

EXPLANATORY MEMORANDUM TO
THE DISABILITY DISCRIMINATION (PREMISES) REGULATIONS 2006
2006 No. 887

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 From 4 December 2006 the Disability Discrimination Act (DDA) 1995, as amended by the DDA 2005, places landlords and those who manage rented premises (referred to in the legislation as “controllers of let premises” and “controllers of premises to let”) under a duty in certain circumstances to make adjustments for disabled people who are either tenants or occupiers of those rented premises. The Regulations support implementation of this new duty by prescribing a number of things, for example, what should (and should not) be treated as a physical feature, and by making provision for the duty to apply to commonholds¹.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Background

4.1 The DDA 1995 makes it unlawful to unjustifiably treat a disabled person less favourably than others for a disability-related reason in the disposal (eg the sale or rental) of premises. The DDA 2005 made some changes to this duty and inserted new duties into the DDA 1995 which require a controller of let premises and a controller of premises to let to make reasonable adjustments for disabled tenants and occupiers, unless failure to do so can be justified. The new duties will come into force on 4 December 2006. From that date, where various conditions are met, controllers of premises will have to take reasonable steps to:

- Make changes to their practices, policies or procedures for premises that are let, or to let;
- Provide auxiliary aids and services for premises that are let, or to let;
- Change terms of a letting for premises that are let.

4.2 The duty does not extend to steps that would involve the removal or alteration of a physical feature of the premises by the controller of premises (section 49G of the DDA 1995, inserted as a Government amendment to the Bill during its Parliamentary passage, makes provision about consent to disability-related improvements where a term of a lease permits the making of improvements

¹ Commonhold is a system of freehold ownership which is suitable for blocks of flats, shops, offices and other multiple occupation premises in England and Wales.

subject to landlord's consent, and regulation 7 (see below) makes provision where a term of a lease prohibits improvements altogether).

- 4.3 The Regulations are part of a package of measures to implement the DDA 2005 (for example, S.I. 2005/2901² and S.I. 2005/3258³, and a proposed Code of Practice on the new duties to be issued by the Disability Rights Commission (DRC) later this year). This set of Regulations support implementation of the new duty of reasonable adjustment by, for example, prescribing what is (and is not) to be treated as a physical feature (and therefore whether it is covered by the duty), and by making provision for the duty (and the less favourable treatment duty) to apply to commonholds. The opportunity has also been taken for some rationalisation of statutory instruments. Regulation 7 of S.I. 1996/1836⁴, which applies to less favourable treatment in respect of withholding deposits for rented premises, is remade as regulation 3, with the slight clarification that it applies also where only part of a deposit is withheld. This means that all regulations which apply to the duties in respect of the disposal and management of premises and the making of reasonable adjustments will now be in one place; and two sets of Regulations can be revoked⁵.
- 4.4 With the exception of deposits (regulation 3), this is the first use of new regulation-making powers inserted into the DDA 1995 by the DDA 2005. Where appropriate, the drafting is consistent with S.I. 2005/2901 and S.I. 2005/3258 where they deal with similar matters (for example, regulation 2 which disapplies the justification defence where a person with power of attorney acts for a disabled person who is incapable of entering into an enforceable agreement or of giving informed consent).
- 4.5 During passage of the Bill that led to the DDA 2005, Baroness Hollis of Heigham said (Lords Hansard, 28 February 2005, Vol 670, No. 44, col 77), in particular, that the powers would be exercised where a term of a lease prohibited the making of alterations to the premises by the tenant so that, in certain circumstances, he would be able to make alterations with the landlord's consent. Regulation 7 achieves this purpose.

5. Extent

- 5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

² The Disability Discrimination (Service Providers and Public Authorities Carrying Out Functions) Regulations 2005.

³ The Disability Discrimination (Private Clubs etc.) Regulations 2005.

⁴ The Disability Discrimination (Services and Premises) Regulations 1996.

⁵ The other set of Regulations revoked is S.I. 2002/1980 - The Disability Discrimination (Services and Premises) (Amendment) Regulations 2002.

7. Policy background

- 7.1 The DDA 1995 was introduced to tackle the discrimination that disabled people face in a number of areas, including access to goods and services and in the disposal (ie the sale, rental and management) of premises. However, when the DDA 1995 was enacted the protection it provided in respect of disposal of premises was only against unjustified less favourable treatment for a disability-related reason. This was in contrast to the provisions relating to goods and services where there was also a duty to make reasonable adjustments for disabled people ie where reasonable, service providers have to make positive efforts to level the playing field by, for example, changing their policies or by providing auxiliary aids or services for disabled customers.
- 7.2 This gap in protection led to criticism of the DDA 1995, and recommendations by a Government-appointed Disability Rights Task Force for the introduction of a duty of reasonable adjustment in respect of rented premises (recommendations 6.25 and 6.26⁶, “From Exclusion to Inclusion”, December 1999). The Government accepted these recommendations in principle in 2001 (paragraph 3.83⁷, “Towards Inclusion – civil rights for disabled people”). Clause 6 of the draft Disability Discrimination Bill published in December 2003 (Cm 6058-1) would have required “controllers of let premises” and “controllers of premises to let” to make reasonable adjustments for disabled tenants and occupiers in certain circumstances. Having taken considerable public evidence, the Joint Committee published its report on 27 May 2004 (HC 352-I, HL Paper 82-I). In respect of clause 6, the Report recommended simply that a planned DRC code of practice should explain the duty of reasonable adjustment fully.
- 7.3 Provisions on reasonable adjustment were included in the resulting Bill presented to Parliament in March 2005, and were enacted on 7 April 2006 as section 13 of the DDA 2005. The duty of reasonable adjustment is set out in sections 24A to 24L of the DDA 1995, as amended by the DDA 2005 and will come into force on 4 December 2006. As recommended by the Joint Committee, this duty (and other ones) will be explained in and supported by a DRC code of practice which it is intended to lay before Parliament shortly in June and issue in August 2006. The code does not have the force of law, but a court would have to take account of the code in any case where it considers the content relevant.
- 7.4 Under these new duties, provided certain conditions are met (for example, that a request has been made), a controller of premises that are to let, or of premises which have been let, may, for example, have to provide an auxiliary aid such

⁶ 6:25: “In civil rights legislation, those covered by the Disability Discrimination Act premises provisions should be under a duty to make reasonable adjustments to their policies, practices and procedures, in the same way as service providers.”

6:26: “In civil rights legislation, those disposing of premises to the public should continue to be covered by the duty under the Disability Discrimination Act access to service provisions to provide auxiliary aids and services in the selling and letting of premises. This duty should extend to any communication between those disposing of premises and the lessee once the premises had been let.”

⁷ 3.83: “We agree in principle to extending to those who let or manage premises duties relating to reasonable adjustments to policies, practices and procedures, and the provision of auxiliary aids and services...”

as a lease in a larger font for someone with a visual impairment or change a policy to allow a wheelchair user to park their vehicle outside their block of flats even though other occupiers are not permitted to do so. The policy intention is that the new duties (in combination with the existing ones) will enable disabled people to rent and enjoy premises and facilities associated with them in a similar way as non-disabled people, by removing barriers to their occupation and enjoyment.

- 7.5 A public consultation on use of the regulation-making powers (Cm 6402) was conducted between December 2004 and March 2005. The consultation sought views on several subjects, although one of them, concerning a landlord's consent to a tenant making alterations to their rented home, was overtaken during the consultation period by the amendments to the Bill mentioned in paragraph 4.2 above. Other relevant matters were: whether what should be treated as a physical feature should be prescribed, and if so how; circumstances in which the incapacity justification should not apply; and whether commonholds should be brought within scope of the premises duties. The document was sent to a wide range of professional and representative bodies including landlord and disability organisations.
- 7.6 The results of the consultation were announced by written statement on 21 July 2005 (House of Commons Hansard vol: 436, col: 169WS). On these three issues, 84% of respondents who commented (27 of 33 responses) agreed that what should be treated as a physical feature should be prescribed and 61% (20 of 33 responses) agreed with the proposed approach on prescription; 87% (26 of 30 responses) agreed with the proposed circumstances for the incapacity justification not to apply; and 88% (23 of 26 responses) agreed that regulations should bring commonholds within the premises duties. An analysis of these responses to the consultation is at Annex A of the attached Regulatory Impact Assessment. The full results of the consultation (which also covered proposals in respect of private clubs, the definition of disability and the Questions Procedure) and of the Government's formal response is available at: <http://www.dwp.gov.uk/consultations/consult/2004/ddb/response-private-clubs.doc>
- 7.7 Due to the change brought about by the amendment to the Bill during the consultation period, a further consultation was conducted between October and November 2005 with around 80 organisations. The views of housing and disability organisations and of respondents to the previous consultation were sought on draft Regulations. The draft Regulations were also made available on the Department's website. The twelve responses broadly supported the approach proposed in the draft Regulations.

8. Impact

- 8.1 A Regulatory Impact Assessment is attached to this memorandum.
- 8.2 The impact on the public sector is estimated to be £110,000 from these Regulations. Local Authority landlords will be required to make reasonable adjustments on the same basis as private and Registered Social Landlords. The majority of Local Authority housing is let on an unfurnished basis, though, so costs arising should be notional.

9. Contact

Richard Timm at the Department for Work and Pensions (Tel: 020 796 28741 or e-mail: Richard.Timm@dwp.gsi.gov.uk) can answer any queries regarding the instrument.

Disability Discrimination Act 2005

The Disability Discrimination (Premises) Regulations 2006

Regulatory Impact Assessment

1. Title

Full Regulatory Impact Assessment

1.1 DISABILITY DISCRIMINATION ACTS 1995 and 2005 (DDA 1995 and 2005):
The Disability Discrimination (Premises) Regulations 2006.

1.2 A partial Regulatory Impact Assessment (RIA) was published in December 2004 in support of a Department for Work and Pensions (DWP) public consultation (Cm 6402) on the Government's proposals for using certain regulation-making powers under what was then the Disability Discrimination Bill. This included proposals for regulations in respect of premises. The Government undertook the consultation exercise to help ensure that the eventual regulations would operate properly and coherently and best support the Bill's framework of duties. This RIA takes account of the outcome of that consultation as announced by the Minister for Disabled People on 21 July 2005 and of a subsequent small scale consultation on draft Regulations.

1.3 An RIA to support the DDA 2005 was published in July 2005. It can be accessed on the internet at <http://www.dwp.gov.uk/publications>

1.4 The consultation document (Cm 6402 - Disability Discrimination Bill: Consultation on Private clubs; premises; the definition of disability and the questions procedure) can also be accessed on the internet at <http://www.dwp.gov.uk/publications>

2. Purpose and intended effect of measures

The objective

2.1 The DDA 2005 makes a wide range of amendments to the DDA 1995. This includes measures which extend duties of reasonable adjustment in respect of the provision of auxiliary aids and services, and changes to policies, practices and procedures (but not changes to physical features) to "controllers of let premises" and "controllers of premises to let" ie those who let or manage rented premises. These measures are intended to enable disabled people to rent and enjoy premises and facilities associated with them in a similar way as non-disabled people, by removing barriers to their occupation and enjoyment.

2.2. The Regulations support these new duties by, for example, specifying what are to be treated as auxiliary aids or services.

The background

2.3 On 3 December 2003, the Government published a draft Disability Discrimination Bill which underwent pre-legislative scrutiny by a Joint Committee of both Houses of Parliament. The draft Bill included provisions to extend the duty of reasonable adjustment to controllers of premises and to provide the Disability Rights Commission (DRC) with powers to issue a Code of Practice giving guidance on the duties. A Disability Discrimination Bill was introduced into the House of Lords on 25 November 2004, and gained Royal Assent on 7

April 2005 as the Disability Discrimination Act 2005. The new duties of reasonable adjustment will come into force on 4 December 2006

Risk Assessment

2.4 The DDA 2005, which amends the DDA 1995, creates new or improved civil rights for over 10 million disabled people in Great Britain who may potentially be covered by the DDA 1995. The measures address a number of omissions in the DDA 1995 and help to tackle discrimination and barriers that disabled people face in accessing goods, services, facilities and premises.

2.5 The consultation document Cm 6402 set out the Government's proposals for using regulation-making powers provided by the DDA 2005. The following issues were considered in the consultation document in respect of premises:

- Whether, and if so how, to specify what should or should not be treated as a 'physical feature' for purposes of new duties of reasonable adjustment which apply to controllers of premises (controllers of premises are under no duty to take any steps which involve the removal or alteration of a physical feature).
- Whether to regulate to ensure that under the duty of reasonable adjustment a controller of premises would not be required to consent to a tenant making alterations to rented premises, or have to change a practice, policy or procedure regarding landlords' consent to tenants' improvements. (This proposal was overtaken by subsequent changes to the Bill during its Parliamentary passage.)
- Whether to disapply justification defences in respect of premises in the DDA 2005 1995, as amended by the DDA 2005, where another person (such as a power of attorney) acts for a disabled person.
- Whether to extend the premises duties to commonhold premises¹.

2.6 The proposals on premises in CM 6402 were intended to provide greater certainty (eg as to what is covered by the term 'physical feature'), to align the justification defence in respect of premises with that applying to provision of services to the public, and to ensure comprehensive coverage of the new duty of reasonable adjustment by bringing commonhold premises into scope.

3. Options

3.1 In general the options with regard to the regulation-making powers are:

- a. not to exercise the powers and rely instead on the duties in the amended DDA supplemented by a DRC Code of Practice;
- b. use the regulation-making powers as proposed in the consultation document;
- c. adapt some of the Government's initial proposals to take account of subsequent changes to the Bill and consultees' comments where appropriate.

¹ Commonhold is a system of freehold ownership which is suitable for blocks of flats, shops, offices and other multiple occupation premises in England and Wales.

3.2 Option a. is not viable for several reasons. There would be doubt as to whether there was a duty to make adjustments in respect of certain things because a DRC Code could not be mandatory as to the meaning of, for example, the term ‘physical feature’. In addition, a Code would not meet the policy objective: for example, it could not modify the justification defence or bring commonhold premises into scope of the duty of reasonable adjustment.

3.3 Option b. might achieve most of the results initially proposed, but the effect would not be optimum. This is because regulations made in accordance with the initial proposals would take no account of amendments to the Bill and resulting development of policy after the consultation document had been issued, and as a result would make no sense in an important respect². In addition, such regulations would not benefit from valid points made by consultees.

3.4 Option c. is the most suitable one. The consultation exercise indicated majority support for the thrust of the Government’s proposals to provide clarity as to the meaning of ‘physical feature’, consistency of approach on justification and to extend coverage to commonhold premises. However points were made by consultees (to both the initial consultation and a subsequent one on draft regulations) that needed to be taken on board. In addition, as mentioned above, one of the key proposals had to be completely rethought as the Bill’s provisions were amended subsequent to the issuing of the consultation document. An analysis of the December 2004 consultation exercises so far as it relates to premises is at Annex A.

4. Costs and Benefits

Costing the DDA 2005 changes

4.1 The RIA published in July 2005 outlines the changes the DDA 2005 makes to the DDA 1995 in respect of reasonable adjustments to rented premises (section 13 of the DDA 2005) - and in respect of provisions introduced during the Bill’s Parliamentary passage relating to unreasonable refusal by a landlord of consent for a tenant to make a disability-related improvement to their rented home (section 16, to which the Regulations do not apply).

4.2 The RIA took a broad approach to costing the new reasonable adjustment duties. It considered, for example, the number of households which moved property in a year, how

² The proposal which was overtaken by changes to the Bill was to regulate to ensure that under the duty of reasonable adjustment a controller of let premises would not be required to consent to a tenant making alterations to rented premises, or have to change a practice, policy or procedure regarding landlord’s consent to tenant’s improvements.

many of them contained a disabled person and how many might need adjustments made because their enjoyment of the rented premises or use of any associated benefit or facility would otherwise be impossible or unreasonably difficult³. The RIA estimated the total costs of the reasonable adjustment duties to be just over £1.1 million for domestic premises and just over £0.1m for commercial premises ie a total of just over £1.2m. The relevant text from the DDA 2005 RIA is at Annex B. This also sets out the expected benefits from the new duties, for example, that adjustments may make rented premises more suitable for disabled people to continue living in.

Costing the 2006 Regulations

4.3 The DDA 2005 RIA's broad approach means that its estimate of costs already takes account of the extension of the reasonable adjustment duties to commonhold premises (regulations 8 and 9). In any case, there are as yet very few commonhold premises (7 commonholds with 97 units at 27 January 2006).

4.4 Several provisions of the 2006 Regulations are likely to have no or only negligible costs. For example, the DDA 1995 allows a landlord to justify discrimination⁴ in certain circumstances. One such justification is that he believes, and it is reasonable to believe in all the circumstances of the case, that the disabled person is incapable of entering into an enforceable agreement or of giving informed consent and for that reason the discrimination is reasonable.

4.5 To provide certainty, and for consistency with other DDA 1995 duties, regulation 2 disapplies this justification where a person acts for a disabled person under a power of attorney (or a similar arrangement applies). Providing such certainty will have no cost and may have benefits, for example, increasing the likelihood of conciliation being successful, thus avoiding a court case, where a landlord refuses to deal with a disabled person's attorney.

4.6 Similarly, regulation 3 (relating to the circumstances in which a deposit can be retained), and regulations 6 and 7 (relating to the steps which are reasonable in relation to the seeking of consent from a third party and changing a term of a letting in certain circumstances) have no or negligible costs over those covered by the DDA 2005 RIA. In most circumstances such actions may be found reasonable were a dispute to go to court, but the regulations provide certainty about this and provide a clear framework for considering the issue. This is likely to benefit landlords and disabled people by reducing the scope for disagreements and court cases.

4.7 A key feature of the reasonable adjustment duties is that controllers of premises do not have to remove or alter a physical feature of the premises. The legislation provides powers for the Government to prescribe things to be, or not be, treated as a physical feature and things to be, or not be, treated as alterations of a physical feature. The December 2004 consultation sought views on whether these powers should be exercised and indicated how

³ Broadly speaking, the duty of reasonable adjustment is triggered only where an adjustment has been requested; enjoyment of rented premises or use of any associated benefit or facility would otherwise be impossible or unreasonably difficult for a disabled person who occupies the premises; it is reasonable to make the adjustment; and failure to do so cannot be justified. There are some exemptions from the duty, for example, certain small dwellings.

⁴ Discrimination is treating a disabled person less favourably than others for a disability-related reason without justification, or failing to make a reasonable adjustment without justification.

that might be done: for example, by prescribing that fixtures should be treated as a physical feature.

4.8 There was majority support for these proposals but a number of issues were raised and helpful suggestions made. Consideration of these led to some changes of approach, for example, that the duty of reasonable adjustment should extend to providing different taps (where reasonable) even though taps might generally be considered to be fixtures and therefore treated as a physical feature.

4.9 Because of these changes, and the overtaking of one of the initial proposals by changes to the Bill, the Government decided to conduct a further consultation. Copies of draft Regulations and an explanation of their intended effect were accordingly sent to around 80 people and organisations in October 2005. Recipients included those who had responded to the December 2004 consultation and landlord and disability organisations.

4.10 Twelve responses were received to this second round of consultation. Again, the responses were broadly favourable with specific drafting suggestions received as well as proposals for additional things which ought to be in scope of the reasonable adjustment duties. Some of these suggestions (such as changing doorbells eg to one that flashes a light) were accepted by the Government and feature in regulations 4 and 5.

4.11 The effect of regulations 4 and 5 is that, where reasonable, and where various conditions set out in the primary legislation are met⁵, a controller of premises may potentially have to make some additional adjustments that were not envisaged in the RIA for the DDA 2005. These are:

- removing, replacing or (except where it would be a fixture when installed) providing furniture, furnishings, materials, equipment or other chattels⁶;
- providing or replacing signs or notices;
- replacing taps or door handles;
- replacing, providing or adapting door bell or door entry systems; and
- changing the colour of surfaces such as walls and doors.

4.12 Consistent with the RIA for the DDA 2005, the broad approach to the costing is to narrow down the population to those who might require a specific adjustment and multiply that by the estimated cost of such an adjustment, to get a total cost. A proportion of these costs are then subtracted to take account of the likelihood that not all adjustments will be 'reasonable' in all cases.

Domestic premises

4.13 The population was calculated by: estimating the total disabled population living in rented accommodation (using the Family Resources Survey); estimating the proportion of these living in private, local authority and Registered Social Landlord (RSL) housing (using the Survey of English Housing); narrowing these populations down to those currently living in unsuitable accommodation that could be adjusted to make it suitable (using the Survey of English Housing); and, further refining these populations to include only those with disabilities / impairments that are likely to result in that specific adjustment being required

⁵ For example, that enjoyment of the premises would otherwise be impossible or unreasonably difficult for a disabled occupier.

⁶ Broadly speaking, in law any thing that is not land or a fixture is a chattel, this includes eg furniture.

(using the Labour Force Survey). For example, for a ‘flashing light’ doorbell system it was assumed that those with a hearing impairment might require such an adjustment.

- 4.14 The expected costs of each adjustment were based on a ‘real-life’ price taken from internet sites or catalogues, with an additional cost added for installation, generally based on the estimated time taken to install. Using the flashing light doorbell system as an example once more, the cost of a ‘wired’ option is comprised of the price to purchase (estimated to be £45.24)⁷ and an installation cost of £100, based on 2 hours for a professional to install the system, at £50 per hour⁸. This represents a total cost of £145.24 for the ‘adjustment’. Alternatively, if the ‘unwired’ flashing light doorbell option is chosen, the total cost is estimated to be only £38.05, comprised of a purchase price of £30.55⁹ and an installation cost of £7.50¹⁰.
- 4.15 As noted above, not all adjustments will be reasonable in all cases. In estimating the ‘reasonableness’ of a particular adjustment, it was assumed that those with a low unit cost (for example, the unwired flashing light doorbell system) are likely to be ‘reasonable’ in significantly more cases than a very expensive adjustment (such as a video door entry system).
- 4.16 The approach taken with the costing has led to an additional overall cost of £320,000 in relation to domestic premises. Therefore, taking into account the costs already stated in the DDA 2005 RIA, the total cost of the reasonable adjustment duties for domestic premises is now estimated to be £1.43 million (£1.11m + £0.32m).
- 4.17 Of the additional £320,000 cost in relation to domestic premises that has arisen as a result of the regulations, £110,000 can be attributed to the ‘public sector’, which represents a cost of £0.03 per Local Authority household. These costs arise because Local Authority landlords will be required to consider reasonable adjustments (for example, in respect of taps) on the same basis as private and RSL Landlords. However, with the vast majority of Local Authority housing being let on an unfurnished basis, costs arising as a result of moving/replacing furniture are notional.
- 4.18 The remaining £210,000 of the additional costs is attributable to privately rented and RSL housing. This represents only £0.06 per household when averaged across the ‘private sector’ (ie the total of privately rented and RSL households). While RSL housing is also generally let on an unfurnished basis, many privately let properties are let on a furnished basis and therefore in these cases they may also have to consider reasonable adjustments in relation to furniture and furnishings.

Commercial premises

- 4.19 The regulations may also result in additional costs to landlords of commercial premises, where these are let to self-employed disabled people. Using a similar

⁷ £45.24 is the cost given for a ‘Friedland Libra Door Chime’ on the website www.tiresias.org. This door chime has a visual and audio signal to draw attention to the presence of someone at the door.

⁸ Internet sources such as www.0800handyman.co.uk suggest that the rate for such a situation is £20 per half hour, plus VAT, plus a nominal callout fee, suggesting an hourly rate of approximately £50.

⁹ Example price taken from the Royal National Institute for the Deaf (RNID) ‘Solutions’ catalogue.

¹⁰ Installation cost of £7.50 assumes half an hour to install at £15 per hour. As a non-professional could install this simple system, the installation cost represents the ‘opportunity cost’ of the landlord’s time. The rate of £15 per hour is consistent with the earlier published RIA for the DDA 2005.

methodology to that used in calculating the cost in relation to domestic premises, it is estimated that the additional cost of the regulations in relation to commercial premises is £21,000.

4.20 Taking into account the costs already stated in the DDA 2005 RIA, the total cost of the reasonable adjustment duties for commercial premises is now estimated to be £128,000 (£107,000 + £21,000). All these additional costs are attributed to the 'private sector' and so there is no additional impact on the 'public sector'.

Summary of costs

Type of premises	DDA premises regulations additional cost	DDA 2005 RIA cost	Total cost
Domestic	£320,000	£1.11 million	£1.43 million
Commercial	£21,000	£107,000	£128,000
Total	£341,000	£1.22 million	£1.56 million

Sensitivity of regulations costing

4.21 There are three key factors that result in a degree of uncertainty around the costings:

- the extent to which a disabled person will be aware of their rights and therefore know that a request for an adjustment to the premises can be made;
- the extent to which it will, in practice, be ‘reasonable’ for a controller of premises to make such an adjustment;
- the actual cost of purchasing and/or installing each individual adjustment. This will vary from case to case and therefore it is possible only to estimate a ‘likely’ or average cost.

4.22 The extent of the uncertainty will vary from one situation to another and depend on all the circumstances of that case including, for example, the resources available to the controller of premises. The DRC code of practice will also play a role in this by providing guidance on what is, or is not, likely to be reasonable in illustrative circumstances.

4.23 Of the three factors highlighted above, the costing is most sensitive to the assessment of ‘reasonableness’. A small change in the proportion of adjustments deemed ‘reasonable’ is likely to have a significant effect on the estimated cost of the regulations. However, it is very difficult to estimate with any certainty the extent to which a particular adjustment would be reasonable in every situation. It should be noted, however, that respondents to the second consultation did not express concern about the potential costs of the adjustments in the draft regulations, and whilst costs were raised in the initial consultation, this was not a major issue.

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

5.1 Some controllers of premises may be small businesses. The DWP carried out a series of focus groups to gauge views on the overall impact of the Bill when it was published in draft. One group comprised representatives of 14 small landlords and property managers from the Doncaster area. The report of this focus group is at Annex B.

6. Competition Assessment

6.1 The Competition Assessment Filter Test has been applied to the measures considered in this RIA and it has been concluded that no private sector competition issues arise. The measures concerned apply equally across all private sector industries. Furthermore, the measures do not impose disproportionate costs or burdens on business start-ups, compared to

existing firms, nor do they affect the ability of firms to choose the price, quality, range or location of their products.

7. Equity and Fairness

7.1 By supporting the premises duties in the DDA 1995, as amended by the DDA 2005, the regulations will have a positive impact on disabled people across a wide range of areas. They will help ensure, for example, that disabled people can continue to live longer in their rented home.

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

8. Enforcement and sanctions

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

9. Monitoring and review

9.1 The DRC, as part of its overall duty to monitor the DDA 1995, will keep the legislative framework under review and come forward with proposals for change as and when it believes they are required. Where appropriate, the DRC can amend its codes of practice which gives guidance on the duties in the DDA 1995, as amended by the DDA 2005. The DRC publishes an annual strategy document setting out its priorities.

9.2 The DWP will continue to monitor and review the operation of the legislation, including by commissioning and disseminating appropriate research. The DWP is continuing a programme of research to examine how those with duties under the DDA 1995 are responding to them. That programme has been extended to cover the new duties introduced through the DDA 2005 along with the impact on those affected.

10. Consultation

10.1 As explained above,

- a Focus Group of small landlords and property managers was held in May 2004 on the draft Disability Discrimination Bill;
- the DWP consulted (in Cm 6402) between 16 December 2004 and 18 March 2005 on proposals for using the premises regulation-making powers. That document was produced in a range of accessible formats. The results were announced in July 2005;
- a further consultation on draft premises regulations was undertaken in October 2005.

10.2 The DRC consulted (between August and November 2005) on a draft code of practice which gives guidance on the premises duties. DWP has worked closely with the DRC during its revision of this draft. The DRC intends to issue this code in August 2006, well in advance of the premises duties coming into force in December 2006.

11. Summary

11.1 This RIA supports the Disability Discrimination (Premises) Regulations 2006. It identifies possible costs and benefits arising from the regulations. It should be read in conjunction with the RIA for the DDA 2005.

12. Declaration

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs

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21 March 2006

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IMPLEMENTATION OF THE DISABILITY DISCRIMINATION ACT 2005 (DDA 2005)

OUTCOME OF CONSULTATION ON PROVISIONS OF THE DISABILITY DISCRIMINATION BILL (CM 6402): PREMISES DUTIES

Introduction

1. This Annex provides information in respect of premises duties on the outcome of a public consultation exercise carried out by the Government between 16 December 2004 and 18 March 2005. The consultation document sought views on the Government's proposals for using a range of regulation-making powers in the (then) Disability Discrimination Bill (the Bill gained Royal Assent on 7 April 2005).

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

Proposals in the consultation document:

3. In broad terms, the consultation document set out the following in respect of the premises duties:

- Whether, and if so how, to specify what should or should not be treated as a 'physical feature' for purposes of new duties of reasonable adjustment on a controller of premises.
- Whether to regulate to ensure that under the duty of reasonable adjustment a controller of premises would not be required to consent to a tenant making alterations to rented premises, or have to change a practice, policy or procedure regarding landlords' consent to tenants' improvements. (This proposal was overtaken by subsequent changes to the Bill during its Parliamentary passage.)
- Whether to disapply justification defences in respect of premises in the (then) Bill and in the Disability Discrimination Act (DDA) 1995 where another person (such as a power of attorney) acts for a disabled person.
- Whether to extend the premises duties to commonhold premises

Outcome of the consultation:

4. The outcome of the consultation was announced by the Minister for Disabled People on 21 July 2005. Where respondents were asked to indicate if they agreed or disagreed, support for the Government's proposals ranged from 53% (for a proposal that was overtaken by subsequent changes to the Bill) to 88%. The following extract from the published table provides further information on responses.

Outcome of consultation on using regulation-making powers under the DDA 1995's (as amended by the DDA 2005) duties on premises – extracted from Government response to the consultation issued in July 2005

	PROPOSAL	NUMBER OF RESPONSES	AGREE		DISAGREE		OTHER VIEWS	
			No.	%	No.	%	No.	%
Premises	8	Do you consider that what is to be treated as a "physical feature" should be prescribed for the purposes of the new duties of reasonable adjustment applying to controllers of premises?	27	84	2	6	3	9
	9	If the Government decides to prescribe what is to be treated as a "physical feature", do you agree with its proposed approach?	20	61	8	24	5	15
	10	The Government would like to know whether you agree with its proposals to regulate on tenant's alterations to premises ¹¹ .	17	53	2	6	13	41

¹¹ These proposals were made redundant by changes to the Bill relating to improvements to let dwelling houses.

	11	The Government would like to know whether you agree with its proposals to regulate on justifications for treating a disabled person less favourably and for not making reasonable adjustments.	30	26	87	0	0	4	13
	12	The Government would like to know whether you agree with its proposals to regulate in respect of commonhold.	26	23	88	0	0	3	12
	13 *	Are there any other areas relating to the new duties of reasonable adjustment on which you think the Government should consider regulating?	26	7	27	4	15	15	58

* Question 13 did not require explicit "agree"/"disagree" answers. Therefore some interpretation has been required in allocating responses to the relevant headings in the table. On that basis, the breakdown of responses is as follows: 7 respondents believed there were areas in which the Government should consider regulating, 4 did not, and 15 made comments outside the scope of the consultation.

**EXTRACT ON PREMISES FROM THE REGULATORY IMPACT ASSESSMENT
FOR THE DISABILITY DISCRIMINATION ACT 2005 ISSUED IN JULY 2005**

“5. Letting of premises

5.1 At present, landlords and managers of rented premises have no duty to make reasonable adjustments to accommodate the needs of disabled tenants or occupiers of the premises. Some landlords and managers of rented premises are also service providers (service providers are those involved in a business or organisation which provides a service or offers facilities to the public), and hence are already covered, in that capacity, in respect of disabled customers by the provisions of Part 3 of the DDA.

5.2 Under changes in Section 13 of the 2005 Act, where renting a premises and the use of any associated benefit or facility or the enjoyment of them is impossible or unreasonably difficult for a disabled person, a landlord or manager of rented premises covered by these provisions may need to change their policies, practices and procedures or provide auxiliary aids or services, where reasonable. For example, they may have to put correspondence in 20point font for a tenant who has a visual impairment. A landlord may also have to change a term of the letting (for example, one prohibiting the tenant from making any alterations) for a disabled tenant or occupier if that is reasonable. However, landlords themselves will not be required to make changes to physical features of their premises; and will only ever have to make adjustments that are reasonable. For example, it may not be reasonable for a small landlord to provide a sign language interpreter. In certain circumstances, landlords will be able to justify not making adjustments. Adjustments will also not be required in a number of situations. For example, where a landlord lives on the premises and there is not normally residential accommodation on the premises for more than six persons, or the accommodation does not consist of residential accommodation for more than two other households besides that occupied by the landlord and members of his household. This would mean that such a landlord would not have to make adjustments for a lodger living in his own home.

5.3 Many tenants can already make alterations to rented residential premises so long as they have the landlord’s consent. There are legislative provisions ensuring that such consent cannot be refused unreasonably, for example, in respect of protected, statutory and secure tenancies. Provisions introduced by Section 16 of the 2005 Act build upon rights provided in existing landlord and tenant and housing legislation to make them more responsive to the needs of disabled people in relation to disability-related adaptations to rented residential premises.

5.4 Where not already provided for under existing legislation, certain procedural matters will have effect in relation to disability-related adaptations needed by a tenant or occupier of rented premises. For example, these include provisions making clear that: consent which is unreasonably withheld by a landlord is to be treated as having been given; and where consent is neither given nor refused within a reasonable period, consent is taken to have been withheld.

5.5 In addition, the Disability Rights Commission will be empowered to prepare codes of practice on the giving of landlords’ consent to such disability-related adaptations, whose provisions the courts will be required to take into account where they consider them relevant,

to make a conciliation service available, and to provide assistance to tenants bringing legal cases.

5.6 Landlords will not have to pay for such alterations, and they will be able to pass on to tenants any reasonable costs incurred in giving consent. Landlords will be able to impose reasonable conditions when giving consent, for example, a condition requiring the tenant to reinstate the premises to their original condition when the tenancy ends. And landlords will not have to give consent if refusal would not be unreasonable, for example, if a particular alteration would lead to a loss in the structural integrity of premises.

5.7 **Cost/benefit to landlords:** Under the provisions introduced by Section 13 of the 2005 Act, landlords and managers of rented premises may have to make adjustments to practices, policies and procedures and provide auxiliary aids and services where reasonable. There is a range of adjustments that might be made. These include rearranging furniture, providing information on cassette, CD or in Braille or spending additional time explaining a contract to a tenant. In these cases the opportunity cost is considered.

5.8 Approximately 1.5 million households moved property in 2002/03, of which 357,000 were by households where at least one adult met the DDA 1995 definition of disability. There were approximately 410,000 people living in these households, of whom roughly 280,000 were disabled and responsible for accommodation, i.e. either living on their own or with other disabled people (**FOOTNOTE 4**). In the remaining households at least one person was not disabled.

5.9 Approximately 15% of DDA disabled people have learning difficulties, mental illness including depression or problems with sight/hearing, the groups identified as most likely to require reasonable adjustments. This implies that up to 42,000 disabled people might require some reasonable adjustments (**FOOTNOTE 6**). Costs are calculated where quantifiable (e.g. translation of lease into Braille £60, providing audio tapes £25 etc.). Elsewhere the opportunity cost of an activity is considered (e.g. taking extra time to explain a lease, rearranging furniture etc.) from landlords or managing agents. The annual cost of adjustments for disabled tenants moving house is estimated to be £670,000.

5.10 In addition, landlords might also be required to make changes for existing households with disabled tenants (around 315,000 households including recently moved households), and the estimated annual cost of this amounts to around £440,000.

5.11 Landlords are not required to make alterations to physical features, although they might be required to rearrange furniture, make existing alternative entries/exits available or provide portable ramps for wheelchair users. There are roughly 12,000 wheelchair users who report that they live in an accommodation that is not suitable for their needs and who use wheelchairs all the time indoors and outdoors (**FOOTNOTE 7**). For example, a folding portable ramp costs around £100 and if 10% of these people require a ramp to access their home the total costs for landlords amount to £120,000. Since most council and social accommodations are in general more easily accessible for wheelchair users, it is assumed that most of these costs (70%) will arise in the private housing sector.

5.12 The total costs are therefore estimated to be just over £1.1 million, with the majority of costs occurring on an annual basis. It is envisaged that landlords will seek to recover these

costs through rent increases. In the event of such increases, the Government will bear a portion of the costs through increases in Housing Benefit (see below).

5.13 Of the 280,000 disabled movers in 2002/03, 41% moved into council accommodation, 23% into accommodation with Registered Social Landlords (RSLs) and 36% into the private sector. Of the stock of disabled households, the respective percentages are 60%, 26%, and 14%.

5.14 The respective total costs for council accommodation, RSLs, and the private sector are estimated to be £510,000, £260,000, and £345,000. Dividing these costs by the number of households results in associated cost of the new premises reasonable adjustment duties of £0.14, £0.16 and £0.16 per household in each sector respectively. However, the costs for the private sector are likely to overestimate the true adjustment costs as they include certain dwellings which are excluded from the new duties.

5.15 As always, costings are subject to variability as, in the absence of perfect information and data, they rely on assumptions. However, changes in unit costs are negligible even for substantial changes in the assumptions.

5.16 Clear guidance from the DRC on tenants making alterations to rented residential premises will benefit landlords by more clearly and transparently stating obligations and rights, balancing out some minor additional familiarisation costs for landlords (see section 13). The cost of the new provisions introduced by Section 16 of the 2005 Act will be negligible, and they are unlikely to result in additional legal action, as a better understanding of obligations and rights and the availability of free DRC conciliation services may make legal recourse unnecessary in most cases. DRC conciliation services were previously unavailable under existing legislation in relation to tenants' alterations.

5.17 Under the provisions introduced by Section 13 of the 2005 Act, there will be some costs in respect of people who rent commercial properties (the provisions introduced by Section 16 of the Act do not apply to such premises). There are approximately 175,000 new businesses registering for VAT each year (**FOOTNOTE 8**). 10.7% of the self-employed are DDA disabled people of whom 6.6% (**FOOTNOTE 6**) have learning difficulties, mental illness or problems with sight/hearing. This implies that 1,240 disabled people may potentially require reasonable adjustments from landlords when renting commercial premises. Assuming that 75% of new businesses will actually rent commercial premises, this implies that 930 disabled people per year will need adjustments. Additionally, the existing number of DDA disabled people renting commercial premises and potentially requiring reasonable adjustments is 17,000. The total cost of adjustments for all disabled tenants is estimated to be £107,000, of which 15% is due to new tenants. Roughly 35% of the total cost is expected to be one-off. As with landlords of domestic premises, it is envisaged that landlords may seek to recover these costs through rent increases.

Quantifiable Cost	£ one-off ^b	£ recurring	Households /commercial premises ^a
Extend duty to make reasonable adjustments to landlords and managers of	£ 51,000	£492,000	315,000

domestic premises (other than to physical features)			
Extend duty to make reasonable adjustments to commercial premises (other than to physical features of premises)	£37,000	£70,000	17,000

^a These numbers refer to the total number of households or commercial premises covered (ie. the stock of and flow to the population).

^b There is likely to be a cost from familiarisation with the new duties, as described in section 13 below, but total cost is unquantifiable.

5.18 **Cost/benefit to Government:** There will be indirect costs to the Government from the duties introduced by Section 13 of the 2005 Act through Housing Benefit payments as local authorities, RSLs, and private landlords are expected to pass at least part of the above costs on to their tenants. The changes in respect of tenants' alterations to rented residential premises introduced by Section 16 of the 2005 Act will lead to negligible one-off costs from issuing the DRC's guidance, as this will be incorporated into the planned revision of an existing code of practice. There may also be minor ongoing costs from increased use of DRC conciliation services and legal advice.

Quantifiable Cost	£	Households covered ^a
Increase in Housing Benefit expenditure due to landlords increasing rent as a consequence of the new duties of reasonable adjustment.	£ 570,000	315,000

^a This number refers to the total number of households covered (i.e. the stock of and flow to the population)

5.19 **Cost/benefit to disabled individuals:** There will be benefits to disabled individuals from the provisions introduced by the 2005 Act in that their dealings with landlords and managing agents will be more effective and efficient, and some may be able to remain in premises that would otherwise have been unsuitable. Legislation on tenants' alterations to premises that is more responsive to the needs of disabled people will also improve their ability to make premises more suitable for living in. Disabled people will benefit from having clear guidance on their rights from the DRC and the ability to access DRC conciliation services and legal advice where necessary.

FOOTNOTES

Footnote 4 - 2001 English Housing Survey grossed up to a GB population and 2002/03 Family Resource Survey

Footnote 6 - Spring 2003 Labour Force Survey and 2002/03 Family Resources Survey

Footnote 7 - 2001 English Housing Survey grossed up to a GB population

Footnote 8 - Small Business Service

(II) FOCUS GROUP OF SMALL LANDLORDS AND MANAGERS OF RENTED PREMISES – Held on 24th MAY 2004

Scope:

A Focus Group was held on behalf of the Department for Work and Pensions (DWP) by Premier Partnership to consider the impact that measures in the Government’s draft Disability Discrimination Bill (DDDB) might have on small landlords and managers of rented property. In particular, the DWP was interested to find out what small landlords and property managers believed the costs of making reasonable adjustments under the DDDB might be.

The Group comprised representatives of 14 small landlords and property managers from the Doncaster area who would be affected by the changes brought about by the proposed Bill, which extends the current duty under the Disability Discrimination Act (DDA).

Experience of small landlords and property managers:

Participants’ overall knowledge of the DDA, which the DDDB seeks to amend, was limited and none of the Group had any detailed understanding of the measures or intent of the DDDB. There was also a limited awareness and understanding of disability and disabled people in general, although 7 participants indicated they were already making adjustments voluntarily.

Main findings from the Group:

The following were the main findings from the Group:

- All participants wrongly believed they would be responsible for making structural changes to physical features of their premises;
- Costs associated with any required changes were thus a major concern;
- There was a lack of awareness and understanding of the DDDB, the DDA, disability and disabled people;
- There was a lack of awareness and understanding of the term ‘reasonable adjustment’ within the DDDB and how this would impact on any measures landlords were required to take;
- The majority of the Group agreed with the Government’s aim of extending rights and opportunities to disabled people and removing barriers to enable full participation in everyday life;
- Most participants agreed that further information regarding existing and forthcoming legislation would be welcome, perhaps in the form of a Code of Practice;
- There were suggestions that funding should be available to support the proposed legislation;

The Group’s views on the DDDB generally:

The Group’s major concern (which was misplaced as the DDDB will not require this) was the potential cost incurred through physical alterations to properties and demonstrated their lack of awareness and understanding of the DDDB. This highlighted the need for clear and accessible information identifying that it is practices, policies and procedures and auxiliary aids or services that are addressed in the draft Bill, not physical alterations. The references to costs was linked to the Group assumption that most disabled people have mobility difficulties or are wheelchair users who would require structural changes to properties.

The Group was unsure about how they would know if someone was disabled. They were concerned that some prospective or existing tenants might falsely claim they were disabled to gain adjustments or to make a claim of discrimination against a landlord. However, the

participants had not fully considered the wide scope of the DDA and who may be covered under the definition of disability.

A key gap in their knowledge was around support that may be required for a tenant with a disability, and how they would know what adjustments would be suitable and reasonable. A particular area of concern was for people with mental health problems, where the Group was concerned they would need support in excess of what landlords were able to provide.

The Group generally agreed that they supported the DDDDB in offering increased civil rights and social inclusion for disabled people, and were able to provide examples of providing support for disabled tenants; however, cost remained a constant concern. The Group reinforced the need for further guidance around their responsibilities and obligations, in particular in the interpretation of the term 'reasonable adjustments'.

Costs of making adjustments for disabled people:

All participants were concerned about any costs that they may incur in making adjustments for a disabled tenant. They felt that support should be made available, especially in respect of additional financial outlay to offer accommodation to a disabled person. However, of the landlords who had experience of disabled tenants, none attributed any additional costs to this aspect of their role and when asked to consider what additional costs were incurred it was felt to be 'a few hours a week'. The potential business benefits from making reasonable adjustments were also acknowledged by the Group.

It was identified that further expert resources would be beneficial in assisting landlords to meet the needs of disabled people. For example, in understanding what adjustments may be required for a person with a specific disability.

Due to their limited experiences of making adjustments for disabled tenants, the Group were not able to give many examples of adjustments they had made and any associated costs. However, some of the voluntary adjustments made to date included temporary ramps, installation of grab rails, non-slip shower mats, changes to appliances, such as bathroom and kitchen taps, and lighting.

A number of the landlords reported making these adjustments themselves and incurring only minimal costs, however there was a concern that as landlords they may have the skills but are not registered to carry out certain types of work, for example electrical jobs. Some costs were easy for the participants to quantify, for example when a third party had been involved or where equipment had been purchased. However, there was an acknowledged amount of unmeasured cost in terms of a landlord's own time, or time a property may be empty prior to making required changes for a disabled tenant. Although some of these would not be required by the DDBD, examples of costs incurred voluntarily through adjustments include:

- Costs incurred where participants were able to carry out small alterations/adjustments themselves, e.g. costs of electrical work or constructing a temporary access ramp were minimal. Many of the adjustments made with disabled tenants in mind, for example night-lights, had knock-on benefits for all tenants;
- Adjusted entry system to 'light flash' - cost was a few pounds for labour;
- Costs associated with installing a new night-lighting system were £100 plus the landlords' own time;
- Costs associated with changing taps in a bathroom/kitchen were £250;
- Extra time to visit a property incurred time costs of £20.00;

- Most felt that the DDDB would not have an impact on existing tenants although if there were any communal areas the landlord would have to consider them, for example, the re-sighting of a dryer with little or no cost);

Conclusion:

An overall lack of awareness, of disability, disabled people, the DDDDB, the DDA and the concept of 'reasonable adjustment' was evident with this Group and this generated some concerns among participants. This lack of awareness was illustrated by the landlords' lack of understanding of what the draft Bill will require them to provide for disabled tenants in the form of reasonable adjustments and their focus on structural and physical alterations to properties, rather than policies, practices and procedures, and auxiliary aids and services.

The Group was, however, able to relate positive experiences and identify actions taken, many cost free, to meet the needs of disabled tenants and prospective tenants. Seven participants indicated that they had already been making adjustments voluntarily to properties (although this would not be required by the DDBD). There was also acknowledgement of the potential business benefits associated with making reasonable adjustments.

The participants also agreed with the Government's aims to extend basic rights and opportunities for disabled people, but felt some financial support and some detailed information, about their duties under the Bill, would assist them in meeting disabled people's needs and would be appropriate."