedicated team is therefore no longer an effective step in making the trains accessible. The rail operator decides to train all its platform staff to assist disabled passengers wherever required. Mainstreaming its training in this way is likely to be a reasonable step for the rail operator to have to take in the circumstances then existing.

- 5.27 Equally, a step which might previously have been an unreasonable one for a transport provider to have to take could subsequently become a reasonable step in the light of changed circumstances. For example, technological developments may provide new or better solutions to the problems of inaccessible services.

A coach company has vehicles fitted with an external wheelchair passenger lift mounted on the side of the vehicle. Some passengers with walking difficulties would also like to use the lift, but are too nervous to do so. When the company originally purchased its fleet, it investigated the option of purchasing vehicles fitted with wheelchair lifts which people with walking difficulties felt less nervous about using. It rejected the option because the equipment was not particularly effective. It would not have been a reasonable step for the company to have to take at that stage. Subsequently, as part of its ongoing replacement programme, the company makes enquiries and establishes that there is a new type of internal wheelchair lift available which is efficient, allows standing passengers to feel secure and is within budget. The company decides that when it replaces any of its vehicles, it will purchase coaches fitted with this type of lift. This is likely to be a reasonable step for the coach company to have to take at this time.

What is meant by 'reasonable steps'?

- 5.28 The duty to make reasonable adjustments contained in section 21 of the Act places a transport provider under a duty to take such steps as it is reasonable, in all the circumstances of the case, for it to have to take in order to make reasonable adjustments. The Act does not specify

that any particular factors should be taken into account. What is a reasonable step for a particular transport provider to have to take depends on all the circumstances of the case. It will vary according to:

- the type of services being provided
- the nature of the transport provider and its size and resources
- the effect of the disability on the individual disabled person.

5.29 However, without intending to be exhaustive, the following are some of the factors which might be taken into account when considering what is reasonable:

- whether taking any particular steps would be effective in overcoming the difficulty that disabled people face in accessing the services in question
- the extent to which it is practicable for the transport provider to take the steps
- the financial and other costs of making the adjustment
- the extent of any disruption which taking the steps would cause
- the extent of the transport provider's financial and other resources
- the amount of any resources already spent on making adjustments
- the availability of financial or other assistance.

An express coach is unable to pull up to the kerb of a scheduled stop due to another vehicle blocking its path. This means that there is insufficient space in which to deploy the powered wheelchair ramp, and consequently a wheelchair user is unable to get off at his destination stop. Other passengers are able to alight from the coach despite the vehicle blocking access to the kerb. Thus, although it is not the coach operator's responsibility to keep stops clear, its policy of making no stops between its set route stops (which are a substantial distance apart) has made the service impossible or unreasonably difficult for the wheelchair user to use. The operator will need to consider how the stopping policy can be adjusted so as to accommodate the requirements of such disabled passengers.

If the driver of the vehicle blocking kerb access is with his car, the coach driver could wait some moments for it to move out of the way. Alternatively, where it is safe and legal to do so, he might pull up to the nearest accessible kerb, a few yards further down the road from the inaccessible stop, informing the wheelchair user of this intention. Depending on the particular circumstances, these might be reasonable steps to have to take to adjust the stopping policy. However, it is not likely to be a reasonable step for the coach to have to drive the disabled passenger to his home in order to allow him to alight. The time, expense and extent of disruption to other passengers involved would probably be an unreasonable use of the coach operator's resources.

- 5.30 It is more likely to be reasonable for a transport provider with substantial financial resources to have to make an adjustment with a significant cost than for a transport provider with fewer resources.

A disabled motorist whose car has broken down away from home requests assistance from the large breakdown recovery operator with which he has a contract. A representative of the breakdown recovery operator arrives and discovers that the broken-down car cannot be repaired on site and must be towed away. The terms of the disabled motorist's contract allow for him to be taken home. Although the breakdown recovery operator would usually comply with these terms by taking motorists to their destination in the recovery vehicle, the disabled motorist has a mobility impairment and cannot climb into the recovery vehicle. The breakdown recovery operator therefore pays for an accessible vehicle, perhaps a suitable taxi, to take the disabled motorist home. This is likely to be a reasonable step for this large breakdown recovery operator to have to take in these circumstances.

A disabled motorist whose car has broken down away from home has no pre-existing arrangement with a breakdown recovery operator. He therefore rings a small local breakdown recovery operator for assistance. The breakdown recovery operator sends its one vehicle to assist, and discovers that the car cannot be repaired on site but must be towed away. The breakdown recovery operator would usually expect to tow the broken-down vehicle to a destination specified by the motorist, at a

standard rate per mile, allowing the motorist to ride in the recovery vehicle. The disabled motorist has a mobility impairment and cannot climb into the recovery vehicle. Since the breakdown recovery operator has very limited resources, it is unlikely to be reasonable for it to have to pay for an accessible taxi to take the disabled motorist on his long journey to his destination, in addition to towing his car in the usual way. It may, however, be reasonable for the breakdown recovery operator to have contact details on hand of local taxi firms with accessible vehicles.

- 5.31 The resources available to the transport provider as a whole are likely to be taken into account as well as other calls on those resources. Where the resources of the transport provider are spread across more than one business unit or profit centre, the calls on them all are likely to be taken into account in assessing reasonableness.
- 5.32 Transport providers should bear in mind that there are no hard and fast solutions. Action which may result in reasonable access to services being achieved for some disabled people may not necessarily do so for others. Equally, it is not enough for transport providers to make some changes if they still leave such services impossible or unreasonably difficult for disabled people to use.

A vehicle rental operator provides a service of installing hand controls in its vehicles to make them accessible to drivers who have restricted leg movement. However, this does not assist drivers who require pedal extensions rather than

hand controls in order to be able to drive. The vehicle rental operator will need to consider the requirements of these customers also.

A disabled wheelchair user wishes to board a train from an unstaffed station. He books ahead for assistance in boarding. The train operator takes steps to ensure that a staff member is available to provide assistance when the train arrives at the station. This is likely to be a reasonable step for the train operator to have to take in these circumstances.

A visually impaired passenger who has boarded a train at a mainline station asks for assistance in finding his seat. He has not pre-booked this assistance and for this reason his request is refused. The refusal is likely to be unlawful in these circumstances.

5.33 Similarly, a transport provider will not have taken reasonable steps if it attempts to provide an auxiliary aid or service which in practice does not help disabled people to access its vehicle-related services. The way in which an auxiliary aid or service is provided may be just as important as the auxiliary aid or service itself.

A bus operator has a fleet of buses, some of which are provided with power operated wheelchair ramps while others have manual wheelchair ramps. The operator deploys the buses with manual ramps on routes which run through unsafe areas, but bus drivers are

unwilling to leave their cabs unattended in these areas in order to activate the manual wheelchair ramp. As a result, wheelchair users are unable to board a bus in those areas. This makes the provision of manual ramps ineffective in these circumstances.

- 5.34 Once a transport provider has decided to put a reasonable adjustment in place, it is important to draw its existence to the attention of disabled people. The transport provider should also establish a means for letting disabled people know about the adjustment where the service is otherwise likely to be unreasonably difficult to use. This might be done by a simple sign or notice at the entrance to the transport provider's premises, or in the relevant vehicle or at a service point. Alternatively, the availability of a reasonable adjustment might be highlighted in forms or documents used by the transport provider, such as publicity materials. In all cases, it is important to use a means of communication which is itself accessible to disabled people. Failing to make people aware of the adjustment, if it is not obvious, may be tantamount to not making the adjustment at all.

A coach tour operator which provides loudspeaker commentary during the course of its tours provides written versions of the commentary on request. A specific mention to this effect by staff when passengers are making a booking, together with a prominent note advertising the service on the booking confirmation literature sent to passengers, assists disabled passengers to access the service.

5.35 If, having considered the issue thoroughly, there are genuinely no steps that it would be reasonable for a transport provider to take to make its services accessible, the transport provider is unlikely to be in breach of the law if it makes no changes. Such a situation is likely to be rare.

Protecting the fundamental nature of a business or service

5.36 The Act does not require a transport provider to take any steps which would fundamentally alter the nature of its service, operation, trade, profession or business. This means that a transport provider does not have to comply with a duty to make reasonable adjustments in a way which would so alter the nature of its business that the transport provider would effectively be providing a completely different kind of service.

A bus operator refuses to divert a bus from its scheduled route in order to pick up a disabled person who has difficulty getting to the bus stop, on the grounds that this would alter the fundamental nature of the service being provided. This is unlikely to be against the law. However, if a bus operator provides a door-to-door service, it is likely to be discriminatory to refuse to serve the disabled person in this way.

5.37 However, there might be an alternative reasonable adjustment which would ensure the accessibility of the services. If this can be provided without fundamentally altering the nature of the services or business, it would be a reasonable step for the transport provider to have to take.

s 21(6)

Cost of providing reasonable adjustments

s 20(5)

5.38 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.

A vehicle rental operator provides vehicles which can be fitted with hand controls and/or pedal extensions for disabled customers who require them. In order to recover the cost of fitting these controls, it charges the disabled customers a higher rate for renting these vehicles than it does other customers, although the vehicles are otherwise identical. This is unlikely to be within the law.

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.

s 20(5)

5.39 Sometimes a transport provider makes an additional service available to customers for which there is a charge. If the additional service is itself a reasonable adjustment which the transport provider has to provide under the Act to its disabled customers, those disabled customers cannot be charged for that service.

What is 'unreasonably difficult'?

s 19(1)(b)

5.40 It is unlawful for a transport provider to discriminate against a disabled person in failing to

comply with a duty to make reasonable adjustments when the effect of that failure is to make it impossible or 'unreasonably difficult' for the disabled person to make use of services provided to the public. The Act does not define what is meant by 'unreasonably difficult'.

- 5.41 However, when considering if services are unreasonably difficult for disabled people to use, transport providers should take account of whether the time, inconvenience, effort, discomfort, anxiety or loss of dignity entailed in using the service would be considered unreasonable by other people if they had to endure similar difficulties (see the example at paragraph 5.29 above).

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

- 5.42 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.

s 19(1)(b),
s 20(2),
s 21(10)

6

Reasonable adjustments in practice

Introduction

- 6.1 In **Chapter 5** the Code outlines the concept of the duty to make reasonable adjustments and provides an overview of the legal principles which underpin it. In this chapter the Code explains and illustrates how the duty works in practice in relation to the provision and use of a vehicle.
- 6.2 As explained in **Chapter 5**, the duty to make reasonable adjustments in respect of services comprises a series of duties falling into three main areas:
- changing practices, policies and procedure
 - providing auxiliary aids and services
 - overcoming a physical feature by
 - removing the feature; or
 - altering it; or
 - providing a reasonable means of avoiding it; or
 - providing the service by a reasonable alternative method.
- 6.3 The way in which the Part 3 duties have been applied to vehicles means that the duty to make reasonable adjustments relating to physical features applies only to vehicle rental and (in a more limited way) to breakdown recovery vehicles.

Practices, policies and procedures

What is the duty to change a practice, policy or procedure?

- 6.4 When a transport provider is providing services to its customers or passengers in respect of the provision or use of a vehicle, it will have established a particular way of doing this. Its practices (including policies and procedures) may be set out formally or may have become established informally or by custom. A transport provider might have a practice which – perhaps unintentionally – makes it impossible or unreasonably difficult for disabled people to make use of its services.
- 6.5 In such a case, the transport provider must take such steps as it is reasonable for it to have to take, in all the circumstances, to change the practice so that it no longer has that effect. This may simply mean instructing staff to waive a practice or amending a policy to allow exceptions or abandoning it altogether. Often, such a change involves little more than an extension of the courtesies which most transport providers already show to their customers or passengers.

A train operator has a policy of allowing only those passengers who have purchased appropriate tickets to sit in first class. However, on a particular service, the accessible toilet in standard class is out of order, leaving only an accessible toilet in first class available for use by passengers who use wheelchairs. A wheelchair user who is travelling in standard class is unable to access the toilet by moving through the train. Unless the train operator is prepared to waive its policy and allow the wheelchair user to sit in first

class in order to have access to the accessible toilet, the effect of its policy is to make it unreasonably difficult for the disabled passenger to use the train. This is likely to be unlawful.

An express coach operator has a policy of allowing only one piece of luggage per passenger to be stowed in the hold of its coaches. A disabled wheelchair user has a suitcase with her. Since she is able to transfer to a coach seat, she wishes to stow her folding wheelchair, as well as her suitcase, in the hold. However, the coach operator decides that the wheelchair constitutes 'a piece of luggage' and refuses to allow the stowage of both items in the hold. The effect of this refusal is to make the journey impossible for the disabled wheelchair user, since there is insufficient room for either item in the body of the coach. The express coach operator's failure to amend its luggage policy is likely to be unlawful.

What are practices, policies and procedures?

6.6 Practices, policies and procedures relate to the way in which a transport provider operates its business or provides its services. This includes any requirements that it makes of its customers or passengers. In principle, the terms cover:

- what a transport provider actually does (its **practice**)
- what a transport provider intends to do (its **policy**)
- how a transport provider plans to go about it (its **procedure**).

However, the three terms overlap and it is not always sensible to treat them as separate concepts.

A breakdown recovery operator has a policy of not allowing dogs in its vehicles. In cases where it is necessary for a broken-down vehicle to be towed from the scene by a representative of the breakdown recovery operator, the procedure is for occupants of the broken-down vehicle to be transferred to the cab of the breakdown recovery vehicle, but for any dogs to be left in the vehicle to be towed. The 'no dogs' policy is enforced in practice by this procedure. However, an assistance dog is trained to accompany at all times the disabled person using it, so both the dog and its owner can find a separation of this sort traumatic. In these circumstances therefore, the policy makes it unreasonably difficult for disabled people accompanied by an assistance dog to use the breakdown recovery service. The breakdown recovery operator decides to amend its 'no dogs' policy by allowing an exception for disabled passengers accompanied by an assistance dog. It also decides to publicise this amended policy in its promotional materials. These are likely to be reasonable steps for the breakdown recovery operator to have to take.

A coach operator has a policy of not reserving seats for passengers, but instead allowing them to choose their seats on boarding the coach. On arriving at the coach, a disabled person with mental health issues asks the driver to reserve him a seat near the front of the coach since, due to his disability, he feels anxious if not placed near the front exit. The coach driver waives the

non-reservation policy in order to reserve the disabled passenger a seat at the front. This is likely to be a reasonable step for the coach operator to have to take.

What are 'reasonable steps' in relation to practices, policies and procedures?

- 6.7 The Act does not define what are 'reasonable steps' for a transport provider to have to take in order to change its practices. The kinds of factors which may be relevant are described in paragraphs 5.28 to 5.35 above.
- 6.8 The purpose of taking the steps is to ensure that the practice no longer has the effect of making it impossible or unreasonably difficult for disabled people to use a service. Where there is an adjustment that the transport provider could reasonably put in place and which would make the service accessible, it is not sufficient for the transport provider to take some lesser step which would not result in the service being accessible.
- 6.9 A practice may have the effect of excluding or screening out disabled people from enjoying access to services. Or the practice may create a barrier or hurdle which makes it unreasonably difficult for disabled people to access these services. In such cases, unless the practice can be justified, a reasonable step for a transport provider to have to take might be to abandon it entirely or to amend or modify it so that it no longer has that effect.

A bus operator learns that several of its drivers regularly adopt the practice of pulling away sharply from bus stops before passengers have had the chance to sit down if they are able to do so. The effect of this practice is to make it unreasonably difficult for disabled people with mobility difficulties to use its buses, due to anxiety about falling. The bus operator instructs its drivers to wait, whenever possible, until passengers have found seats before pulling away from bus stops. Although it may not always be possible to achieve this, for example if the bus is crowded, if the bus operator ensures that its drivers adopt this practice as a matter of policy whenever it is possible to do so, this is likely to be a reasonable step for the bus operator to have to take.

- 6.10 As already stated in paragraph 2.27 above, providers of public service vehicles, rail vehicles and taxis may have obligations under Part 5 in respect of the design of their vehicles. For example, there are specific regulations covering audio-visual information screens on trains and ramps on buses. It should be noted, however, that the operation and maintenance of such devices is also likely to be covered by Part 3 of the Act.

A wheelchair user waits at a stop on a bus route where she knows the buses have ramps. However, the bus operator fails regularly to service and check the ramps on the buses in its fleet. When a bus arrives at the stop, its driver discovers that the ramp is not working and cannot be deployed. Although the ramp accords with the requirements of Part 5, the failure to check that the ramp is working properly means

that the bus operator is unlikely to have taken reasonable steps under Part 3 to enable disabled passengers to make use of its services.

Auxiliary aids and services

What is the duty to provide auxiliary aids or services?

- 6.11 A transport provider must take reasonable steps to provide auxiliary aids or services if this would enable (or make it easier for) disabled people to make use of a service in respect of the provision or use of a vehicle.

s 21(4)

What is an auxiliary aid or service?

- 6.12 The Part 3 Code gives many examples of auxiliary aids and services, and some examples relevant to the provision or use of a vehicle are set out below. But these are only illustrations of the kinds of auxiliary aids or services which a transport provider might need to consider. An auxiliary aid or service might be the provision of a special piece of equipment (such as a portable wheelchair ramp) or simply extra assistance to disabled people from staff.

Disabled passengers with a visual impairment or a learning disability may need assistance in identifying their destination stop when travelling on a bus. The bus operator instructs its drivers to announce stops on request. The bus operator is providing an auxiliary service which makes its bus journeys accessible. This is likely to be a reasonable step for the bus operator to have to take.

An express coach operator instructs its drivers to assist in guiding passengers who have difficulty in getting to and from seats when boarding and alighting (for example, if they are visually impaired). This is the provision of an auxiliary service and is likely to be a reasonable step for the express coach operator to have to take.

A disabled driver who has difficulty turning her head wishes to hire a car. However, the nature of her disability means that she requires a wider rear-view mirror than the standard model used by the vehicle rental operator. The vehicle rental operator clips a wider (panoramic) model over the standard mirror in one of its cars. This is likely to be a reasonable step for the vehicle rental operator to have to take.

6.13 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.

- 6.14 What is an appropriate auxiliary aid or service will vary according to the type of transport provider, the nature of the services being provided, and the requirements of the disabled passengers or potential passengers. Auxiliary aids and services are not limited to aids to communication.

There is almost always a gap between a train and a platform. A train operator provides a suitably chosen portable ramp which helps disabled people with a mobility impairment to board and alight from its trains safely. This is the provision of an auxiliary aid and is likely to be a reasonable step for the train operator to have to take.

A vehicle rental operator provides a service on request of fitting pedal extensions to its vehicles, for example, for people with restricted growth who require them in order to drive. This is the provision of an auxiliary aid, and is likely to be a reasonable step for the vehicle rental operator to have to take.

A bus tour provides a written commentary to the sights it passes to make them accessible to passengers with learning disabilities. The bus tour operator produces a version of the commentary which uses plain language, text and pictures to explain the sights. This is the provision of an auxiliary aid (suited to passengers with learning disabilities, but which may also benefit other people) and is likely to be a reasonable step for the bus tour operator to have to take.

- 6.15 Under the 2005 Regulations certain things are not treated as auxiliary aids or services. There is thus no obligation on transport providers to provide anything that involves a permanent alteration to the physical fabric of the vehicle (although there is nothing in the Act to prevent such provision).
- 6.16 Transport providers should remember that in the case of taxis, buses, coaches and rail vehicles, there is provision in Part 5 of the Act for minimum technical standards to be set. Such standards covering buses, coaches and rail vehicles are already in force (see **Appendix**).
- 6.17 Nothing in the Act requires a transport provider to provide an auxiliary aid or service to be used for personal purposes unconnected to the services being provided or to be taken away by the disabled person after use.

A coach tour operator provides a written commentary for disabled passengers who find it difficult to hear or follow the verbal commentary accompanying the tour. This written commentary is provided as a laminated booklet. Any disabled passengers using the booklet are using an auxiliary aid to assist them in following the tour. They would be expected to return the booklet at the end of the tour.

What are 'reasonable steps' in relation to auxiliary aids or services?

- 6.18 The duty to provide auxiliary aids or services requires the transport provider to take such steps as it is reasonable for it to have to take in all the circumstances of the case to make its services accessible to disabled people. What might be reasonable for a large transport provider (or one

with substantial resources) might not be reasonable for a smaller transport provider. The size of the transport provider, the resources available to it and the cost of the auxiliary service are relevant factors.

A large bus tour operator has hourly guided tours of a popular major city. It provides a radio microphone system for hearing-aid users to accompany the tour and periodically has a BSL interpreter available. The bus tour operator advertises this service and encourages BSL users to book space with the interpreter on the tours on that day. These are likely to be reasonable steps for the bus tour operator to have to take.

A small bus tour operator with limited resources provides a daily guided tour of local sights. It investigates the provision of equipment for hearing-aid users such as a portable induction loop in the bus, but rejects this option as ineffective because of interference caused by the bus's electrical systems. Instead, with little effort or cost, the bus tour operator decides to provide good quality audio taped guides (with an option of plug-in neck loops) which can be used by people with hearing aids who want to follow the guided tour. This is likely to be a reasonable step for the bus tour operator to have to take.

- 6.19 The reasonableness of the transport provider's response to disabled people's requirements will inevitably vary with the circumstances. The kinds of factors which may be relevant are described in paragraphs 5.28 to 5.35 above.

- 6.20 A transport provider will have to consider what steps it can reasonably take to meet the individual requirements of disabled people. How effectively the transport provider is able to do so will depend largely on how far it has anticipated the requirements of its disabled customers or passengers. Many things that seem impossible at the time they are confronted might have been accommodated relatively easily if prior thought had been given to the question.
- 6.21 The Act leaves open what particular auxiliary aids or services might be provided in specific circumstances. Disabled people may be able to help the transport provider to identify difficulties in accessing the service and what kind of auxiliary aid or service will overcome them. It is good practice to include disabled passengers in the process of considering what reasonable adjustments should be made. However, the duty remains on the transport provider to determine what steps it needs to take.

Using auxiliary aids or services to improve communication

- 6.22 In many cases, a transport provider will need to consider providing auxiliary aids or services to improve communication with people with a sensory impairment (such as those affecting hearing or sight) or a speech impairment or learning disabilities. The type of auxiliary aid or service will vary according to the importance, length, complexity or frequency of the communication involved. In some cases, more than one type of auxiliary aid or service might be appropriate, as different people have different communication requirements. Account should also be taken of people with multiple communication disabilities, such as deaf-

blindness or combined speech and hearing disabilities.

A large breakdown recovery operator issues its customers with a Helpline number which they can call if they need breakdown recovery assistance. In order to provide such a service to deaf customers, the breakdown recovery operator also issues a separate telephone number which can be used to transmit and receive SMS text messages. This is likely to be a reasonable step for the breakdown recovery operator to have to take.

Provision for people with a hearing disability

- 6.23 The Part 3 Code contains a list of some of the auxiliary aids or services which it might be reasonable to provide for people with a hearing disability. In relation to the provision or use of a vehicle, examples of auxiliary aids or services might include written information (such as a leaflet, guide or written commentary) and/or a facility for taking and exchanging written notes.

Due to a technical fault, a train is forced to terminate at an earlier station than scheduled. The train manager makes an announcement over the Passenger Information System informing passengers of the situation. On passing through the train, the train manager discovers one hearing-impaired passenger who was unable to hear the announcement. Using a notepad and pen, the train manager writes a short note for the passenger, explaining what is happening. This is likely to be a reasonable step for the train manager to have to take.

6.24 Transport providers should bear in mind that hearing impairments take many forms and are of varying degrees. What might be a reasonable auxiliary aid or service for a person with tinnitus or reduced hearing might not be a reasonable adjustment for someone who is profoundly deaf.

Provision for people with a visual impairment

6.25 The Part 3 Code contains a list of auxiliary aids or services which it might be reasonable to provide for people with a visual impairment. In relation to the provision or use of a vehicle, examples of auxiliary aids or services might include the reading out of information, spoken announcements or verbal communication; assistance with guiding; and documents in large print or Braille.

A visually impaired person carrying a long cane is waiting at a bus stop which is used by buses on several different routes. On seeing that the waiting passenger is carrying a long cane, the bus drivers call out to her the number and destination of their buses, in case she is waiting for their bus. This is provision of an auxiliary service and may be a reasonable step for the bus drivers to have to take.

6.26 As with other forms of sensory impairments, visual disabilities are of varying kinds and degrees. Transport providers need to consider what is the most appropriate auxiliary aid or service to provide. More than one auxiliary aid or service may be necessary according to the circumstances.

A train operator is reviewing the accessibility of its on-board information for passengers who are partially sighted or blind. It decides to change the print size and redesign the appearance of its emergency evacuation information. This makes the on-board information more accessible to partially sighted passengers, but does not assist those who are blind. The train operator therefore also decides that a member of its on-board staff should offer to read out the information to passengers on request. These are likely to be reasonable steps for the train operator to have to take.

Provision for people with other disabilities or multiple disabilities

- 6.27 There are many examples of how auxiliary aids or services can be used to improve communication with people who have hearing disabilities or visual impairments. Transport providers should also consider how communication barriers can be overcome for people with other disabilities. For example, a passenger with a learning disability may be able to access on-board information by the provision of documents in large, clear print and plain language or by the use of colour coding and illustrations.
- 6.28 Transport providers should not assume that their services are made accessible to customers or passengers with multiple disabilities simply by providing auxiliary aids or services which are suitable for people with individual disabilities.
- 6.29 For example, deafblind people (individuals who have a severe combined sight and hearing impairment) are not necessarily assisted in

accessing services by the simple provision of communication aids designed for use by people with hearing disabilities or visual impairments. Such aids could assist deafblind people if appropriately used (for example, information leaflets produced in Braille or Moon, good lighting and acoustics, induction loop systems, etc). However, what is appropriate will depend on the nature and extent of the individual's dual sensory impairment and the methods they use to communicate and access information. Where transport providers give their staff disability awareness training, they should consider including ways of helping deafblind people, such as guiding them safely and tracing capital letters and numbers on the palm of the hand.

Overcoming barriers created by physical features

- 6.30 As explained in **Chapter 5**, the duty to make reasonable adjustments to physical features in respect of the provision or use of a vehicle applies only to **vehicle rental** and **breakdown recovery** vehicles. Both the application of this duty and what constitutes a physical feature are slightly different for each type of service, as is described below.
- 6.31 The kinds of factors which may be relevant in deciding what are reasonable steps for a transport provider to have to take are described in paragraphs 5.28 to 5.35 above.

Rental vehicles

- 6.32 In respect of rental vehicles, the duty to make reasonable adjustments in respect of physical features applies to M1 vehicles only.

What is the duty to make reasonable adjustments in relation to physical features?

6.33 Where a 'physical feature' makes it impossible or unreasonably difficult for disabled people to make use of a service in respect of the provision or use of a rental vehicle, a transport provider must take reasonable steps to:

- remove the feature; or
- alter it so that it no longer has that effect; or
- provide a reasonable means of avoiding the feature; or
- provide a reasonable alternative method of making the service available to disabled people.

6.34 Thus, the duty provides four possible ways in which the barriers created by such features might be overcome. However, although a transport provider technically has the option of complying with any of the four strands of the duty set out above, it is likely that the application of the duty in respect of rental vehicles will focus on the removal or alteration of a physical feature (see paragraphs 6.35 and 6.36 below).

What is a 'physical feature'?

6.35 The 2005 Regulations provide that certain things are to be treated as physical features in a rental vehicle.

Any part of the vehicle that requires alteration in order to make provision for:

s 21(2)

Reg 8(1)

Reg 8(2)

- hand controls to enable a disabled person to operate braking and accelerator systems for the vehicle; and
- facilities for stowing a wheelchair

is to be treated as a physical feature.

Such features are likely to be covered whether the alterations required are temporary or permanent.

6.36 There are a few exceptions to paragraph 6.35 above:

- in relation to altering a vehicle to install hand controls, fixed seating and in-built electrical systems are not to be treated as physical features; and
- in relation to altering a vehicle to allow the stowage of a wheelchair, fixed seating is not to be treated as a physical feature.

In these cases, where something is not treated as a physical feature, there is no obligation to alter it.

A disabled driver wishes to hire a rental car. In order to be able to drive, he requires hand controls to be fitted in the vehicle. The vehicle rental operator alters the braking and accelerator controls in one of its cars by installing a set of hand controls which the driver can use. This is likely to be a reasonable step for the vehicle rental operator to have to take.

A disabled wheelchair user wishes to hire a car. She does not need to drive from her wheelchair, but she does need to take it with her. The vehicle

rental operator fits one of its vehicles with a wheelchair hoist mounted in the boot, which enables the wheelchair user to stow her wheelchair in the vehicle. She can then use her wheelchair on reaching her destination. This is likely to be a reasonable step for the vehicle rental operator to have to take.

Breakdown recovery vehicles

What is the duty to make reasonable adjustments in relation to physical features?

6.37 Where a 'physical feature' makes it impossible or unreasonably difficult for disabled people to make use of a service in respect of the provision or use of a breakdown recovery vehicle, a transport provider must take reasonable steps to:

- provide a reasonable alternative method of making the service available to disabled people.

What is a 'physical feature'?

6.38 The 2005 Regulations do not define a physical feature in relation to breakdown recovery vehicles. What may constitute a physical feature in a breakdown recovery vehicle is likely to include any feature arising from its design or operation, including the means of entering or exiting the vehicle. Such features are likely to be covered, whether temporary or permanent.

6.39 In reality, because the duty to overcome physical features in breakdown recovery vehicles is limited (see paragraph 6.37 above), what will be considered a physical feature in a breakdown

s 21(2)(d),
SI 2005/3190
Reg 5

recovery vehicle for the purposes of the Act will not be extensive.

A breakdown recovery operator sends a vehicle to assist a disabled motorist whose car has broken down on his journey home. On arrival, the breakdown recovery representative discovers that the broken-down car cannot be repaired immediately and must be towed away. The terms of the motorist's breakdown contract provide for him to be taken on to his destination in the event of a breakdown that cannot be resolved on site. The breakdown recovery operator would usually expect to comply with these terms by transporting customers in the cab of the recovery vehicle. The cab has steps leading up to it, which constitute a physical feature. However, the motorist has a mobility impairment and cannot climb up the steps into the cab. The breakdown recovery operator therefore orders an accessible vehicle, perhaps a suitable taxi, to take the motorist home at no extra charge. This is provision of a service by an alternative method and is likely to be a reasonable step for the breakdown recovery operator to have to take.

7 Can a transport provider justify less favourable treatment or a failure to make reasonable adjustments?

Introduction

- 7.1 A transport provider should not be looking for reasons or excuses to discriminate against disabled people who wish to use the services it provides. It is in the transport provider's own best interests to ensure that its services are accessible to all customers and passengers.
- 7.2 However, in limited circumstances, the Act does permit a transport provider to justify the less favourable treatment of a disabled person or a failure to make a reasonable adjustment. This cannot be used as a reason for a general exclusion of disabled people from access to services. The circumstances in which such treatment or failure might be justified are examined in this chapter.

Less favourable treatment

- 7.3 A transport provider discriminates against a disabled person if:
- for a reason which relates to the disabled person's disability, it treats them less favourably than it treats or would treat others to whom that reason does not or would not apply; **and**
 - it cannot show that the treatment in question is **justified**.
- s 20(1)(a)
- s 20(1)(b)

Failure to make reasonable adjustments

7.4 A transport provider also discriminates against a disabled person if:

- s 20(2)(a)
 - it fails to comply with a duty to make reasonable adjustments imposed on it under the Act in relation to the disabled person; **and**
- s 20(2)(b)
 - it cannot show that the failure to comply with that duty is **justified**.

s 20(9) 7.5 Treating a disabled person less favourably for a reason related to disability or failing to comply with a duty to make reasonable adjustments may be justified **only if**:

- s 20(3)(a)
 - the transport provider believes that one or more of the relevant conditions detailed in paragraphs 7.11 to 7.24 below are satisfied; **and**
- s 20(3)(b)
 - it is reasonable in all the circumstances of the case for that person to hold that opinion.

s 20(4) 7.6 The conditions specified in the Act relate to:

- health or safety
- the disabled person being incapable of entering into a contract
- the transport provider being otherwise unable to provide the service to the public
- enabling the transport provider to provide the service to the disabled person or other members of the public
- the greater cost of providing a tailor-made service.

These are explained in more detail in paragraphs 7.11 to 7.24 below.

- 7.7 If the reason for less favourable treatment or for failure to comply with a duty to make reasonable adjustments does not fall within one of the relevant conditions, it cannot be justified and will therefore be unlawful.

The general approach to justification

- 7.8 The test of justification is twofold: did the transport provider believe that at least one of the specified conditions was satisfied? (a subjective test) and was that belief reasonably held? (an objective test). A transport provider does not have to be an expert on disability, but it should take into account all the circumstances, including any information which is available, any advice which it would be reasonable to seek, and the opinion of the disabled person. The transport provider should also consider whether it could make reasonable adjustments so that there would no longer be any less favourable treatment to justify. The lawfulness of what a transport provider does or fails to do will be judged by what it knew (or could reasonably have known), what it did and why it did it **at the time** of the alleged discriminatory act.
- 7.9 In some instances, it will not be clear whether any of the justifications apply. It may be shown subsequently that a transport provider was mistaken in its opinion in a particular case. Coming to an incorrect conclusion does not necessarily mean that the transport provider has discriminated unlawfully against a disabled person. In such cases, a transport provider may be able to justify less favourable treatment or a failure to make reasonable adjustments if it can show that it was reasonable, in all the circumstances of the case, for it to hold that opinion at the time.

7.10 If a disabled person can show that they have been treated less favourably than others for a reason related to their disability, it is for the transport provider to show that the action taken was justified. Similarly, if a disabled person can show that the transport provider has failed to comply with a duty to make reasonable adjustments in relation to the disabled person, it is for the transport provider to show that the failure was justified. In either case, the justification must fall within one of the relevant categories of justification set out in the Act and which are described in paragraphs 7.11 to 7.24 immediately below. Some of the categories of justification only apply to particular acts of otherwise unlawful discrimination.

Health or safety

7.11 The Act does not require a transport provider to do anything which would endanger the health or safety of any person. A transport provider can justify less favourable treatment or a failure to make an adjustment if it is necessary in order not to endanger the health or safety of any person, including the disabled person in question.

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.

A disabled wheelchair user wishes to travel on a coach which has no wheelchair lift. Since the disabled person is able to get out of the wheelchair for short distances, she asks that it be stowed in the luggage compartment for the journey. However, the wheelchair is a particularly heavy and cumbersome electric model which cannot be broken down into smaller parts. The driver attempts to pick it up but, finding this particularly difficult, he refuses to lift it in and out of the luggage compartment. Although this means the wheelchair user is unable to travel on the coach, the driver genuinely believes that his health or safety would be endangered by lifting the wheelchair, and it is likely to be reasonable for him to hold that belief. In these circumstances the driver's refusal is likely to be justified.

- 7.12 The justification cannot apply unless the transport provider reasonably believes that the treatment is necessary in order not to endanger the health or safety of any person. Health or safety reasons which are based on generalisations and stereotyping of disabled people provide no defence. Transport providers should ensure that any action taken in relation to health or safety is proportionate to the risk. There must be a balance between protecting against the risk and restricting disabled people from using the service. Disabled people are entitled to make the same choices and to take the same risks within the same limits as other people.

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.

7.13 As indicated in paragraph 7.11 above, before a transport provider relies on health or safety to justify less favourable treatment of a disabled person, it should consider whether a reasonable adjustment could be made which would allow the disabled person to access the service without concerns for health or safety. Similarly, if health or safety is used to justify a failure to make a particular reasonable adjustment, the transport provider should consider whether there is any alternative adjustment that could be made to allow the disabled person to use the service.

Incapacity to contract

7.14 The Act does not require a transport provider to contract with a disabled person who is incapable of entering into a legally enforceable agreement or of giving an informed consent. If a disabled person is unable to understand a particular transaction, a transport provider may refuse to enter into a contract. This might also justify discriminatory standards or manner or terms of service, as well as a failure to make a reasonable adjustment.

s 20(4)(b),
s 20(9)

7.15 Any such refusal must be reasonable. A person may be able to understand less complicated transactions, but have difficulty with more complex ones. Unless there is clear evidence to the contrary, a transport provider should assume that a disabled person is able to enter into any contract.

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.

7.16 The Disability Discrimination (Services and Premises) Regulations 1996 (and, as of 4 December 2006, the Disability Discrimination (Service Providers and Public Authorities Carrying Out Functions) Regulations 2005) made under the Act prevent transport providers from justifying less favourable treatment of a disabled person on the ground of incapacity to contract or inability to give an informed consent where another person is legally acting on behalf of the disabled person.

7.17 Before a transport provider seeks to justify any form of discrimination against a disabled person on the ground of incapability of entering into an enforceable agreement or of giving an informed consent, the transport provider should consider whether a reasonable adjustment could be made to solve this problem.

SI 1996/1836
Reg 8,
SI 2005/2901
Reg 3

7

Transport provider otherwise unable to provide the service in respect of provision or use of a vehicle to the public

s 20(4)(c)

7.18 A transport provider can justify refusing to provide (or deliberately not providing) a service in respect of the provision or use of a vehicle to a disabled person if this is necessary because the transport provider would otherwise be unable to provide the service to other members of the public.

A coach tour operator runs a tour involving many sightseeing stops at which passengers make their own way around the tourist attractions. It refuses to allow a person with severe dementia on the tour because, unless accompanied, she often becomes disorientated and wanders off without warning. Although the disabled passenger would be brought to and collected from the coach at the start and end of the tour by a member of her family, there is no one to accompany her during the tour. The coach tour operator's refusal to allow the disabled passenger on the tour is likely to be justified because it has well-founded reasons for believing that the extra time taken to find her would prevent the coach party from completing the tour.

7.19 However, refusing service to a disabled person is only justifiable if other people would be effectively prevented from using the service at all unless the transport provider treated the disabled person less favourably than other people. It is not enough that those other people would be inconvenienced or delayed.

A disabled customer with a speech impairment or a learning disability may have difficulty in explaining to a bus driver what their destination is. If the bus driver refuses to allow them on the bus in order not to delay other customers waiting to board, this is unlikely to be justified.

- 7.20 Before a transport provider seeks to rely on this justification for a refusal of provision (or a non-provision) of services to a disabled person, it should first consider whether there are any reasonable adjustments that could be made to allow the disabled person to enjoy the service.

To enable the transport provider to provide the service to the disabled person or other members of the public

- 7.21 A transport provider can justify providing service of a lower standard or in a worse manner or on worse terms (an inferior service) if this is necessary in order to be able to provide the service to the disabled person or other members of the public.

A heritage train operator restricts a wheelchair user's choice of train carriages to the one with wheelchair access. Although each carriage is decorated to illustrate a different type of old rolling stock, the wheelchair user only has the option of seeing the decor of the carriage he is in (unlike other passengers who have the option of viewing each carriage). The disabled person would otherwise be unable to travel on the heritage train. The restriction is necessary in order to provide the service to the disabled passenger. This is likely to be justified.

s 20(4)(d)

7

7.22 However, providing an inferior service to a disabled person is only justifiable if other people or the disabled person would be effectively prevented from using the service at all unless the transport provider treated the disabled person less favourably than other people. A transport provider cannot justify such treatment of a disabled person simply because of other people's preferences or prejudices.

A bus operator providing a bus service to a small rural community restricts the times a passenger who has AIDS is allowed to travel. The other passengers, who are aware of his condition, have objected to his presence because of a groundless fear that they might become infected with HIV by normal contact with him. Despite his reassurances, the bus operator has bowed to the pressure of the other passengers. This is unlikely to be justified.

7.23 Before a transport provider seeks to rely on this justification for an inferior service to a disabled person, it should first consider whether there are any reasonable adjustments that could be made to allow the disabled person to enjoy the service.

Greater cost of providing a tailor-made service

7.24 A transport provider can justify charging a disabled person more for some services than it charges other people. This is where the service is individually tailored to the requirements of the disabled customer or passenger. If a higher charge reflects the additional cost or expense of meeting the disabled person's specification, that would justify the higher charge.

s 20(4)(e)

A disabled customer orders a rental car which is fitted with a four-way joystick (one stick for controlling direction, acceleration and braking). The adaptation has to be individually calibrated to accommodate her disability. The vehicle rental operator charges more for this car than it does for a standard one, as the specially designed vehicle has had to be extensively modified and adapted in order to meet the disabled customer's requirements. This is likely to be justified.

- 7.25 However, justification on this ground cannot apply where the extra cost results from the provision of a reasonable adjustment – see **Chapter 5** for further details.

Further limitations on duty not to discriminate

- 7.26 A transport provider is not required to do anything under the Act that will result in a breach of legal obligations under any other legislation or enactment. However, it is only in cases where a legal obligation is specific in its requirements, leaving a transport provider with no choice other than to act in a particular way, that the provisions of the Act may be overridden.

s 20(5)

s 59

Appendix

Part 5 of the Act: public transport regulations

Introduction

As explained in **Chapter 1**, Part 5 of the Act has a particular relevance to transport. Although the purpose of this Code is to explain the transport-related changes to Part 3 brought about by the 2005 Act, a brief description of the provisions of Part 5 is set out below.

Trains, buses, coaches and taxis

Part 5 allows the Government to set access standards for buses, coaches, trains, trams and taxis. The Government has produced regulations on access standards for rail vehicles (the Rail Vehicle Accessibility Regulations) and these apply to vehicles entering service from 1 January 1999. Access standards for certain buses and coaches which are used on local or scheduled services (the Public Service Vehicles Accessibility Regulations), have applied to new vehicles since the end of 2000. Access standards for taxis have not been introduced as at the date at which this Code is published.

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

SI 1998/2456,
SI 2000/3215,
SI 2000/1970,
SI 2000/3318,
SI 2002/2981,
SI 2003/1818,
SI 2004/1881,
SI 2005/2988

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

s 37,
SI 2000/2990,
s 37a,
SI 2003/3122

Since 31 March 2001 in England and Wales and 31 March 2003 in Scotland, 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 in England, Wales and Scotland to the drivers of PHVs, and in England and Wales 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.

Changes to Part 5: rail vehicles

s 46(4A),
s 47(A–C),
s 47(D–M)

The 2005 Act amends Part 5, requiring the Secretary of State to set an end date of no later than 2020 by which all rail vehicles will have to comply with Part 5 rail access standards. Other

changes will affect the procedures governing the certification of rail vehicles as compliant and the way in which breaches of the regulations are penalised. For more information on these changes, please contact the Department for Transport.

Index

- airline operators 2.22–2.23
- assistance dogs 2.27, Appendix
- auxiliary aids and services 5.8, 6.2, 6.12–6.17
 - duty 6.11
 - hearing disability 6.23–6.24
 - other disabilities or multiple disabilities 6.27–6.29
 - reasonable steps 6.18–6.21
 - to improve communication 6.22
 - visual impairment 6.25–6.26

- bad treatment 4.5
- breakdown recovery vehicles 2.6, 2.13, 2.15
 - physical features 6.38–6.39
 - reasonable adjustments to physical features 5.11, 5.14, 6.2–6.3, 6.30, 6.37
- buses 2.6, 2.13, 2.18, 6.10
 - access standards 2.27, 5.12, 6.16, Appendix

- coaches 2.6, 2.13, 2.18, 6.10
 - access standards 2.27, 5.12, 6.16, Appendix
- communication, auxiliary aids and services 6.22–6.29
- costs
 - as justification 7.6, 7.24–7.25
 - less favourable treatment 4.21
 - reasonable adjustments 5.29, 5.30, 5.38–5.39, 7.25

- deafblind people, auxiliary aids and services 6.29
- disability, definition 3.16–3.21, 4.12–4.13
- disability equality duty 2.26
- Disability Rights Commission (DRC) 1.21
- discrimination 3.8–3.9, 3.10–3.15, 4.2
 - claims 3.22
 - limitations on duty 7.26

see also justification; less favourable treatment;
reasonable adjustments

employees

legal liability for 4.14–4.15, 5.6, 5.23

training 5.17

guided transport 2.6, 2.13, 2.21

health or safety 7.6, 7.11–7.13

hearing disability, auxiliary aids and services 6.23–6.24

hire vehicles see rental vehicles

incapacity to contract 7.6, 7.14–7.17

justification 7.1–7.2, 7.5–7.7

cost 7.24–7.25

general approach 7.8–7.10

health or safety 7.11–7.13

incapacity to contract 7.14–7.17

less favourable treatment 3.11, 7.3

otherwise unable to provide the service 7.18–7.20

reasonable adjustments 3.13, 7.4

to enable provision of service 7.21–7.23

learning disabilities, auxiliary aids and services 6.27

less favourable treatment 3.11, 4.1, 4.3–4.10, 7.3

knowing a person is disabled 4.11–4.13

legal liability for employees 4.14–4.15

refusal or non-provision of service 4.17–4.19

standard or manner of service 4.20

steps to consider 4.16

terms of service 4.21

see also justification

light rail vehicles 2.6

M1 vehicles 2.16, 6.32

M2 vehicles 2.16

more favourable treatment 4.22

N1 vehicles 2.16
 non-provision of service 4.17–4.19, 7.6

physical features 5.8, 5.11–5.12, 6.2, 6.3, 6.30–6.31
 auxiliary aids and services 6.15
 breakdown recovery vehicles 5.14, 6.37–6.39
 rental vehicles 5.13, 6.32–6.36

positive action 4.22

practices, policies and procedures 5.8, 6.2
 definition 6.6
 duty to change 6.4–6.5
 reasonable steps 6.7–6.10

private hire vehicles (PHVs) 2.6, 2.13, 2.17
 carriage of assistance dogs 2.27, Appendix

public service vehicles 2.6, 2.13, 2.18, 6.10
 access standards 2.27, 5.12, 6.16, Appendix
 practices, policies and procedures 6.10

public transport
 access standards 2.27, Appendix
 see also private hire vehicles; public service vehicles;
 rail vehicles; taxis

rail vehicles 2.6, 2.13, 2.19
 access standards 2.27, 5.12, 6.16, Appendix
 practices, policies and procedures 6.10

reasonable adjustments 3.13, 4.2, 5.1–5.3, 7.4
 anticipating 5.21
 anticipating every barrier 5.24–5.25
 auxiliary aids and services 6.11–6.29
 breakdown recovery vehicles 5.14
 continuing duty 5.26–5.27
 cost 5.38–5.39, 7.25
 duty 5.7–5.12, 6.1–6.3
 duty to disabled people at large 5.19–5.20
 general approach 5.15–5.17
 knowing a person is disabled 5.22–5.23
 non-compliance 5.42
 physical features 6.30–6.39
 practices, policies and procedures 6.4–6.10

- protecting the fundamental nature of a business or service 5.36–5.37
- rental vehicles 5.13, 6.32
- reviewing 4.16
- unreasonably difficult 5.40–5.41
- use of examples 5.18
- what the Act says 5.4–5.6
- what is meant 5.28–5.35
- see also justification
- refusal of service 4.17–4.19
- rental vehicles 2.6, 2.13, 2.16
 - physical features 6.35–6.36
 - reasonable adjustments to physical features 5.11, 5.13, 6.2–6.3, 6.30, 6.32–6.34

- safety 7.6, 7.11–7.13
- Scotland
 - private hire vehicles 2.17
 - taxis 2.20
- sensory impairment 6.22
 - see also hearing disability; visual impairment
- shipping operators 2.22–2.23
- standard of service 4.20

- taxis 2.6, 2.13, 2.20
 - access standards 2.27, 5.12, 6.16, Appendix
 - carriage of assistance dogs 2.27, Appendix
 - practices, policies and procedures 6.10
- terms of service 4.21
- trains 2.6, 2.19
 - access standards 2.27, 6.16, Appendix
- trams 2.6, 2.19
- transport exemption 1.4
 - narrowing and lifting 1.6–1.7, 2.2–2.3
- transport infrastructure 1.5, 2.2, 2.24
- transport providers 3.2–3.7
- transport service 2.7

- unreasonably difficult 5.40–5.41

vehicle rental see rental vehicles

vehicles

covered by 2005 Regulations 2.13–2.21

definition 2.11–2.12

provision or use of 2.7–2.10

victimisation 3.15

visual impairment, auxiliary aids and services 6.25–6.26

Copies of this publication can be downloaded from the Disability Rights Commission website:
www.drc-gb.org

Copies of this publication in Braille, audio CD and CD-ROM formats are also available from The Stationery Office.

Welsh language copies can be downloaded from the Disability Rights Commission website and Welsh print, audio CD and CD-ROM formats can be ordered from The Stationery Office.

For information and advice from the Disability Rights Commission visit the DRC website at: www.drc-gb.org

You can also contact the DRC Helpline between 08:00 and 20:00, Monday to Friday.

Telephone: 08457 622 633

Textphone: 08457 622 644

Fax: 08457 778 878

Website: www.drc-gb.org

Post: DRC Helpline
FREEPOST
MID 02164
Stratford upon Avon
CV37 9BR

You can email the DRC Helpline from our website:
www.drc-gb.org



www.tso.co.uk

ISBN 0-11-703632-3



9 780117 036321 >