

BOATING CLUBS RESPONSIBILITIES IN TERMS OF THE DISABILITY DISCRIMINATION ACT 2005

What s Changing?

The Disability Discrimination Act 2005 amends the Disability Discrimination Act 1995 (the Act) by extending the scope of Part III of the Act to private clubs with 25 or more members. Part III of the Act deals with access to goods, services, facilities and premises.

At present, Part III of the Act only applies to the provision of services to the general public and not to services provided by Private Clubs. Clubs only open to members are not covered so long as they only discriminate against members.

The Act extends the provision of the Act to private clubs. Applicants for memberships, existing members, associate members, guests and potential guests of the club will all be afforded rights under the Act. Accordingly, this legislation will affect many boating clubs.

It should be remembered that if your club employs staff then the club will already be subject to the Disability Discrimination Act in respect of those employees.

Definition of Disability

A person has a disability if they have a physical or mental impairment which has a substantial and long term adverse effect on their ability to carry out normal day to day activities. This is a very broad definition and is much wider than just those people who are registered disabled. If you are unsure whether a particular condition amounts to a disability then you should contact the Disability Rights Commission (contact details below) for guidance.

Do These Changes Affect Our Club?

Does your club have personal selection mechanisms for membership?

If it does then your club will be covered by the Act if it has 25 or more members.

If your club does not have personal selection mechanisms for membership then it is likely that the club will be considered to be a service provider and therefore already covered by Part III of the Act.

In What Way Is It Possible For Us To Discriminate?

There are essentially two instances where it will be unlawful for a private club to discriminate against a disabled person.

Firstly, a disabled person must not be treated less favourably than the club treats or would treat non-disabled persons for a reason related to the disabled person s disability and where there is no justification for the treatment.

Examples:-

- A club refuses membership to an individual on the grounds that they are disabled.

- A club does not permit a disabled person to take part in certain activities, for example, a training activity or a day trip.

Secondly, where a private club fails to comply with any duty to make reasonable adjustments to policies, practices, procedures or physical features which adversely affect disabled persons who are, or might wish to become, members or associates of the club.

Examples:-

- Alterations to physical features such as widening doorways, installing a wheelchair accessible toilet or wheelchair ramp or fitting a handrail to ensure that a disabled member is able to access the full range of club facilities.
- Provision of equipment, such as hoists, to assist disabled members getting in and out of boats.
- A member, due to a visual disability may be unable to read training handouts and material in relation to a sailing course. Consideration should be given to using large print diagrams, physical modes and audio tapes of training materials.
- Having large print or Braille application forms, newsletters and annual reports for people with sight impairments. Having large print menus where food is served. Hiring portable induction loops for those with hearing impairments.

What Does Our Club Need To Do?

The duty to make reasonable adjustments is anticipatory. Private clubs will have to take a proactive approach to comply with their obligations. At present, it is thought that the trigger in relation to making reasonable adjustments will be the point at which a policy, practice or procedure applied by the club or the physical nature of the premises, make it impossible or unreasonably difficult for a disabled person to use the premises, service or facility.

As a result, private clubs will have to plan ahead and take into consideration the fact that disabled people may become members. Where any improvements are planned the club should consider any reasonable adjustments that could be made. In addition, it may be worthwhile for private clubs to carry out a risk assessment taking into consideration the reasonable needs of disabled persons and any possible improvements.

What Is A Reasonable Adjustment?

It should be noted though that any adjustment should be reasonable, taking into account the specific circumstances of the case and also taking into consideration the cost of the adjustment, the resources of the club and the size of the club. In relation to guests, it may be reasonable to consider how frequently the guests visit the club.

The Disability Rights Commission has produced a Code of Practice to accompany the reasonable adjustment responsibilities already in force under the Act. The following factors are suggested within the Code of Practice and could be looked to for an indication of what private clubs in turn may have to be taken into consideration in relation to reasonable adjustments:-

- Whether the steps would be effective in overcoming the difficulty with regard to access.

- The extent to which it is practicable to take the steps.
- Financial and other costs of making the adjustment.
- The amount of disruption caused by taking the steps.
- Money already spent on making reasonable adjustments.
- The availability of financial or other assistance to the club.

Where the premises are rented, consent would have to be sought from the landlord, but landlords are obliged to not refuse such consent unreasonably.

There are also a number of justifications for not making reasonable adjustments:-

- The less favourable treatment is necessary to avoid endangering the health and safety of any person, including the health and safety of any disabled person.
- The disabled person is incapable of giving informed consent or entering into an enforceable agreement and therefore the treatment is reasonable.
- The treatment of the disabled person is necessary to allow members, associates, guests or disabled persons access to a benefit, service or facility.
- The club would otherwise be unable to afford members, associates or guests access to a benefit, facility or service.
- The cost to the club of affording the disabled person membership is disproportionate to the cost of affording such a benefit to a non-disabled person.

The club must be able to show that one or more of the justifications are met, and that in all the circumstances, it is reasonable to hold that opinion.

It should be noted that the club could charge the disabled person more for services where the cost of allowing the disabled person access to the service is greater than for a non-disabled person. A disabled person can only be charged more where the service is provided to them and not to all members, therefore, where the service is provided to all members, the cost would then have to be shared between all the members.

It is possible that funding may be available in the event that reasonable adjustments require to be made. You should contact the Disability Rights Commission in the first instance for further information.

What Happens If Our Club Does Not Comply?

Civil proceedings may be brought against the club in the Sheriff Court. The Court can make an award of damages against the club, including damages for injury to feelings. Any action would likely be raised against both the club and any office bearers.

When Will These Changes To The Law Come Into Force?

The provisions outlawing less favourable treatment by private clubs with over 25 members will come into force in December 2005.

It is anticipated that the duty to make reasonable adjustments will be in force in December 2006.

We will let you know when the date for implementation becomes more definite.

Where Can I Go For Further Guidance In This Area?

The Disability Rights Commission can provide further general guidance in respect of the Disability Discrimination Act 1995. The helpline number is 08457 622 633.

The Royal Yachting Association Scotland may also be able to assist. Contact Jane Scott on 0131 317 7388 or at jane.scott@rya-online.net.

In certain circumstances legal advice may also require to be taken.

Summary

- **Be aware of the changes to the law.**
- **Consider whether there are any practices that your club adopts which could be discriminatory.**
- **Consider whether there are any reasonable adjustments which the Club could make.**
- **When making physical changes to your premises always consider what changes could/should be made to assist those with disabilities.**
- **If in doubt seek further advice.**

Disclaimer

This publication is for general guidance only and does not purport to provide legal or professional advice on any particular situation. You should take specific legal advice before taking any course of action.