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STATUTORY INSTRUMENTS

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**2006 No. 312**

**The Disability Discrimination (Northern Ireland) Order 2006**

*Transport*

**Application of sections 19 to 21 of the 1995 Act to transport vehicles**

7. After section 21 of the 1995 Act insert—

**“21ZA Application of sections 19 to 21 to transport vehicles**

(1) Section 19(1)(a), (c) and (d) do not apply in relation to a case where the service is a transport service and, as provider of that service, the provider of services discriminates against a disabled person—

- (a) in not providing, or in providing, him with a vehicle; or
- (b) in not providing, or in providing, him with services when he is travelling in a vehicle provided in the course of the transport service.

(2) For the purposes of section 21(1), (2) and (4), it is never reasonable for a provider of services, as a provider of a transport service—

- (a) to have to take steps which would involve the alteration or removal of a physical feature of a vehicle used in providing the service;
- (b) to have to take steps which would—
  - (i) affect whether vehicles are provided in the course of the service or what vehicles are so provided, or
  - (ii) where a vehicle is provided in the course of the service, affect what happens in the vehicle while someone is travelling in it.

(3) Regulations may provide for subsection (1) or (2) not to apply, or to apply only to a prescribed extent, in relation to vehicles of a prescribed description.

(4) In this section—

“transport service” means a service which (to any extent) involves transport of people by vehicle;

“vehicle” means a vehicle for transporting people by land, air or water, and includes (in particular)—

- (a) a vehicle not having wheels, and
- (b) a vehicle constructed or adapted to carry passengers on a system using a mode of guided transport;

“guided transport” means transport by vehicles guided by means external to the vehicles (whether or not the vehicles are also capable of being operated in some other way).”

## **Rail vehicles: application of accessibility regulations**

8.—(1) In section 46 of the 1995 Act (rail vehicle accessibility regulations), before subsection (5) insert—

“(4A) The Department for Regional Development shall exercise the power to make rail vehicle accessibility regulations so as to secure that on and after 1st January 2020 every rail vehicle is a regulated rail vehicle, but this does not affect the powers conferred by subsection (5) or section 47(1) or 67(2).”.

(2) In that section for the definition in subsection (6) of “rail vehicle” substitute—

““rail vehicle” means a vehicle constructed or adapted to carry passengers by rail;”.

(3) For section 47(1) of the 1995 Act (rail vehicle accessibility regulations: power to exempt use of vehicles of specified descriptions or in specified circumstances) substitute—

“(1) The Department for Regional Development may by order (an “exemption order”)—

- (a) authorise the use for carriage of a regulated rail vehicle even though the vehicle does not conform with the provisions of rail vehicle accessibility regulations with which it is required to conform;
- (b) authorise a regulated rail vehicle to be used for carriage otherwise than in conformity with the provisions of rail vehicle accessibility regulations with which use of the vehicle is required to conform.

(1A) Authority under subsection (1)(a) or (b) may be for—

- (a) any regulated rail vehicle that is specified or is of a specified description; or
- (b) use in specified circumstances of—
  - (i) any regulated rail vehicle, or
  - (ii) any regulated rail vehicle that is specified or is of a specified description.”.

(4) In the 1995 Act, after section 67 insert—

### **“67A Exercise of discretion under section 67(4B)**

(1) Before the Department for Regional Development decides which of the Assembly procedures available under section 67(4B) is to be adopted in connection with the making of any particular order under section 47(1), it must consult such persons as it thinks appropriate.

(2) An order under section 47(1) may be made without a draft of the order having been laid before, and approved by a resolution of, the Assembly only if—

- (a) regulations under subsection (3) are in force; and
- (b) the making of the order without such laying and approval is in accordance with the regulations

(3) Regulations may set out the basis on which the Department for Regional Development, when it comes to make an order under section 47(1), will decide which of the Assembly procedures available under section 67(4B) is to be adopted in connection with the making of the order.

(4) Before making regulations under subsection (3), the Department for Regional Development must consult such persons as it considers appropriate.

### **67B Annual report on rail exemption orders**

(1) The Department for Regional Development must after each 31st December prepare, in respect of the year that ended with that day, a report on—

- (a) the exercise in that year of the power to make orders under section 47(1); and
  - (b) the exercise in that year of the discretion under section 67(4B).
- (2) A report under subsection (1) must (in particular) contain—
- (a) details of each order made under section 47(1) in the year in respect of which the report is made; and
  - (b) details of consultation carried out under sections 47(3) and 67A(1) in connection with orders made in that year under section 47(1).
- (3) The Department for Regional Development must lay before the Assembly each report that it prepares under this section.”.

#### Commencement Information

**II** Art. 8 in operation at 2.9.2013 by S.R. 2013/216, art. 2(a)

PROSPECTIVE

#### Rail vehicles: accessibility compliance certificates

9.—(1) In the 1995 Act, after section 47 insert—

##### “47A Rail vehicle accessibility compliance certificates

(1) A regulated rail vehicle to which this subsection applies shall not be used for carriage unless a rail vehicle accessibility compliance certificate is in force for the vehicle.

(2) Subsection (1) applies to a regulated rail vehicle if the vehicle—

- (a) is prescribed; or
- (b) is of a prescribed class or description.

(3) A rail vehicle accessibility compliance certificate is a certificate that the Department for Regional Development is satisfied that the regulated rail vehicle conforms with those provisions of rail vehicle accessibility regulations with which the vehicle is required to conform.

(4) A rail vehicle accessibility compliance certificate may provide that it is subject to conditions specified in the certificate.

(5) Subsection (6) applies where—

- (a) the Department for Regional Development refuses an application for the issue of a rail vehicle accessibility compliance certificate for a regulated rail vehicle; and
- (b) before the end of the prescribed period, the applicant asks the Department for Regional Development to review the decision and pays any fee fixed under section 47C.

(6) The Department for Regional Development shall—

- (a) review the decision; and
- (b) in doing so, consider any representations made to it in writing, before the end of the prescribed period, by the applicant.

*Status: This version of this part contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the The Disability Discrimination (Northern Ireland) Order 2006, Transport. (See end of Document for details)*

#### **47B Rail vehicle accessibility compliance certificates: supplementary**

(1) Regulations may make provision with respect to rail vehicle accessibility compliance certificates.

(2) The provision that may be made under subsection (1) includes (in particular)—

- (a) provision for certificates to be issued on application;
- (b) provision specifying conditions to which certificates are subject;
- (c) provision as to the period for which certificates are to continue in force or as to circumstances in which certificates are to cease to be in force;
- (d) provision (other than provision of a kind mentioned in paragraph (c)) dealing with failure to comply with a condition to which a certificate is subject;
- (e) provision for the withdrawal of certificates issued in error;
- (f) provision for the correction of errors in certificates;
- (g) provision with respect to the issue of copies of certificates in place of certificates which have been lost or destroyed;
- (h) provision for the examination of a rail vehicle before a certificate is issued in respect of it.

(3) In making provision of the kind mentioned in subsection (2)(a), regulations under subsection (1) may (in particular)—

- (a) make provision as to the persons by whom applications may be made;
- (b) make provision as to the form in which applications are to be made;
- (c) make provision as to information to be supplied in connection with an application, including (in particular) provision requiring the supply of a report of a compliance assessment.

(4) For the purposes of this section, a compliance assessment is an assessment of a rail vehicle against provisions of rail vehicle accessibility regulations with which the vehicle is required to conform.

(5) In requiring a report of a compliance assessment to be supplied in connection with an application, regulations under subsection (1) may make provision as to the person who has to have carried out the assessment, and may (in particular) require that the assessment be one carried out by a person who has been appointed by the Department for Regional Development to carry out compliance assessments (an “appointed assessor”).

(6) For the purposes of any provisions in regulations under subsection (1) with respect to the supply of reports of compliance assessments carried out by appointed assessors, regulations under that subsection—

- (a) may make provision about appointments of appointed assessors, including (in particular)—
  - (i) provision for an appointment to be on application or otherwise than on application;
  - (ii) provision as to who may be appointed;
  - (iii) provision as to the form of applications for appointment;
  - (iv) provision as to information to be supplied with applications for appointment;
  - (v) provision as to terms and conditions, or the period or termination, of an appointment; and

- (vi) provision for terms and conditions of an appointment, including any as to its period or termination, to be as agreed by the Department for Regional Development when making the appointment;
- (b) may make provision authorising an appointed assessor to charge fees in connection with, or incidental to, its carrying-out of a compliance assessment, including (in particular)—
  - (i) provision restricting the amount of a fee;
  - (ii) provision authorising fees that contain a profit element; and
  - (iii) provision for advance payment of fees;
- (c) may make provision requiring an appointed assessor to carry out a compliance assessment, and to do so in accordance with any procedures that may be prescribed, if prescribed conditions, which may include conditions as to the payment of fees to the assessor, are satisfied;
- (d) shall make provision for the referral to the Department for Regional Development of disputes between—
  - (i) an appointed assessor carrying out a compliance assessment, and
  - (ii) the person who requested the assessment,relating to which provisions of rail vehicle accessibility regulations the vehicle is to be assessed against or to what amounts to conformity with any of those provisions.

(7) In subsection (6)(b) to (d) “compliance assessment” includes pre-assessment activities (for example, a consideration of how the outcome of a compliance assessment would be affected by the carrying-out of particular proposed work).

#### **47C Rail vehicle accessibility compliance certificates: fees**

- (1) Such fees, payable at such times, as may be prescribed may be charged by the Department for Regional Development in respect of—
  - (a) applications for, and the issue of, rail vehicle accessibility compliance certificates;
  - (b) copies of such certificates;
  - (c) reviews under section 47A;
  - (d) referrals of disputes under provision that, in accordance with section 47B(6)(d), is contained in regulations under section 47B(1).
- (2) Any such fees received by the Department for Regional Development shall be paid by it into the Consolidated Fund.
- (3) Regulations under subsection (1) may make provision for the repayment of fees, in whole or in part, in such circumstances as may be prescribed.
- (4) Before making any regulations under subsection (1) the Department for Regional Development shall consult such representative organisations as it thinks fit.”.
- (2) In section 49 of the 1995 Act (forgery and false statements)—
  - (a) in subsection (1) (“relevant documents”), after paragraph (d) insert  
“; or  
(e) a rail vehicle accessibility compliance certificate.”, and
  - (b) in subsection (4) (false statements), for “or an approval certificate” substitute “ , an approval certificate or a rail vehicle accessibility compliance certificate ”.

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(3) In section 68(1) of the 1995 Act (interpretation), before the definition of “rail vehicle accessibility regulations” insert—

““rail vehicle accessibility compliance certificate” has the meaning given in section 47A(3);”.

PROSPECTIVE

### **Rail vehicles: enforcement and penalties**

10.—(1) In the 1995 Act, after section 47C (which is inserted by Article 9) insert—

#### **“47D Penalty for using rail vehicle without accessibility compliance certificate**

**47D.** If a regulated rail vehicle to which section 47A(1) applies is used for carriage at a time when no rail vehicle accessibility compliance certificate is in force for the vehicle, the Department for Regional Development may require the operator of the vehicle to pay a penalty.

#### **47E Penalty for using rail vehicle that does not conform with accessibility regulations**

(1) Where it appears to the Department for Regional Development that a regulated rail vehicle does not conform with a provision of rail vehicle accessibility regulations with which the vehicle is required to conform, that Department may give to the operator of the vehicle a notice—

- (a) identifying the vehicle, the provision and how the vehicle fails to conform with the provision; and
- (b) specifying the improvement deadline.

(2) The improvement deadline specified in a notice under subsection (1) may not be earlier than the end of the prescribed period beginning with the day when the notice is given to the operator.

(3) Subsection (4) applies where—

- (a) the Department for Regional Development has given a notice under subsection (1);
- (b) the improvement deadline specified in the notice has passed; and
- (c) it appears to the Department for Regional Development that the vehicle still does not conform with the provision identified in the notice.

(4) The Department for Regional Development may give to the operator a further notice—

- (a) identifying the vehicle, the provision and how the vehicle fails to conform to the provision; and
- (b) specifying the final deadline.

(5) The final deadline specified in a notice under subsection (4) may not be earlier than the end of the prescribed period beginning with the day when the notice is given to the operator.

(6) If—

- (a) the Department for Regional Development has given a notice under subsection (4) to the operator of a regulated rail vehicle, and
- (b) the vehicle is used for carriage at a time after the final deadline when the vehicle does not conform with the provision identified in the notice,

the Department for Regional Development may require the operator to pay a penalty.

#### **47F Penalty for using rail vehicle otherwise than in conformity with accessibility regulations**

(1) Where it appears to the Department for Regional Development that a regulated rail vehicle has been used for carriage otherwise than in conformity with a provision of rail vehicle accessibility regulations with which use of the vehicle is required to conform, that Department may give to the operator of the vehicle a notice—

- (a) identifying the provision and how it was breached;
- (b) identifying which of the regulated rail vehicles operated by the operator is or are covered by the notice; and
- (c) specifying the improvement deadline.

(2) The improvement deadline specified in a notice under subsection (1) may not be earlier than the end of the prescribed period beginning with the day when the notice is given to the operator.

(3) Subsection (4) applies where—

- (a) the Department for Regional Development has given a notice under subsection (1);
- (b) the improvement deadline specified in the notice has passed; and
- (c) it appears to that Department that a vehicle covered by the notice has after that deadline been used for carriage otherwise than in conformity with the provision identified in the notice.

(4) The Department for Regional Development may give to the operator a further notice—

- (a) identifying the provision and how it was breached;
- (b) identifying which of the regulated rail vehicles covered by the notice under subsection (1) is or are covered by the further notice; and
- (c) specifying the final deadline.

(5) The final deadline specified in a notice under subsection (4) may not be earlier than the end of the prescribed period beginning with the day when the notice is given to the operator.

(6) If—

- (a) the Department for Regional Development has given a notice under subsection (4), and
- (b) a vehicle covered by the notice is at a time after the final deadline used for carriage otherwise than in conformity with the provision identified in the notice,

that Department may require the operator of the vehicle to pay a penalty.

(7) For the purposes of subsection (1), a vehicle is operated by a person if that person is the operator of the vehicle.

#### **47G Sections 47E and 47F: inspection of rail vehicles**

(1) Where the Department for Regional Development has reasonable grounds for suspecting that a regulated rail vehicle may not conform with provisions of rail vehicle accessibility regulations with which it is required to conform, a person authorised by that Department—

- (a) may inspect the vehicle for conformity with the provisions;
- (b) for the purpose of exercising his power under paragraph (a)—
  - (i) may enter premises if he has reasonable grounds for suspecting the vehicle to be at those premises, and

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(ii) may enter the vehicle; and

(c) for the purpose of exercising his power under paragraph (a) or (b), may require any person to afford such facilities and assistance with respect to matters under that person's control as are necessary to enable the power to be exercised.

(2) Where the Department for Regional Development has given a notice under section 47E(1) or (4), a person authorised by that Department—

(a) may inspect the vehicle concerned for conformity with the provision specified in the notice;

(b) for the purpose of exercising his power under paragraph (a)—

(i) may enter premises if he has reasonable grounds for suspecting the vehicle to be at those premises, and

(ii) may enter the vehicle; and

(c) for the purpose of exercising his power under paragraph (a) or (b), may require any person to afford such facilities and assistance with respect to matters under that person's control as are necessary to enable the power to be exercised.

(3) A person exercising power under subsection (1) or (2) shall, if required to do so, produce evidence of his authority to exercise the power.

(4) Where a person obstructs the exercise of power under subsection (1), the Department for Regional Development may, for purposes of section 47E(1) or 47F(1), draw such inferences from the obstruction as appear proper.

(5) Where a person—

(a) obstructs the exercise of power under subsection (2), and

(b) the obstruction occurs before a notice under section 47E(4) is given in respect of the vehicle concerned,

the Department for Regional Development may treat section 47E(3)(c) as satisfied in the case concerned.

(6) Where a person obstructs the exercise of power under subsection (2) and the obstruction occurs—

(a) after a notice under section 47E(4) has been given in respect of the vehicle concerned, and

(b) as a result of the operator, or a person who acts on his behalf, behaving in a particular way with the intention of obstructing the exercise of the power,

the Department for Regional Development may require the operator of the vehicle to pay a penalty.

(7) In this section “inspect” includes test.

#### **47H Sections 47E and 47F: supplementary powers**

(1) For the purposes of section 47E, the Department for Regional Development may give notice to a person requiring the person to supply the Department for Regional Development, by a time specified in the notice, with a vehicle number or other identifier for a rail vehicle—

(a) of which that person is the operator; and

(b) which is described in the notice.

(2) The time specified in a notice given to a person under subsection (1) may not be earlier than the end of 14 days beginning with the day when the notice is given to the person.



(3) If a person to whom a notice is given under subsection (1) does not comply with the notice by the time specified in the notice, the Department for Regional Development may require the person to pay a penalty.

(4) Where the Department for Regional Development has given a notice to a person under section 47E(1) or (4) or 47F(1) or (4), that Department may request that person to supply that Department, by a time specified in the request, with a statement detailing the steps taken in response to the notice.

(5) The time specified in a request under subsection (4) must—

- (a) if the request relates to a notice under section 47E(1) or 47F(1), be no earlier than the improvement deadline; and
- (b) if the request relates to a notice under section 47E(4) or 47F(4), be no earlier than the final deadline.

(6) Where a request under subsection (4)—

- (a) relates to a notice under section 47E(1) or 47F(1), and
- (b) is not complied with by the time specified in the request,

the Department for Regional Development may treat section 47E(3)(c) or (as the case may be) section 47F(3)(c) as being satisfied in the case concerned.

#### **47J Penalties under sections 47D to 47H: amount, due date and recovery**

(1) In this section “penalty” means a penalty under any of sections 47D to 47H.

(2) The amount of a penalty—

- (a) must not exceed the maximum prescribed for the purposes of this subsection; and
- (b) must not exceed 10 per cent of the turnover of the person on whom it is imposed.

(3) For the purposes of subsection (2)(b), a person's turnover shall be determined in accordance with regulations.

(4) A penalty must be paid to the Department for Regional Development before the end of the prescribed period.

(5) Any sum payable to the Department for Regional Development as a penalty may be recovered by that Department as a debt due to it.

(6) In proceedings under subsection (5) for enforcement of a penalty, no question may be raised as to—

- (a) liability to the imposition of the penalty; or
- (b) its amount.

(7) Any sum paid to the Department for Regional Development as a penalty shall be paid by it into the Consolidated Fund.

(8) The Department for Regional Development shall issue a code of practice specifying matters to be considered in determining the amount of a penalty.

(9) The Department for Regional Development may from time to time revise the whole or any part of the code and issue the code as revised.

(10) Before issuing the first or a revised version of the code, the Department for Regional Development shall lay a draft of that version before the Assembly.

(11) After laying the draft of a version of the code before the Assembly, the Department for Regional Development may bring that version of the code into operation by order.

*Status: This version of this part contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the The Disability Discrimination (Northern Ireland) Order 2006, Transport. (See end of Document for details)*

(12) The Department for Regional Development shall have regard to the code (in addition to any other matters it thinks relevant)—

- (a) when imposing a penalty; and
- (b) when considering under section 47K(6) a notice of objection under section 47K(4).

**47K Penalties under sections 47D to 47H: procedure**

(1) In this section “penalty” means a penalty under any of sections 47D to 47H.

(2) If the Department for Regional Development decides that a person is liable to a penalty, that Department must notify the person of the decision.

(3) A notification under subsection (2) must—

- (a) state that Department's reasons for deciding that the person is liable to the penalty;
- (b) state the amount of the penalty;
- (c) specify the date before which, and the manner in which, the penalty must be paid; and
- (d) include an explanation of the steps that the person may take if he objects to the penalty.

(4) Where a person to whom a notification under subsection (2) is issued objects on the ground that—

- (a) he is not liable to the imposition of a penalty, or
- (b) the amount of the penalty is too high,

the person may give a notice of objection to the Department for Regional Development.

(5) A notice of objection must—

- (a) be in writing;
- (b) give the objector's reasons; and
- (c) be given before the end of the prescribed period.

(6) Where the Department for Regional Development receives a notice of objection to a penalty in accordance with this section, that Department shall consider it and—

- (a) cancel the penalty;
- (b) reduce the penalty; or
- (c) determine to do neither of those things.

(7) Where the Department for Regional Development considers under subsection (6) a notice of objection under subsection (4), it shall—

- (a) inform the objector of its decision before the end of the prescribed period or such longer period as it may agree with the objector; and
- (b) if it reduces the penalty, notify the objector of the reduced amount.

**47L Penalties under sections 47D to 47H: appeals**

(1) A person may appeal to the county court against a penalty imposed on him under any of sections 47D to 47H on the ground that—

- (a) he is not liable to the imposition of a penalty; or
- (b) the amount of the penalty is too high.

(2) On an appeal under this section, the county court may—

- (a) allow the appeal and cancel the penalty;
- (b) allow the appeal and reduce the penalty; or
- (c) dismiss the appeal.

(3) An appeal under this section shall be a re-hearing of the decision of the Department for Regional Development to impose a penalty, and shall be determined having regard to—

- (a) any code of practice under section 47J which has effect at the time of the appeal; and
- (b) any other matters which the county court thinks relevant (which may include matters of which the Department for Regional Development was unaware).

(4) An appeal may be brought by a person under this section against a penalty whether or not—

- (a) he has given notice of objection under section 47K(4); or
- (b) the penalty has been reduced under section 47K(6).

#### **47M Sections 46 to 47H: interpretation**

(1) In sections 46 to 47H “operator”, in relation to any rail vehicle, means the person having the management of that vehicle.

(2) For the purposes of those sections, a person uses a vehicle for carriage if he uses it for the carriage of passengers.

(3) Where an exemption order under section 47 authorises use of a rail vehicle even though the vehicle does not conform with a provision of rail vehicle accessibility regulations, references in sections 47A to 47G to provisions of rail vehicle accessibility regulations with which the vehicle is required to conform do not, in the vehicle's case, include that provision.”.

(2) In section 49 of the 1995 Act (Part V—public transport: offences), after subsection (4) insert—

“(5) A person who falsely pretends to be a person authorised to exercise power under section 47G is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.”.

and, in the section's heading, after “Forgery and false statements” insert “, and impersonation”.

**Status:**

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**Changes to legislation:**

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