
DISABLED PERSONS ORDINANCE 2016

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SCHEDULE — PRIVILEGED PARKING PLACES

D I S A B L E D P E R S O N S O R D I N A N C E 2 0 1 6

An Ordinance to provide for the needs of disabled persons in employment and in the provision of goods, facilities and services and related matters

M. Wigston
ADMINISTRATOR

3 August 2016

BE it enacted by the Administrator of the Sovereign Base Areas of Akrotiri and Dhekelia as follows:—

PART 1
PRELIMINARY

Short title and commencement

- 1.**—(1) This Ordinance may be cited as the Disabled Persons Ordinance 2016.
(2) Except for section 11(2) (inspectors), this Ordinance comes into force on 1 October 2016.
(3) Section 11(2) comes into force by order of the Chief Officer made as a public instrument.

Interpretation

- 2.**—(1) In this Ordinance—
“act” includes omission;
“corresponding Republican law” means Republican Law Number 127(I)/2000(a) (Disabled Persons Law 2000) and includes—
(a) amendments to that law, whether made before or after the coming into force of this Ordinance;
(b) any law replacing that law;

(a) Republic of Cyprus Gazette No. 3420, 21 July 2000.

(c) public instruments of the Republic made under that law, whether made before or after the coming into force of this Ordinance;

“the Crown” means Her Majesty in right of Her Government of the United Kingdom and in right of Her Administration of the Areas;

“direct discrimination” has the meaning given in section 4(1);

“disability” is to be construed in accordance with section 3;

“disabled person” means a person with a disability;

“discrimination” means direct discrimination or indirect discrimination, except in the phrase “indirect discrimination” or “direct discrimination”;

“employment” means employment under a contract of employment, a contract of apprenticeship or a contract personally to do work;

“harassment” means unwanted conduct towards a disabled person related to his or her disability with the purpose or effect of —

(a) violating the person’s dignity; or

(b) creating an intimidating, hostile, degrading, humiliating or offensive environment for the person;

“indirect discrimination” has the meaning given in section 4(2);

“motor vehicle” has the meaning given in section 2(1) of the Motor Vehicles and Road Traffic (Consolidation) Ordinance 2006(a);

“parking permit” means a parking permit for disabled persons issued under the corresponding Republican law;

“privileged parking place” is to be construed in accordance with the Schedule;

“tribunal” means the Industrial Disputes Tribunal established under section 16 of the Annual Holidays with Pay Ordinance 1973(b).

(2) In this Ordinance—

(a) “an employer” or “an employee” is to be construed by reference to the definition of employment in subsection (1);

(b) “an employer” includes a reference to a person who has no employees but is seeking to employ one or more other persons.

(3) For the purpose of this Ordinance, a person holding personal or public office is an employee and the person responsible for paying that person is an employer.

Disability

3.—(1) A person has a disability if—

(a) the person has a physical or mental impairment which is permanent or of indefinite duration; and

(b) the impairment prevents, or substantially affects, the performance by the person of one or more normal day-to-day activities or functions which are significant to the quality of the person’s life.

(2) An assessment of whether an activity is “normal” or “significant to the quality of the person’s life” is by comparison to a person of the same age who does not have the impairment.

Direct and indirect discrimination

4.—(1) A person (A) directly discriminates against another (B) if because of B’s disability A treats B less favourably than A treats or would treat others who do not have the disability.

(a) Ordinance 5/2006 to which there are amendments, but which are not relevant to the definition of motor vehicle.

(b) Ordinance 10/1973, to which there are amendments, but which are not relevant to the establishment of the tribunal.

(2) A person (A) indirectly discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to B's disability.

(3) For the purpose of subsection (2), a provision, criterion or practice is discriminatory in relation to B's disability if—

- (a) A applies it, or would apply it, to persons without the disability;
- (b) it puts, or would put, B at a particular disadvantage compared to persons without the disability; and
- (c) A cannot show it to be a proportionate means of achieving a legitimate aim.

Application to the Crown and authorised service organisations

5.—(1) Subject to the provisions of this section, this Ordinance binds the Crown.

(2) This Ordinance does not apply to —

- (a) service as a member of Her Majesty's Forces;
- (b) the employment of a member of the civilian component by the Crown or by an authorised service organisation;
- (c) the employment of a person enjoying the rights and facilities of members of Her Majesty's Force by virtue of paragraph 3 of section 9 of Part II of Annex B to the Treaty, other than as a dependent.

(3) Part 3 does not apply to the Crown in right of its Government of the United Kingdom.

(4) Proceedings for a criminal offence under this Ordinance may not be brought against—

- (a) the Crown;
- (b) a member of Her Majesty's Forces in relation to an act done in the course of service of the Crown;
- (c) an employee of the Crown in relation to an act done in the course of employment of the Crown.

(5) Section 8(3) (funds provided by the Republic for reasonable adjustments) does not apply where the employer is the Crown or an authorised service organisation.

(6) Section 20 (charitable collections and events) does not apply to—

- (a) the Crown;
- (b) an authorised service organisation;
- (c) a charitable collection or event which takes place wholly or mainly on Crown land;
- (d) a charitable collection or event which starts or finishes on Crown land.

(7) In this section—

- (a) "civilian component" is to be construed in accordance with paragraph 1(b) of section 1 of Annex C to the Treaty, but with the reference to "territory of the Republic of Cyprus" in paragraph 1(a)(i) of that section substituted with "territory of the Areas";
- (b) "Crown land" means land owned or occupied by the Crown in any capacity, but does not include land which is owned by the Crown only in right of its administration of the Areas;
- (c) "dependent" is to be construed in accordance with paragraph 1(d) of section 1 of Annex C to the Treaty, but with the reference to "territory of the Republic of Cyprus" in paragraph 1(a)(i) of that section substituted with "territory of the Areas".

General exceptions

6. A person does not contravene this Ordinance if the person does anything in pursuance of legislation relating to public security, the maintenance of public order, the prevention of criminal offences, the protection of health, or the protection of the rights and freedoms of others.

PART 2

EMPLOYMENT

Discrimination and harassment prohibited

7.—(1) — An employer (A) must not discriminate against a disabled person (B)—

- (a) in arrangements A makes for deciding to whom to offer employment;
- (b) by not offering B employment.

(2) An employer (A) must not discriminate against a disabled person (B) who is an employee of A's—

- (a) as to the terms and conditions of B's employment;
- (b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer, training or for receiving any other benefit, facility or service.

(3) An employer (A) must not harass a disabled person who—

- (a) has applied to A for employment; or
- (b) is an employee of A's.

(4) A person must not discriminate against a disabled person in relation to—

- (a) membership of organisations of employers or employees; or
- (b) benefits provided by such organisations.

(5) A person who by an act intentionally or through gross negligence, contravenes this section commits an offence, and is liable on conviction to a fine not exceeding €3,417.

(6) This section is subject to section 9 (occupational requirements).

Reasonable adjustments

8.—(1) An employer (A) must make reasonable adjustments in relation to a disabled person who is—

- (a) an applicant for employment with A; or
- (b) an employee of A's.

(2) A reasonable adjustment is an adjustment which is a proportionate means of ameliorating the disadvantage faced by the disabled person and which does not involve disproportionate cost.

(3) In determining whether a reasonable adjustment involves disproportionate cost, the tribunal must take account of whether an application has been made or funds provided by the Government of the Republic under policies designed to eliminate discrimination against, or advance equality of opportunity for, disabled persons.

(4) Reasonable adjustments must take account of the needs and particular circumstances of the disabled person, and, without limiting the generality of subsection (1), include reasonable adjustments related to—

- (a) selection and recruitment criteria;
- (b) professional guidance and training, and vocational training;
- (c) promotion;
- (d) working conditions, including conditions of employment and remuneration;
- (e) access to the workplace;
- (f) adaptations to facilities in the workplace.

(5) An employer who by an act intentionally or through gross negligence, contravenes subsection (1) commits an offence, and is liable on conviction to a fine not exceeding €3,417.

Occupational requirements

9. An employer (A) does not discriminate against a disabled person (B), who has applied to A for employment or who is an employee of A's, if A imposes a requirement on B which, by reason of the nature of the work,—

- (a) is an occupational requirement;
- (b) the application of the requirement is a proportionate means, taking account of the duty to make reasonable adjustments under section 8(1), of achieving a legitimate aim.

Positive action

10.—(1) A person does not discriminate if the person takes any action which is a proportionate means of furthering the aim of encouraging disabled persons to overcome or to reduce the disadvantages related to participation in the workplace.

(2) Without limiting the generality of subsection (1), the person may—

- (a) take measures in relation to health and safety at work;
- (b) create or maintain facilities for disabled persons including making facilities accessible to disabled persons;
- (c) create employment projects for disabled persons;
- (d) create working schedules for disabled persons;
- (e) adapt machinery, instruments or other devices for disabled persons;
- (f) facilitate the rehabilitation of disabled persons in a specific profession or specialism;
- (g) make special provision in relation to termination of employment for disabled persons.

Inspectors

11.—(1) The Chief Officer may appoint inspectors for the purpose of the better application of—

- (a) this Part; and
- (b) section 21 (protection against reprisal) or 22 (unenforceable terms), in connection with the application of those provisions to employment.

(2) The functions of an inspector (prescribed in regulations made under section 24) are general delegated functions for the purposes of the Delegation of Functions to the Republic Ordinance 2007(a) (irrespective of whether or not an inspector is appointed under subsection (1)).

PART 3

PROVISION OF SERVICES

Goods, facilities and services: discrimination and harassment

12.—(1) A person supplying goods, facilities or services (a “service-provider”) must not discriminate against a disabled person—

- (a) requiring the goods, facilities or services; or
- (b) to whom the service-provider provides the goods, facilities or services.

(2) A service-provider must not harass a disabled person—

- (a) requiring the goods, facilities or services; or
- (b) to whom the service-provider provides the goods, facilities or services.

(a) Ordinance 17/2007.

(3) A service-provider must take reasonable measures to facilitate the supply of goods, facilities or services to a disabled person.

(4) Without limiting the generality of subsection (1), the following constitute discrimination under that subsection—

- (a) refusal to provide goods, facilities or services to a disabled person because of the person's disability;
- (b) provision of lower quality goods, facilities or services than offered to a person who is not disabled;
- (c) provision of goods, facilities or services on less favourable terms than offered to a person who is not disabled;
- (d) failure to take reasonable measures to adapt facilities or services which are otherwise difficult or impossible for a disabled person to access.

(5) A service-provider who, without reasonable excuse, contravenes subsection (1) or (2) commits an offence, and is liable on conviction to a fine not exceeding €3,417.

(6) In determining whether a service-provider has reasonable excuse the court must take account of reasonable measures which have been, or could have been, taken.

Reasonable measures

13.—(1) For the purposes of section 12, a “reasonable measure” is a measure which is a proportionate means of facilitating the access of disabled persons to goods, facilities or services having regard, in particular, to—

- (a) the type and cost of the measure;
- (b) the financial resources of a person required to take it, including competing financial obligations of the person; and
- (c) the wider benefit of the measure to disabled persons in general.

(2) Reasonable measures include—

- (a) the creation of appropriate means of access and facilities for the comfortable and secure use of disabled persons; and
- (b) the use of specialised means of contact and provision of information for disabled persons.

PART 4 DISABLED PARKING

Parking permit

14.—(1) A motor vehicle may be parked in a privileged parking place if a parking permit is displayed with the disability symbol visible, and the vehicle—

- (a) has been driven by the holder of the parking permit (the “holder”) to the place where it is parked;
- (b) has been used to carry the holder to the place where it is parked;
- (c) is to be driven by the holder from the place where it is parked; or
- (d) is to be used to carry the holder from the place where it is parked.

(2) The holder commits an offence if the holder allows a motor vehicle displaying the holder's parking permit to be parked in a privileged parking place specified in column (a) of the table in paragraph 1 of the Schedule for a period longer than the period specified in the corresponding entry in column (b), and is liable on conviction to a fine not exceeding €55.

(3) Where a person has been convicted on two or more occasions of an offence under subsection (2), the court may order that the holder's parking permit is not recognised in the Areas for such period as is determined by the court having regard to all the circumstances of the case.

(4) It is an offence for a person to park a motor vehicle in a privileged parking place where paragraph (1) does not apply.

(5) A person who is convicted of an offence under subsection (4) is liable to a term of imprisonment not exceeding 1 year or a fine not exceeding €1,285, or to both.

PART 5 ENFORCEMENT

Proceedings

15.—(1) The tribunal has exclusive jurisdiction to determine any civil disputes (including any ancillary or incidental matter relating to such a dispute) arising from Part 2 (employment), and from section 21 (protection against reprisal) or 22 (unenforceable terms) where the dispute is in connection with employment.

(2) A claim to the tribunal may not be brought after the end of the period of 12 months starting with the date of the act to which the claim relates.

(3) For the purpose of subsection (2), conduct extending over a period is to be treated as done at the end of the period.

(4) This section does not limit the application of the Courts (Judicial Review) Ordinance 2004(a).

Burden of proof

16.—(1) This section applies to proceedings brought in accordance with section 15.

(2) If there are facts from which the tribunal could decide, in the absence of any other explanation, that a person contravened a provision in this Ordinance, the tribunal must hold that the contravention occurred.

(3) But subsection (2) does not apply if the person shows that he or she did not contravene the provision.

Remedies

17.—(1) Where the tribunal upholds a claim, the tribunal must make an order requiring the respondent to pay such compensation to the claimant as it considers just and equitable having regard to—

- (a) the act complained of; and
- (b) any loss sustained by the claimant which is attributable to that act.

(2) An award made by the tribunal under this section is recoverable as a civil debt.

Representation by relevant organisation

18.—(1) Subject to subsection (2), a relevant organisation may, on behalf of an employee, do either or both of the following—

- (a) bring a claim in accordance with section 15 to the tribunal in the name of the employee;
- (b) represent the employee in proceedings before the tribunal in such a claim.

(a) Ordinance 10/2004, as amended by Ordinance 8/2012.

(2) The employee must consent to the relevant organisation doing an act specified in subsection (1).

(3) In this section “relevant organisation” means—

- (a) a trade union within the meaning of the Trade Unions Ordinance 1968(a);
- (b) another organisation representing the interests of employees;
- (c) an organisation whose purpose is the protection of the interests of disabled persons.

Application of Citizens of the Republic (Jurisdiction of Courts) Ordinance 1960

19. Part 3 of the Citizens of the Republic (Jurisdiction of Courts) Ordinance 1960(b) applies to proceedings brought to the tribunal in connection with a dispute under this Ordinance, and for this purpose—

- (a) proceedings in connection with such a dispute are to be treated as civil proceedings and, as appropriate, as an action or an appeal;
- (b) the tribunal is to be treated as a Court of the Areas, and the Industrial Disputes Court of the Republic is to be treated as a District Court of the Republic;
- (c) any company or other body corporate established in the Areas or the Republic under the provisions of any Ordinance of the Areas or Law of the Republic, is to be treated as a Cypriot; and
- (d) references to “the tribunal” in this Ordinance are to be construed as the Industrial Disputes Court of the Republic.

PART 6 GENERAL

Charitable collections and events

20.—(1) A person must not organise or cause to take place a charitable collection or event with the sole or main purpose of raising money for disabled persons unless the person has a licence issued by the Chief Officer in accordance with the corresponding Republican law.

(2) The function of the Chief Officer in this section is a general delegated function for the purposes of the Delegation of Functions to the Republic Ordinance 2007.

Protection against reprisal

21.—(1) A person (A) must not treat a person (B) less favourably than another person because B does a protected act.

(2) Each of the following is a protected act—

- (a) bringing proceedings under this Ordinance;
- (b) giving evidence or information in connection with proceedings under this Ordinance;
- (c) doing any other thing for the purposes of or in connection with this Ordinance;
- (d) making an allegation (whether or not express) that A or another person has contravened this Ordinance.

(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

(a) Ordinance 4/1968.
(b) Ordinance 6/1960.

Unenforceable terms

22.—(1) A term of a contract or agreement is unenforceable in so far as it promotes or provides for treatment which is contrary to this Ordinance.

(2) Without limiting the generality of subsection (1), the terms referred to in subsection (1) include terms in—

- (a) a contract of employment;
- (b) a collective agreement;
- (c) the enforceable rules of an organisation including, but not limited to, the rules of an organisation representing employers or employees;
- (d) a contract for the provision of goods, facilities or services.

Liability of body corporate

23. Where an offence under this Ordinance is committed by a company or other body corporate and is committed with the consent of, or is attributable to the negligence of, a director, manager, secretary or other similar officer of the company or other body corporate, the officer also commits an offence and is liable, on conviction, to the penalty for that offence.

Regulations

24.—(1) The Administrator may make regulations by public instrument for the more effective application of this Ordinance.

(2) Without limiting the generality of subsection (1), regulations may—

- (a) make provision for a condition of a prescribed description to be or not to be an impairment;
- (b) make provision for an effect of a prescribed description on the ability of a person to carry out normal day-to-day activities as being or not being significant to the quality of a person's life;
- (c) provide for the powers and duties of inspectors appointed under section 11;
- (d) adopt codes of practice, with or without modification, made under the corresponding Republican law and make provision for the delegation of functions in the codes in accordance with the Delegation of Functions to the Republic Ordinance 2007.

Repeal

25. The Disabled Persons Ordinance 2002(a) is repealed.

(a) Ordinance 18/2002.

SCHEDULE

Sections 2(1) and 14(2)

PRIVILEGED PARKING PLACES

1. A privileged parking place is a place specified in column (a) of the table.

	Column (a) Privileged parking place	Column (b) Period for which parking permitted
1.	A parking place designated by a traffic sign for disabled persons	Unlimited, unless a traffic sign specifies otherwise
2.	A road with a parking meter where a traffic sign indicates that parking for disabled persons is permitted	Unlimited, unless a traffic sign specifies otherwise
3.	Parking on a road with a single or double yellow line, where a traffic sign indicates that parking for disabled persons is permitted	Up to 3 hours

2. In this Schedule—

- (a) “road” has the meaning given in section 2(1) of the Motor Vehicles and Road Traffic (Consolidation) Ordinance 2006(a), read together with the presumption in section 2(3)(b) of that Ordinance.
- (b) “traffic sign” has the meaning given in regulation 2 of the Motor Vehicles and Road Traffic (Traffic Signs) Regulations 2012(b).

(a) Ordinance 5/2006 to which there are amendments, but which are not relevant to the definition of road.

(b) P.I. 12/2012.

EXPLANATORY NOTE

(This note is not part of the Ordinance)

Introduction

1. This explanatory note relates to the Disabled Persons Ordinance 2016 (the “Ordinance”). It has been prepared by the Office of the Attorney General and Legal Adviser in order to assist the reader of the Ordinance. It does not form part of the Ordinance.
2. This note should be read in conjunction with the Ordinance. It is not, and is not meant to be, a comprehensive description of the Ordinance. So, when a section or part of a section does not seem to require any explanation or comment, none is given.

Particular points

3. The purpose of this Ordinance is to reflect the relevant provisions in the Republic’s Disabled Persons Law 2000 (Law 127(I)/2000), as currently amended by Laws 57(I)/2007, 72(I)/2007, 102 (I)/2007 and 22(I)/2015. In summary, it makes discrimination and harassment against disabled persons in employment and the provision of goods, facilities and services unlawful, recognises parking permits for disabled persons issued by the Republic and makes provision for privileged parking places for disabled persons in the Areas.
4. Part 1 contains preliminary provisions. Section 3 defines disability as a physical or mental impairment which is permanent or of indefinite duration and which prevents or has a substantial effect on, the normal day-to-day activities which are significant to the quality of a person’s life. Section 4 defines direct discrimination and indirect discrimination. Section 5 provides that the Ordinance applies to the Crown, with a limited number of exceptions. The main exception is that it does not apply to the Crown in respect of service in HM Forces and employment of members of the civilian component (UK-based civilians). In addition, the requirement under section 20 for charitable collections and events raising money for disabled persons to be licensed does not apply to the Crown, authorised service organisations or collections and events which take place wholly or mainly on land owned or occupied by the Crown. Section 6 provides for general exceptions for acts done in pursuance of legislation related to public security, public order, the prevention of criminal offences, and the protection of health and the rights and freedoms of others.
5. Part 2 contains provisions relating to discrimination in employment. Section 7 provides that it is unlawful to discriminate (in relation to a disability) against an employee or an applicant for employment. It also prohibits an employer harassing an employee or an applicant for employment. Section 8 imposes a duty on employers to make reasonable adjustments in relation to disabled employees or applicants for employment. For example, this could be by providing special computer software or enabling access to the workplace by provision of ramps or lifts. The requirement to make reasonable adjustments is subject to an employer not incurring disproportionate cost. Contravention of section 7 or 8 is a criminal offence.
6. Section 9 provides for an exception to section 7. Section 7 is not contravened if a person shows that discrimination is by reason of the nature of the work i.e. that there is a genuine and determining occupational requirement which is legitimate and, taking into account the need to make reasonable adjustments, proportionate. For example, a job requiring physical labour may require that an employee meets specified fitness requirements.
7. Section 10 provides that a person may take positive action to overcome the disadvantages of disabled persons in the workplace and section 11 is power for the Chief Officer to appoint inspectors for the purpose of enforcement of the anti-discrimination employment provisions.

8. Part 3 contains provisions relating to the supply of goods, facilities and services. Section 12 makes discrimination and harassment in this field unlawful. Contravention is a criminal offence and requires that a person providing services etc. takes reasonable measures as are required by Ordinance to facilitate the provision of goods, facilities and services to disabled persons. Under section 13 an assessment of whether a measure is reasonable is by reference to factors including the type and cost of the measure, and the financial resources of the person required to take the measure.
9. Part 4 contains provisions relating to disabled parking. Section 14 provides that a vehicle being used to convey the holder of a parking permit issued to a disabled person under Republican law can park a vehicle in a privileged parking place. Privileged parking places are defined in section 2 by reference to the Schedule.
10. Part 5 makes provision for enforcement. Under section 15 claims in respect of contravention of provisions relating to employment are brought to the Industrial Disputes Tribunal of the Areas. Where there are facts which, in the absence of any other explanation, show discrimination, it is for the defendant to show there has not been discrimination. An award to a claimant who has been discriminated against is assessed by the tribunal on the grounds of what it considers just and equitable, by reference to the act complained of and any loss sustained.
11. Part 6 makes general provisions. Section 20 makes provision for licensing charitable collections and events raising money for disabled persons. Section 21 protects a person who has done a protected act such as bringing proceedings or giving evidence in relation to a contravention of the Ordinance against reprisals. Section 22 provides that a term of a contract or agreement which makes provision contrary to the Ordinance is unenforceable. Section 23 provides for criminal liability for an officer of a body corporate for an offence under the Ordinance, and under section 24 the Administrator may make regulations by public instrument for the more effective implementation of the Ordinance. Section 25 repeals the Disabled Persons Ordinance 2002.

SBA/AG/2/EM/297

