

# Disability Discrimination Act 1995

## 1995 CHAPTER 50

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An Act to make it unlawful to discriminate against disabled persons in connection with employment, the provision of goods, facilities and services or the disposal or management of premises; to make provision about the employment of disabled persons; and to establish a National Disability Council.

[8th November 1995]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### PART I

#### DISABILITY

##### 1.— Meaning of “disability” and “disabled person”.

(1) Subject to the provisions of Schedule 1, a person has a disability for the purposes of this Act if he has a physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities.

(2) In this Act “disabled person” means a person who has a disability.

##### 2.— Past disabilities.

(1) The provisions of this Part and Parts II to 4 and 5A apply in relation to a person who has had a disability as they apply in relation to a person who has that disability.

(2) Those provisions are subject to the modifications made by Schedule 2

(3) Any regulations or order made under this Act by the Secretary of State, the Scottish Ministers or the [Welsh Ministers]<sup>1</sup> may include provision with respect to persons who have had a disability.

(4) In any proceedings under Part 2, 3, 4 or 5A of this Act, the question whether a person had a disability at a particular time (“the relevant time”) shall be determined, for the purposes of this section, as if the provisions of, or under, this Act in force when the act complained of was done had been in force at the relevant time.

(5) The relevant time may be a time before the passing of this Act.

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<sup>1</sup> words substituted by Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007/1388 Sch. 1 para. 48

### 3.— Guidance.

(A1) The Secretary of State may issue guidance about matters to be taken into account in determining whether a person is a disabled person.

(1) Without prejudice to the generality of subsection (A1), the Secretary of State may, in particular, issue guidance about the matters to be taken into account in determining—

- (a) whether an impairment has a substantial adverse effect on a person's ability to carry out normal day-to-day activities; or
- (b) whether such an impairment has a long-term effect.

(2) Without prejudice to the generality of subsection (A1), guidance about the matters mentioned in subsection (1) may, among other things, give examples of—

- (a) effects which it would be reasonable, in relation to particular activities, to regard for purposes of this Act as substantial adverse effects;
- (b) effects which it would not be reasonable, in relation to particular activities, to regard for such purposes as substantial adverse effects;
- (c) substantial adverse effects which it would be reasonable to regard, for such purposes, as long-term;
- (d) substantial adverse effects which it would not be reasonable to regard, for such purposes, as long-term.

(3) An adjudicating body determining, for any purpose of this Act, whether [a person is a disabled person]<sup>2</sup>, shall take into account any guidance which appears to it to be relevant.

(3A) “Adjudicating body” means –

- (a) a court;
- (b) a tribunal; and
- (c) any other person who, or body which, may decide a claim under Part 4.

(4) In preparing a draft of any guidance, the Secretary of State shall consult such persons as he considers appropriate.

(5) Where the Secretary of State proposes to issue any guidance, he shall publish a draft of it, consider any representations that are made to him about the draft and, if he thinks it appropriate, modify his proposals in the light of any of those representations.

(6) If the Secretary of State decides to proceed with any proposed guidance, he shall lay a draft of it before each House of Parliament.

(7) If, within the 40-day period, either House resolves not to approve the draft, the Secretary of State shall take no further steps in relation to the proposed guidance.

(8) If no such resolution is made within the 40-day period, the Secretary of State shall issue the guidance in the form of his draft.

(9) The guidance shall come into force on such date as the Secretary of State may appoint by order.

(10) Subsection (7) does not prevent a new draft of the proposed guidance from being laid before Parliament.

(11) The Secretary of State may—

- (a) from time to time revise the whole or part of any guidance and re-issue it;

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<sup>2</sup> words substituted by Disability Discrimination Act 2005 c. 13 Sch. 1(1) para. 3(5)

(b) by order revoke any guidance.

(12) In this section—

“40-day period”, in relation to the draft of any proposed guidance, means —

(a) if the draft is laid before one House on a day later than the day on which it is laid before the other House, the period of 40 days beginning with the later of the two days, and

(b) in any other case, the period of 40 days beginning with the day on which the draft is laid before each House,

no account being taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days; and

“guidance” means guidance issued by the Secretary of State under this section and includes guidance which has been revised and re-issued.

## PART II

### THE EMPLOYMENT FIELD[ AND MEMBERS OF LOCALLY-ELECTABLE AUTHORITIES]<sup>3</sup>

#### *Meaning of “discrimination” and “harassment*

#### **[3A Meaning of “discrimination”**

(1) For the purposes of this Part, a person discriminates against a disabled person if—

(a) for a reason which relates to the disabled person's disability, he treats him less favourably than he treats or would treat others to whom that reason does not or would not apply, and

(b) he cannot show that the treatment in question is justified.

(2) For the purposes of this Part, a person also discriminates against a disabled person if he fails to comply with a duty to make reasonable adjustments imposed on him in relation to the disabled person.

(3) Treatment is justified for the purposes of subsection (1)(b) if, but only if, the reason for it is both material to the circumstances of the particular case and substantial.

(4) But treatment of a disabled person cannot be justified under subsection (3) if it amounts to direct discrimination falling within subsection (5).

(5) A person directly discriminates against a disabled person if, on the ground of the disabled person's disability, he treats the disabled person less favourably than he treats or would treat a person not having that particular disability whose relevant circumstances, including his abilities, are the same as, or not materially different from, those of the disabled person.

(6) If, in a case falling within subsection (1), a person is under a duty to make reasonable adjustments in relation to a disabled person but fails to comply with that duty, his treatment of that person cannot be justified under subsection (3) unless it would have been justified even if he had complied with that duty.

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<sup>3</sup> words inserted by Disability Discrimination Act 2005 c. 13 Sch. 1(1) para. 4

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**[3B Meaning of “harassment”**

(1) For the purposes of this Part, a person subjects a disabled person to harassment where, for a reason which relates to the disabled person's disability, he engages in unwanted conduct which has the purpose or effect of—

- (a) violating the disabled person's dignity, or
- (b) creating an intimidating, hostile, degrading, humiliating or offensive environment for him.

(2) Conduct shall be regarded as having the effect referred to in paragraph (a) or (b) of subsection (1) only if, having regard to all the circumstances, including in particular the perception of the disabled person, it should reasonably be considered as having that effect.

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*Discrimination by employers***4.—**

[Existing s.4 is moved into a new Section Group as part of the amendment substituting ss.4–6 for ss.4–4F.]⁶

**5.— [...]**⁷**6.— [...]**⁸**7.— [...]**⁹*Employment***[4 Employers: discrimination and harassment**

(1) It is unlawful for an employer to discriminate against a disabled person—

- (a) in the arrangements which he makes for the purpose of determining to whom he should offer employment;
- (b) in the terms on which he offers that person employment; or

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<sup>4</sup> added by Disability Discrimination Act 1995 (Amendment) Regulations 2003/1673 Pt 2 Reg. 4(2)

<sup>5</sup> added by Disability Discrimination Act 1995 (Amendment) Regulations 2003/1673 Pt 2 Reg. 4(2)

<sup>6</sup> existing ss.4–6 substituted for ss.4–4F by Disability Discrimination Act 1995 (Amendment) Regulations 2003/1673 Pt 2 Reg. 5

<sup>7</sup> existing ss.4–6 substituted for ss.4–4F by Disability Discrimination Act 1995 (Amendment) Regulations 2003/1673 Pt 2 Reg. 5

<sup>8</sup> existing ss.4–6 substituted for ss.4–4F by Disability Discrimination Act 1995 (Amendment) Regulations 2003/1673 Pt 2 Reg. 5

<sup>9</sup> repealed by Disability Discrimination Act 1995 (Amendment) Regulations 2003/1673 Pt 2 Reg. 7

- (c) by refusing to offer, or deliberately not offering, him employment.
- (2) It is unlawful for an employer to discriminate against a disabled person whom he employs—
- (a) in the terms of employment which he affords him;
  - (b) in the opportunities which he affords him for promotion, a transfer, training or receiving any other benefit;
  - (c) by refusing to afford him, or deliberately not affording him, any such opportunity; or
  - (d) by dismissing him, or subjecting him to any other detriment.
- (3) It is also unlawful for an employer, in relation to employment by him, to subject to harassment—
- (a) a disabled person whom he employs; or
  - (b) a disabled person who has applied to him for employment.
- (4) Subsection (2) does not apply to benefits of any description if the employer is concerned with the provision (whether or not for payment) of benefits of that description to the public, or to a section of the public which includes the employee in question, unless—
- (a) that provision differs in a material respect from the provision of the benefits by the employer to his employees;
  - (b) the provision of the benefits to the employee in question is regulated by his contract of employment; or
  - (c) the benefits relate to training.
- (5) The reference in subsection (2)(d) to the dismissal of a person includes a reference—
- (a) to the termination of that person's employment by the expiration of any period (including a period expiring by reference to an event or circumstance), not being a termination immediately after which the employment is renewed on the same terms; and
  - (b) to the termination of that person's employment by any act of his (including the giving of notice) in circumstances such that he is entitled to terminate it without notice by reason of the conduct of the employer.
- (6) This section applies only in relation to employment at an establishment in Great Britain.
- 1<sup>10</sup>

#### **[4A Employers: duty to make adjustments**

- (1) Where—
- (a) a provision, criterion or practice applied by or on behalf of an employer, or
  - (b) any physical feature of premises occupied by the employer,
- places the disabled person concerned at a substantial disadvantage in comparison with persons who are not disabled, it is the duty of the employer to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to prevent the provision, criterion or practice, or feature, having that effect.
- (2) In subsection (1), “the disabled person concerned” means—
- (a) in the case of a provision, criterion or practice for determining to whom employment should be offered, any disabled person who is, or has notified the employer that he may be, an applicant for that employment;
  - (b) in any other case, a disabled person who is—

<sup>10</sup> existing ss.4-6 substituted for ss.4-4F by Disability Discrimination Act 1995 (Amendment) Regulations 2003/1673 Pt 2 Reg. 5

- (i) an applicant for the employment concerned, or
- (ii) an employee of the employer concerned.

(3) Nothing in this section imposes any duty on an employer in relation to a disabled person if the employer does not know, and could not reasonably be expected to know—

- (a) in the case of an applicant or potential applicant, that the disabled person concerned is, or may be, an applicant for the employment; or
- (b) in any case, that that person has a disability and is likely to be affected in the way mentioned in subsection (1).

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### *Contract workers*

#### **[4B Contract workers**

(1) It is unlawful for a principal, in relation to contract work, to discriminate against a disabled person who is a contract worker (a “disabled contract worker”)—

- (a) in the terms on which he allows him to do that work;
- (b) by not allowing him to do it or continue to do it;
- (c) in the way he affords him access to any benefits or by refusing or deliberately omitting to afford him access to them; or
- (d) by subjecting him to any other detriment.

(2) It is also unlawful for a principal, in relation to contract work, to subject a disabled contract worker to harassment.

(3) Subsection (1) does not apply to benefits of any description if the principal is concerned with the provision (whether or not for payment) of benefits of that description to the public, or to a section of the public which includes the contract worker in question, unless that provision differs in a material respect from the provision of the benefits by the principal to contract workers.

(4) This subsection applies to a disabled contract worker where, by virtue of—

- (a) a provision, criterion or practice applied by or on behalf of all or most of the principals to whom he is or might be supplied, or
- (b) a physical feature of premises occupied by such persons,

he is likely, on each occasion when he is supplied to a principal to do contract work, to be placed at a substantial disadvantage in comparison with persons who are not disabled which is the same or similar in each case.

(5) Where subsection (4) applies to a disabled contract worker, his employer must take such steps as he would have to take under section 4A if the provision, criterion or practice were applied by him or on his behalf or (as the case may be) if the premises were occupied by him.

(6) Section 4A applies to any principal, in relation to contract work, as if he were, or would be, the employer of the disabled contract worker and as if any contract worker supplied to do work for him were an employee of his.

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<sup>11</sup> existing ss.4-6 substituted for ss.4-4F by Disability Discrimination Act 1995 (Amendment) Regulations 2003/1673 Pt 2 Reg. 5

(7) However, for the purposes of section 4A as applied by subsection (6), a principal is not required to take a step in relation to a disabled contract worker if under that section the disabled contract worker's employer is required to take the step in relation to him.

(8) This section applies only in relation to contract work done at an establishment in Great Britain (the provisions of section 68 about the meaning of “employment at an establishment in Great Britain” applying for the purposes of this subsection with the appropriate modifications).

(9) In this section–

“principal” means a person (“A”) who makes work available for doing by individuals who are employed by another person who supplies them under a contract made with A;

“contract work” means work so made available; and

“contract worker” means any individual who is supplied to the principal under such a contract.

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### *Office-holders*

#### **4C Office-holders: introductory**

(1) Subject to subsection (5), sections 4D and 4E apply to an office or post if–

(a) no relevant provision of this Part applies in relation to an appointment to the office or post; and

(b) one or more of the conditions specified in subsection (3) is satisfied.

(2) The following are relevant provisions of this Part for the purposes of subsection (1)(a): section 4, section 4B, section 6A, section 7A, section 7C, section 14C and section 15B(3)(b).

(3) The conditions specified in this subsection are that–

(a) the office or post is one to which persons are appointed to discharge functions personally under the direction of another person, and in respect of which they are entitled to remuneration;

(b) the office or post is one to which appointments are made by a Minister of the Crown, a government department, the Welsh Ministers, the First Minister for Wales, the Counsel General to the Welsh Assembly Government or any part of the Scottish Administration;

(c) the office or post is one to which appointments are made on the recommendation of, or subject to the approval of, a person referred to in paragraph (b).

(4) For the purposes of subsection (3)(a) the holder of an office or post–

(a) is to be regarded as discharging his functions under the direction of another person if that other person is entitled to direct him as to when and where he discharges those functions;

(b) is not to be regarded as entitled to remuneration merely because he is entitled to payments–

(i) in respect of expenses incurred by him in carrying out the functions of the office or post, or

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<sup>12</sup> existing ss.4-6 substituted for ss.4-4F by Disability Discrimination Act 1995 (Amendment) Regulations 2003/1673 Pt 2 Reg. 5

(ii) by way of compensation for the loss of income or benefits he would or might have received from any person had he not been carrying out the functions of the office or post.

(5) Sections 4D and 4E do not apply to—

- (a) any office of the House of Commons held by a member of it,
- (b) a life peerage within the meaning of the Life Peerages Act 1958, or any office of the House of Lords held by a member of it,
- (c) any office mentioned in Schedule 2 (Ministerial offices) to the House of Commons Disqualification Act 1975<sup>[13]</sup>,
- (d) the offices of Leader of the Opposition, Chief Opposition Whip or Assistant Opposition Whip within the meaning of the Ministerial and other Salaries Act 1975,
- (e) any office of the Scottish Parliament held by a member of it,
- (f) a member of the Scottish Executive within the meaning of section 44 of the Scotland Act 1998, or a junior Scottish Minister within the meaning of section 49 of that Act,
- (g) any office of the National Assembly for Wales held by a member of it,  
[ (ga) a member of the Welsh Assembly Government, ]<sup>14</sup>
- (h) in England, any office of a county council, a London borough council, a district council or a parish council held by a member of it,
- (i) in Wales, any office of a county council, a county borough council or a community council held by a member of it,
- (j) in relation to a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 or a community council established under section 51 of the Local Government (Scotland) Act 1973<sup>[15]</sup>, any office of such a council held by a member of it,
- (k) any office of the Greater London Authority held by a member of it,
- (l) any office of the Common Council of the City of London held by a member of it,
- (m) any office of the Council of the Isles of Scilly held by a member of it, or
- (n) any office of a political party.

#### **[4D Office-holders: discrimination and harassment**

(1) It is unlawful for a relevant person, in relation to an appointment to an office or post to which this section applies, to discriminate against a disabled person—

- (a) in the arrangements which he makes for the purpose of determining who should be offered the appointment;
- (b) in the terms on which he offers him the appointment; or
- (c) by refusing to offer him the appointment.

(2) It is unlawful for a relevant person, in relation to an appointment to an office or post to which this section applies and which satisfies the condition set out in section 4C(3)(c), to discriminate against a disabled person—

<sup>13</sup> 1975 c.24. Schedule 2 was amended by S.I. 2002/794, article 5(2), Schedule 2 and by the Scotland Act 1998 sections 48(6), 125, Schedule 9 and section 87(1).

<sup>14</sup> added by Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007/1388 Sch. 1 para. 49(3)

<sup>15</sup> 1973 c.65, amended by the Local Government etc. (Scotland) Act 1994 (c.39), section 180(2), Schedule 14, paragraph 1.



- (a) in the arrangements which he makes for the purpose of determining who should be recommended or approved in relation to the appointment; or
  - (b) in making or refusing to make a recommendation, or giving or refusing to give an approval, in relation to the appointment.
- (3) It is unlawful for a relevant person, in relation to a disabled person who has been appointed to an office or post to which this section applies, to discriminate against him—
- (a) in the terms of the appointment;
  - (b) in the opportunities which he affords him for promotion, a transfer, training or receiving any other benefit, or by refusing to afford him any such opportunity;
  - (c) by terminating the appointment; or
  - (d) by subjecting him to any other detriment in relation to the appointment.
- (4) It is also unlawful for a relevant person, in relation to an office or post to which this section applies, to subject to harassment a disabled person—
- (a) who has been appointed to the office or post;
  - (b) who is seeking or being considered for appointment to the office or post; or
  - (c) who is seeking or being considered for a recommendation or approval in relation to an appointment to an office or post satisfying the condition set out in section 4C(3)(c).
- (5) Subsection (3) does not apply to benefits of any description if the relevant person is concerned with the provision (for payment or not) of benefits of that description to the public, or a section of the public to which the disabled person belongs, unless—
- (a) that provision differs in a material respect from the provision of the benefits to persons appointed to offices or posts which are the same as, or not materially different from, that to which the disabled person has been appointed;
  - (b) the provision of the benefits to the person appointed is regulated by the terms and conditions of his appointment; or
  - (c) the benefits relate to training.
- (6) In subsection (3)(c) the reference to the termination of the appointment includes a reference—
- (a) to the termination of the appointment by the expiration of any period (including a period expiring by reference to an event or circumstance), not being a termination immediately after which the appointment is renewed on the same terms and conditions; and
  - (b) to the termination of the appointment by any act of the person appointed (including the giving of notice) in circumstances such that he is entitled to terminate the appointment by reason of the conduct of the relevant person.
- (7) In this section—
- (a) references to making a recommendation include references to making a negative recommendation; and
  - (b) references to refusal include references to deliberate omission.

]<sup>16</sup>

#### **[4E Office-holders: duty to make adjustments**

- (1) Where—

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<sup>16</sup> existing ss.4-6 substituted for ss.4-4F by Disability Discrimination Act 1995 (Amendment) Regulations 2003/1673 Pt 2 Reg. 5

- (a) a provision, criterion or practice applied by or on behalf of a relevant person, or
- (b) any physical feature of premises–
  - (i) under the control of a relevant person, and
  - (ii) at or from which the functions of an office or post to which this section applies are performed,

places the disabled person concerned at a substantial disadvantage in comparison with persons who are not disabled, it is the duty of the relevant person to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to prevent the provision, criterion or practice, or feature, having that effect.

- (2) In this section, “the disabled person concerned” means–
- (a) in the case of a provision, criterion or practice for determining who should be appointed to, or recommended or approved in relation to, an office or post to which this section applies, any disabled person who–
    - (i) is, or has notified the relevant person that he may be, seeking appointment to, or (as the case may be) seeking a recommendation or approval in relation to, that office or post, or
    - (ii) is being considered for appointment to, or (as the case may be) for a recommendation or approval in relation to, that office or post;
  - (b) in any other case, a disabled person–
    - (i) who is seeking or being considered for appointment to, or a recommendation or approval in relation to, the office or post concerned, or
    - (ii) who has been appointed to the office or post concerned.
- (3) Nothing in this section imposes any duty on the relevant person in relation to a disabled person if the relevant person does not know, and could not reasonably be expected to know–
- (a) in the case of a person who is being considered for, or is or may be seeking, appointment to, or a recommendation or approval in relation to, an office or post, that the disabled person concerned–
    - (i) is, or may be, seeking appointment to, or (as the case may be) seeking a recommendation or approval in relation to, that office or post, or
    - (ii) is being considered for appointment to, or (as the case may be) for a recommendation or approval in relation to, that office or post; or
  - (b) in any case, that that person has a disability and is likely to be affected in the way mentioned in subsection (1).

]<sup>17</sup>

#### **[4F Office-holders: supplementary**

- (1) In sections 4C to 4E, appointment to an office or post does not include election to an office or post.
- (2) In sections 4D and 4E, “relevant person” means–
  - (a) in a case relating to an appointment to an office or post, the person with power to make that appointment;

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<sup>17</sup> existing ss.4-6 substituted for ss.4-4F by Disability Discrimination Act 1995 (Amendment) Regulations 2003/1673 Pt 2 Reg. 5

- (b) in a case relating to the making of a recommendation or the giving of an approval in relation to an appointment, a person or body referred to in section 4C(3)(b) with power to make that recommendation or (as the case may be) to give that approval;
  - (c) in a case relating to a term of an appointment, the person with power to determine that term;
  - (d) in a case relating to a working condition afforded in relation to an appointment–
    - (i) the person with power to determine that working condition; or
    - (ii) where there is no such person, the person with power to make the appointment;
  - (e) in a case relating to the termination of an appointment, the person with power to terminate the appointment;
  - (f) in a case relating to the subjection of a disabled person to any other detriment or to harassment, any person or body falling within one or more of paragraphs (a) to (e) in relation to such cases as are there mentioned.
- (3) In subsection (2)(d), “working condition” includes–
- (a) any opportunity for promotion, a transfer, training or receiving any other benefit; and
  - (b) any physical feature of premises at or from which the functions of an office or post are performed.

]<sup>18</sup>

### *Occupational pension schemes*

#### **[4G Occupational pension schemes: non-discrimination rule**

- (1) Every occupational pension scheme shall be taken to include a provision (“the non-discrimination rule”) containing the following requirements–
- (a) a requirement that the trustees or managers of the scheme refrain from discriminating against a relevant disabled person in carrying out any of their functions in relation to the scheme (including in particular their functions relating to the admission of members to the scheme and the treatment of members of the scheme);
  - (b) a requirement that the trustees or managers of the scheme do not subject a relevant disabled person to harassment in relation to the scheme.
- (2) The other provisions of the scheme are to have effect subject to the non-discrimination rule.
- (3) It is unlawful for the trustees or managers of an occupational pension scheme–
- (a) to discriminate against a relevant disabled person contrary to requirement (a) of the non-discrimination rule; or
  - (b) to subject a relevant disabled person to harassment contrary to requirement (b) of the non-discrimination rule.
- (4) The non-discrimination rule does not apply in relation to rights accrued, or benefits payable, in respect of periods of service prior to the coming into force of this section (but it does apply to communications with members or prospective members of the scheme in relation to such rights or benefits).

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<sup>18</sup> existing ss.4-6 substituted for ss.4-4F by Disability Discrimination Act 1995 (Amendment) Regulations 2003/1673 Pt 2 Reg. 5

- (5) The trustees or managers of an occupational pension scheme may, if–
- (a) they do not (apart from this subsection) have power to make such alterations to the scheme as may be required to secure conformity with the non-discrimination rule, or
  - (b) they have such power but the procedure for doing so–
    - (i) is liable to be unduly complex or protracted, or
    - (ii) involves the obtaining of consents which cannot be obtained, or can only be obtained with undue delay or difficulty,
- by resolution make such alterations to the scheme.
- (6) The alterations referred to in subsection (5) may have effect in relation to a period before the alterations are made (but may not have effect in relation to a period before the coming into force of this section).

] <sup>19</sup>

#### **[4H Occupational pension schemes: duty to make adjustments**

- (1) Where–
- (a) a provision, criterion or practice (including a scheme rule) applied by or on behalf of the trustees or managers of an occupational pension scheme, or
  - (b) any physical feature of premises occupied by the trustees or managers,
- places a relevant disabled person at a substantial disadvantage in comparison with persons who are not disabled, it is the duty of the trustees or managers to take such steps as it is reasonable, in all the circumstances of the case, for them to have to take in order to prevent the provision, criterion or practice, or feature, having that effect.
- (2) The making of alterations to scheme rules is (in addition to the examples set out in section 18B(2)) an example of a step which trustees or managers may have to take in order to comply with the duty set out in subsection (1).
- (3) Nothing in subsection (1) imposes any duty on trustees or managers in relation to a disabled person if they do not know, and could not reasonably be expected to know–
- (a) that the disabled person is a relevant disabled person; or
  - (b) that that person has a disability and is likely to be affected in the way mentioned in subsection (1).

] <sup>20</sup>

#### **[4I Occupational pension schemes: procedure**

- (1) Where under section 17A<sup>[21]</sup> a relevant disabled person presents a complaint to an employment tribunal that the trustees or managers of an occupational pension scheme have acted in relation to him in a way which is unlawful under this Part, the employer in relation to that scheme shall, for the purposes of the rules governing procedure, be treated as a party and be entitled to appear and be heard in accordance with those rules.

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<sup>19</sup> added by Disability Discrimination Act 1995 (Pensions) Regulations 2003/2770 Reg. 3

<sup>20</sup> added by Disability Discrimination Act 1995 (Pensions) Regulations 2003/2770 Reg. 3

<sup>21</sup> The former section 8 of the 1995 Act, moved, renumbered and amended by regulation 9 of the Amendment Regulations.

(2) In this section, “employer”, in relation to an occupational pension scheme, has the meaning given by section 124(1) of the Pensions Act 1995 as at the date of coming into force of this section.  
J<sup>22</sup>

#### **[4J Occupational pension schemes: remedies**

- (1) This section applies where—
- (a) under section 17A a relevant disabled person presents to an employment tribunal a complaint that—
    - (i) the trustees or managers of an occupational pension scheme have acted in relation to him in a way which is unlawful under this Part; or
    - (ii) an employer has so acted in relation to him;
  - (b) the complaint relates to—
    - (i) the terms on which persons become members of an occupational pension scheme, or
    - (ii) the terms on which members of the scheme are treated;
  - (c) the disabled person is not a pensioner member of the scheme; and
  - (d) the tribunal finds that the complaint is well-founded.
- (2) The tribunal may, without prejudice to the generality of its power under section 17A(2)(a), make a declaration that the complainant has a right—
- (a) (where subsection (1)(b)(i) applies) to be admitted to the scheme in question; or
  - (b) (where subsection (1)(b)(ii) applies) to membership of the scheme without discrimination.
- (3) A declaration under subsection (2)—
- (a) may be made in respect of such period as the declaration may specify (but may not be made in respect of any period before the coming into force of this section);
  - (b) may make such provision as the tribunal considers appropriate as to the terms upon which, or the capacity in which, the disabled person is to enjoy such admission or membership.
- (4) The tribunal may not award the disabled person any compensation under section 17A(2)(b) (whether in relation to arrears of benefits or otherwise) other than—
- (a) compensation for injury to feelings;
  - (b) compensation pursuant to section 17A(5).

J<sup>23</sup>

#### **[4K Occupational pension schemes: supplementary**

- (1) In their application to communications, sections 4G to 4J apply in relation to a disabled person who is—
- (a) entitled to the present payment of dependants' or survivors' benefits under an occupational pension scheme; or
  - (b) a pension credit member of such a scheme,
- as they apply in relation to a disabled person who is a pensioner member of the scheme.

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<sup>22</sup> added by Disability Discrimination Act 1995 (Pensions) Regulations 2003/2770 Reg. 3

<sup>23</sup> added by Disability Discrimination Act 1995 (Pensions) Regulations 2003/2770 Reg. 3

(2) In sections 4G to 4J and in this section–

“active member”, “deferred member”, “managers”, “pension credit member”, “pensioner member” and “trustees or managers” have the meanings given by section 124(1) of the Pensions Act 1995 as at the date of coming into force of this section;

“communications” includes–

- (i) the provision of information, and
- (ii) the operation of a dispute resolution procedure;

“member”, in relation to an occupational pension scheme, means any active, deferred or pensioner member;

“non-discrimination rule” means the rule in section 4G(1);

“relevant disabled person”, in relation to an occupational pension scheme, means a disabled person who is a member or prospective member of the scheme; and

“prospective member” means any person who, under the terms of his contract of employment or the scheme rules or both–

- (i) is able, at his own option, to become a member of the scheme,
- (ii) will become so able if he continues in the same employment for a sufficiently long period,
- (iii) will be admitted to it automatically unless he makes an election not to become a member, or
- (iv) may be admitted to it subject to the consent of his employer.

]<sup>24</sup>

### *Partnerships*

#### **[6A Partnerships: discrimination and harassment**

(1) It is unlawful for a firm, in relation to a position as partner in the firm, to discriminate against a disabled person–

- (a) in the arrangements which they make for the purpose of determining who should be offered that position;
- (b) in the terms on which they offer him that position;
- (c) by refusing or deliberately omitting to offer him that position; or
- (d) in a case where the person already holds that position–
  - (i) in the way they afford him access to any benefits or by refusing or deliberately omitting to afford him access to them; or
  - (ii) by expelling him from that position, or subjecting him to any other detriment.

(2) It is also unlawful for a firm, in relation to a position as partner in the firm, to subject to harassment a disabled person who holds or has applied for that position.

(3) Subsection (1) does not apply to benefits of any description if the firm are concerned with the provision (whether or not for payment) of benefits of that description to the public, or to a section of the public which includes the partner in question, unless that provision differs in a material respect from the provision of the benefits to other partners.

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<sup>24</sup> added by Disability Discrimination Act 1995 (Pensions) Regulations 2003/2770 Reg. 3

(4) The reference in subsection (1)(d)(ii) to the expulsion of a person from a position as partner includes a reference—

- (a) to the termination of that person's partnership by the expiration of any period (including a period expiring by reference to an event or circumstance), not being a termination immediately after which the partnership is renewed on the same terms; and
- (b) to the termination of that person's partnership by any act of his (including the giving of notice) in circumstances such that he is entitled to terminate it without notice by reason of the conduct of the other partners.

]<sup>25</sup>

### **[6B Partnerships: duty to make adjustments**

(1) Where—

- (a) a provision, criterion or practice applied by or on behalf of a firm, or
- (b) any physical feature of premises occupied by the firm,

places the disabled person concerned at a substantial disadvantage in comparison with persons who are not disabled, it is the duty of the firm to take such steps as it is reasonable, in all the circumstances of the case, for them to have to take in order to prevent the provision, criterion or practice, or feature, having that effect.

(2) In this section, “the disabled person concerned” means—

- (a) in the case of a provision, criterion or practice for determining to whom the position of partner should be offered, any disabled person who is, or has notified the firm that he may be, a candidate for that position;
- (b) in any other case, a disabled person who is—
  - (i) a partner, or
  - (ii) a candidate for the position of partner.

(3) Nothing in this section imposes any duty on a firm in relation to a disabled person if the firm do not know, and could not reasonably be expected to know—

- (a) in the case of a candidate or potential candidate, that the disabled person concerned is, or may be, a candidate for the position of partner; or
- (b) in any case, that that person has a disability and is likely to be affected in the way mentioned in subsection (1).

(4) Where a firm are required by this section to take any steps in relation to the disabled person concerned, the cost of taking those steps shall be treated as an expense of the firm; and the extent to which such cost should be borne by that person, where he is or becomes a partner in the firm, shall not exceed such amount as is reasonable, having regard in particular to the proportion in which he is entitled to share in the firm's profits.

]<sup>26</sup>

### **[6C Partnerships: supplementary**

(1) Sections 6A(1)(a) to (c) and (2) and section 6B apply in relation to persons proposing to form themselves into a partnership as they apply in relation to a firm.

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<sup>25</sup> added by Disability Discrimination Act 1995 (Amendment) Regulations 2003/1673 Pt 2 Reg. 6

<sup>26</sup> added by Disability Discrimination Act 1995 (Amendment) Regulations 2003/1673 Pt 2 Reg. 6

(2) Sections 6A and 6B apply to a limited liability partnership as they apply to a firm; and, in the application of those sections to a limited liability partnership, references to a partner in a firm are references to a member of the limited liability partnership.

(3) In the case of a limited partnership, references in sections 6A and 6B to a partner shall be construed as references to a general partner as defined in section 3 of the Limited Partnerships Act 1907.

(4) In sections 6A and 6B and in this section, “firm” has the meaning given by section 4 of the Partnership Act 1890.

]<sup>27</sup>

### *Barristers and advocates*

#### **[7A Barristers: discrimination and harassment**

(1) It is unlawful for a barrister or a barrister's clerk, in relation to any offer of a pupillage or tenancy, to discriminate against a disabled person—

- (a) in the arrangements which are made for the purpose of determining to whom it should be offered;
- (b) in respect of any terms on which it is offered; or
- (c) by refusing, or deliberately omitting, to offer it to him.

(2) It is unlawful for a barrister or a barrister's clerk, in relation to a disabled pupil or tenant in the set of chambers in question, to discriminate against him—

- (a) in respect of any terms applicable to him as a pupil or tenant;
- (b) in the opportunities for training, or gaining experience, which are afforded or denied to him;
- (c) in the benefits which are afforded or denied to him;
- (d) by terminating his pupillage or by subjecting him to any pressure to leave the chambers; or
- (e) by subjecting him to any other detriment.

(3) It is unlawful for a barrister or barrister's clerk, in relation to a pupillage or tenancy, to subject to harassment a disabled person who is, or has applied to be, a pupil or tenant in the set of chambers in question.

(4) It is also unlawful for any person, in relation to the giving, withholding or acceptance of instructions to a barrister, to discriminate against a disabled person or to subject him to harassment.

(5) In this section and in section 7B—

“barrister's clerk” includes any person carrying out any of the functions of a barrister's clerk; “pupil”, “pupillage” and “set of chambers” have the meanings commonly associated with their use in the context of barristers practising in independent practice; and “tenancy” and “tenant” have the meanings commonly associated with their use in the context of barristers practising in independent practice, but they also include reference to any barrister permitted to practise from a set of chambers.

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<sup>27</sup> added by Disability Discrimination Act 1995 (Amendment) Regulations 2003/1673 Pt 2 Reg. 6



] <sup>28</sup>**[7B Barristers: duty to make adjustments**

(1) Where—

(a) a provision, criterion or practice applied by or on behalf of a barrister or barrister's clerk, or

(b) any physical feature of premises occupied by a barrister or a barrister's clerk, places the disabled person concerned at a substantial disadvantage in comparison with persons who are not disabled, it is the duty of the barrister or barrister's clerk to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to prevent the provision, criterion or practice, or feature, having that effect.

(2) In a case where subsection (1) applies in relation to two or more barristers in a set of chambers, the duty in that subsection is a duty on each of them to take such steps as it is reasonable, in all of the circumstances of the case, for him to have to take.

(3) In this section, “the disabled person concerned” means—

(a) in the case of a provision, criterion or practice for determining to whom a pupillage or tenancy should be offered, any disabled person who is, or has notified the barrister or the barrister's clerk concerned that he may be, an applicant for a pupillage or tenancy;

(b) in any other case, a disabled person who is—

(i) a tenant;

(ii) a pupil; or

(iii) an applicant for a pupillage or tenancy.

(4) Nothing in this section imposes any duty on a barrister or a barrister's clerk in relation to a disabled person if he does not know, and could not reasonably be expected to know—

(a) in the case of an applicant or potential applicant, that the disabled person concerned is, or may be, an applicant for a pupillage or tenancy; or

(b) in any case, that that person has a disability and is likely to be affected in the way mentioned in subsection (1).

] <sup>29</sup>**[7C Advocates: discrimination and harassment**

(1) It is unlawful for an advocate, in relation to taking any person as his pupil, to discriminate against a disabled person—

(a) in the arrangements which he makes for the purpose of determining whom he will take as his pupil;

(b) in respect of any terms on which he offers to take the disabled person as his pupil; or

(c) by refusing, or deliberately omitting, to take the disabled person as his pupil.

(2) It is unlawful for an advocate, in relation to a disabled person who is a pupil, to discriminate against him—

(a) in respect of any terms applicable to him as a pupil;

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<sup>28</sup> added by Disability Discrimination Act 1995 (Amendment) Regulations 2003/1673 Pt 2 Reg. 8

<sup>29</sup> added by Disability Discrimination Act 1995 (Amendment) Regulations 2003/1673 Pt 2 Reg. 8

- (b) in the opportunities for training, or gaining experience, which are afforded or denied to him;
- (c) in the benefits which are afforded or denied to him;
- (d) by terminating the relationship or by subjecting him to any pressure to leave; or
- (e) by subjecting him to any other detriment.

(3) It is unlawful for an advocate, in relation to taking any person as his pupil, to subject to harassment a disabled person who is, or has applied to be taken as, his pupil.

(4) It is also unlawful for any person, in relation to the giving, withholding or acceptance of instructions to an advocate, to discriminate against a disabled person or to subject him to harassment.

(5) In this section and section 7D–

“advocate” means a member of the Faculty of Advocates practising as such; and

“pupil” has the meaning commonly associated with its use in the context of a person training to be an advocate.

] <sup>30</sup>

#### **[7D Advocates: duty to make adjustments**

(1) Where–

- (a) a provision, criterion or practice applied by or on behalf of an advocate, or
  - (b) any physical feature of premises occupied by, and under the control of, an advocate,
- places the disabled person concerned at a substantial disadvantage in comparison with persons who are not disabled, it is the duty of the advocate to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to prevent the provision, criterion or practice, or feature, having that effect.

(2) In this section, “the disabled person concerned” means–

- (a) in the case of a provision, criterion or practice for determining whom he will take as his pupil, any disabled person who has applied, or has notified the advocate that he may apply, to be taken as a pupil;
- (b) in any other case, a disabled person who is–
  - (i) an applicant to be taken as the advocate's pupil, or
  - (ii) a pupil.

(3) Nothing in this section imposes any duty on an advocate in relation to a disabled person if he does not know, and could not reasonably be expected to know–

- (a) in the case of an applicant or potential applicant, that the disabled person concerned is, or may be, applying to be taken as his pupil; or
- (b) in any case, that that person has a disability and is likely to be affected in the way mentioned in subsection (1).

] <sup>31</sup>

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<sup>30</sup> added by Disability Discrimination Act 1995 (Amendment) Regulations 2003/1673 Pt 2 Reg. 8

<sup>31</sup> added by Disability Discrimination Act 1995 (Amendment) Regulations 2003/1673 Pt 2 Reg. 8

*Enforcement etc.***8.—**

[Existing s.8 is not repealed but has been renumbered as s.17A and moved into a new Section Group.]<sup>32</sup>

**9.—** [...] <sup>33</sup>**10.—**

[Existing s.10 is not repealed but has been renumbered as s.18C and moved into a new Section Group.]<sup>34</sup>

**11.—** [...] <sup>35</sup>*Discrimination by other persons***12.—** [...] <sup>36</sup>**13.—**

[s.13 is not repealed but has been substituted for a new s.13.]<sup>37</sup>

**14.—**

[s.14 is not repealed but has been substituted for a new s.14.]<sup>38</sup>

**15.—** [...] <sup>39</sup>


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<sup>32</sup> existing s.8 renumbered as s.17A by Disability Discrimination Act 1995 (Amendment) Regulations 2003/1673 Pt 2 Reg. 9(1)

<sup>33</sup> repealed by Disability Discrimination Act 1995 (Amendment) Regulations 2003/1673 Pt 2 Reg. 10

<sup>34</sup> existing s.10 renumbered as s.18C by Disability Discrimination Act 1995 (Amendment) Regulations 2003/1673 Pt 2 Reg. 11

<sup>35</sup> repealed by Disability Discrimination Act 1995 (Amendment) Regulations 2003/1673 Pt 2 Reg. 12

<sup>36</sup> repealed by Disability Discrimination Act 1995 (Amendment) Regulations 2003/1673 Pt 2 Reg. 12

<sup>37</sup> ss.13-14D substituted for ss.13-15 by Disability Discrimination Act 1995 (Amendment) Regulations 2003/1673 Pt 2 Reg. 13

<sup>38</sup> ss.13-14D substituted for ss.13-15 by Disability Discrimination Act 1995 (Amendment) Regulations 2003/1673 Pt 2 Reg. 13

<sup>39</sup> ss.13-14D substituted for ss.13-15 by Disability Discrimination Act 1995 (Amendment) Regulations 2003/1673 Pt 2 Reg. 13

*Trade and professional bodies***[13 Trade organisations: discrimination and harassment**

- (1) It is unlawful for a trade organisation to discriminate against a disabled person—
- (a) in the arrangements which it makes for the purpose of determining who should be offered membership of the organisation;
  - (b) in the terms on which it is prepared to admit him to membership of the organisation;
- or
- (c) by refusing to accept, or deliberately not accepting, his application for membership.
- (2) It is unlawful for a trade organisation, in the case of a disabled person who is a member of the organisation, to discriminate against him—
- (a) in the way it affords him access to any benefits or by refusing or deliberately omitting to afford him access to them;
  - (b) by depriving him of membership, or varying the terms on which he is a member; or
  - (c) by subjecting him to any other detriment.
- (3) It is also unlawful for a trade organisation, in relation to membership of that organisation, to subject to harassment a disabled person who—
- (a) is a member of the organisation; or
  - (b) has applied for membership of the organisation.
- (4) In this section and section 14 “trade organisation” means—
- (a) an organisation of workers;
  - (b) an organisation of employers; or
  - (c) any other organisation whose members carry on a particular profession or trade for the purposes of which the organisation exists.

] <sup>40</sup>**[14 Trade organisations: duty to make adjustments**

- (1) Where—
- (a) a provision, criterion or practice applied by or on behalf of a trade organisation, or
  - (b) any physical feature of premises occupied by the organisation,
- places the disabled person concerned at a substantial disadvantage in comparison with persons who are not disabled, it is the duty of the organisation to take such steps as it is reasonable, in all the circumstances of the case, for it to have to take in order to prevent the provision, criterion or practice, or feature, having that effect.
- (2) In this section “the disabled person concerned” means—
- (a) in the case of a provision, criterion or practice for determining to whom membership should be offered, any disabled person who is, or has notified the organisation that he may be, an applicant for membership;
  - (b) in any other case, a disabled person who is—
    - (i) a member of the organisation, or

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<sup>40</sup> ss.13-14D substituted for ss.13-15 by Disability Discrimination Act 1995 (Amendment) Regulations 2003/1673 Pt 2 Reg. 13

(ii) an applicant for membership of the organisation.

(3) Nothing in this section imposes any duty on an organisation in relation to a disabled person if the organisation does not know, and could not reasonably be expected to know—

- (a) in the case of an applicant or potential applicant, that the disabled person concerned is, or may be, an applicant for membership of the organisation; or
- (b) in any case, that that person has a disability and is likely to be affected in the way mentioned in subsection (1).

]<sup>41</sup>

#### **[14A Qualifications bodies: discrimination and harassment**

(1) It is unlawful for a qualifications body to discriminate against a disabled person—

- (a) in the arrangements which it makes for the purpose of determining upon whom to confer a professional or trade qualification;
- (b) in the terms on which it is prepared to confer a professional or trade qualification on him;
- (c) by refusing or deliberately omitting to grant any application by him for such a qualification; or
- (d) by withdrawing such a qualification from him or varying the terms on which he holds it.

(2) It is also unlawful for a qualifications body, in relation to a professional or trade qualification conferred by it, to subject to harassment a disabled person who holds or applies for such a qualification.

(3) In determining for the purposes of subsection (1) whether the application by a qualifications body of a competence standard to a disabled person constitutes discrimination within the meaning of section 3A, the application of the standard is justified for the purposes of section 3A(1)(b) if, but only if, the qualifications body can show that—

- (a) the standard is, or would be, applied equally to persons who do not have his particular disability; and
- (b) its application is a proportionate means of achieving a legitimate aim.

(4) For the purposes of subsection (3)—

- (a) section 3A(2) (and (6)) does not apply; and
- (b) section 3A(4) has effect as if the reference to section 3A(3) were a reference to subsection (3) of this section.

(5) In this section and section 14B—

“qualifications body” means any authority or body which can confer a professional or trade qualification, but it does not include—

- (a) a responsible body (within the meaning of Chapter 1 or 2 of Part 4),
- (b) a local education authority in England or Wales, or
- (c) an education authority (within the meaning of section 135(1) of the Education (Scotland) Act 1980);

“confer” includes renew or extend;

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<sup>41</sup> ss.13-14D substituted for ss.13-15 by Disability Discrimination Act 1995 (Amendment) Regulations 2003/1673 Pt 2 Reg. 13

“professional or trade qualification” means an authorisation, qualification, recognition, registration, enrolment, approval or certification which is needed for, or facilitates engagement in, a particular profession or trade;

“competence standard” means an academic, medical or other standard applied by or on behalf of a qualifications body for the purpose of determining whether or not a person has a particular level of competence or ability.

] <sup>42</sup>

#### **[14B Qualifications bodies: duty to make adjustments**

(1) Where—

(a) a provision, criterion or practice, other than a competence standard, applied by or on behalf of a qualifications body; or

(b) any physical feature of premises occupied by a qualifications body,

places the disabled person concerned at a substantial disadvantage in comparison with persons who are not disabled, it is the duty of the qualifications body to take such steps as it is reasonable, in all the circumstances of the case, for it to have to take in order to prevent the provision, criterion or practice, or feature, having that effect.

(2) In this section “the disabled person concerned” means—

(a) in the case of a provision, criterion or practice for determining on whom a professional or trade qualification is to be conferred, any disabled person who is, or has notified the qualifications body that he may be, an applicant for the conferment of that qualification;

(b) in any other case, a disabled person who—

(i) holds a professional or trade qualification conferred by the qualifications body, or

(ii) applies for a professional or trade qualification which it confers.

(3) Nothing in this section imposes a duty on a qualifications body in relation to a disabled person if the body does not know, and could not reasonably be expected to know—

(a) in the case of an applicant or potential applicant, that the disabled person concerned is, or may be, an applicant for the conferment of a professional or trade qualification; or

(b) in any case, that that person has a disability and is likely to be affected in the way mentioned in subsection (1).

] <sup>43</sup>

#### *Practical work experience*

#### **14C Practical work experience: discrimination and harassment**

(1) It is unlawful, in the case of a disabled person seeking or undertaking a work placement, for a placement provider to discriminate against him—

<sup>42</sup> ss.13-14D substituted for ss.13-15 by Disability Discrimination Act 1995 (Amendment) Regulations 2003/1673 Pt 2 Reg. 13

<sup>43</sup> ss.13-14D substituted for ss.13-15 by Disability Discrimination Act 1995 (Amendment) Regulations 2003/1673 Pt 2 Reg. 13

- (a) in the arrangements which he makes for the purpose of determining who should be offered a work placement;
  - (b) in the terms on which he affords him access to any work placement or any facilities concerned with such a placement;
  - (c) by refusing or deliberately omitting to afford him such access;
  - (d) by terminating the placement; or
  - (e) by subjecting him to any other detriment in relation to the placement.
- (2) It is also unlawful for a placement provider, in relation to a work placement, to subject to harassment—
- (a) a disabled person to whom he is providing a placement; or
  - (b) a disabled person who has applied to him for a placement.
- [ (3) This section and section 14D do not apply—
- (a) to anything which is unlawful under any provision of section 4, sections 19 to 21A, sections 21F to 21J or Part 4; or
  - (b) to anything which would be unlawful under any such provision but for the operation of any provision in or made under this Act.
- ] <sup>44</sup>
- (4) In this section and section 14D—
- “work placement” means practical work experience undertaken for a limited period for the purposes of a person's vocational training;
  - “placement provider” means any person who provides a work placement to a person whom he does not employ.
- (5) This section and section 14D do not apply to a work placement undertaken in any of the naval, military and air forces of the Crown.

#### **[14D Practical work experience: duty to make adjustments**

- (1) Where—
- (a) a provision, criterion or practice applied by or on behalf of a placement provider, or
  - (b) any physical feature of premises occupied by the placement provider,
- places the disabled person concerned at a substantial disadvantage in comparison with persons who are not disabled, it is the duty of the placement provider to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to prevent the provision, criterion or practice, or feature, having that effect.
- (2) In this section, “the disabled person concerned” means—
- (a) in the case of a provision, criterion or practice for determining to whom a work placement should be offered, any disabled person who is, or has notified the placement provider that he may be, an applicant for that work placement;
  - (b) in any other case, a disabled person who is—
    - (i) an applicant for the work placement concerned, or
    - (ii) undertaking a work placement with the placement provider.
- (3) Nothing in this section imposes any duty on a placement provider in relation to the disabled person concerned if he does not know, and could not reasonably be expected to know—

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<sup>44</sup> substituted by Disability Discrimination Act 2005 c. 13 Sch. 1(1) para. 6

- (a) in the case of an applicant or potential applicant, that the disabled person concerned is, or may be, an applicant for the work placement; or
- (b) in any case, that that person has a disability and is likely to be affected in the way mentioned in subsection (1).

] <sup>45</sup>

*Relationships between locally-electable authorities and their members*

**[15A Interpretation of sections 15B and 15C**

- (1) Sections 15B and 15C apply to the following authorities—
- (a) the Greater London Authority;
  - (b) a county council (in England or Wales);
  - (c) a county borough council (in Wales);
  - (d) a district council (in England);
  - (e) a London borough council;
  - (f) the Common Council of the City of London;
  - (g) the Council of the Isles of Scilly;
  - (h) a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994;
  - (i) a parish council (in England); and
  - (j) a community council (in Wales or Scotland).
- (2) In relation to a member of an authority to which sections 15B and 15C apply, a reference in those sections to his carrying-out of official business is to his doing of anything—
- (a) as member of the authority;
  - (b) as member of any body to which he is appointed by, or is appointed following nomination by, the authority or a group of bodies that includes the authority; or
  - (c) as member of any other body if it is a public body.
- (3) In this section and sections 15B and 15C “member”, in relation to the Greater London Authority, means Mayor of London or member of the London Assembly.

] <sup>46</sup>

**[15B Authorities and their members: discrimination and harassment**

- (1) It is unlawful for an authority to which this section applies to discriminate against a disabled person who is a member of the authority—
- (a) in the opportunities which it affords the disabled person to receive training, or any other facility, for his carrying-out of official business;
  - (b) by refusing to afford, or deliberately not affording, the disabled person any such opportunities; or
  - (c) by subjecting the disabled person to any other detriment in connection with his carrying-out of official business.

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<sup>45</sup> ss.13-14D substituted for ss.13-15 by Disability Discrimination Act 1995 (Amendment) Regulations 2003/1673 Pt 2 Reg. 13

<sup>46</sup> added by Disability Discrimination Act 2005 c. 13 s. 1



- (2) It is unlawful for an authority to which this section applies to subject a disabled person who is a member of the authority to harassment in connection with his carrying-out of official business.
- (3) A member of an authority to which this section applies is not subjected to a detriment for the purposes of subsection (1)(c) by reason of—
- (a) his not being appointed or elected to an office of the authority;
  - (b) his not being appointed or elected to, or to an office of, a committee or sub-committee of the authority; or
  - (c) his not being appointed or nominated in exercise of any power of the authority, or of a group of bodies that includes the authority, to appoint, or nominate for appointment, to any body.
- (4) Regulations may make provision as to the circumstances in which treatment is to be taken to be justified, or is to be taken not to be justified, for the purposes of section 3A(1)(b) as it has effect for the interpretation of “discriminate” in subsection (1).
- (5) Regulations under subsection (4) may (in particular) provide for section 3A(3) to apply with prescribed modifications, or not to apply, for those purposes; but treatment of a disabled person cannot be justified under subsection (4) if it amounts to direct discrimination falling within section 3A(5).
- (6) If, in a case falling within section 3A(1) as it has effect for the interpretation of “discriminate” in subsection (1), an authority to which this section applies is under a duty imposed by section 15C in relation to a disabled person but fails to comply with that duty, its treatment of that person cannot be justified under subsection (4) unless it would have been justified even if it had complied with that duty.

]<sup>47</sup>

### **[15C Authorities and their members: duty to make adjustments**

- (1) Subsection (2) applies where—
- (a) a provision, criterion or practice applied by or on behalf of an authority to which this section applies, or
  - (b) any physical feature of premises occupied by, or under the control of, such an authority, places a disabled person who is a member of the authority at a substantial disadvantage, in comparison with members of the authority who are not disabled persons, in connection with his carrying-out of official business.
- (2) It is the duty of the authority to take such steps as it is reasonable, in all the circumstances of the case, for it to have to take in order to prevent the provision, criterion or practice, or feature, having that effect.
- (3) Subsection (2) does not impose any duty on an authority to which this section applies in relation to a member of the authority who is a disabled person if the authority does not know, and could not reasonably be expected to know, that the member—
- (a) has a disability; and
  - (b) is likely to be affected in the way mentioned in subsection (1).
- (4) Regulations may make provision, for purposes of this section—

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<sup>47</sup> added by Disability Discrimination Act 2005 c. 13 s. 1

- (a) as to circumstances in which a provision, criterion or practice, or physical feature, is to be taken to have the effect mentioned in subsection (1);
- (b) as to circumstances in which a provision, criterion or practice, or physical feature, is to be taken not to have the effect mentioned in subsection (1);
- (c) as to circumstances in which it is, or as to circumstances in which it is not, reasonable for an authority to have to take steps of a prescribed description;
- (d) as to steps which it is always, or as to steps which it is never, reasonable for an authority to have to take;
- (e) as to things which are, or as to things which are not, to be treated as physical features.

]<sup>48</sup>

*Premises occupied under leases*

**16.— Alterations to premises occupied under leases.**

[Existing s.16 is not repealed but has been renumbered as s.18A]<sup>49</sup>

*Other unlawful acts*

**16A Relationships which have come to an end**

- (1) This section applies where—
  - (a) there has been a relevant relationship between a disabled person and another person (“the relevant person”), and
  - (b) the relationship has come to an end.
- (2) In this section a “relevant relationship” is—
  - (a) a relationship during the course of which an act of discrimination against, or harassment of, one party to the relationship by the other party to it is unlawful under any preceding provision of this Part, other than sections 15B and 15C; or
  - (b) a relationship between a person providing employment services [...] <sup>50</sup> and a person receiving such services.
- (3) It is unlawful for the relevant person—
  - (a) to discriminate against the disabled person by subjecting him to a detriment, or
  - (b) to subject the disabled person to harassment,
 where the discrimination or harassment arises out of and is closely connected to the relevant relationship.
- (4) This subsection applies where—
  - (a) a provision, criterion or practice applied by the relevant person to the disabled person in relation to any matter arising out of the relevant relationship, or
  - (b) a physical feature of premises which are occupied by the relevant person,

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<sup>48</sup> added by Disability Discrimination Act 2005 c. 13 s. 1

<sup>49</sup> existing s.16 renumbered as s.18A by Disability Discrimination Act 1995 (Amendment) Regulations 2003/1673 Pt 2 Reg. 14

<sup>50</sup> words repealed by Disability Discrimination Act 2005 c. 13 Sch. 2 para. 1

places the disabled person at a substantial disadvantage in comparison with persons who are not disabled, but are in the same position as the disabled person in relation to the relevant person.

(5) Where subsection (4) applies, it is the duty of the relevant person to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to prevent the provision, practice or criterion, or feature, having that effect.

(6) Nothing in subsection (5) imposes any duty on the relevant person if he does not know, and could not reasonably be expected to know, that the disabled person has a disability and is likely to be affected in the way mentioned in that subsection.

(7) In subsection (2), reference to an act of discrimination or harassment which is unlawful includes, in the case of a relationship which has come to an end before the commencement of this section, reference to such an act which would, after the commencement of this section, be unlawful.

## **16B Discriminatory advertisements**

(1) It is unlawful for a person to publish or cause to be published an advertisement which—

- (a) invites applications for a relevant appointment or benefit; and
- (b) indicates, or might reasonably be understood to indicate, that an application will or may be determined to any extent by reference to—
  - (i) the applicant not having any disability, or any particular disability,
  - (ii) the applicant not having had any disability, or any particular disability, or
  - (iii) any reluctance of the person determining the application to comply with a duty to make reasonable adjustments or (in relation to employment services) with the duty imposed by section 21(1) as modified by section 21A(6).

(2) Subsection (1) does not apply where it would not in fact be unlawful under this Part or, to the extent that it relates to the provision of employment services, Part 3 for an application to be determined in the manner indicated (or understood to be indicated) in the advertisement.

(2A) A person who publishes an advertisement of the kind described in subsection (1) shall not be subject to any liability under subsection (1) in respect of the publication of the advertisement if he proves—

- (a) that the advertisement was published in reliance on a statement made to him by the person who caused it to be published to the effect that, by reason of the operation of subsection (2), the publication would not be unlawful; and
- (b) that it was reasonable for him to rely on the statement.

(2B) A person who knowingly or recklessly makes a statement such as is mentioned in subsection (2A)(a) which in a material respect is false or misleading commits an offence, and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2C) Subsection (1) does not apply in relation to an advertisement so far as it invites persons to apply, in their capacity as members of an authority to which sections 15B and 15C apply, for a relevant appointment or benefit which the authority is intending to make or confer.

(3) In this section, “relevant appointment or benefit” means—

- (a) any employment, promotion or transfer of employment;
- (b) membership of, or a benefit under, an occupational pension scheme;
- (c) an appointment to any office or post to which section 4D applies;
- (d) any partnership in a firm (within the meaning of section 6A);

- (e) any tenancy or pupillage (within the meaning of section 7A or 7C);
- (f) any membership of a trade organisation (within the meaning of section 13);
- (g) any professional or trade qualification (within the meaning of section 14A);
- (h) any work placement (within the meaning of section 14C);
- (i) any employment services.

(4) In this section, “advertisement” includes every form of advertisement or notice, whether to the public or not.

[ (5) Proceedings in respect of a contravention of subsection (1) may be brought only—

- (a) by the Commission for Equality and Human Rights, and
- (b) in accordance with section 25 of the Equality Act 2006.

] <sup>51</sup>

### **16C Instructions and pressure to discriminate**

(1) It is unlawful for a person—

- (a) who has authority over another person, or
- (b) in accordance with whose wishes that other person is accustomed to act,

to instruct him to do any act which is unlawful under this Part or, to the extent that it relates to the provision of employment services, Part 3, or to procure or attempt to procure the doing by him of any such act.

(2) It is also unlawful to induce, or attempt to induce, a person to do any act which contravenes this Part or, to the extent that it relates to the provision of employment services, Part 3 by—

- (a) providing or offering to provide him with any benefit, or
- (b) subjecting or threatening to subject him to any detriment.

(3) An attempted inducement is not prevented from falling within subsection (2) because it is not made directly to the person in question, if it is made in such a way that he is likely to hear of it.

[

(4) Proceedings in respect of a contravention of this section may be brought only—

- (a) by the Commission for Equality and Human Rights, and
- (b) in accordance with section 25 of the Equality Act 2006.

] <sup>52</sup>

### *Occupational pension schemes*

**17.—** [...] <sup>53</sup>

**18.—** [...] <sup>54</sup>

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<sup>51</sup> added by Equality Act 2006 c. 3 Sch. 3 para. 42

<sup>52</sup> added by Equality Act 2006 c. 3 Sch. 3 para. 43

<sup>53</sup> repealed by Disability Discrimination Act 1995 (Pensions) Regulations 2003/2770 Reg. 4(1)

<sup>54</sup> repealed by Disability Discrimination Act 2005 c. 13 Sch. 2 para. 1

*Enforcement etc.***17A.— Enforcement, remedies and procedure.**

(1) A complaint by any person that another person—

(a) has discriminated against him, or subjected him to harassment, in a way which is unlawful under this Part, or

(b) is, by virtue of section 57 or 58, to be treated as having done so,  
may be presented to an employment tribunal.

(1A) Subsection (1) does not apply to a complaint under section 14A(1) or (2) of an act in respect of which an appeal, or proceedings in the nature of an appeal, may be brought under any enactment.

(1B) [...]<sup>55</sup>

(1C) Where, on the hearing of a complaint under subsection (1), the complainant proves facts from which the tribunal could, apart from this subsection, conclude in the absence of an adequate explanation that the respondent has acted in a way which is unlawful under this Part, the tribunal shall uphold the complaint unless the respondent proves that he did not so act.

(2) Where an employment tribunal finds that a complaint presented to it under this section is well-founded, it shall take such of the following steps as it considers just and equitable—

(a) making a declaration as to the rights of the complainant and the respondent in relation to the matters to which the complaint relates;

(b) ordering the respondent to pay compensation to the complainant;

(c) recommending that the respondent take, within a specified period, action appearing to the tribunal to be reasonable, in all the circumstances of the case, for the purpose of obviating or reducing the adverse effect on the complainant of any matter to which the complaint relates.

(3) Where a tribunal orders compensation under subsection (2)(b), the amount of the compensation shall be calculated by applying the principles applicable to the calculation of damages in claims in tort or (in Scotland) in reparation for breach of statutory duty.

(4) For the avoidance of doubt it is hereby declared that compensation in respect of discrimination in a way which is unlawful under this Part may include compensation for injury to feelings whether or not it includes compensation under any other head.

(5) If the respondent to a complaint fails, without reasonable justification, to comply with a recommendation made by an employment tribunal under subsection (2)(c) the tribunal may, if it thinks it just and equitable to do so—

(a) increase the amount of compensation required to be paid to the complainant in respect of the complaint, where an order was made under subsection (2)(b); or

(b) make an order under subsection (2)(b).

(6) Regulations may make provision—

(a) for enabling a tribunal, where an amount of compensation falls to be awarded under subsection (2)(b), to include in the award interest on that amount; and

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<sup>55</sup> repealed by Disability Discrimination Act 2005 c. 13 Sch. 2 para. 1

(b) specifying, for cases where a tribunal decides that an award is to include an amount in respect of interest, the manner in which and the periods and rate by reference to which the interest is to be determined.

(7) Regulations may modify the operation of any order made under section 14 of the Employment Tribunals Act 1996 (power to make provision as to interest on sums payable in pursuance of employment tribunal decisions) to the extent that it relates to an award of compensation under subsection (2)(b).

(8) Part I of Schedule 3 makes further provision about the enforcement of this Part and about procedure.

**17B** [...] <sup>56</sup>

**[17C Validity of contracts, collective agreements and rules of undertakings**  
Schedule 3A shall have effect. ] <sup>57</sup>

### *Supplementary and general*

#### **18A.— Alterations to premises occupied under leases.**

(1) This section applies where—

- (a) a person to whom a duty to make reasonable adjustments applies (“the occupier”) occupies premises under a lease;
- (b) but for this section, the occupier would not be entitled to make a particular alteration to the premises; and
- (c) the alteration is one which the occupier proposes to make in order to comply with [that duty] <sup>58</sup> .

(2) Except to the extent to which it expressly so provides, the lease shall have effect by virtue of this subsection as if it provided—

- (a) for the occupier to be entitled to make the alteration with the written consent of the lessor;
- (b) for the occupier to have to make a written application to the lessor for consent if he wishes to make the alteration;
- (c) if such an application is made, for the lessor not to withhold his consent unreasonably; and
- (d) for the lessor to be entitled to make his consent subject to reasonable conditions.

(3) In this section—

- “lease” includes a tenancy, sub-lease or sub-tenancy and an agreement for a lease, tenancy, sub-lease or sub-tenancy; and
- “sub-lease” and “sub-tenancy” have such meaning as may be prescribed.

(4) If the terms and conditions of a lease—

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<sup>56</sup> repealed by Equality Act 2006 c. 3 Sch. 4 para. 1

<sup>57</sup> added by Disability Discrimination Act 1995 (Amendment) Regulations 2003/1673 Pt 2 Reg. 16(1)

<sup>58</sup> words substituted by Disability Discrimination Act 1995 (Amendment) Regulations 2003/1673 Pt 2 Reg. 14(3)(b)

- (a) impose conditions which are to apply if the occupier alters the premises, or
- (b) entitle the lessor to impose conditions when consenting to the occupier's altering the premises,

the occupier is to be treated for the purposes of subsection (1) as not being entitled to make the alteration.

(5) Part I of Schedule 4 supplements the provisions of this section.

### **[18B Reasonable adjustments: supplementary**

(1) In determining whether it is reasonable for a person to have to take a particular step in order to comply with a duty to make reasonable adjustments, regard shall be had, in particular, to—

- (a) the extent to which taking the step would prevent the effect in relation to which the duty is imposed;
- (b) the extent to which it is practicable for him to take the step;
- (c) the financial and other costs which would be incurred by him in taking the step and the extent to which taking it would disrupt any of his activities;
- (d) the extent of his financial and other resources;
- (e) the availability to him of financial or other assistance with respect to taking the step;
- (f) the nature of his activities and the size of his undertaking;
- (g) where the step would be taken in relation to a private household, the extent to which taking it would—
  - (i) disrupt that household, or
  - (ii) disturb any person residing there.

(2) The following are examples of steps which a person may need to take in relation to a disabled person in order to comply with a duty to make reasonable adjustments—

- (a) making adjustments to premises;
- (b) allocating some of the disabled person's duties to another person;
- (c) transferring him to fill an existing vacancy;
- (d) altering his hours of working or training;
- (e) assigning him to a different place of work or training;
- (f) allowing him to be absent during working or training hours for rehabilitation, assessment or treatment;
- (g) giving, or arranging for, training or mentoring (whether for the disabled person or any other person);
- (h) acquiring or modifying equipment;
- (i) modifying instructions or reference manuals;
- (j) modifying procedures for testing or assessment;
- (k) providing a reader or interpreter;
- (l) providing supervision or other support.

(3) For the purposes of a duty to make reasonable adjustments, where under any binding obligation a person is required to obtain the consent of another person to any alteration of the premises occupied by him—

- (a) it is always reasonable for him to have to take steps to obtain that consent; and
- (b) it is never reasonable for him to have to make that alteration before that consent is obtained.

(4) The steps referred to in subsection (3)(a) shall not be taken to include an application to a court or tribunal.

(5) In subsection (3), “binding obligation” means a legally binding obligation (not contained in a lease (within the meaning of section 18A(3)) in relation to the premises, whether arising from an agreement or otherwise.

(6) A provision of this Part imposing a duty to make reasonable adjustments applies only for the purpose of determining whether a person has discriminated against a disabled person; and accordingly a breach of any such duty is not actionable as such.

]<sup>59</sup>

### **[18C.— Charities and support for particular groups of persons.**

(1) Nothing in this Part—

(a) affects any charitable instrument which provides for conferring benefits on one or more categories of person determined by reference to any physical or mental capacity; or

(b) makes unlawful any act done by a charity or recognised body in pursuance of any of its charitable purposes, so far as those purposes are connected with persons so determined.

(2) Nothing in this Part prevents—

(a) a person who provides supported employment from treating members of a particular group of disabled persons more favourably than other persons in providing such employment; or

(b) the Secretary of State from agreeing to arrangements for the provision of supported employment which will, or may, have that effect.

(3) In this section—

“charitable instrument” means an enactment or other instrument (whenever taking effect) so far as it relates to charitable purposes;

“charity” has the same meaning as in the Charities Act 1993;

“recognised body” means a body which is a recognised body for the purposes of Part I of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990; and

“supported employment” means facilities provided, or in respect of which payments are made, under section 15 of the Disabled Persons (Employment) Act 1944.

(4) In the application of this section to England and Wales, “charitable purposes” means purposes which are exclusively charitable according to the law of England and Wales.

(5) In the application of this section to Scotland, “charitable purposes” shall be construed in the same way as if it were contained in the Income Tax Acts.

]<sup>60</sup>

### **18D Interpretation of Part 2**

(1) Subject to any duty to make reasonable adjustments, nothing in this Part is to be taken to require a person to treat a disabled person more favourably than he treats or would treat others.

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<sup>59</sup> added by Disability Discrimination Act 1995 (Amendment) Regulations 2003/1673 Pt 2 Reg. 17(2)

<sup>60</sup> existing s.10 renumbered as s.18C by Disability Discrimination Act 1995 (Amendment) Regulations 2003/1673 Pt 2 Reg. 11



## (2) In this Part—

“benefits”, except in sections 4G to 4K, includes facilities and services;

“detriment”, except in section 16C(2)(b), does not include conduct of the nature referred to in section 3B (harassment);

“discriminate”, “discrimination” and other related expressions are to be construed in accordance with section 3A;

“duty to make reasonable adjustments” means a duty imposed by or under section 4A, 4B(5) or (6), 4E, 4H, 6B, 7B, 7D, 14, 14B, 14D, 15C or 16A(5);

“employer” includes a person who has no employees but is seeking to employ another person;

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

“physical feature”, in relation to any premises, includes [ (subject to any provision under section 15C(4)(e))] <sup>61</sup> any of the following (whether permanent or temporary)—

(a) any feature arising from the design or construction of a building on the premises,

(b) any feature on the premises of any approach to, exit from or access to such a building,

(c) any fixtures, fittings, furnishings, furniture, equipment or material in or on the premises,

(d) any other physical element or quality of any land comprised in the premises;

“provision, criterion or practice” includes any arrangements.

**[18E Premises provided otherwise than in course of a Part 2 relationship]**

(1) This Part does not apply in relation to the provision, otherwise than in the course of a Part 2 relationship, of premises by the regulated party to the other party.

(2) For the purposes of subsection (1)—

(a) “Part 2 relationship” means a relationship during the course of which an act of discrimination against, or harassment of, one party to the relationship by the other party to it is unlawful under sections 4 to 15C; and

(b) in relation to a Part 2 relationship, “regulated party” means the party whose acts of discrimination, or harassment, are made unlawful by sections 4 to 15C.

]<sup>62</sup>

**PART III****DISCRIMINATION IN OTHER AREAS***Goods, facilities and services***19.— Discrimination in relation to goods, facilities and services.**

(1) It is unlawful for a provider of services to discriminate against a disabled person—

(a) in refusing to provide, or deliberately not providing, to the disabled person any service which he provides, or is prepared to provide, to members of the public;

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<sup>61</sup> words inserted by Disability Discrimination Act 2005 c. 13 Sch. 1(1) para. 11(b)

<sup>62</sup> added by Disability Discrimination Act 2005 c. 13 Sch. 1(1) para. 12

- (b) in failing to comply with any duty imposed on him by section 21 in circumstances in which the effect of that failure is to make it impossible or unreasonably difficult for the disabled person to make use of any such service;
  - (c) in the standard of service which he provides to the disabled person or the manner in which he provides it to him; or
  - (d) in the terms on which he provides a service to the disabled person.
- (2) For the purposes of this section and sections 20 to 21ZA—
- (a) the provision of services includes the provision of any goods or facilities;
  - (b) a person is “a provider of services” if he is concerned with the provision, in the United Kingdom, of services to the public or to a section of the public; and
  - (c) it is irrelevant whether a service is provided on payment or without payment.
- (3) The following are examples of services to which this section and sections 20 and 21 apply—
- (a) access to and use of any place which members of the public are permitted to enter;
  - (b) access to and use of means of communication;
  - (c) access to and use of information services;
  - (d) accommodation in a hotel, boarding house or other similar establishment;
  - (e) facilities by way of banking or insurance or for grants, loans, credit or finance;
  - (f) facilities for entertainment, recreation or refreshment;
  - (g) facilities provided by employment agencies or under section 2 of the Employment and Training Act 1973;
  - (h) the services of any profession or trade, or any local or other public authority.
- (4) In the case of an act which constitutes discrimination by virtue of section 55, this section also applies to discrimination against a person who is not disabled.
- [ (4A) Subsection (1) does not apply to anything that is governed by Regulation (EC) No. 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air. ]<sup>63</sup>
- (5) Regulations may provide for subsection (1) and section 21(1), (2) and (4) not to apply, or to apply only to a prescribed extent, in relation to a service of a prescribed description.
- (5A) Nothing in this section or sections 20 to 21A applies to the provision of a service in relation to which discrimination is unlawful under Part 4.

## **20.— Meaning of “discrimination”.**

- (1) For the purposes of section 19, a provider of services discriminates against a disabled person if—
- (a) for a reason which relates to the disabled person's disability, he treats him less favourably than he treats or would treat others to whom that reason does not or would not apply; and
  - (b) he cannot show that the treatment in question is justified.
- (2) For the purposes of section 19, a provider of services also discriminates against a disabled person if—

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<sup>63</sup> added by Civil Aviation (Access to Air Travel for Disabled Persons and Persons with Reduced Mobility) Regulations 2007/1895 Reg. 8

- (a) he fails to comply with a section 21 duty imposed on him in relation to the disabled person; and
  - (b) he cannot show that his failure to comply with that duty is justified.
- (3) For the purposes of this section, treatment is justified only if—
- (a) in the opinion of the provider of services, one or more of the conditions mentioned in subsection (4) are satisfied; and
  - (b) it is reasonable, in all the circumstances of the case, for him to hold that opinion.
- (4) The conditions are that—
- (a) in any case, the treatment is necessary in order not to endanger the health or safety of any person (which may include that of the disabled person);
  - (b) in any case, the disabled person is incapable of entering into an enforceable agreement, or of giving an informed consent, and for that reason the treatment is reasonable in that case;
  - (c) in a case falling within section 19(1)(a), the treatment is necessary because the provider of services would otherwise be unable to provide the service to members of the public;
  - (d) in a case falling within section 19(1)(c) or (d), the treatment is necessary in order for the provider of services to be able to provide the service to the disabled person or to other members of the public;
  - (e) in a case falling within section 19(1)(d), the difference in the terms on which the service is provided to the disabled person and those on which it is provided to other members of the public reflects the greater cost to the provider of services in providing the service to the disabled person.
- (5) Any increase in the cost of providing a service to a disabled person which results from compliance by a provider of services with a section 21 duty shall be disregarded for the purposes of subsection (4)(e).
- (6) Regulations may make provision, for purposes of this section, as to circumstances in which—
- (a) it is reasonable for a provider of services to hold the opinion mentioned in subsection (3)(a);
  - (b) it is not reasonable for a provider of services to hold that opinion.
- (7) Regulations may make provision for subsection (4)(b) not to apply in prescribed circumstances where—
- (a) a person is acting for a disabled person under a power of attorney;
  - (b) functions conferred by or under [the Mental Capacity Act 2005]<sup>64</sup> are exercisable in relation to a disabled person's property or affairs; or
  - (c) powers are exercisable in relation to a disabled person's property or affairs in consequence of the appointment, under the law of Scotland, of a guardian, tutor or judicial factor.
- (8) Regulations may make provision, for purposes of this section, as to circumstances (other than those mentioned in subsection (4)) in which treatment is to be taken to be justified.
- (9) In subsections (3), (4) and (8) “treatment” includes failure to comply with a section 21 duty.

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<sup>64</sup> words substituted by Mental Capacity Act 2005 c. 9 Sch. 6 para. 41

**21.— Duty of providers of services to make adjustments.**

(1) Where a provider of services has a practice, policy or procedure which makes it impossible or unreasonably difficult for disabled persons to make use of a service which he provides, or is prepared to provide, to other members of the public, it is his duty to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to change that practice, policy or procedure so that it no longer has that effect.

(2) Where a physical feature (for example, one arising from the design or construction of a building or the approach or access to premises) makes it impossible or unreasonably difficult for disabled persons to make use of such a service, it is the duty of the provider of that service to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to—

- (a) remove the feature;
- (b) alter it so that it no longer has that effect;
- (c) provide a reasonable means of avoiding the feature; or
- (d) provide a reasonable alternative method of making the service in question available to disabled persons.

(3) Regulations may prescribe—

- (a) matters which are to be taken into account in determining whether any provision of a kind mentioned in subsection (2)(c) or (d) is reasonable; and
- (b) categories of providers of services to whom subsection (2) does not apply.

(4) Where an auxiliary aid or service (for example, the provision of information on audio tape or of a sign language interpreter) would—

- (a) enable disabled persons to make use of a service which a provider of services provides, or is prepared to provide, to members of the public, or
- (b) facilitate the use by disabled persons of such a service,

it is the duty of the provider of that service to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to provide that auxiliary aid or service.

(5) Regulations may make provision, for the purposes of this section—

- (a) as to circumstances in which it is reasonable for a provider of services to have to take steps of a prescribed description;
- (b) as to circumstances in which it is not reasonable for a provider of services to have to take steps of a prescribed description;
- (c) as to what is to be included within the meaning of “practice, policy or procedure”;
- (d) as to what is not to be included within the meaning of that expression;
- (e) as to things which are to be treated as physical features;
- (f) as to things which are not to be treated as such features;
- (g) as to things which are to be treated as auxiliary aids or services;
- (h) as to things which are not to be treated as auxiliary aids or services.

(6) Nothing in this section requires a provider of services to take any steps which would fundamentally alter the nature of the service in question or the nature of his trade, profession or business.

(7) Nothing in this section requires a provider of services to take any steps which would cause him to incur expenditure exceeding the prescribed maximum.

(8) Regulations under subsection (7) may provide for the prescribed maximum to be calculated by reference to—

- (a) aggregate amounts of expenditure incurred in relation to different cases;
- (b) prescribed periods;
- (c) services of a prescribed description;
- (d) premises of a prescribed description; or
- (e) such other criteria as may be prescribed.

(9) Regulations may provide, for the purposes of subsection (7), for expenditure incurred by one provider of services to be treated as incurred by another.

(10) This section imposes duties only for the purposes of determining whether a provider of services has discriminated against a disabled person; and accordingly a breach of any such duty is not actionable as such.

### **[21ZA Application of sections 19 to 21 to transport vehicles**

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

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

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

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

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

(4) In this section—

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

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

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

“guided transport” has the same meaning as in the Transport and Works Act 1992.

]<sup>65</sup>

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<sup>65</sup> added by Disability Discrimination Act 2005 c. 13 s. 5

## 21A Employment services

- (1) In this Act, “employment services” means—
- (a) vocational guidance;
  - (b) vocational training; or
  - (c) services to assist a person to obtain or retain employment, or to establish himself as self-employed.
- (2) It is unlawful for a provider of employment services, in relation to such services, to subject to harassment a disabled person—
- (a) to whom he is providing such services, or
  - (b) who has requested him to provide such services;
- and section 3B (meaning of “harassment”) applies for the purposes of this subsection as it applies for the purposes of Part 2.
- (3) In their application to employment services, the preceding provisions of this Part have effect as follows.
- (4) Section 19 has effect as if—
- (a) after subsection (1)(a), there were inserted the following paragraph—
 

“(aa) in failing to comply with a duty imposed on him by subsection (1) of section 21 in circumstances in which the effect of that failure is to place the disabled person at a substantial disadvantage in comparison with persons who are not disabled in relation to the provision of the service;”;
  - (b) in subsection (1)(b), for “section 21” there were substituted “subsection (2) or (4) of section 21”;
  - [ (c) in subsection (2), for “sections 20 to 21ZA” there is substituted “sections 20 to 21A”. ]<sup>66</sup>
- (5) Section 20 has effect as if—
- (a) after subsection (1), there were inserted the following subsection—
 

“(1A) For the purposes of section 19, a provider of services also discriminates against a disabled person if he fails to comply with a duty imposed on him by subsection (1) of section 21 in relation to the disabled person.”;
  - (b) in subsection (2)(a), for “a section 21 duty imposed” there were substituted “a duty imposed by subsection (2) or (4) of section 21”;
  - (c) after subsection (3), there were inserted the following subsection—
 

“(3A) But treatment of a disabled person cannot be justified under subsection (3) if it amounts to direct discrimination falling within section 3A(5).”.
- (6) Section 21 has effect as if—
- (a) in subsection (1), for “makes it impossible or unreasonably difficult for disabled persons to make use of” there were substituted “places disabled persons at a substantial disadvantage in comparison with persons who are not disabled in relation to the provision of”;
  - (b) after subsection (1), there were inserted the following subsection—

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<sup>66</sup> substituted by Disability Discrimination Act 2005 c. 13 Sch. 1(1) para. 15(3)

“(1A) In subsection (1), “practice, policy or procedure” includes a provision or criterion.”

*Public authorities*

**[21B Discrimination by public authorities**

- (1) It is unlawful for a public authority to discriminate against a disabled person in carrying out its functions.
- (2) In this section, and sections 21D and 21E, “public authority”–
  - (a) includes any person certain of whose functions are functions of a public nature; but
  - (b) does not include any person mentioned in subsection (3).
- (3) The persons are–
  - (a) either House of Parliament;
  - (b) a person exercising functions in connection with proceedings in Parliament;
  - (c) the Security Service;
  - (d) the Secret Intelligence Service;
  - (e) the Government Communications Headquarters; and
  - (f) a unit, or part of a unit, of any of the naval, military or air forces of the Crown which is for the time being required by the Secretary of State to assist the Government Communications Headquarters in carrying out its functions.
- (4) In relation to a particular act, a person is not a public authority by virtue only of subsection (2)(a) if the nature of the act is private.
- (5) Regulations may provide for a person of a prescribed description to be treated as not being a public authority for purposes of this section and sections 21D and 21E.
- (6) In the case of an act which constitutes discrimination by virtue of section 55, subsection (1) of this section also applies to discrimination against a person who is not disabled.
- (7) Subsection (1)–
  - (a) does not apply to anything which is unlawful under any provision of this Act other than subsection (1); and
  - (b) does not, subject to subsections (8) and (9), apply to anything which would be unlawful under any such provision but for the operation of any provision in or made under this Act.
- (8) Subsection (1) does apply in relation to a public authority's function of appointing a person to, and in relation to a public authority's functions with respect to a person as holder of, an office or post if–
  - (a) none of the conditions specified in section 4C(3) is satisfied in relation to the office or post; and
  - (b) sections 4D and 4E would apply in relation to an appointment to the office or post if any of those conditions was satisfied.
- (9) Subsection (1) does apply in relation to a public authority's functions with respect to a person as candidate or prospective candidate for election to, and in relation to a public authority's functions with respect to a person as elected holder of, an office or post if–

- (a) the office or post is not membership of a House of Parliament, the Scottish Parliament, the National Assembly for Wales or an authority mentioned in section 15A(1);
- (b) none of the conditions specified in section 4C(3) is satisfied in relation to the office or post; and
- (c) sections 4D and 4E would apply in relation to an appointment to the office or post if–
  - (i) any of those conditions was satisfied, and
  - (ii) section 4F(1) (but not section 4C(5)) was omitted.

(10) Subsections (8) and (9)–

- (a) shall not be taken to prejudice the generality of subsection (1); but
- (b) are subject to section 21C(5).

]<sup>67</sup>

### **21C Exceptions from section 21B(1)**

(1) Section 21B(1) does not apply to–

- (a) a judicial act (whether done by a court, tribunal or other person); or
- (b) an act done on the instructions, or on behalf, of a person acting in a judicial capacity.

(2) Section 21B(1) does not apply to any act of, or relating to, making, confirming or approving–

- (a) an Act, an Act of the Scottish Parliament, a Measure or Act of the National Assembly for Wales or an Order in Council; or
- (b) an instrument made under an Act, or under an Act of the Scottish Parliament, or under a Measure or Act of the National Assembly for Wales, by–
  - (i) a Minister of the Crown;
  - (ii) a member of the Scottish Executive; or
  - (iii) the [Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government]<sup>68</sup> .

(3) Section 21B(1) does not apply to any act of, or relating to, imposing conditions or requirements of a kind falling within section 59(1)(c).

(4) Section 21B(1) does not apply to–

- (a) a decision not to institute criminal proceedings;
- (b) where such a decision is made, an act done for the purpose of enabling the decision to be made;
- (c) a decision not to continue criminal proceedings; or
- (d) where such a decision is made–
  - (i) an act done for the purpose of enabling the decision to be made; or
  - (ii) an act done for the purpose of securing that the proceedings are not continued.

(5) Section 21B(1) does not apply to an act of a prescribed description.

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<sup>67</sup> added by Disability Discrimination Act 2005 c. 13 s. 2

<sup>68</sup> words substituted by Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007/1388 Sch. 1 para. 50(b)(ii)



**[21D Meaning of “discrimination” in section 21B**

- (1) For the purposes of section 21B(1), a public authority discriminates against a disabled person if—
- (a) for a reason which relates to the disabled person's disability, it treats him less favourably than it treats or would treat others to whom that reason does not or would not apply; and
  - (b) it cannot show that the treatment in question is justified under subsection (3), (5) or (7)(c).
- (2) For the purposes of section 21B(1), a public authority also discriminates against a disabled person if—
- (a) it fails to comply with a duty imposed on it by section 21E in circumstances in which the effect of that failure is to make it—
    - (i) impossible or unreasonably difficult for the disabled person to receive any benefit that is or may be conferred, or
    - (ii) unreasonably adverse for the disabled person to experience being subjected to any detriment to which a person is or may be subjected,by the carrying-out of a function by the authority; and
  - (b) it cannot show that its failure to comply with that duty is justified under subsection (3), (5) or (7)(c).
- (3) Treatment, or a failure to comply with a duty, is justified under this subsection if—
- (a) in the opinion of the public authority, one or more of the conditions specified in subsection (4) are satisfied; and
  - (b) it is reasonable, in all the circumstances of the case, for it to hold that opinion.
- (4) The conditions are—
- (a) that the treatment, or non-compliance with the duty, is necessary in order not to endanger the health or safety of any person (which may include that of the disabled person);
  - (b) that the disabled person is incapable of entering into an enforceable agreement, or of giving an informed consent, and for that reason the treatment, or non-compliance with the duty, is reasonable in the particular case;
  - (c) that, in the case of treatment mentioned in subsection (1), treating the disabled person equally favourably would in the particular case involve substantial extra costs and, having regard to resources, the extra costs in that particular case would be too great;
  - (d) that the treatment, or non-compliance with the duty, is necessary for the protection of rights and freedoms of other persons.
- (5) Treatment, or a failure to comply with a duty, is justified under this subsection if the acts of the public authority which give rise to the treatment or failure are a proportionate means of achieving a legitimate aim.
- (6) Regulations may make provision, for purposes of this section, as to circumstances in which it is, or as to circumstances in which it is not, reasonable for a public authority to hold the opinion mentioned in subsection (3)(a).
- (7) Regulations may—
- (a) amend or omit a condition specified in subsection (4) or make provision for it not to apply in prescribed circumstances;
  - (b) amend or omit subsection (5) or make provision for it not to apply in prescribed circumstances;

(c) make provision for purposes of this section (in addition to any provision for the time being made by subsections (3) to (5)) as to circumstances in which treatment, or a failure to comply with a duty, is to be taken to be justified.

]<sup>69</sup>

### [21E Duties for purposes of section 21D(2) to make adjustments

(1) Subsection (2) applies where a public authority has a practice, policy or procedure which makes it—

- (a) impossible or unreasonably difficult for disabled persons to receive any benefit that is or may be conferred, or
- (b) unreasonably adverse for disabled persons to experience being subjected to any detriment to which a person is or may be subjected,

by the carrying-out of a function by the authority.

(2) It is the duty of the authority to take such steps as it is reasonable, in all the circumstances of the case, for the authority to have to take in order to change that practice, policy or procedure so that it no longer has that effect.

(3) Subsection (4) applies where a physical feature makes it—

- (a) impossible or unreasonably difficult for disabled persons to receive any benefit that is or may be conferred, or
- (b) unreasonably adverse for disabled persons to experience being subjected to any detriment to which a person is or may be subjected,

by the carrying-out of a function by a public authority.

(4) It is the duty of the authority to take such steps as it is reasonable, in all the circumstances of the case, for the authority to have to take in order to—

- (a) remove the feature;
- (b) alter it so that it no longer has that effect;
- (c) provide a reasonable means of avoiding the feature; or
- (d) adopt a reasonable alternative method of carrying out the function.

(5) Regulations may prescribe—

- (a) matters which are to be taken into account in determining whether any provision of a kind mentioned in subsection (4)(c) or (d) is reasonable;
- (b) categories of public authorities to whom subsection (4) does not apply.

(6) Subsection (7) applies where an auxiliary aid or service would—

- (a) enable disabled persons to receive, or facilitate the receiving by disabled persons of, any benefit that is or may be conferred, or
- (b) reduce the extent to which it is adverse for disabled persons to experience being subjected to any detriment to which a person is or may be subjected,

by the carrying-out of a function by a public authority.

(7) It is the duty of the authority to take such steps as it is reasonable, in all the circumstances of the case, for the authority to have to take in order to provide that auxiliary aid or service.

(8) Regulations may make provision, for purposes of this section—

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<sup>69</sup> added by Disability Discrimination Act 2005 c. 13 s. 2

- (a) as to circumstances in which it is, or as to circumstances in which it is not, reasonable for a public authority to have to take steps of a prescribed description;
  - (b) as to steps which it is always, or as to steps which it is never, reasonable for a public authority to have to take;
  - (c) as to what is, or as to what is not, to be included within the meaning of “practice, policy or procedure”;
  - (d) as to things which are, or as to things which are not, to be treated as physical features;
  - (e) as to things which are, or as to things which are not, to be treated as auxiliary aids or services.
- (9) Nothing in this section requires a public authority to take any steps which, apart from this section, it has no power to take.
- (10) This section imposes duties only for the purposes of determining whether a public authority has, for the purposes of section 21B(1), discriminated against a disabled person; and accordingly a breach of any such duty is not actionable as such.

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*Private clubs etc.*

**[21F Discrimination by private clubs etc.**

- (1) This section applies to any association of persons (however described, whether corporate or unincorporate, and whether or not its activities are carried on for profit) if—
- (a) it has twenty-five or more members;
  - (b) admission to membership is regulated by its constitution and is so conducted that the members do not constitute a section of the public within the meaning of section 19(2); and
  - (c) it is not an organisation to which section 13 applies.
- (2) It is unlawful for an association to which this section applies, in the case of a disabled person who is not a member of the association, to discriminate against him—
- (a) in the terms on which it is prepared to admit him to membership; or
  - (b) by refusing or deliberately omitting to accept his application for membership.
- (3) It is unlawful for an association to which this section applies, in the case of a disabled person who is a member, or associate, of the association, to discriminate against him—
- (a) in the way it affords him access to a benefit, facility or service;
  - (b) by refusing or deliberately omitting to afford him access to a benefit, facility or service;
  - (c) in the case of a member—
    - (i) by depriving him of membership, or
    - (ii) by varying the terms on which he is a member;
  - (d) in the case of an associate—
    - (i) by depriving him of his rights as an associate, or
    - (ii) by varying those rights; or
  - (e) in either case, by subjecting him to any other detriment.

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<sup>70</sup> added by Disability Discrimination Act 2005 c. 13 s. 2

- (4) It is unlawful for an association to which this section applies to discriminate against a disabled person—
- (a) in the way it affords him access to a benefit, facility or service,
  - (b) by refusing or deliberately omitting to afford him access to a benefit, facility or service, or
  - (c) by subjecting him to any other detriment,
- in his capacity as a guest of the association.
- (5) It is unlawful for an association to which this section applies to discriminate against a disabled person—
- (a) in the terms on which it is prepared to invite him, or permit a member or associate to invite him, to be a guest of the association;
  - (b) by refusing or deliberately omitting to invite him to be a guest of the association; or
  - (c) by not permitting a member or associate to invite him to be a guest of the association.
- (6) It is unlawful for an association to which this section applies to discriminate against a disabled person in failing in prescribed circumstances to comply with a duty imposed on it under section 21H.
- (7) In the case of an act which constitutes discrimination by virtue of section 55, this section also applies to discrimination against a person who is not disabled.
- ]<sup>71</sup>

### **[21G Meaning of “discrimination”**

- (1) For the purposes of section 21F, an association discriminates against a disabled person if—
- (a) for a reason which relates to the disabled person's disability, the association treats him less favourably than it treats or would treat others to whom that reason does not or would not apply; and
  - (b) it cannot show that the treatment in question is justified.
- (2) For the purposes of subsection (1), treatment is justified only if—
- (a) in the opinion of the association, one or more of the conditions mentioned in subsection (3) are satisfied; and
  - (b) it is reasonable, in all the circumstances, for it to hold that opinion.
- (3) The conditions are that—
- (a) the treatment is necessary in order not to endanger the health or safety of any person (which may include that of the disabled person);
  - (b) the disabled person is incapable of entering into an enforceable agreement, or giving an informed consent, and for that reason the treatment is reasonable in that case;
  - (c) in a case falling within section 21F(2)(a), (3)(a), (c)(ii), (d)(ii) or (e), (4)(a) or (c) or (5)(a), the treatment is necessary in order for the association to be able to afford members, associates or guests of the association, or the disabled person, access to a benefit, facility or service;
  - (d) in a case falling within section 21F(2)(b), (3)(b), (c)(i) or (d)(i), (4)(b) or (5)(b) or (c), the treatment is necessary because the association would otherwise be unable to afford members, associates or guests of the association access to a benefit, facility or service;

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<sup>71</sup> added by Disability Discrimination Act 2005 c. 13 s. 12

- (e) in a case falling within section 21F(2)(a), the difference between—
- (i) the terms on which membership is offered to the disabled person, and
  - (ii) those on which it is offered to other persons,
- reflects the greater cost to the association of affording the disabled person access to a benefit, facility or service;
- (f) in a case falling within section 21F(3)(a), (c)(ii) or (d)(ii) or (4)(a), the difference between—
- (i) the association's treatment of the disabled person, and
  - (ii) its treatment of other members or (as the case may be) other associates or other guests of the association,
- reflects the greater cost to the association of affording the disabled person access to a benefit, facility or service;
- (g) in a case falling within section 21F(5)(a), the difference between—
- (i) the terms on which the disabled person is invited, or permitted to be invited, to be a guest of the association, and
  - (ii) those on which other persons are invited, or permitted to be invited, to be guests of the association,
- reflects the greater cost to the association of affording the disabled person access to a benefit, facility or service.
- (4) Any increase in the cost of affording a disabled person access to a benefit, facility or service which results from compliance with a duty under section 21H shall be disregarded for the purposes of subsection (3)(e), (f) and (g).
- (5) Regulations may—
- (a) make provision, for purposes of this section, as to circumstances in which it is, or as to circumstances in which it is not, reasonable for an association to hold the opinion mentioned in subsection (2)(a);
  - (b) amend or omit a condition specified in subsection (3) or make provision for it not to apply in prescribed circumstances;
  - (c) make provision as to circumstances (other than any for the time being mentioned in subsection (3)) in which treatment is to be taken to be justified for the purposes of subsection (1).
- (6) For the purposes of section 21F, an association also discriminates against a disabled person if—
- (a) it fails to comply with a duty under section 21H imposed on it in relation to the disabled person; and
  - (b) it cannot show that its failure to comply with that duty is justified.
- (7) Regulations may make provision as to circumstances in which failure to comply with a duty under section 21H is to be taken to be justified for the purposes of subsection (6).

]<sup>72</sup>

## **[21H Duty to make adjustments**

- (1) Regulations may make provision imposing on an association to which section 21F applies—

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<sup>72</sup> added by Disability Discrimination Act 2005 c. 13 s. 12

- (a) a duty to take steps for a purpose relating to a policy, practice or procedure of the association, or a physical feature, which adversely affects disabled persons who—
    - (i) are, or might wish to become, members or associates of the association, or
    - (ii) are, or are likely to become, guests of the association;
  - (b) a duty to take steps for the purpose of making an auxiliary aid or service available to any such disabled persons.
- (2) Regulations under subsection (1) may (in particular)—
- (a) make provision as to the cases in which a duty is imposed;
  - (b) make provision as to the steps which a duty requires to be taken;
  - (c) make provision as to the purpose for which a duty requires steps to be taken.
- (3) Any duty imposed under this section is imposed only for the purpose of determining whether an association has, for the purposes of section 21F, discriminated against a disabled person; and accordingly a breach of any such duty is not actionable as such.
- ] <sup>73</sup>

### **[21J “Member”, “associate” and “guest”**

- (1) For the purposes of sections 21F to 21H and this section—
- (a) a person is a member of an association to which section 21F applies if he belongs to it by virtue of his admission to any sort of membership provided for by its constitution (and is not merely a person with certain rights under its constitution by virtue of his membership of some other association), and references to membership of an association shall be construed accordingly;
  - (b) a person is an associate of an association to which section 21F applies if, not being a member of it, he has under its constitution some or all of the rights enjoyed by members (or would have apart from any provision in its constitution authorising the refusal of those rights in particular cases).
- (2) References in sections 21F to 21H to a guest of an association include a person who is a guest of the association by virtue of an invitation issued by a member or associate of the association and permitted by the association.
- (3) Regulations may make provision, for purposes of sections 21F to 21H, as to circumstances in which a person is to be treated as being, or as to circumstances in which a person is to be treated as not being, a guest of an association.
- ] <sup>74</sup>

### *Premises*

#### **22.— Discrimination in relation to premises.**

- (1) It is unlawful for a person with power to dispose of any premises to discriminate against a disabled person—
- (a) in the terms on which he offers to dispose of those premises to the disabled person;

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<sup>73</sup> added by Disability Discrimination Act 2005 c. 13 s. 12

<sup>74</sup> added by Disability Discrimination Act 2005 c. 13 s. 12

- (b) by refusing to dispose of those premises to the disabled person; or
  - (c) in his treatment of the disabled person in relation to any list of persons in need of premises of that description.
- (2) Subsection (1) does not apply to a person who owns an estate or interest in the premises and wholly occupies them unless, for the purpose of disposing of the premises, he—
- (a) uses the services of an estate agent, or
  - (b) publishes an advertisement or causes an advertisement to be published.
- (3) It is unlawful for a person managing any premises to discriminate against a disabled person occupying those premises—
- (a) in the way he permits the disabled person to make use of any benefits or facilities;
  - (b) by refusing or deliberately omitting to permit the disabled person to make use of any benefits or facilities; or
  - (c) by evicting the disabled person, or subjecting him to any other detriment.
- [ (3A) Regulations may make provision, for purposes of subsection (3)—
- (a) as to who is to be treated as being, or as to who is to be treated as not being, a person who manages premises;
  - (b) as to who is to be treated as being, or as to who is to be treated as not being, a person occupying premises.
- ]<sup>75</sup>
- (4) It is unlawful for any person whose licence or consent is required for the disposal of any premises comprised in, or (in Scotland) the subject of, a tenancy to discriminate against a disabled person by withholding his licence or consent for the disposal of the premises to the disabled person.
- (5) Subsection (4) applies to tenancies created before as well as after the passing of this Act.
- (6) In this section—
- “advertisement” includes every form of advertisement or notice, whether to the public or not;
  - “dispose”, in relation to premises, includes granting a right to occupy the premises, and, in relation to premises comprised in, or (in Scotland) the subject of, a tenancy, includes—
    - (a) assigning the tenancy, and
    - (b) sub-letting or parting with possession of the premises or any part of the premises;
 and “disposal” shall be construed accordingly;
  - “estate agent” means a person who, by way of profession or trade, provides services for the purpose of finding premises for persons seeking to acquire them or assisting in the disposal of premises; and
  - “tenancy” means a tenancy created—
    - (a) by a lease or sub-lease,
    - (b) by an agreement for a lease or sub-lease,
    - (c) by a tenancy agreement, or
    - (d) in pursuance of any enactment.
- (7) In the case of an act which constitutes discrimination by virtue of section 55, this section also applies to discrimination against a person who is not disabled.
- (8) This section applies only in relation to premises in the United Kingdom.

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<sup>75</sup> added by Disability Discrimination Act 2005 c. 13 Sch. 1(1) para. 16

**[22A Commonholds**

- (1) It is unlawful for any person whose licence or consent is required for the disposal of an interest in a commonhold unit by the unit-holder to discriminate against a disabled person by withholding his licence or consent for the disposal of the interest in favour of, or to, the disabled person.
- (2) Where it is not possible for an interest in a commonhold unit to be disposed of by the unit-holder unless some other person is a party to the disposal of the interest, it is unlawful for that other person to discriminate against a disabled person by deliberately not being a party to the disposal of the interest in favour of, or to, the disabled person.
- (3) Regulations may provide for subsection (1) or (2) not to apply, or to apply only, in cases of a prescribed description.
- (4) Regulations may make provision, for purposes of this section—
- (a) as to what is, or as to what is not, to be included within the meaning of “dispose” (and “disposal”);
  - (b) as to what is, or as to what is not, to be included within the meaning of “interest in a commonhold unit”.
- (5) In this section “commonhold unit”, and “unit-holder” in relation to such a unit, have the same meaning as in Part 1 of the Commonhold and Leasehold Reform Act 2002.
- (6) In the case of an act which constitutes discrimination by virtue of section 55, this section also applies to discrimination against a person who is not disabled.
- (7) This section applies only in relation to premises in England and Wales.

] <sup>76</sup>**23.— Exemption for small dwellings.**

- (1) Where the conditions mentioned in subsection (2) are satisfied, subsection (1), (3) or (as the case may be (4) of section 22 does not apply.
- (2) The conditions are that—
- (a) the relevant occupier resides, and intends to continue to reside, on the premises;
  - (b) the relevant occupier shares accommodation on the premises with persons who reside on the premises and are not members of his household;
  - (c) the shared accommodation is not storage accommodation or a means of access; and
  - (d) the premises are small premises.
- (3) For the purposes of this section, premises are “small premises” if they fall within subsection (4) or (5).
- (4) Premises fall within this subsection if—
- (a) only the relevant occupier and members of his household reside in the accommodation occupied by him;
  - (b) the premises comprise, in addition to the accommodation occupied by the relevant occupier, residential accommodation for at least one other household;
  - (c) the residential accommodation for each other household is let, or available for letting, on a separate tenancy or similar agreement; and

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<sup>76</sup> added by Disability Discrimination Act 2005 c. 13 Sch. 1(1) para. 17



- (d) there are not normally more than two such other households.
- (5) Premises fall within this subsection if there is not normally residential accommodation on the premises for more than six persons in addition to the relevant occupier and any members of his household.
- (6) For the purposes of this section “the relevant occupier” means —
- (a) in a case falling within section 22(1), the person with power to dispose of the premises, or a near relative of his;
  - (aa) in a case falling within section 22(3), the person managing the premises, or a near relative of his;
  - (b) in a case falling within section 22(4), the person whose licence or consent is required for the disposal of the premises, or a near relative of his.
- (7) For the purposes of this section—
- “near relative” means a person's spouse or civil partner, partner, parent, child, grandparent, grandchild, or brother or sister (whether of full or half blood or by marriage or civil partnership); and
- [ “partner” means the other member of a couple consisting of—
- (a) a man and a woman who are not married to each other but are living together as husband and wife, or
  - (b) two people of the same sex who are not civil partners of each other but are living together as if they were civil partners.
- ] <sup>77</sup>

#### 24.— Meaning of “discrimination”

- (1) For the purposes of sections 22 and 22A, a person (“A”) discriminates against a disabled person if—
- (a) for a reason which relates to the disabled person's disability, he treats him less favourably than he treats or would treat others to whom that reason does not or would not apply; and
  - (b) he cannot show that the treatment in question is justified.
- (2) For the purposes of this section, treatment is justified only if—
- (a) in A's opinion, one or more of the conditions mentioned in subsection (3) are satisfied; and
  - (b) it is reasonable, in all the circumstances of the case, for him to hold that opinion.
- (3) The conditions are that—
- (a) in any case, the treatment is necessary in order not to endanger the health or safety of any person (which may include that of the disabled person);
  - (b) in any case, the disabled person is incapable of entering into an enforceable agreement, or of giving an informed consent, and for that reason the treatment is reasonable in that case;
  - (c) in a case falling within section 22(3)(a), the treatment is necessary in order for the disabled person or the occupiers of other premises forming part of the building to make use of the benefit or facility;

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<sup>77</sup> definition substituted by Civil Partnership Act 2004 c. 33 Sch. 27 para. 150(3)

- (d) in a case falling within section 22(3)(b), the treatment is necessary in order for the occupiers of other premises forming part of the building to make use of the benefit or facility;
- (e) in a case to which subsection (3A) applies, the terms are less favourable in order to recover costs which—
  - (i) as a result of the disabled person having a disability, are incurred in connection with the disposal of the premises, and
  - (ii) are not costs incurred in connection with taking steps to avoid liability under section 24G(1);
- (f) in a case to which subsection (3B) applies, the disabled person is subjected to the detriment in order to recover costs which—
  - (i) as a result of the disabled person having a disability, are incurred in connection with the management of the premises, and
  - (ii) are not costs incurred in connection with taking steps to avoid liability under section 24A(1) or 24G(1).

[ (3A) This subsection applies to a case if—

- (a) the case falls within section 22(1)(a);
- (b) the premises are to let;
- (c) the person with power to dispose of the premises is a controller of them; and
- (d) the proposed disposal of the premises would involve the disabled person becoming a person to whom they are let.

(3B) This subsection applies to a case if—

- (a) the case falls within section 22(3)(c);
- (b) the detriment is not eviction;
- (c) the premises are let premises;
- (d) the person managing the premises is a controller of them; and
- (e) the disabled person is a person to whom the premises are let or, although not a person to whom they are let, is lawfully under the letting an occupier of them.

(3C) Section 24G(3) and (4) apply for the purposes of subsection (3A) as for those of section 24G; and section 24A(3) and (4) apply for the purposes of subsection (3B) as for those of section 24A.  
] <sup>78</sup>

- (4) Regulations may make provision, for purposes of this section, as to circumstances in which—
  - (a) it is reasonable for a person to hold the opinion mentioned in subsection 2(a);
  - (b) it is not reasonable for a person to hold that opinion.

(4A) Regulations may make provision for the condition specified in subsection (3)(b) not to apply in prescribed circumstances.

(5) Regulations may make provision, for purposes of this section, as to circumstances (other than those mentioned in subsection (3)) in which treatment is to be taken to be justified.

#### **[24A Let premises: discrimination in failing to comply with duty**

- (1) It is unlawful for a controller of let premises to discriminate against a disabled person—
  - (a) who is a person to whom the premises are let; or

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<sup>78</sup> added by Disability Discrimination Act 2005 c. 13 Sch. 1(1) para. 19(4)

- (b) who, although not a person to whom the premises are let, is lawfully under the letting an occupier of the premises.
- (2) For the purposes of subsection (1), a controller of let premises discriminates against a disabled person if–
- (a) he fails to comply with a duty under section 24C or 24D imposed on him by reference to the disabled person; and
  - (b) he cannot show that failure to comply with the duty is justified (see section 24K).
- (3) For the purposes of this section and sections 24B to 24F, a person is a controller of let premises if he is–
- (a) a person by whom the premises are let; or
  - (b) a person who manages the premises.
- (4) For the purposes of this section and sections 24B to 24F–
- (a) “let” includes sub-let; and
  - (b) premises shall be treated as let by a person to another where a person has granted another a contractual licence to occupy them.
- (5) This section applies only in relation to premises in the United Kingdom.

]<sup>79</sup>

#### **[24B Exceptions to section 24A(1)]**

- (1) Section 24A(1) does not apply if–
- (a) the premises are, or have at any time been, the only or principal home of an individual who is a person by whom they are let; and
  - (b) since entering into the letting–
    - (i) the individual has not, and
    - (ii) where he is not the sole person by whom the premises are let, no other person by whom they are let has,
 used for the purpose of managing the premises the services of a person who, by profession or trade, manages let premises.
- (2) Section 24A(1) does not apply if the premises are of a prescribed description.
- (3) Where the conditions mentioned in section 23(2) are satisfied, section 24A(1) does not apply.
- (4) For the purposes of section 23 “the relevant occupier” means, in a case falling within section 24A(1), a controller of the let premises, or a near relative of his; and “near relative” has here the same meaning as in section 23.

]<sup>80</sup>

#### **[24C Duty for purposes of section 24A(2) to provide auxiliary aid or service]**

- (1) Subsection (2) applies where–
- (a) a controller of let premises receives a request made by or on behalf of a person to whom the premises are let;

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<sup>79</sup> added by Disability Discrimination Act 2005 c. 13 s. 13

<sup>80</sup> added by Disability Discrimination Act 2005 c. 13 s. 13

- (b) it is reasonable to regard the request as a request that the controller take steps in order to provide an auxiliary aid or service; and
  - (c) either the first condition, or the second condition, is satisfied.
- (2) It is the duty of the controller to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to provide the auxiliary aid or service (but see section 24E(1)).
- (3) The first condition is that—
- (a) the auxiliary aid or service—
    - (i) would enable a relevant disabled person to enjoy, or facilitate such a person's enjoyment of, the premises, but
    - (ii) would be of little or no practical use to the relevant disabled person concerned if he were neither a person to whom the premises are let nor an occupier of them; and
  - (b) it would, were the auxiliary aid or service not to be provided, be impossible or unreasonably difficult for the relevant disabled person concerned to enjoy the premises.
- (4) The second condition is that—
- (a) the auxiliary aid or service—
    - (i) would enable a relevant disabled person to make use, or facilitate such a person's making use, of any benefit, or facility, which by reason of the letting is one of which he is entitled to make use, but
    - (ii) would be of little or no practical use to the relevant disabled person concerned if he were neither a person to whom the premises are let nor an occupier of them; and
  - (b) it would, were the auxiliary aid or service not to be provided, be impossible or unreasonably difficult for the relevant disabled person concerned to make use of any benefit, or facility, which by reason of the letting is one of which he is entitled to make use.

]<sup>81</sup>

#### **[24D Duty for purposes of section 24A(2) to change practices, terms etc**

- (1) Subsection (3) applies where—
- (a) a controller of let premises has a practice, policy or procedure which has the effect of making it impossible, or unreasonably difficult, for a relevant disabled person—
    - (i) to enjoy the premises, or
    - (ii) to make use of any benefit, or facility, which by reason of the letting is one of which he is entitled to make use, or
  - (b) a term of the letting has that effect,
- and (in either case) the conditions specified in subsection (2) are satisfied.
- (2) Those conditions are—
- (a) that the practice, policy, procedure or term would not have that effect if the relevant disabled person concerned did not have a disability;
  - (b) that the controller receives a request made by or on behalf of a person to whom the premises are let; and

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<sup>81</sup> added by Disability Discrimination Act 2005 c. 13 s. 13

(c) that it is reasonable to regard the request as a request that the controller take steps in order to change the practice, policy, procedure or term so as to stop it having that effect.

(3) It is the duty of the controller to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to change the practice, policy, procedure or term so as to stop it having that effect (but see section 24E(1)).

]<sup>82</sup>

#### **[24E Sections 24C and 24D: supplementary and interpretation**

(1) For the purposes of sections 24C and 24D, it is never reasonable for a controller of let premises to have to take steps consisting of, or including, the removal or alteration of a physical feature.

(2) Sections 24C and 24D impose duties only for the purpose of determining whether a person has, for the purposes of section 24A, discriminated against another; and accordingly a breach of any such duty is not actionable as such.

(3) In sections 24C and 24D “relevant disabled person”, in relation to let premises, means a particular disabled person—

- (a) who is a person to whom the premises are let; or
- (b) who, although not a person to whom the premises are let, is lawfully under the letting an occupier of the premises.

(4) For the purposes of sections 24C and 24D, the terms of a letting of premises include the terms of any agreement which relates to the letting of the premises.

]<sup>83</sup>

#### **[24F Let premises: victimisation of persons to whom premises are let**

(1) Where a duty under section 24C or 24D is imposed on a controller of let premises by reference to a person who, although not a person to whom the premises are let, is lawfully under the letting an occupier of the premises, it is unlawful for a controller of the let premises to discriminate against a person to whom the premises are let.

(2) For the purposes of subsection (1), a controller of the let premises discriminates against a person to whom the premises are let if—

- (a) the controller treats that person (“T”) less favourably than he treats or would treat other persons whose circumstances are the same as T's; and
- (b) he does so because of costs incurred in connection with taking steps to avoid liability under section 24A(1) for failure to comply with the duty.

(3) In comparing T's circumstances with those of any other person for the purposes of subsection (2)(a), the following (as well as the costs' having been incurred) shall be disregarded—

- (a) the making of the request that gave rise to the imposition of the duty; and
- (b) the disability of each person who—
  - (i) is a disabled person or a person who has had a disability, and

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<sup>82</sup> added by Disability Discrimination Act 2005 c. 13 s. 13

<sup>83</sup> added by Disability Discrimination Act 2005 c. 13 s. 13

(ii) is a person to whom the premises are let or, although not a person to whom the premises are let, is lawfully under the letting an occupier of the premises.

]<sup>84</sup>

#### **[24G Premises that are to let: discrimination in failing to comply with duty**

(1) Where—

- (a) a person has premises to let, and
- (b) a disabled person is considering taking a letting of the premises,

it is unlawful for a controller of the premises to discriminate against the disabled person.

(2) For the purposes of subsection (1), a controller of premises that are to let discriminates against a disabled person if—

- (a) he fails to comply with a duty under section 24J imposed on him by reference to the disabled person; and
- (b) he cannot show that failure to comply with the duty is justified (see section 24K).

(3) For the purposes of this section and sections 24H and 24J, a person is a controller of premises that are to let if he is—

- (a) a person who has the premises to let; or
- (b) a person who manages the premises.

(4) For the purposes of this section and sections 24H and 24J—

- (a) “let” includes sub-let;
- (b) premises shall be treated as to let by a person to another where a person proposes to grant another a contractual licence to occupy them;

and references to a person considering taking a letting of premises shall be construed accordingly.

(5) This section applies only in relation to premises in the United Kingdom.

]<sup>85</sup>

#### **[24H Exceptions to section 24G(1)**

(1) Section 24G(1) does not apply in relation to premises that are to let if the premises are, or have at any time been, the only or principal home of an individual who is a person who has them to let and—

- (a) the individual does not use, and
- (b) where he is not the sole person who has the premises to let, no other person who has the premises to let uses,

the services of an estate agent (within the meaning given by section 22(6)) for the purposes of letting the premises.

(2) Section 24G(1) does not apply if the premises are of a prescribed description.

(3) Where the conditions mentioned in section 23(2) are satisfied, section 24G(1) does not apply.

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<sup>84</sup> added by Disability Discrimination Act 2005 c. 13 s. 13

<sup>85</sup> added by Disability Discrimination Act 2005 c. 13 s. 13

(4) For the purposes of section 23 “the relevant occupier” means, in a case falling within section 24G(1), a controller of the premises that are to let, or a near relative of his; and “near relative” has here the same meaning as in section 23.

]<sup>86</sup>

#### **[24J Duties for purposes of section 24G(2)**

(1) Subsection (2) applies where—

- (a) a controller of premises that are to let receives a request made by or on behalf of a relevant disabled person;
- (b) it is reasonable to regard the request as a request that the controller take steps in order to provide an auxiliary aid or service;
- (c) the auxiliary aid or service—
  - (i) would enable the relevant disabled person to become, or facilitate his becoming, a person to whom the premises are let, but
  - (ii) would be of little or no practical use to him if he were not considering taking a letting of the premises; and
- (d) it would, were the auxiliary aid or service not to be provided, be impossible or unreasonably difficult for the relevant disabled person to become a person to whom the premises are let.

(2) It is the duty of the controller to take such steps as it is reasonable, in all the circumstances of the case, for the controller to have to take in order to provide the auxiliary aid or service (but see subsection (5)).

(3) Subsection (4) applies where—

- (a) a controller of premises that are to let has a practice, policy or procedure which has the effect of making it impossible, or unreasonably difficult, for a relevant disabled person to become a person to whom the premises are let;
- (b) the practice, policy or procedure would not have that effect if the relevant disabled person did not have a disability;
- (c) the controller receives a request made by or on behalf of the relevant disabled person; and
- (d) it is reasonable to regard the request as a request that the controller take steps in order to change the practice, policy or procedure so as to stop it having that effect.

(4) It is the duty of the controller to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to change the practice, policy or procedure so as to stop it having that effect (but see subsection (5)).

(5) For the purposes of this section, it is never reasonable for a controller of premises that are to let to have to take steps consisting of, or including, the removal or alteration of a physical feature.

(6) In this section “relevant disabled person”, in relation to premises that are to let, means a particular disabled person who is considering taking a letting of the premises.

(7) This section imposes duties only for the purpose of determining whether a person has, for the purposes of section 24G, discriminated against another; and accordingly a breach of any such duty is not actionable as such.

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<sup>86</sup> added by Disability Discrimination Act 2005 c. 13 s. 13

] <sup>87</sup>**[24K Let premises and premises that are to let: justification**

- (1) For the purposes of sections 24A(2) and 24G(2), a person's failure to comply with a duty is justified only if—
- (a) in his opinion, a condition mentioned in subsection (2) is satisfied; and
  - (b) it is reasonable, in all the circumstances of the case, for him to hold that opinion.
- (2) The conditions are—
- (a) that it is necessary to refrain from complying with the duty in order not to endanger the health or safety of any person (which may include that of the disabled person concerned);
  - (b) that the disabled person concerned is incapable of entering into an enforceable agreement, or of giving informed consent, and for that reason the failure is reasonable.
- (3) Regulations may—
- (a) make provision, for purposes of this section, as to circumstances in which it is, or as to circumstances in which it is not, reasonable for a person to hold the opinion mentioned in subsection (1)(a);
  - (b) amend or omit a condition specified in subsection (2) or make provision for it not to apply in prescribed circumstances;
  - (c) make provision, for purposes of this section, as to circumstances (other than any for the time being mentioned in subsection (2)) in which a failure is to be taken to be justified.

] <sup>88</sup>**[24L Sections 24 to 24K: power to make supplementary provision**

- (1) Regulations may make provision, for purposes of sections 24(3A) and (3B) and 24A to 24K—
- (a) as to circumstances in which premises are to be treated as let to a person;
  - (b) as to circumstances in which premises are to be treated as not let to a person;
  - (c) as to circumstances in which premises are to be treated as being, or as not being, to let;
  - (d) as to who is to be treated as being, or as to who is to be treated as not being, a person who, although not a person to whom let premises are let, is lawfully under the letting an occupier of the premises;
  - (e) as to who is to be treated as being, or as to who is to be treated as not being, a person by whom premises are let;
  - (f) as to who is to be treated as having, or as to who is to be treated as not having, premises to let;
  - (g) as to who is to be treated as being, or as to who is to be treated as not being, a person who manages premises;
  - (h) as to things which are, or as to things which are not, to be treated as auxiliary aids or services;
  - (i) as to what is, or as to what is not, to be included within the meaning of “practice, policy or procedure”;

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<sup>87</sup> added by Disability Discrimination Act 2005 c. 13 s. 13

<sup>88</sup> added by Disability Discrimination Act 2005 c. 13 s. 13



- (j) as to circumstances in which it is, or as to circumstances in which it is not, reasonable for a person to have to take steps of a prescribed description;
  - (k) as to steps which it is always, or as to steps which it is never, reasonable for a person to have to take;
  - (l) as to circumstances in which it is, or as to circumstances in which it is not, reasonable to regard a request as being of a particular kind;
  - (m) as to things which are, or as to things which are not, to be treated as physical features;
  - (n) as to things which are, or as to things which are not, to be treated as alterations of physical features.
- (2) Regulations under subsection (1)(a) may (in particular) provide for premises to be treated as let to a person where they are a commonhold unit of which he is a unit-holder; and “commonhold unit”, and “unit-holder” in relation to such a unit, have here the same meaning as in Part 1 of the Commonhold and Leasehold Reform Act 2002.
- (3) The powers under subsections (1)(j) and (k) are subject to sections 24E(1) and 24J(5).
- 1<sup>89</sup>

#### **[24M Premises provisions do not apply where other provisions operate**

- (1) Sections 22 to 24L do not apply–
- (a) in relation to the provision of premises by a provider of services where he provides the premises in providing services to members of the public;
  - (b) in relation to the provision, in the course of a Part 2 relationship, of premises by the regulated party to the other party;
  - (c) in relation to the provision of premises to a student or prospective student–
    - (i) by a responsible body within the meaning of Chapter 1 or 2 of Part 4, or
    - (ii) by an authority in discharging any functions mentioned in section 28F(1); or
  - (d) to anything which is unlawful under section 21F or which would be unlawful under that section but for the operation of any provision in or made under this Act.
- (2) Subsection (1)(a) has effect subject to any prescribed exceptions.
- (3) In subsection (1)(a) “provider of services”, and providing services, have the same meaning as in section 19.
- (4) For the purposes of subsection (1)(b)–
- (a) “Part 2 relationship” means a relationship during the course of which an act of discrimination against, or harassment of, one party to the relationship by the other party to it is unlawful under sections 4 to 15C; and
  - (b) in relation to a Part 2 relationship, “regulated party” means the party whose acts of discrimination, or harassment, are made unlawful by sections 4 to 15C.
- (5) In subsection (1)(c) “student” includes pupil.
- 1<sup>90</sup>

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<sup>89</sup> added by Disability Discrimination Act 2005 c. 13 s. 13

<sup>90</sup> added by Disability Discrimination Act 2005 c. 13 Sch. 1(1) para. 20

*Enforcement, etc.***25.— Enforcement, remedies and procedure.**

- (1) A claim by any person that another person—
- (a) has discriminated against him in a way which is unlawful under this Part; or
  - (b) is by virtue of section 57 or 58 to be treated as having discriminated against him in such a way,
- may be made the subject of civil proceedings in the same way as any other claim in tort or (in Scotland) in reparation for breach of statutory duty.
- (2) For the avoidance of doubt it is hereby declared that damages in respect of discrimination in a way which is unlawful under this Part may include compensation for injury to feelings whether or not they include compensation under any other head.
- (3) Proceedings in England and Wales shall be brought only in a county court.
- (4) Proceedings in Scotland shall be brought only in a sheriff court.
- (5) The remedies available in such proceedings are those which are available in the High Court or (as the case may be) the Court of Session.
- (6) Part II of Schedule 3 makes further provision about the enforcement of this Part and about procedure.
- (6A) Subsection (1) does not apply in relation to a claim by a person that another person—
- (a) has discriminated against him in relation to the provision under a group insurance arrangement of facilities by way of insurance; or
  - (b) is by virtue of section 57 or 58 to be treated as having discriminated against him in relation to the provision under such an arrangement of such facilities.
- [ (7) Subsection (1) does not apply in relation to a claim by a person that another person—
- (a) has discriminated against him in relation to the provision of employment services; or
  - (b) is by virtue of section 57 or 58 to be treated as having discriminated against him in relation to the provision of employment services.
- (8) A claim—
- (a) of the kind referred to in subsection (6A) or (7), or
  - (b) by a person that another—
    - (i) has subjected him to harassment in a way which is unlawful under section 21A(2), or
    - (ii) is by virtue of section 57 or 58 to be treated as having subjected him to harassment in such a way,
- may be presented as a complaint to an employment tribunal.
- <sup>91</sup>
- (9) Section 17A(1A) to (7) and paragraphs 3 and 4 of Schedule 3 apply in relation to a complaint under subsection (8) as if it were a complaint under section 17A(1) (and paragraphs 6 to 8 of Schedule 3 do not apply in relation to such a complaint).

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<sup>91</sup> substituted by Disability Discrimination Act 2005 c. 13 Sch. 1(1) para. 21

**26.— Validity and revision of certain agreements.**

(1) Any term in a contract for the provision of goods, facilities or services or in any other agreement is void so far as it purports to—

- (a) require a person to do anything which would contravene any provision of, or made under, this Part,
- (b) exclude or limit the operation of any provision of this Part, or
- (c) prevent any person from making a claim under this Part.

[ (1A) Subsection (1) does not apply to—

- (a) any term in a contract for the provision of employment services;
- (b) any term in a contract which is a group insurance arrangement; or
- (c) a term which—
  - (i) is in an agreement which is not a contract of either of those kinds, and
  - (ii) relates to the provision of employment services or the provision under a group insurance arrangement of facilities by way of insurance.

] <sup>92</sup>

(2) Paragraphs (b) and (c) of subsection (1) do not apply to an agreement settling a claim to which section 25 applies.

(3) On the application of any person interested in an agreement to which subsection (1) applies, a county court or a sheriff court may make such order as it thinks just for modifying the agreement to take account of the effect of subsection (1).

(4) No such order shall be made unless all persons affected have been—

- (a) given notice of the application; and
- (b) afforded an opportunity to make representations to the court.

(5) Subsection (4) applies subject to any rules of court providing for that notice to be dispensed with.

(6) An order under subsection (3) may include provision as respects any period before the making of the order.

**27.— Alterations to premises occupied under leases.**

(1) This section applies where—

- (a) a provider of services, a public authority (within the meaning given by section 21B) or an association to which section 21F applies (“the occupier”) occupies premises under a lease;
- (b) but for this section, the occupier would not be entitled to make a particular alteration to the premises; and
- (c) the alteration is one which the occupier proposes to make in order to comply with a section 21 duty [ or a duty imposed under section 21E or 21H ] <sup>93</sup> .

(2) Except to the extent to which it expressly so provides, the lease shall have effect by virtue of this subsection as if it provided—

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<sup>92</sup> substituted by Disability Discrimination Act 2005 c. 13 Sch. 1(1) para. 22

<sup>93</sup> words inserted by Disability Discrimination Act 2005 c. 13 Sch. 1(1) para. 23(c)

- (a) for the occupier to be entitled to make the alteration with the written consent of the lessor;
  - (b) for the occupier to have to make a written application to the lessor for consent if he wishes to make the alteration;
  - (c) if such an application is made, for the lessor not to withhold his consent unreasonably; and
  - (d) for the lessor to be entitled to make his consent subject to reasonable conditions.
- (3) In this section—  
 “lease” includes a tenancy, sub-lease or sub-tenancy and an agreement for a lease, tenancy, sub-lease or sub-tenancy; and  
 “sub-lease” and “sub-tenancy” have, such meaning as may be prescribed.
- (4) If the terms and conditions of a lease—  
 (a) impose conditions which are to apply if the occupier alters the premises, or  
 (b) entitle the lessor to impose conditions when consenting to the occupier's altering the premises,  
 the occupier is to be treated for the purposes of subsection (1) as not being entitled to make the alteration.
- (5) Part II of Schedule 4 supplements the provisions of this section.

**28.—** [...] <sup>94</sup>

**PART IV**  
**EDUCATION**  
**[ CHAPTER 1**  
**SCHOOLS ]** <sup>95</sup>

*Duties of responsible bodies*

**[28A Discrimination against disabled pupils and prospective pupils**

- (1) It is unlawful for the body responsible for a school to discriminate against a disabled person—  
 (a) in the arrangements it makes for determining admission to the school as a pupil;  
 (b) in the terms on which it offers to admit him to the school as a pupil; or  
 (c) by refusing or deliberately omitting to accept an application for his admission to the school as a pupil.
- (2) It is unlawful for the body responsible for a school to discriminate against a disabled pupil in the education or associated services provided for, or offered to, pupils at the school by that body.
- (3) The Secretary of State may by regulations prescribe services which are, or services which are not, to be regarded for the purposes of subsection (2) as being—

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<sup>94</sup> repealed by Equality Act 2006 c. 3 Sch. 4 para. 1

<sup>95</sup> added by Special Educational Needs and Disability Act 2001 c. 10 Pt 2 c. 1 s. 19(1)

- (a) education; or
- (b) an associated service.

(4) It is unlawful for the body responsible for a school to discriminate against a disabled pupil by excluding him from the school, whether permanently or temporarily.

(5) The body responsible for a school is to be determined in accordance with Schedule 4A, and in the remaining provisions of this Chapter is referred to as the “responsible body”.

(6) In the case of an act which constitutes discrimination by virtue of section 55, this section also applies to discrimination against a person who is not disabled.

]<sup>96</sup>

### **[28B Meaning of “discrimination”**

(1) For the purposes of section 28A, a responsible body discriminates against a disabled person if—

- (a) for a reason which relates to his disability, it treats him less favourably than it treats or would treat others to whom that reason does not or would not apply; and
- (b) it cannot show that the treatment in question is justified.

(2) For the purposes of section 28A, a responsible body also discriminates against a disabled person if—

- (a) it fails, to his detriment, to comply with section 28C; and
- (b) it cannot show that its failure to comply is justified.

(3) In relation to a failure to take a particular step, a responsible body does not discriminate against a person if it shows—

- (a) that, at the time in question, it did not know and could not reasonably have been expected to know, that he was disabled; and
- (b) that its failure to take the step was attributable to that lack of knowledge.

(4) The taking of a particular step by a responsible body in relation to a person does not amount to less favourable treatment if it shows that at the time in question it did not know, and could not reasonably have been expected to know, that he was disabled.

(5) Subsections (6) to (8) apply in determining whether, for the purposes of this section—

- (a) less favourable treatment of a person, or
- (b) failure to comply with section 28C,

is justified.

(6) Less favourable treatment of a person is justified if it is the result of a permitted form of selection.

(7) Otherwise, less favourable treatment, or a failure to comply with section 28C, is justified only if the reason for it is both material to the circumstances of the particular case and substantial.

(8) If, in a case falling within subsection (1)—

- (a) the responsible body is under a duty imposed by section 28C in relation to the disabled person, but

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<sup>96</sup> added by Special Educational Needs and Disability Act 2001 c. 10 Pt 2 c. 1 s. 11(1)

(b) it fails without justification to comply with that duty, its treatment of that person cannot be justified under subsection (7) unless that treatment would have been justified even if it had complied with that duty.

] <sup>97</sup>

## **28C Disabled pupils not to be substantially disadvantaged**

(1) The responsible body for a school must take such steps as it is reasonable for it to have to take to ensure that—

(a) in relation to the arrangements it makes for determining the admission of pupils to the school, disabled persons are not placed at a substantial disadvantage in comparison with persons who are not disabled; and

(b) in relation to education and associated services provided for, or offered to, pupils at the school by it, disabled pupils are not placed at a substantial disadvantage in comparison with pupils who are not disabled.

(2) That does not require the responsible body to—

(a) remove or alter a physical feature (for example, one arising from the design or construction of the school premises or the location of resources); or

(b) provide auxiliary aids or services.

(3) Regulations may make provision, for the purposes of this section—

(a) as to circumstances in which it is reasonable for a responsible body to have to take steps of a prescribed description;

(b) as to steps which it is always reasonable for a responsible body to have to take;

(c) as to circumstances in which it is not reasonable for a responsible body to have to take steps of a prescribed description;

(d) as to steps which it is never reasonable for a responsible body to have to take.

(4) [...] <sup>98</sup>

(5) Subsection (6) applies if, in relation to a person, a confidentiality request has been made of which a responsible body is aware.

(6) In determining whether it is reasonable for the responsible body to have to take a particular step in relation to that person in order to comply with its duty under subsection (1), regard shall be had to the extent to which taking the step in question is consistent with compliance with that request.

(7) “Confidentiality request” means a request which asks for the nature, or asks for the existence, of a disabled person's disability to be treated as confidential and which satisfies either of the following conditions—

(a) it is made by that person's parent; or

(b) it is made by that person himself and the responsible body reasonably believes that he has sufficient understanding of the nature of the request and of its effect.

(8) This section imposes duties only for the purpose of determining whether a responsible body has discriminated against a disabled person; and accordingly a breach of any such duty is not actionable as such.

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<sup>97</sup> added by Special Educational Needs and Disability Act 2001 c. 10 Pt 2 c. 1 s. 12

<sup>98</sup> words substituted by Equality Act 2006 c. 3 Sch. 3 para. 46

**28D Accessibility strategies and plans**

- (1) Each local education authority must prepare, in relation to schools for which they are the responsible body—
  - (a) an accessibility strategy;
  - (b) further such strategies at such times as may be prescribed.
- (2) An accessibility strategy is a strategy for, over a prescribed period—
  - (a) increasing the extent to which disabled pupils can participate in the schools' curriculums;
  - (b) improving the physical environment of the schools for the purpose of increasing the extent to which disabled pupils are able to take advantage of education and associated services provided or offered by the schools; and
  - (c) improving the delivery to disabled pupils—
    - (i) within a reasonable time, and
    - (ii) in ways which are determined after taking account of their disabilities and any preferences expressed by them or their parents,of information which is provided in writing for pupils who are not disabled.
- (3) An accessibility strategy must be in writing.
- (4) Each local education authority must keep their accessibility strategy under review during the period to which it relates and, if necessary, revise it.
- (5) It is the duty of each local education authority to implement their accessibility strategy.
- (7) Subsections (8) to (13) apply to—
  - (a) maintained schools;
  - (b) independent schools; and
  - (c) special schools which are not maintained special schools but which are approved by the Secretary of State, or by the [Welsh Ministers]<sup>99</sup>, under section 342 of the Education Act 1996.
- (8) The responsible body must prepare—
  - (a) an accessibility plan;
  - (b) further such plans at such times as may be prescribed.
- (9) An accessibility plan is a plan for, over a prescribed period—
  - (a) increasing the extent to which disabled pupils can participate in the school's curriculum;
  - (b) improving the physical environment of the school for the purpose of increasing the extent to which disabled pupils are able to take advantage of education and associated services provided or offered by the school; and
  - (c) improving the delivery to disabled pupils—
    - (i) within a reasonable time, and
    - (ii) in ways which are determined after taking account of their disabilities and any preferences expressed by them or their parents,of information which is provided in writing for pupils who are not disabled.
- (10) An accessibility plan must be in writing.

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<sup>99</sup> words substituted by Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007/1388 Sch. 1 para. 51(2)

- (11) During the period to which the plan relates, the responsible body must keep its accessibility plan under review and, if necessary, revise it.
- (12) It is the duty of the responsible body to implement its accessibility plan.
- (13) An inspection under the Part 1 of the Education Act 2005 may extend to the performance by the responsible body of its functions in relation to the preparation, publication, review, revision and implementation of its accessibility plan.
- (14) For a maintained school or maintained nursery school, the duties imposed by subsections (8) to (12) are duties of the governing body.
- (15) Regulations may prescribe services which are, or services which are not, to be regarded for the purposes of this section as being—
- (a) education; or
  - (b) an associated service.
- (16) In this section and in section 28E, “local education authority” has the meaning given in section 12 of the Education Act 1996.
- (17) In this section—
- “prescribed” means prescribed in regulations;
- “regulations” means—
- (a) in relation to England, regulations made by the Secretary of State, and
  - (b) in relation to Wales, regulations made by the Welsh Ministers.
- (18) “Disabled pupil” includes a disabled person who may be admitted to the school as a pupil.
- (19) “Maintained school” and “independent school” have the meaning given in section 28Q(5).<sup>[100]</sup>  
<sup>[101]</sup>

## **28E Accessibility strategies and plans: procedure**

- (1) In preparing their accessibility strategy, a local education authority must have regard to—
- (a) the need to allocate adequate resources for implementing the strategy; and
  - (b) any guidance issued as to—
    - (i) the content of an accessibility strategy;
    - (ii) the form in which it is to be produced; and
    - (iii) the persons to be consulted in its preparation.
- (2) A local education authority must have regard to any guidance issued as to compliance with the requirements of section 28D(4).
- (3) Guidance under subsection (1)(b) or (2) may be issued—
- (a) for England, by the Secretary of State; and
  - (b) for Wales, by the Welsh Ministers.
- (4) In preparing an accessibility plan, the responsible body must have regard to the need to allocate adequate resources for implementing the plan.
- (5) If the Secretary of State asks for a copy of—

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<sup>100</sup> In relation to Wales: s. 28D is modified: [See Westlaw UK].

<sup>101</sup> In relation to Scotland: s. 28D is modified: [See Westlaw UK].



- (a) the accessibility strategy prepared by a local education authority in England, or  
 (b) the accessibility plan prepared by the proprietor of an independent school (other than an Academy) in England,  
 the strategy or plan must be given to him.
- (6) If the Welsh Ministers ask for a copy of–  
 (a) the accessibility strategy prepared by a local education authority in Wales, or  
 (b) the accessibility plan prepared by the proprietor of an independent school (other than an Academy) in Wales,  
 the strategy or plan must be given to [them]<sup>102</sup> .
- (7) If asked to do so, a local education authority must make a copy of their accessibility strategy available for inspection at such reasonable times as they may determine.
- (8) If asked to do so, the proprietor of an independent school which is not an Academy must make a copy of his accessibility plan available for inspection at such reasonable times as he may determine.<sup>[103] [104]</sup>

### *Residual duty of education authorities*

#### **28F Duty of education authorities not to discriminate**

- (1) This section applies to–  
 (a) the functions of a local education authority under the Education Acts; and  
 (b) the functions of an education authority under–  
 (i) the Education (Scotland) Act 1980;  
 (ii) the Education (Scotland) Act 1996; [...] <sup>105</sup>  
 (iii) the Standards in Scotland's Schools etc. Act 2000[; and] <sup>106</sup>  
 [(iv) the Education (Additional Support for Learning) (Scotland) Act 2004. ] <sup>107</sup>
- (2) But it does not apply to any prescribed function.
- (3) In discharging a function to which this section applies, it is unlawful for the authority to discriminate against–  
 (a) a disabled pupil; or  
 (b) a disabled person who may be admitted to a school as a pupil.
- (4) But an act done in the discharge of a function to which this section applies is unlawful as a result of subsection (3) only if no other provision of this Chapter makes that act unlawful.

<sup>102</sup> word substituted by Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007/1388 Sch. 1 para. 52(3)(b)

<sup>103</sup> In relation to Wales: s. 28E is modified: [See Westlaw UK].

<sup>104</sup> In relation to Scotland: s. 28E is modified: [See Westlaw UK].

<sup>105</sup> added by Education (Additional Support for Learning) (Scotland) Act 2004 (Consequential Modifications) Order 2005/1791 art. 2(b)

<sup>106</sup> added by Education (Additional Support for Learning) (Scotland) Act 2004 (Consequential Modifications) Order 2005/1791 art. 2(b)

<sup>107</sup> added by Education (Additional Support for Learning) (Scotland) Act 2004 (Consequential Modifications) Order 2005/1791 art. 2(b)

- (5) In the case of an act which constitutes discrimination by virtue of section 55, this section also applies to discrimination against a person who is not disabled.
- (6) In this section and section 28G, “local education authority” has the meaning given in section 12 of the Education Act 1996.
- (7) “The Education Acts” has the meaning given in section 578 of the Education Act 1996.
- (8) In this section and section 28G, “education authority” has the meaning given in section 135(1) of the Education (Scotland) Act 1980.

### **[28G Residual duty: supplementary provisions**

- (1) Section 28B applies for the purposes of section 28F as it applies for the purposes of section 28A with the following modifications—
- (a) references to a responsible body are to be read as references to an authority; and
  - (b) references to section 28C are to be read as references to subsections (2) to (4).
- (2) Each authority must take such steps as it is reasonable for it to have to take to ensure that, in discharging any function to which section 28F applies—
- (a) disabled persons who may be admitted to a school as pupils are not placed at a substantial disadvantage in comparison with persons who are not disabled; and
  - (b) disabled pupils are not placed at a substantial disadvantage in comparison with pupils who are not disabled.
- (3) That does not require the authority to—
- (a) remove or alter a physical feature; or
  - (b) provide auxiliary aids or services.
- (4) This section imposes duties only for the purpose of determining whether an authority has discriminated against a disabled person; and accordingly a breach of any such duty is not actionable as such.
- (5) A reference in sections 28I, 28K(1), 28M(6) and 28P to a responsible body is to be read as including a reference to a local education authority in relation to a function to which section 28F applies.
- (6) A reference in section 28N and 28P to a responsible body is to be read as including a reference to an education authority in relation to a function to which section 28F applies.
- (7) “Authority” means—
- (a) in relation to England and Wales, a local education authority; and
  - (b) in relation to Scotland, an education authority.

<sup>108</sup>

### *Enforcement: England and Wales*

### **28H Tribunals**

- (1) The Special Educational Needs Tribunal—

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<sup>108</sup> added by Special Educational Needs and Disability Act 2001 c. 10 Pt 2 c. 1 s. 16

- (a) is to continue to exist; but
  - (b) after the commencement date is to be known as the Special Educational Needs and Disability Tribunal.
- (2) In this Chapter—  
 “the Tribunal” means the Special Educational Needs and Disability Tribunal, and  
 “the Welsh Tribunal” means the Special Educational Needs Tribunal for Wales.
- [ (3) In addition to the jurisdiction of those tribunals under Part 4 of the Education Act 1996, each of them is to exercise the jurisdiction conferred on it by this Chapter. ]<sup>109</sup>
- (4) “Commencement date” means the day on which section 17 of the Special Educational Needs and Disability Act 2001 comes into force.

### **28I Jurisdiction and powers of the Tribunal**

- (1) A claim that a responsible body—
- (a) has discriminated against a person (“A”) in a way which is made unlawful under this Chapter, or
  - (b) is by virtue of section 58 to be treated as having discriminated against a person (“A”) in such a way,
- may be made to the appropriate tribunal by A's parent.
- (2) But this section does not apply to a claim to which section 28K or 28L applies.
- (3) If the appropriate tribunal considers that a claim under subsection (1) is well founded—
- (a) it may declare that A has been unlawfully discriminated against; and
  - (b) if it does so, it may make such order as it considers reasonable in all the circumstances of the case.
- (4) The power conferred by subsection (3)(b)—
- (a) may, in particular, be exercised with a view to obviating or reducing the adverse effect on the person concerned of any matter to which the claim relates; but
  - (b) does not include power to order the payment of any sum by way of compensation.
- [ (5) Subject to regulations under section 28J(8), the appropriate tribunal—
- (a) for a claim against the responsible body for a school in England, is the Tribunal,
  - (b) for a claim against the responsible body for a school in Wales, is the Welsh Tribunal.
- ] <sup>110</sup>

### **28J Procedure**

- (1) Regulations may make provision about—
- (a) the proceedings of the Tribunal on a claim of unlawful discrimination under this Chapter; and
  - (b) the making of a claim.
- (2) The regulations may, in particular, include provision—
- (a) as to the manner in which a claim must be made;

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<sup>109</sup> substituted by Education Act 2002 c. 32 Sch. 18 para. 8(1)

<sup>110</sup> added by Education Act 2002 c. 32 Sch. 18 para. 9(3)

- (b) if the jurisdiction of the Tribunal is being exercised by more than one tribunal—
  - (i) for determining by which tribunal any claim is to be heard, and
  - (ii) for the transfer of proceedings from one tribunal to another;
- (c) for enabling functions which relate to matters preliminary or incidental to a claim (including, in particular, decisions under paragraph 10(3) of Schedule 3) to be performed by the President, or by the chairman;
- (d) enabling hearings to be conducted in the absence of any member other than the chairman;
- (e) as to the persons who may appear on behalf of the parties;
- (f) for granting any person such disclosure or inspection of documents or right to further particulars as might be granted by a county court;
- (g) requiring persons to attend to give evidence and produce documents;
- (h) for authorising the administration of oaths to witnesses;
- (i) for the determination of claims without a hearing in prescribed circumstances;
- (j) as to the withdrawal of claims;
- (k) for enabling the Tribunal to stay proceedings on a claim;
- (l) for the award of costs or expenses;
- (m) for taxing or otherwise settling costs or expenses (and, in particular, for enabling costs to be taxed in the county court);
- (n) for the registration and proof of decisions and orders; and
- (o) for enabling prescribed decisions to be reviewed, or prescribed orders to be varied or revoked, in such circumstances as may be determined in accordance with the regulations.

(2A) If made with the agreement of the Welsh Ministers, the regulations apply to the Welsh Tribunal as they apply to the Tribunal, subject to such modifications as may be specified in the regulations.

(3) Proceedings before the Tribunal or the Welsh Tribunal are to be held in private, except in prescribed circumstances.

(5) The Secretary of State may pay such allowances for the purpose of or in connection with the attendance of persons at the Tribunal or the Welsh Tribunal as he may, with the consent of the Treasury, determine.

(6) In relation to the Welsh Tribunal, the power conferred by subsection (5) may be exercised only with the agreement of the [Welsh Ministers]<sup>111</sup> .

(7) Part 1 of the Arbitration Act 1996 does not apply to proceedings before the Tribunal or the Welsh Tribunal but regulations may make provision, in relation to such proceedings, corresponding to any provision of that Part.

(8) The regulations may make provision for a claim under this Chapter to be heard, in prescribed circumstances, with an appeal under Part 4 of the Education Act 1996, including provision—

- (a) for determining the appropriate tribunal for the purposes of section 28I for such a claim, and
- (b) for the transfer of proceedings between the Tribunal and the Welsh Tribunal.

(9) A person who without reasonable excuse fails to comply with—

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<sup>111</sup> words substituted by Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007/1388 Sch. 1 para. 53(3)

- (a) a requirement in respect of the disclosure or inspection of documents imposed by the regulations by virtue of subsection (2)(f), or
  - (b) a requirement imposed by the regulations by virtue of subsection (2)(g),
- is guilty of an offence.

(10) A person guilty of an offence under subsection (9) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(11) Part 3 of Schedule 3 makes further provision about enforcement of this Chapter and about procedure.

## **28K Admissions**

(1) If the condition mentioned in subsection (2) is satisfied, this section applies to a claim in relation to an admissions decision that a responsible body—

- (a) has discriminated against a person (“A”) in a way which is made unlawful under this Chapter; or
- (b) is by virtue of section 58 to be treated as having discriminated against a person (“A”) in such a way.

(2) The condition is that arrangements (“appeal arrangements”) have been made—

- (a) under section 94 of the School Standards and Framework Act 1998, or
- (b) under an agreement entered into between the responsible body for an Academy and the Secretary of State under section 482 of the Education Act 1996,

enabling an appeal to be made against the decision by A's parent.

(3) The claim must be made under the appeal arrangements.

(4) The body hearing the claim has the powers which it has in relation to an appeal under the appeal arrangements.

(5) “Admissions decision” means—

- (a) a decision of a kind mentioned in section 94(1) or (2) of the School Standards and Framework Act 1998;
- (b) a decision as to the admission of a person to [an Academy]<sup>112</sup> taken by the responsible body or on its behalf.

## **28L Exclusions**

(1) If the condition mentioned in subsection (2) is satisfied, this section applies to a claim in relation to an exclusion decision that a responsible body—

- (a) has discriminated against a person (“A”) in a way which is made unlawful under this Chapter; or
- (b) is by virtue of section 58 to be treated as having discriminated against a person (“A”) in such a way.

(2) The condition is that arrangements (“appeal arrangements”) have been made—

- (a) under section 52(3)(c) of the Education Act 2002, or

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<sup>112</sup> words substituted by Education Act 2002 c. 32 Sch. 7(2) para. 5(3)

(b) under an agreement entered into between the responsible body for an Academy and the Secretary of State under section 482 of the Education Act 1996, enabling an appeal to be made against the decision by A or by his parent.

(3) The claim must be made under the appeal arrangements.

(4) The body hearing the claim has the powers which it has in relation to an appeal under the appeal arrangements.

(5) “Exclusion decision” means–

(a) a decision of a kind mentioned in section 52(3)(c) of the Education Act 2002;

(b) a decision not to reinstate a pupil who has been permanently excluded from an Academy by its head teacher, taken by the responsible body or on its behalf.

(6) “Responsible body”, in relation to a maintained school, includes the discipline committee of the governing body if that committee is required to be established as a result of regulations made under [section 19 of the Education Act 2002]<sup>113</sup> .

(7) “Maintained school” has the meaning given in section 28Q(5).<sup>114</sup>

## **28M Roles of the Secretary of State and the Welsh Ministers**

(1) If the appropriate authority is satisfied (whether on a complaint or otherwise) that a responsible body–

(a) has acted, or is proposing to act, unreasonably in the discharge of a duty imposed by or under section 28D or 28E, or

(b) has failed to discharge a duty imposed by or under either of those sections,

it may give that body such directions as to the discharge of the duty as appear to it to be expedient.

(2) Subsection (3) applies in relation to–

(a) special schools which are not maintained special schools but which are approved by the Secretary of State, or by the Welsh Ministers, under section 342 of the Education Act 1996; and

(b) city academies.

(3) If the appropriate authority is satisfied (whether on a complaint or otherwise) that a responsible body–

(a) has acted, or is proposing to act, unreasonably in the discharge of a duty which that body has in relation to–

(i) the provision to the appropriate authority of copies of that body's accessibility plan, or

(ii) the inspection of that plan, or

(b) has failed to discharge that duty,

it may give that body such directions as to the discharge of the duty as appear to it to be expedient.

(4) Directions may be given under subsection (1) or (3) even if the performance of the duty is contingent upon the opinion of the responsible body.

(5) Subsection (6) applies if the Tribunal has made an order under section 28I(3).

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<sup>113</sup> words substituted in relation to Wales by Education Act 2002 c. 32 Sch. 21 para. 27(3)

<sup>114</sup> In relation to England: s. 28L is modified: [See Westlaw UK].

(6) If the Secretary of State is satisfied (whether on a complaint or otherwise) that the responsible body concerned—

- (a) has acted, or is proposing to act, unreasonably in complying with the order, or
- (b) has failed to comply with the order,

he may give that body such directions as to compliance with the order as appear to him to be expedient.

(7) Directions given under subsection (1), (3) or (6)—

- (a) may be varied or revoked by the directing authority; and
- (b) may be enforced, on the application of the directing authority, by a mandatory order obtained in accordance with section 31 of the Supreme Court Act 1981.

(8) “Appropriate authority” means—

- (a) in relation to England, the Secretary of State; and
- (b) in relation to Wales, the Welsh Ministers.

(9) “Directing authority” means—

- (a) the Secretary of State in relation to a direction given by him; and
- (b) the Welsh Ministers in relation to a direction given by [them]<sup>115</sup> .

### *Enforcement: Scotland*

#### **28N Civil proceedings**

(1) A claim that a responsible body in Scotland—

- (a) has discriminated against a person in a way which is unlawful under this Chapter, or
- (b) is by virtue of section 58 to be treated as having discriminated against a person in such a way,

may be made the subject of civil proceedings in the same way as any other claim for the enforcement of a statutory duty.

(2) Proceedings in Scotland may be brought only in a sheriff court.

(3) The remedies available in such proceedings are those which are available in the Court of Session other than an award of damages.

(4) Part 3 of Schedule 3 makes further provision about the enforcement of this Chapter and about procedure.

(5) In relation to civil proceedings in Scotland, in paragraph 10 of that Schedule—

- (a) references to section 28I are to be construed as a reference to this section;
- (b) references to the Tribunal [or Welsh Tribunal ]<sup>116</sup> are to be construed as references to the sheriff court.

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<sup>115</sup> word substituted by Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007/1388 Sch. 1 para. 54(5)(b)

<sup>116</sup> words inserted by Disability Discrimination Act 2005 c. 13 Sch. 1(1) para. 24(3)(c)

*Agreements relating to enforcement***[28P Validity and revision of agreements of responsible bodies**

- (1) Any term in a contract or other agreement made by or on behalf of a responsible body is void so far as it purports to—
- (a) require a person to do anything which would contravene any provision of, or made under, this Chapter;
  - (b) exclude or limit the operation of any provision of, or made under, this Chapter; or
  - (c) prevent any person from making a claim under this Chapter.
- (2) Paragraphs (b) and (c) of subsection (1) do not apply to an agreement settling a claim—
- (a) under section 28I or 28N; or
  - (b) to which section 28K or 28L applies.
- (3) On the application of any person interested in an agreement to which subsection (1) applies, a county court or a sheriff court may make such order as it thinks just for modifying the agreement to take account of the effect of subsection (1).
- (4) No such order may be made unless all persons affected have been—
- (a) given notice of the application; and
  - (b) afforded an opportunity to make representations to the court.
- (5) Subsection (4) applies subject to any rules of court providing for notice to be dispensed with.
- (6) An order under subsection (3) may include provision as respects any period before the making of the order.

]<sup>117</sup>

*Interpretation of Chapter 1***28Q Interpretation**

- (1) This section applies for the purpose of interpreting this Chapter.
- (2) “Disabled pupil” means a pupil who is a disabled person.
- (3) “Pupil”—
- (a) in relation to England and Wales, has the meaning given in section 3(1) of the Education Act 1996; and
  - (b) in relation to Scotland, has the meaning given in section 135(1) of the Education (Scotland) Act 1980.
- (4) Except in relation to Scotland (when it has the meaning given in section 135(1) of the Education (Scotland) Act 1980) “school” means—
- (a) a maintained school;
  - (b) a maintained nursery school;
  - (c) an independent school;

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<sup>117</sup> added by Special Educational Needs and Disability Act 2001 c. 10 Pt 2 c. 1 s. 24



- (d) a special school which is not a maintained special school but which is approved by the Secretary of State, or by the [Welsh Ministers]<sup>118</sup>, under section 342 of the Education Act 1996;
- (e) a pupil referral unit.
- (5) In subsection (4)–
- “maintained school” has the meaning given in section 20(7) of the School Standards and Framework Act 1998;
- “maintained nursery school” has the meaning given in section 22(9) of the School Standards and Framework Act 1998;
- “independent school” has the meaning given in section 463 of the Education Act 1996; and
- “pupil referral unit” has the meaning given in section 19(2) of the Education Act 1996.
- (6) “Responsible body” has the meaning given in section 28A(5).
- (7) “Governing body”, in relation to a maintained school, means the body corporate (constituted in accordance with regulations under section 19 of the Education Act 2002) which the school has as a result of that section.
- (8) “Parent”–
- (a) in relation to England and Wales, has the meaning given in section 576 of the Education Act 1996; and
- (b) in relation to Scotland, has the meaning given in section 135(1) of the Education (Scotland) Act 1980.
- (9) In relation to England and Wales “permitted form of selection” means–
- (a) if the school is a maintained school which is not designated as a grammar school under section 104 of the School Standards and Framework Act 1998, any form of selection mentioned in section 99(2) or (4) of that Act;
- (b) if the school is a maintained school which is so designated, any of its selective admission arrangements;
- (c) if the school is an independent school, any arrangements which make provision for any or all of its pupils to be selected by reference to general or special ability or aptitude, with a view to admitting only pupils of high ability or aptitude.
- (10) In relation to Scotland, “permitted form of selection” means–
- (a) if the school is managed by an education authority, such arrangements as have been approved by the Scottish Ministers for the selection of pupils for admission;
- (b) if the school is an independent school or a self-governing school, any arrangements which make provision for any or all of its pupils to be selected by reference to general or special ability or aptitude, with a view to admitting only pupils of high ability or aptitude.
- (11) In subsection (10), “education authority”, “independent school” and “self-governing school” have the meaning given in section 135(1) of the Education (Scotland) Act 1980.
- (13) “Accessibility strategy” and “accessibility plan” have the meaning given in section 28D.

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<sup>118</sup> words substituted by Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007/1388 Sch. 1 para. 55(2)

## [ CHAPTER 2

FURTHER AND HIGHER EDUCATION ]<sup>119</sup>*Duties of responsible bodies***28R Discrimination against disabled students and prospective students**

(1) It is unlawful for the body responsible for an educational institution to discriminate against a disabled person—

- (a) in the arrangements it makes for determining admissions to the institution;
- (b) in the terms on which it offers to admit him to the institution; or
- (c) by refusing or deliberately omitting to accept an application for his admission to the institution.

(2) It is unlawful for the body responsible for an educational institution to discriminate against a disabled student in the student services it provides, or offers to provide.

(3) It is unlawful for the body responsible for an educational institution to discriminate against a disabled student by excluding him from the institution, whether permanently or temporarily.

[ (3A) It is unlawful for the body responsible for an educational institution to discriminate against a disabled person—

- (a) in the arrangements which it makes for the purpose of determining upon whom to confer a qualification;
- (b) in the terms on which it is prepared to confer a qualification on him;
- (c) by refusing or deliberately omitting to grant any application by him for a qualification; or
- (d) by withdrawing a qualification from him or varying the terms on which he holds it.

(3B) It is unlawful for the body responsible for an educational institution to subject to harassment a disabled person who—

- (a) holds or applies for a qualification conferred by the institution;
- (b) is a student at the institution; or
- (c) seeks admission as a student to the institution.

] <sup>120</sup>

(4) In the case of an act which constitutes discrimination by virtue of section 55, this section also applies to discrimination against a person who is not disabled.

(5) The body responsible for an educational institution is to be determined in accordance with Schedule 4B, and in the remaining provisions of this Chapter is referred to as the “responsible body”.

(6) “Educational institution”, in relation to England and Wales, means an institution—

- (a) within the higher education sector;
- (b) within the further education sector; or
- (c) designated in an order made by the Secretary of State.

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<sup>119</sup> added by Special Educational Needs and Disability Act 2001 c. 10 Pt 2 c. 2 s. 31(1)

<sup>120</sup> added by Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006/1721 Pt 2 Reg. 5

- (7) “Educational institution”, in relation to Scotland, means –
- (a) an institution within the higher education sector (within the meaning of section 56(2) of the Further and Higher Education (Scotland) Act 1992);
  - (b) a college of further education with a board of management within the meaning of section 36 of that Act;
  - (c) a central institution within the meaning of section 135 of the Education (Scotland) Act 1980;
  - (d) a college of further education maintained by an education authority in the exercise of their further education functions in providing courses of further education within the meaning of section 1(5)(b)(ii) of that Act;
  - (e) an institution designated in an order made by the Secretary of State.
- (8) Subsection (6) is to be read with section 91 of the Further and Higher Education Act 1992.
- (9) The Secretary of State may not make an order under subsection (6)(c) or (7)(e) unless he is satisfied that the institution concerned is wholly or partly funded from public funds.
- (10) Before making an order under subsection (7)(e), the Secretary of State must consult the Scottish Ministers.
- (11) “Student services” means services of any description which are provided wholly or mainly for students.
- (12) Regulations may make provision as to services which are, or are not, to be regarded for the purposes of subsection (2) as student services.

## **28S Meaning of “discrimination”**

- (1) For the purposes of this Chapter, a responsible body discriminates against a disabled person if–
- (a) for a reason which relates to his disability, it treats him less favourably than it treats or would treat others to whom that reason does not or would not apply; and
  - (b) it cannot show that the treatment in question is justified.
- (2) For the purposes of this Chapter, a responsible body also discriminates against a disabled person if it fails to comply with a duty imposed on it by section 28T or 28UA(5) in relation to the disabled person.
- (3) In relation to a failure to take a particular step, a responsible body does not discriminate against a person if it shows–
- (a) that, at the time in question, it did not know and could not reasonably have been expected to know, that he was disabled; and
  - (b) that its failure to take the step was attributable to that lack of knowledge.
- [ (5) Treatment, other than the application of a competence standard, is (subject to subsections (7) to (9)), justified for the purposes of subsection (1)(b) if, but only if, the reason for it is both material to the circumstances of the particular case and substantial.
- (6) The application by a responsible body of a competence standard to a disabled person is (subject to subsections (8) and (9)) justified for the purposes of subsection (1)(b) if, but only if, the body can show that—

- (a) the standard is, or would be, applied equally to persons who do not have his particular disability, and
- (b) its application is a proportionate means of achieving a legitimate aim.

(7) If in a case falling within subsection (1), other than a case where the treatment is the application of a competence standard, a responsible body is under a duty under section 28T or 28UA(5) in relation to the disabled person, but fails to comply with that duty, its treatment of that person cannot be justified under subsection (5) unless that treatment would have been justified even if it had complied with that duty.

(8) Subject to subsection (9), regulations may make provision, for purposes of this section, as to circumstances in which treatment is, or as to circumstances in which treatment is not, to be taken to be justified.

(9) Treatment of a disabled person by a responsible body cannot be justified under subsection (5), (6) or (8) if it amounts to direct discrimination falling within subsection (10).

(10) A responsible body directly discriminates against a disabled person if, on the ground of the disabled person's disability, it treats the disabled person less favourably than it treats or would treat a person not having that particular disability whose relevant circumstances, including his abilities, are the same as, or not materially different from, those of the disabled person.

(11) In this section and section 28T, “competence standard” means an academic, medical or other standard applied by or on behalf of a responsible body for the purpose of determining whether or not a person has a particular level of competence or ability. ]<sup>121</sup>

### **[28SA. Meaning of “harassment”**

(1) For the purposes of this Chapter, a responsible body subjects a disabled person to harassment where, for a reason which relates to the disabled person's disability, that body engages in unwanted conduct which has the purpose or effect of—

- (a) violating the disabled person's dignity, or
- (b) creating an intimidating, hostile, degrading, humiliating or offensive environment for him.

(2) Conduct shall be regarded as having the effect referred to in subsection (1) (a) or (b) only if, having regard to all the circumstances, including in particular the perception of the disabled person, it should reasonably be considered as having that effect.

] <sup>122</sup>

### **28T Responsible bodies' duties to make adjustments**

(1) Where—

- (a) a provision, criterion or practice, other than a competence standard, is applied by or on behalf of a responsible body,
- (b) it is a provision, criterion or practice relating to—

<sup>121</sup> s.28S(5)-(11) substituted for s.28S(5)-(9) by Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006/1721 Pt 2 Reg. 6(4)

<sup>122</sup> added by Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006/1721 Pt 2 Reg. 7

- (i) the arrangements it makes for determining admissions to the institution, or
- (ii) student services provided for, or offered to, students by the responsible body, and

(c) that provision, criterion or practice places disabled persons at a substantial disadvantage in comparison with persons who are not disabled,

it is the duty of the responsible body to take such steps as it is reasonable, in all the circumstances of the case, for it to have to take in order to prevent the provision, criterion or practice having that effect.

(1A) Where—

- (a) a provision, criterion or practice, other than a competence standard, is applied by or on behalf of a responsible body,
- (b) it is a provision, criterion or practice for determining on whom a qualification is to be conferred,
- (c) a disabled person is, or has notified the body that he may be, an applicant for the conferment of that qualification, and
- (d) the provision, criterion or practice places the disabled person at a substantial disadvantage in comparison with persons who are not disabled,

it is the duty of the responsible body to take such steps as it is reasonable, in all the circumstances of the case, for it to have to take in order to prevent the provision, criterion or practice having that effect.

(1B) Where—

- (a) a provision, criterion or practice, other than a competence standard, is applied by or on behalf of a responsible body,
- (b) it is a provision, criterion or practice other than one mentioned in subsection (1)(b) or (1A)(b), and
- (c) it places a disabled person who—
  - (i) holds a qualification conferred by the responsible body, or
  - (ii) applies for a qualification which the responsible body confers,
 at a substantial disadvantage in comparison with persons who are not disabled,

it is the duty of the responsible body to take such steps as it is reasonable, in all the circumstances of the case, for it to have to take in order to prevent the provision, criterion or practice having that effect.

(1C) Where any physical feature of premises occupied by a responsible body places disabled persons at a substantial disadvantage in comparison with persons who are not disabled in relation to—

- (a) the arrangements which that body makes for determining admissions to the institution, or
- (b) student services provided for, or offered to, students by that body,

it is the duty of the body to take such steps as it is reasonable, in all the circumstances of the case, for it to have to take in order to prevent the feature having that effect.

(1D) Where any physical feature of premises occupied by a responsible body places a disabled person who—

- (a) applies for a qualification which that body confers, or
- (b) holds a qualification which was conferred by that body,

at a substantial disadvantage in comparison with persons who are not disabled, it is the duty of the body to take such steps as it is reasonable, in all the circumstances of the case, for it to have to take in order to prevent the feature having that effect.

(2) In considering whether it is reasonable for it to have to take a particular step in order to comply with its duty under any of subsections (1) to (1D), a responsible body must have regard to any relevant provisions of a code of practice issued under [section 14 of the Equality Act 2006]<sup>123</sup> .

(3) Subsection (4) applies if a person has made a confidentiality request of which a responsible body is aware.

(4) In determining whether it is reasonable for the responsible body to have to take a particular step in relation to that person in order to comply with its duty under any of subsections (1) to (1D), regard shall be had to the extent to which taking the step in question is consistent with compliance with that request.

(5) “Confidentiality request” means a request made by a disabled person, which asks for the nature, or asks for the existence, of his disability to be treated as confidential.

(6) This section imposes duties only for the purpose of determining whether a responsible body has discriminated against a disabled person; and accordingly a breach of any such duty is not actionable as such.

*Other providers of further education or training facilities*

**[28U. Further education etc provided by local education authorities and schools**

(1) Part 1 of Schedule 4C modifies this Chapter for the purpose of its application in relation to higher and further education secured by a local education authority.

(2) Part 1A of that Schedule modifies this Chapter for the purpose of its application in relation to recreational or training facilities secured by a local education authority and further education provided by the governing body of a maintained school.

(3) Part 2 of that Schedule modifies this Chapter for the purpose of its application in relation to further education, within the meaning of section 1(5)(b)(iii) of the Education (Scotland) Act 1980.

(4) Part 2A of that Schedule modifies this Chapter for the purpose of its application in relation to facilities whose provision is secured by an education authority under section 1(3) of the Education (Scotland) Act 1980.

]<sup>124</sup>

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<sup>123</sup> words substituted by Equality Act 2006 c. 3 Sch. 3 para. 46

<sup>124</sup> substituted by Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006/1721 Pt 2 Reg. 10

*Other unlawful acts***[28UA. Relationships which have come to an end**

(1) This section applies where—

- (a) there has been a relevant relationship between a disabled person and a responsible body, and
- (b) that relationship has come to an end.

(2) In this section a “relevant relationship” is a relationship during the course of which an act of discrimination against, or harassment of, one party to the relationship by the other party to it is unlawful under any preceding provision of this Chapter.

(3) It is unlawful for the responsible body—

- (a) to discriminate against the disabled person by subjecting him to a detriment, or
- (b) to subject the disabled person to harassment,

where the discrimination or harassment arises out of and is closely connected to the relevant relationship.

(4) This subsection applies where—

- (a) a provision, criterion or practice applied by the responsible body to the disabled person in relation to any matter arising out of the relevant relationship, or
- (b) a physical feature of premises which are occupied by the responsible body,

places the disabled person at a substantial disadvantage in comparison with persons who are not disabled but are in the same position as the disabled person in relation to the responsible body.

(5) Where subsection (4) applies, it is the duty of the responsible body to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to prevent the provision, criterion or practice, or feature, having that effect.

(6) Subsection (5) imposes duties only for the purpose of determining whether a responsible body has discriminated against a disabled person; and accordingly a breach of any such duty is not actionable as such.

(7) Nothing in subsection (5) imposes any duty on the responsible body if it does not know and could not reasonably be expected to know, that the person has a disability and is likely to be affected in the way mentioned in that subsection.

(8) In subsection (2), reference to an act of discrimination or harassment which is unlawful includes, in the case of a relationship which has come to an end before the commencement of this section, reference to such an act which would, after the commencement of this section, be unlawful.

]<sup>125</sup>

**[28UB. Instructions and pressure to discriminate**

(1) It is unlawful for a responsible body to instruct another person to do any act which is unlawful under this Chapter or to procure or attempt to procure the doing of any such unlawful act by that other person.

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<sup>125</sup> added by Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006/1721 Pt 2 Reg. 12

- (2) It is also unlawful for a responsible body to induce, or attempt to induce, another person to do any act which is unlawful under this Chapter by—
- (a) providing or offering to provide that person with any benefit, or
  - (b) subjecting or threatening to subject that person to any detriment.
- (3) An attempted inducement is not prevented from falling within subsection (2) because it is not made directly to the person in question, if it is made in such a way that he is likely to hear of it.
- (4) Proceedings in respect of a contravention of subsection (1) may be brought only—
- (a) by the Commission for Equality and Human Rights, and
  - (b) in accordance with section 25 of the Equality Act 2006.

]<sup>126</sup>

### **[28UC. Discriminatory advertisements**

- (1) It is unlawful for a responsible body to publish or cause to be published an advertisement which—
- (a) invites applications in relation to any course or student service provided or offered by it, or any qualification conferred by it, and
  - (b) indicates, or might reasonably be understood to indicate, that such an application will or may be determined to any extent by reference to—
    - (i) the applicant not having any disability, or any particular disability, or
    - (ii) any reluctance on the part of the person determining the application to comply with a duty imposed on it by section 28T.
- (2) Subsection (1) does not apply where it would not in fact be unlawful under this Chapter for an application to be determined in the manner indicated (or understood to be indicated) in the advertisement.
- (3) In this section, “advertisement” includes every form of advertisement or notice, whether to the public or not.
- (4) Proceedings in respect of a contravention of subsection (1) may be brought only—
- (a) by the Commission for Equality and Human Rights, and
  - (b) in accordance with section 25 of the Equality Act 2006.

]<sup>127</sup>

*Enforcement, etc.*

### **28V Enforcement, remedies and procedure**

- (1) A claim by a person—
- (a) that a responsible body has discriminated against him, or subjected him to harassment, in a way which is unlawful under this Chapter,

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<sup>126</sup> added by Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006/1721 Pt 2 Reg. 13

<sup>127</sup> added by Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006/1721 Pt 2 Reg. 14



(b) that a responsible body is by virtue of section 57 or 58 to be treated as having done so, or  
 (c) that a person is by virtue of section 57 to be treated as having done so,  
 may be made the subject of civil proceedings in the same way as any other claim in tort or (in Scotland) in reparation for breach of statutory duty.

[ (1A) Where—

(a) a claim is brought under subsection (1), and  
 (b) the claimant (or pursuer, in Scotland) proves facts from which the court could, apart from this subsection, conclude in the absence of an adequate explanation that the defendant (or defender, in Scotland) has acted in a way which is unlawful under this Chapter,  
 the court shall uphold the claim unless the defendant (or defender, in Scotland) proves that he did not so act.

]<sup>128</sup>

(2) For the avoidance of doubt it is hereby declared that damages in respect of discrimination in a way which is unlawful under this Chapter may include compensation for injury to feelings whether or not they include compensation under any other head.

(3) Proceedings in England and Wales may be brought only in a county court.

(4) Proceedings in Scotland may be brought only in a sheriff court.

(5) The remedies available in such proceedings are those which are available in the High Court or (as the case may be) the Court of Session.

(6) The fact that a person who brings proceedings under this Part against a responsible body may also be entitled to bring proceedings against that body under Part 2 is not to affect the proceedings under this Part.

(7) Part 4 of Schedule 3 makes further provision about the enforcement of this Part and about procedure.

## **28W Occupation of premises by educational institutions**

(1) This section applies if—

- (a) premises are occupied by an educational institution under a lease;
- (b) but for this section, the responsible body would not be entitled to make a particular alteration to the premises; and
- (c) the alteration is one which the responsible body proposes to make in order to comply with section 28T[ or section 28UA(5)]<sup>129</sup> .

(2) Except to the extent to which it expressly so provides, the lease has effect, as a result of this subsection, as if it provided—

- (a) for the responsible body to be entitled to make the alteration with the written consent of the lessor;

<sup>128</sup> inserted subject to transitional provisions specified in SI 2006/1721 reg.3 by Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006/1721 Pt 2 Reg. 15(3)

<sup>129</sup> words inserted by Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006/1721 Pt 2 Reg. 16

- (b) for the responsible body to have to make a written application to the lessor for consent if it wishes to make the alteration;
  - (c) if such an application is made, for the lessor not to withhold his consent unreasonably; and
  - (d) for the lessor to be entitled to make his consent subject to reasonable conditions.
- (3) In this section—  
 “lease” includes a tenancy, sub-lease or sub-tenancy and an agreement for a lease, tenancy, sub-lease or sub-tenancy; and  
 “sub-lease” and “sub-tenancy” have such meaning as may be prescribed.
- (4) If the terms and conditions of a lease—  
 (a) impose conditions which are to apply if the responsible body alters the premises, or  
 (b) entitle the lessor to impose conditions when consenting to the responsible body's altering the premises,  
 the responsible body is to be treated for the purposes of subsection (1) as not being entitled to make the alteration.
- (5) Part 3 of Schedule 4 supplements the provisions of this section.<sup>[130] [131]</sup>

### **[28X Validity and revision of agreements**

Section 28P applies for the purposes of this Chapter as it applies for the purposes of Chapter 1, but with the substitution, for paragraphs (a) and (b) of subsection (2), of “under section 28V”. ]<sup>132</sup>

### *Duties of funding councils*

### **30.— Further and higher education of disabled persons**

- (1) <sup>[133]</sup> The Further and Higher Education Act 1992 is amended as set out in subsections (2) to (6).
- (2) In section 5 (administration of funds by further education funding councils), in subsection (6)(b), after “may” insert “, subject to subsection (7A) below,”.
- (3) After section 5(7) insert—  
 “(7A) Without prejudice to the power to impose conditions given by subsection (6)(b) above, the conditions subject to which a council gives financial support under this section to the governing body of an institution within the further education sector—  
 (a) shall require the governing body to publish disability statements at such intervals as may be prescribed; and  
 (b) may include conditions relating to the provision made, or to be made, by the institution with respect to disabled persons.

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<sup>130</sup> In relation to England and Wales: s.28W is inserted.

<sup>131</sup> In relation to any case where the occupier occupies premises under a sub-lease or sub-tenancy: [See Westlaw UK].

<sup>132</sup> added by Special Educational Needs and Disability Act 2001 c. 10 Pt 2 c. 2 s. 32

<sup>133</sup> In relation to England and Wales: s. 30 is modified: [See Westlaw UK].

(7B) For the purposes of subsection (7A) above—

“disability statement” means a statement containing information of a prescribed description about the provision of facilities for education made by the institution in respect of disabled persons;

“disabled persons” means persons who are disabled persons for the purposes of the Disability Discrimination Act 1995; and

“prescribed” means prescribed by regulations.”

(4) In section 8 (supplementary functions) add, at the end—

“(6) As soon as is reasonably practicable after the end of its financial year, each council shall make a written report to the Secretary of State on—

(a) the progress made during the year to which the report relates in the provision of further education for disabled students in their area; and

(b) their plans for the future provision of further education for disabled students in their area.

(7) In subsection (6) above—

“disabled students” means students who are disabled persons for the purposes of the Disability Discrimination Act 1995; and

“financial year” means the period of twelve months ending with 31st March 1997 and each successive period of twelve months.”

(5) In section 62 (establishment of higher education funding councils), after subsection (7) insert—

“(7A) In exercising their functions, each council shall have regard to the requirements of disabled persons.

(7B) In subsection (7A) “disabled persons” means persons who are disabled persons for the purposes of the Disability Discrimination Act 1995.”

(6) [...] <sup>134</sup>

### **31.— Further and higher education of disabled persons; Scotland**

(1) The Further and Higher Education (Scotland) Act 1992 is amended as follows.

(2) In section 37 (establishment of Scottish Higher Education Funding Council) after subsection (4) insert—

“(4A) In exercising their functions, the Council shall have regard to the requirements of disabled persons.

(4B) In subsection (4A) above, “disabled persons” means persons who are disabled persons for the purpose of the Disability Discrimination Act 1995.”

(3) [...] <sup>135</sup>

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<sup>134</sup> repealed by Special Educational Needs and Disability Act 2001 c. 10 Sch. 9 para. 1

<sup>135</sup> repealed by Special Educational Needs and Disability Act 2001 c. 10 Sch. 9 para. 1

*Interpretation of Chapter 2***31A Interpretation**

- (1) Subsections (2) to (10) apply for the purpose of interpreting this Chapter.
- (2) “Disabled student” means a student who is a disabled person.
- (3) “Student” means a person who is attending, or undertaking a course of study at, an educational institution.
- (4) “Educational institution”, “responsible body” and “student services” have the meaning given in section 28R.
- [ (5) “Provision, criterion or practice” includes any arrangements.
- (6) “Qualification” means any authorisation, qualification, approval or certification conferred by a responsible body.
- (7) “Discriminate”, “discrimination” and other related expressions are to be construed in accordance with section 28S.
- (8) “Harassment” is to be construed in accordance with section 28SA.
- (9) References (however expressed) to the conferment of a qualification on a person by a responsible body include—
  - (i) the renewal or extension of a qualification, and
  - (ii) the authentication of a qualification awarded to him by another person.
- (10) “Physical feature”, in relation to any premises, includes any of the following (whether permanent or temporary)—
  - (a) any feature arising from the design or construction of a building on the premises,
  - (b) any feature on the premises of any approach to, exit from or access to such a building,
  - (c) any fixtures, fittings, furnishings, furniture, equipment or material in or on the premises, and
  - (d) any other physical element or quality of any land comprised in the premises.

] <sup>136</sup>**[ CHAPTER 2A****GENERAL QUALIFICATIONS BODIES ]** <sup>137</sup>**[31AA General qualifications bodies: discrimination and harassment**

- (1) It is unlawful for a general qualifications body to discriminate against a disabled person—
  - (a) in the arrangements which it makes for the purpose of determining upon whom to confer a relevant qualification;
  - (b) in the terms on which it is prepared to confer a relevant qualification on him;

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<sup>136</sup> added by Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006/1721 Pt 2 Reg. 17

<sup>137</sup> added by Disability Discrimination Act 2005 c. 13 s. 15

- (c) by refusing or deliberately omitting to grant any application by him for such a qualification; or
  - (d) by withdrawing such a qualification from him or varying the terms on which he holds it.
- (2) It is also unlawful for a general qualifications body, in relation to a relevant qualification conferred by it, to subject to harassment a disabled person who holds or applies for such a qualification.
- (3) In the case of an act which constitutes discrimination by virtue of section 55, this section also applies to discrimination against a person who is not disabled.
- (4) In this section and section 31AD, “relevant qualification” means an authorisation, qualification, approval or certification of a prescribed description.
- (5) But an authorisation, qualification, approval or certification may not be prescribed under subsection (4) if it is a professional or trade qualification (within the meaning given by section 14A(5)).
- (6) In this Chapter–
- (a) “general qualifications body” means any authority or body which can confer a relevant qualification, but it does not include–
    - (i) a responsible body (within the meaning of Chapter 1 or 2 of this Part),
    - (ii) a local education authority in England or Wales,
    - (iii) an education authority (within the meaning of section 135(1) of the Education (Scotland) Act 1980), or
    - (iv) an authority or body of a prescribed description or in prescribed circumstances;
  - (b) references (however expressed) to the conferment of a qualification on a person include–
    - (i) the renewal or extension of a qualification, and
    - (ii) the authentication of a qualification awarded to him by another person.

]<sup>138</sup>

### **[31AB Meaning of “discrimination”**

- (1) For the purposes of section 31AA, a body discriminates against a disabled person if–
- (a) for a reason which relates to the disabled person's disability, it treats him less favourably than it treats or would treat others to whom that reason does not or would not apply; and
  - (b) it cannot show that the treatment in question is justified.
- (2) For the purposes of section 31AA, a body also discriminates against a disabled person if it fails to comply with a duty imposed on it by section 31AD in relation to the disabled person.
- (3) Treatment, other than the application of a competence standard, is (subject to subsections (5) to (7)) justified for the purposes of subsection (1)(b) if, but only if, the reason for it is both material to the circumstances of the particular case and substantial.
- (4) The application by a body of a competence standard to a disabled person is (subject to subsections (6) and (7)) justified for the purposes of subsection (1)(b) if, but only if, the body can show that–

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<sup>138</sup> added by Disability Discrimination Act 2005 c. 13 s. 15

- (a) the standard is, or would be, applied equally to persons who do not have his particular disability; and
  - (b) its application is a proportionate means of achieving a legitimate aim.
- (5) If, in a case falling within subsection (1) other than a case where the treatment is the application of a competence standard, a body is under a duty under section 31AD in relation to the disabled person but fails to comply with that duty, its treatment of that person cannot be justified under subsection (3) unless it would have been justified even if the body had complied with that duty.
- (6) Regulations may make provision, for purposes of this section, as to circumstances in which treatment is, or as to circumstances in which treatment is not, to be taken to be justified (but see subsection (7)).
- (7) Treatment of a disabled person cannot be justified under subsection (3), (4) or (6) if it amounts to direct discrimination falling within subsection (8).
- (8) A body directly discriminates against a disabled person if, on the ground of the disabled person's disability, it treats the disabled person less favourably than it treats or would treat a person not having that particular disability whose relevant circumstances, including his abilities, are the same as, or not materially different from, those of the disabled person.
- (9) In this section, "competence standard" means an academic, medical or other standard applied by or on behalf of a general qualifications body for the purpose of determining whether or not a person has a particular level of competence or ability.

]<sup>139</sup>

### **[31AC Meaning of "harassment"**

- (1) For the purposes of section 31AA, a body subjects a disabled person to harassment where, for a reason which relates to the disabled person's disability, the body engages in unwanted conduct which has the purpose or effect of—
- (a) violating the disabled person's dignity; or
  - (b) creating an intimidating, hostile, degrading, humiliating or offensive environment for him.
- (2) Conduct shall be regarded as having the effect referred to in paragraph (a) or (b) of subsection (1) only if, having regard to all the circumstances, including in particular the perception of the disabled person, it should reasonably be considered as having that effect.

]<sup>140</sup>

### **[31AD General qualifications bodies: duty to make adjustments**

- (1) Where—
- (a) a provision, criterion or practice, other than a competence standard, is applied by or on behalf of a general qualifications body,
  - (b) it is a provision, criterion or practice for determining on whom a relevant qualification is to be conferred,

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<sup>139</sup> added by Disability Discrimination Act 2005 c. 13 s. 15

<sup>140</sup> added by Disability Discrimination Act 2005 c. 13 s. 15

(c) a disabled person is, or has notified the body that he may be, an applicant for the conferment of that qualification, and

(d) the provision, criterion or practice places the disabled person at a substantial disadvantage in comparison with persons who are not disabled,

it is the duty of the body to take such steps as it is reasonable, in all the circumstances of the case, for it to have to take in order to prevent the provision, criterion or practice having that effect.

(2) Where—

(a) a provision, criterion or practice, other than a competence standard, is applied by or on behalf of a general qualifications body,

(b) it is a provision, criterion or practice other than one for determining on whom a relevant qualification is to be conferred, and

(c) it places a disabled person who—

(i) holds a relevant qualification conferred by the body, or

(ii) applies for a relevant qualification which the body confers,

at a substantial disadvantage in comparison with persons who are not disabled,

it is the duty of the body to take such steps as it is reasonable, in all the circumstances of the case, for it to have to take in order to prevent the provision, criterion or practice having that effect.

(3) Where any physical feature of premises occupied by a general qualifications body places a disabled person who—

(a) holds a relevant qualification conferred by the body, or

(b) applies for a relevant qualification which the body confers,

at a substantial disadvantage in comparison with persons who are not disabled, it is the duty of the body to take such steps as it is reasonable, in all the circumstances of the case, for it to have to take in order to prevent the feature having that effect.

(4) Nothing in subsection (1), (2) or (3) imposes a duty on a general qualifications body in relation to a disabled person if the body does not know, and could not reasonably be expected to know—

(a) in the case of an applicant or potential applicant for the conferment of a relevant qualification, that the disabled person concerned is, or may be, such an applicant; or

(b) in any case, that that person has a disability and is likely to be affected in the way mentioned in that subsection.

(5) In this section—

(a) “provision, criterion or practice” includes (subject to any provision under subsection (6)(e)) any arrangements;

(b) “competence standard” has the meaning given by section 31AB(9).

(6) Regulations may make provision, for purposes of this section—

(a) as to circumstances in which a provision, criterion or practice is to be taken to have, or as to circumstances in which a provision, criterion or practice is to be taken not to have, the effect mentioned in subsection (1)(d) or (2)(c);

(b) as to circumstances in which a physical feature is to be taken to have, or as to circumstances in which a physical feature is to be taken not to have, the effect mentioned in subsection (3);

(c) as to circumstances in which it is, or as to circumstances in which it is not, reasonable for a body to have to take steps of a prescribed description;

(d) as to steps which it is always, or as to steps which it is never, reasonable for a body to have to take;

- (e) as to what is, or as to what is not, to be included within the meaning of “provision, criterion or practice”;
- (f) as to things which are, or as to things which are not, to be treated as physical features.

(7) This section imposes duties only for the purpose of determining whether a body has, for the purposes of section 31AA, discriminated against a disabled person; and accordingly a breach of any such duty is not actionable as such.

]<sup>141</sup>

### **[31ADA— Enforcement, remedies and procedures**

(1) A claim by a person—

- (a) that a general qualifications body has discriminated against him, or subjected him to harassment, in a way which is unlawful under this Chapter,
- (b) that a general qualifications body is by virtue of section 57 or 58 to be treated as having done so, or
- (c) that a person is by virtue of section 57 to be treated as having done so,

may be made the subject of civil proceedings in the same way as any other claim in tort or (in Scotland) in reparation for breach of statutory duty.

(2) Where—

- (a) a claim is brought under subsection (1), and
- (b) the claimant (or pursuer, in Scotland) proves facts from which the court could, apart from this subsection, conclude in the absence of an adequate explanation that the defendant (or defender, in Scotland) has acted in a way which is unlawful under this Chapter,

the court shall uphold the claim unless the defendant (or defender, in Scotland) proves that he did not so act.

(3) Damages in respect of discrimination in a way which is unlawful under this Chapter may include compensation for injury to feelings whether or not they include compensation under any other head.

(4) Proceedings in England and Wales may be brought only in a county court.

(5) Proceedings in Scotland may be brought only in a sheriff court.

(6) The remedies available in such proceedings are those which are available in the High Court or (as the case may be) the Court of Session.

(7) Part 5 of Schedule 3 makes further provision about the enforcement of this Part and about procedure and evidence.

]<sup>142</sup>

### **[31ADB— Alterations to premises occupied under leases**

(1) This section applies where—

- (a) a general qualifications body occupies premises under a lease;

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<sup>141</sup> added by Disability Discrimination Act 2005 c. 13 s. 15

<sup>142</sup> added by Disability Discrimination Act 1995 (Amendment etc.) (General Qualifications Bodies) (Alteration of Premises and Enforcement) Regulations 2007/2405 Pt 2 Reg. 3



- (b) but for this section, the general qualifications body would not be entitled to make a particular alteration to the premises; and
  - (c) the alteration is one which the general qualifications body proposes to make in order to comply with the duty imposed by section 31AD(3).
- (2) Except to the extent to which it expressly so provides, the lease shall have effect by virtue of this subsection as if it provided—
- (a) for the general qualifications body to be entitled to make the alteration with the written consent of the lessor;
  - (b) for the general qualifications body to have to make a written application to the lessor for consent if it wishes to make the alteration;
  - (c) if such an application is made, for the lessor not to withhold his consent unreasonably; and
  - (d) for the lessor to be entitled to make his consent subject to reasonable conditions.
- (3) In this section and in Part 4 of Schedule 4—
- “lease” includes a tenancy, sub-lease or sub-tenancy and an agreement for a lease, tenancy, sub-lease or sub-tenancy;
  - “sub-lease” means any sub-term created out of, or deriving from, a leasehold interest; and
  - “sub-tenancy” means any tenancy created out of, or deriving from, a superior tenancy.
- (4) For the purposes of subsection (1), the general qualifications body is to be treated as not being entitled to make the alteration, if the terms and conditions of the lease—
- (a) impose conditions which are to apply if the general qualifications body alters the premises, or
  - (b) entitle the lessor to impose conditions when consenting to the general qualifications body's altering the premises.
- (5) Part 4 of Schedule 4 supplements the provisions of this section.
- 1<sup>143</sup>

### **[31AE Chapter 2A: claims, leased premises and certain agreements**

- (1) Regulations may make provision for, or in connection with, the making of a claim by a person—
- (a) that a general qualifications body has discriminated against him, or subjected him to harassment, in a way which is unlawful under this Chapter;
  - (b) that a general qualifications body is by virtue of section 57 or 58 to be treated as having done so; or
  - (c) that a person is by virtue of section 57 to be treated as having done so.
- (2) Regulations may, in relation to a case where premises are occupied by a general qualifications body under a lease—
- (a) make provision modifying the lease, or make provision for its modification, in connection with the making of alterations to the premises in pursuance of a duty imposed on the body by section 31AD;

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<sup>143</sup> added by Disability Discrimination Act 1995 (Amendment etc.) (General Qualifications Bodies) (Alteration of Premises and Enforcement) Regulations 2007/2405 Pt 2 Reg. 5

- (b) make provision in connection with the determination of questions that are about the body's compliance with any such duty and are related to the making of alterations to the premises.
- (3) Any term in a contract or other agreement made by or on behalf of a general qualifications body is void so far as it purports to—
- (a) require a person to do anything which would contravene any provision of, or made under, this Chapter;
  - (b) exclude or limit the operation of any provision of, or made under, this Chapter; or
  - (c) prevent any person making a claim of a kind mentioned in subsection (1).
- (4) Regulations may—
- (a) make provision for subsection (3)(b) or (c) not to apply to an agreement settling a claim of a kind mentioned in subsection (1);
  - (b) make provision modifying an agreement to which subsection (3) applies, or make provision for the modification of such an agreement, in order to take account of the effect of that subsection.
- (5) The provision that may be made under subsection (1), (2) or (4) includes (in particular)—
- (a) provision as to the court or tribunal to which a claim, or an application in connection with a modification, may be made;
  - (b) provision for the determination of claims or matters otherwise than by the bringing of proceedings before a court or tribunal;
  - (c) provision for a person who is a lessor in relation to a lease under which a general qualifications body occupies premises to be made a party to proceedings;
  - (d) provision as to remedies;
  - (e) provision as to procedure;
  - (f) provision as to appeals;
  - (g) provision as to time limits;
  - (h) provision as to evidence;
  - (i) provision as to costs or expenses.
- (6) Provision under subsection (1), (2) or (4) may take the form of amendments of this Act.
- (7) Regulations may make provision as to the meaning of “lease” or “lessor” in this section.
- (8) Except as provided in regulations under subsection (1), no civil or criminal proceedings may be brought against any person in respect of an act merely because the act is unlawful under this Chapter.
- (9) Subsection (8) does not prevent the making of an application for judicial review.

1<sup>144</sup>

### **31AF Chapter 2A: duty to consult before making regulations**

- (1) Before making regulations under this Chapter, the Secretary of State shall consult such persons as it appears to him to be appropriate to consult, having regard to the substance and effect of the regulations in question.

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<sup>144</sup> added by Disability Discrimination Act 2005 c. 13 s. 15

(2) Without prejudice to the generality of subsection (1), the Secretary of State shall consult the [Welsh Ministers]<sup>145</sup> and the Scottish Ministers before making regulations under this Chapter.

**29.—** [...] <sup>146</sup>

**30.— Further and higher education of disabled persons**

[Existing ss.30–31 are not repealed but have been moved into a new Section Group.]<sup>147</sup>

**31.—**

[Existing ss.30–31 are not repealed but have been moved into a new Section Group.]<sup>148</sup>

[ **CHAPTER 3**

**SUPPLEMENTARY ]**<sup>149</sup>

**31B** [...] <sup>150</sup>

**[31C Application to Isles of Scilly**

This Part applies to the Isles of Scilly—

(a) as if the Isles were a separate non-metropolitan county (and the Council of the Isles of Scilly were a county council), and

(b) with such other modifications as may be specified in an order made by the Secretary of State.

] <sup>151</sup>

**PART V**

**PUBLIC TRANSPORT**

*Taxis*

**32.— Taxi accessibility regulations.**

(1) The Secretary of State may make regulations (“taxi accessibility regulations”) for the purpose of securing that it is possible—

<sup>145</sup> words substituted by Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007/1388 Sch. 1 para. 56

<sup>146</sup> repealed by Special Educational Needs and Disability Act 2001 c. 10 Sch. 9 para. 1

<sup>147</sup> existing ss.30–31 are moved into a new section group by Special Educational Needs and Disability Act 2001 c. 10 Pt 2 c. 2 s. 34(4)

<sup>148</sup> existing ss.30–31 are moved into a new section group by Special Educational Needs and Disability Act 2001 c. 10 Pt 2 c. 2 s. 34(4)

<sup>149</sup> added by Special Educational Needs and Disability Act 2001 c. 10 Pt 2 c. 3 s. 37

<sup>150</sup> repealed by Equality Act 2006 c. 3 Sch. 4 para. 1

<sup>151</sup> added by Special Educational Needs and Disability Act 2001 c. 10 Pt 2 c. 3 s. 39

- (a) for disabled persons—
    - (i) to get into and out of taxis in safety;
    - (ii) to be carried in taxis in safety and in reasonable comfort; and
  - (b) for disabled persons in wheelchairs—
    - (i) to be conveyed in safety into and out of taxis while remaining in their wheelchairs; and
    - (ii) to be carried in taxis in safety and in reasonable comfort while remaining in their wheelchairs.
- (2) Taxi accessibility regulations may, in particular—
- (a) require any regulated taxi to conform with provisions of the regulations as to—
    - (i) the size of any door opening which is for the use of passengers;
    - (ii) the floor area of the passenger compartment;
    - (iii) the amount of headroom in the passenger compartment;
    - (iv) the fitting of restraining devices designed to ensure the stability of a wheelchair while the taxi is moving;
  - (b) require the driver of any regulated taxi which is plying for hire, or which has been hired, to comply with provisions of the regulations as to the carrying of ramps or other devices designed to facilitate the loading and unloading of wheelchairs;
  - (c) require the driver of any regulated taxi in which a disabled person who is in a wheelchair is being carried (while remaining in his wheelchair) to comply with provisions of the regulations as to the position in which the wheelchair is to be secured.
- (3) The driver of a regulated taxi which is plying for hire, or which has been hired, is guilty of an offence if—
- (a) he fails to comply with any requirement imposed on him by the regulations; or
  - (b) the taxi fails to conform with any provision of the regulations with which it is required to conform.
- (4) A person who is guilty of such an offence is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.
- (5) In this section—
- “passenger compartment” has such meaning as may be prescribed;
  - “regulated taxi” means any taxi to which the regulations are expressed to apply;
  - “taxi” means a vehicle licensed under—
    - (a) section 37 of the Town Police Clauses Act 1847, or
    - (b) section 6 of the Metropolitan Public Carriage Act 1869,
 but does not include a taxi which is drawn by a horse or other animal.

### **33.— Designated transport facilities.**

- (1) In this section “a franchise agreement” means a contract entered into by the operator of a designated transport facility for the provision by the other party to the contract of hire car services—
- (a) for members of the public using any part of the transport facility; and
  - (b) which involve vehicles entering any part of that facility.
- (2) The Secretary of State may by regulations provide for the application of any taxi provision in relation to—
- (a) vehicles used for the provision of services under a franchise agreement; or

- (b) the drivers of such vehicles.
- (3) Any regulations under subsection (2) may apply any taxi provision with such modifications as the Secretary of State considers appropriate.
- (4) In this section—
- “designated” means designated for the purposes of this section by an order made by the Secretary of State;
  - “hire car” has such meaning as may be prescribed;
  - “operator”, in relation to a transport facility, means any person who is concerned with the management or operation of the facility;
  - “taxi provision” means any provision of—
    - (a) this Act, or
    - (b) regulations made in pursuance of section 20(2A) of the Civic Government (Scotland) Act 1982,
 which applies in relation to taxis or the drivers of taxis; and
  - “transport facility” means any premises which form part of any port, airport, railway station or bus station.

#### **34.— New licences conditional on compliance with taxi accessibility regulations.**

- (1) No licensing authority shall grant a licence for a taxi to ply for hire unless the vehicle conforms with those provisions of the taxi accessibility regulations with which it will be required to conform if licensed.
- (2) Subsection (1) does not apply if such a licence was in force with respect to the vehicle at any time during the period of 28 days immediately before the day on which the licence is granted.
- (3) The Secretary of State may by order provide for subsection (2) to cease to have effect on such date as may be specified in the order.
- (4) Separate orders may be made under subsection (3) with respect to different areas or localities.

#### **35.— Exemption from taxi accessibility regulations.**

- (1) The Secretary of State may make regulations (“exemption regulations”) for the purpose of enabling any relevant licensing authority to apply to him for an order (an “exemption order”) exempting the authority from the requirements of section 34.
- (2) Exemption regulations may, in particular, make provision requiring a licensing authority proposing to apply for an exemption order—
- (a) to carry out such consultations as may be prescribed;
  - (b) to publish the proposal in the prescribed manner;
  - (c) to consider any representations made to it about the proposal, before applying for the order;
  - (d) to make its application in the prescribed form.
- (3) A licensing authority may apply for an exemption order only if it is satisfied—
- (a) that, having regard to the circumstances prevailing in its area, it would be inappropriate for the requirements of section 34 to apply; and

- (b) that the application of section 34 would result in an unacceptable reduction in the number of taxis in its area.
- (4) After considering any application for an exemption order and consulting the Disabled Persons Transport Advisory Committee and such other persons as he considers appropriate, the Secretary of State may—
- (a) make an exemption order in the terms of the application;
  - (b) make an exemption order in such other terms as he considers appropriate; or
  - (c) refuse to make an exemption order.
- (5) The Secretary of State may by regulations (“swivel seat regulations”) make provision requiring any exempt taxi plying for hire in an area in respect of which an exemption order is in force to conform with provisions of the regulations as to the fitting and use of swivel seats.
- (6) The Secretary of State may by regulations make provision with respect to swivel seat regulations similar to that made by section 34 with respect to taxi accessibility regulations.
- (7) In this section—
- “exempt taxi” means a taxi in relation to which section 34(1) would apply if the exemption order were not in force;
- “relevant licensing authority” means a licensing authority responsible for licensing taxis in any area of England and Wales other than the area to which the Metropolitan Public Carriage Act 1869 applies; and
- “swivel seats” has such meaning as may be prescribed.

### **36.— Carrying of passengers in wheelchairs.**

- (1) This section imposes duties on the driver of a regulated taxi which has been hired—
- (a) by or for a disabled person who is in a wheelchair; or
  - (b) by a person who wishes such a disabled person to accompany him in the taxi.
- (2) In this section—
- “carry” means carry in the taxi concerned; and
- “the passenger” means the disabled person concerned.
- (3) The duties are—
- (a) to carry the passenger while he remains in his wheelchair;
  - (b) not to make any additional charge for doing so;
  - (c) if the passenger chooses to sit in a passenger seat, to carry the wheelchair;
  - (d) to take such steps as are necessary to ensure that the passenger is carried in safety and in reasonable comfort;
  - (e) to give such assistance as may be reasonably required—
    - (i) to enable the passenger to get into or out of the taxi;
    - (ii) if the passenger wishes to remain in his wheelchair, to enable him to be conveyed into and out of the taxi while in his wheelchair;
    - (iii) to load the passenger's luggage into or out of the taxi;
    - (iv) if the passenger does not wish to remain in his wheelchair, to load the wheelchair into or out of the taxi.
- (4) Nothing in this section is to be taken to require the driver of any taxi—

- (a) except in the case of a taxi of a prescribed description, to carry more than one person in a wheelchair, or more than one wheelchair, on any one journey; or
  - (b) to carry any person in circumstances in which it would otherwise be lawful for him to refuse to carry that person.
- (5) A driver of a regulated taxi who fails to comply with any duty imposed on him by this section is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.
- (6) In any proceedings for an offence under this section, it is a defence for the accused to show that, even though at the time of the alleged offence the taxi conformed with those provisions of the taxi accessibility regulations with which it was required to conform, it would not have been possible for the wheelchair in question to be carried in safety in the taxi.
- (7) If the licensing authority is satisfied that it is appropriate to exempt a person from the duties imposed by this section—
- (a) on medical grounds, or
  - (b) on the ground that his physical condition makes it impossible or unreasonably difficult for him to comply with the duties imposed on drivers by this section,
- it shall issue him with a certificate of exemption.
- (8) A certificate of exemption shall be issued for such period as may be specified in the certificate.
- (9) The driver of a regulated taxi is exempt from the duties imposed by this section if—
- (a) a certificate of exemption issued to him under this section is in force; and
  - (b) the prescribed notice of his exemption is exhibited on the taxi in the prescribed manner.

### **37.— Carrying of guide dogs and hearing dogs.**

- (1) This section imposes duties on the driver of a taxi which has been hired—
- (a) by or for a disabled person who is accompanied by his guide dog or hearing dog, or
  - (b) by a person who wishes such a disabled person to accompany him in the taxi.
- (2) The disabled person is referred to in this section as “the passenger”.
- (3) The duties are—
- (a) to carry the passenger's dog and allow it to remain with the passenger; and
  - (b) not to make any additional charge for doing so.
- (4) A driver of a taxi who fails to comply with any duty imposed on him by this section is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.
- (5) If the licensing authority is satisfied that it is appropriate on medical grounds to exempt a person from the duties imposed by this section, it shall issue him with a certificate of exemption.
- (6) In determining whether to issue a certificate of exemption, the licensing authority shall, in particular, have regard to the physical characteristics of the taxi which the applicant drives or those of any kind of taxi in relation to which he requires the certificate.
- (7) A certificate of exemption shall be issued—
- (a) with respect to a specified taxi or a specified kind of taxi; and
  - (b) for such period as may be specified in the certificate.

- (8) The driver of a taxi is exempt from the duties imposed by this section if—
- (a) a certificate of exemption issued to him under this section is in force with respect to the taxi; and
  - (b) the prescribed notice of his exemption is exhibited on the taxi in the prescribed manner.
- (9) The Secretary of State may, for the purposes of this section, prescribe any other category of dog trained to assist a disabled person who has a disability of a prescribed kind.
- (10) This section applies in relation to any such prescribed category of dog as it applies in relation to guide dogs.
- (11) In this section—
- “guide dog” means a dog which has been trained to guide a blind person; and
  - “hearing dog” means a dog which has been trained to assist a deaf person.

### **37A Carrying of assistance dogs in private hire vehicles**

- [ (1) It is an offence for the operator of a private hire vehicle to fail or refuse to accept a booking for a private hire vehicle—
- (a) if the booking is requested by or on behalf of a disabled person, or a person who wishes a disabled person to accompany him; and
  - (b) the reason for the failure or refusal is that the disabled person will be accompanied by his assistance dog.
- (2) It is an offence for the operator of a private hire vehicle to make an additional charge for carrying an assistance dog which is accompanying a disabled person.
- (3) It is an offence for the driver of a private hire vehicle to fail or refuse to carry out a booking accepted by the operator of the vehicle—
- (a) if the booking was made by or on behalf of a disabled person, or a person who wishes a disabled person to accompany him; and
  - (b) the reason for the failure or refusal is that the disabled person is accompanied by his assistance dog.
- (4) A person who is guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale. ]<sup>152</sup>
- (5) <sup>[153]</sup> If the licensing authority is satisfied that it is appropriate on medical grounds to issue a certificate of exemption to a driver in respect of subsection (3) it must do so.
- (6) In determining whether to issue a certificate of exemption, the licensing authority shall, in particular, have regard to the physical characteristics of the private hire vehicle which the applicant drives or those of any kind of private hire vehicle in relation to which he requires the certificate.
- (7) A certificate of exemption shall be issued—
- (a) with respect to a specified private hire vehicle or a specified kind of private hire vehicle; and
  - (b) for such period as may be specified in the certificate.
- (8) No offence is committed by a driver under subsection (3) if—

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<sup>152</sup> added by Private Hire Vehicles (Carriage of Guide Dogs etc.) Act 2002 c. 37 s. 1(1)

<sup>153</sup> In relation to England and Wales: s.37A is inserted.



- (a) a certificate of exemption issued to him under this section is in force with respect to the private hire vehicle; and
- (b) the prescribed notice is exhibited on the private hire vehicle in the prescribed manner.

(9) In this section—

“assistance dog” means a dog which—

- (a) has been trained to guide a blind person;
- (b) has been trained to assist a deaf person;
- (c) has been trained by a prescribed charity to assist a disabled person who has a disability which—
  - (i) consists of epilepsy; or
  - (ii) otherwise affects his mobility, manual dexterity, physical co-ordination or ability to lift, carry or otherwise move everyday objects;

“driver” means a person who holds a licence granted under—

- (a) section 13 of the Private Hire Vehicles (London) Act 1998 (c. 34) (“the 1998 Act”);
- (b) section 51 of the Local Government (Miscellaneous Provisions) Act 1976 (c. 57) (“the 1976 Act”); or
- (c) an equivalent provision of a local enactment;

“licensing authority”, in relation to any area of England and Wales, means the authority responsible for licensing private hire vehicles in that area;

“operator” means a person who holds a licence granted under—

- (a) section 3 of the 1998 Act;
- (b) section 55 of the 1976 Act; or
- (c) an equivalent provision of a local enactment;

“private hire vehicle” means a vehicle licensed under—

- (a) section 6 of the 1998 Act;
- (b) section 48 of the 1976 Act; or
- (c) an equivalent provision of a local enactment.

### **38.— Appeal against refusal of exemption certificate.**

(1) Any person who is aggrieved by the refusal of a licensing authority to issue an exemption certificate under section 36 or 37 may appeal to a magistrates' court before the end of the period of 28 days beginning with the date of the refusal.

(2) On an appeal to it under this section, the court may direct the licensing authority concerned to issue the appropriate certificate of exemption to have effect for such period as may be specified in the direction.<sup>[154]</sup> <sup>155</sup>

(3) [...] <sup>156</sup>

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<sup>154</sup> In relation to England and Wales: s. 38 is modified: [See Westlaw UK].

<sup>155</sup> repealed by Courts Act 2003 c. 39 Sch. 10 para. 1

<sup>156</sup> repealed by Courts Act 2003 c. 39 Sch. 10 para. 1

**39.— Requirements as to disabled passengers in Scotland.**

(1) Part II of the Civic Government (Scotland) Act 1982 (licensing and regulation) is amended as follows.

(2) In subsection (4) of section 10 (suitability of vehicle for use as taxi)—

(a) after “authority” insert “—(a)”; and

(b) at the end add

“; and

(b) as not being so suitable if it does not so comply.”

(3) In section 20 (regulations relating to taxis etc.) after subsection (2) insert—

“(2A) Without prejudice to the generality of subsections (1) and (2) above, regulations under those subsections may make such provision as appears to the Secretary of State to be necessary or expedient in relation to the carrying in taxis of disabled persons (within the meaning of section 1(2) of the Disability Discrimination Act 1995) and such provision may in particular prescribe—

(a) requirements as to the carriage of wheelchairs, guide dogs, hearing dogs and other categories of dog;

(b) a date from which any such provision is to apply and the extent to which it is to apply; and

(c) the circumstances in which an exemption from such provision may be granted in respect of any taxi or taxi driver,

and in this subsection—

“guide dog” means a dog which has been trained to guide a blind person;

“hearing dog” means a dog which has been trained to assist a deaf person; and

“other categories of dog” means such other categories of dog as the Secretary of State may prescribe, trained to assist disabled persons who have disabilities of such kinds as he may prescribe.”

*Public service vehicles***40.— PSV accessibility regulations.**

(1) The Secretary of State may make regulations (“PSV accessibility regulations”) for the purpose of securing that it is possible for disabled persons—

(a) to get on to and off regulated public service vehicles in safety and without unreasonable difficulty (and, in the case of disabled persons in wheelchairs, to do so while remaining in their wheelchairs); and

(b) to be carried in such vehicles in safety and in reasonable comfort.

(2) PSV accessibility regulations may, in particular, make provision as to the construction, use and maintenance of regulated public service vehicles including provision as to—

(a) the fitting of equipment to vehicles;

(b) equipment to be carried by vehicles;

(c) the design of equipment to be fitted to, or carried by, vehicles;

- (d) the fitting and use of restraining devices designed to ensure the stability of wheelchairs while vehicles are moving;
  - (e) the position in which wheelchairs are to be secured while vehicles are moving.
- (3) Any person who—
- (a) contravenes or fails to comply with any provision of the PSV accessibility regulations,
  - (b) uses on a road a regulated public service vehicle which does not conform with any provision of the regulations with which it is required to conform, or
  - (c) causes or permits to be used on a road such a regulated public service vehicle,
- is guilty of an offence.
- (4) A person who is guilty of such an offence is liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.
- (5) In this section—
- “public service vehicle” means a vehicle which is—
    - (a) adapted to carry more than eight passengers; and
    - (b) a public service vehicle for the purposes of the Public Passenger Vehicles Act 1981;
  - “regulated public service vehicle” means any public service vehicle to which the PSV accessibility regulations are expressed to apply.
- (6) Different provision may be made in regulations under this section—
- (a) as respects different classes or descriptions of vehicle;
  - (b) as respects the same class or description of vehicle in different circumstances.
- (7) Before making any regulations under this section or section 41 or 42 the Secretary of State shall consult the Disabled Persons Transport Advisory Committee and such other representative organisations as he thinks fit.

#### **41.— Accessibility certificates.**

- (1) A regulated public service vehicle shall not be used on a road unless—
- (a) a vehicle examiner has issued a certificate (an “accessibility certificate”) that such provisions of the PSV accessibility regulations as may be prescribed are satisfied in respect of the vehicle; or
  - (b) an approval certificate has been issued under section 42 in respect of the vehicle.
- (2) The Secretary of State may make regulations—
- (a) with respect to applications for, and the issue of, accessibility certificates;
  - (b) providing for the examination of vehicles in respect of which applications have been made;
  - (c) with respect to the issue of copies of accessibility certificates in place of certificates which have been lost or destroyed.
- (3) If a regulated public service vehicle is used in contravention of this section, the operator of the vehicle is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (4) In this section “operator” has the same meaning as in the Public Passenger Vehicles Act 1981.

**42.— Approval certificates.**

- (1) Where the Secretary of State is satisfied that such provisions of the PSV accessibility regulations as may be prescribed for the purposes of section 41 are satisfied in respect of a particular vehicle he may approve the vehicle for the purposes of this section.
- (2) A vehicle which has been so approved is referred to in this section as a “type vehicle”.
- (3) Subsection (4) applies where a declaration in the prescribed form has been made by an authorised person that a particular vehicle conforms in design, construction and equipment with a type vehicle.
- (4) A vehicle examiner may, after examining (if he thinks fit) the vehicle to which the declaration applies, issue a certificate in the prescribed form (“an approval certificate”) that it conforms to the type vehicle.
- (5) The Secretary of State may make regulations—
  - (a) with respect to applications for, and grants of, approval under subsection (1);
  - (b) with respect to applications for, and the issue of, approval certificates;
  - (c) providing for the examination of vehicles in respect of which applications have been made;
  - (d) with respect to the issue of copies of approval certificates in place of certificates which have been lost or destroyed.
- (6) The Secretary of State may at any time withdraw his approval of a type vehicle.
- (7) Where an approval is withdrawn—
  - (a) no further approval certificates shall be issued by reference to the type vehicle; but
  - (b) any approval certificates issued by reference to the type vehicle before the withdrawal shall continue to have effect for the purposes of section 41.
- (8) In subsection (3) “authorised person” means a person authorised by the Secretary of State for the purposes of that subsection.

**43.— Special authorisations.**

- (1) The Secretary of State may by order authorise the use on roads of—
  - (a) any regulated public service vehicle of a class or description specified by the order, or
  - (b) any regulated public service vehicle which is so specified, and nothing in section 40, 41 or 42 prevents the use of any vehicle in accordance with the order.
- (2) Any such authorisation may be given subject to such restrictions and conditions as may be specified by or under the order.
- (3) The Secretary of State may by order make provision for the purpose of securing that, subject to such restrictions and conditions as may be specified by or under the order, provisions of the PSV accessibility regulations apply to regulated public service vehicles of a description specified by the order subject to such modifications or exceptions as may be specified by the order.

**44.— Reviews and appeals.**

- (1) Subsection (2) applies where—
  - (a) the Secretary of State refuses an application for the approval of a vehicle under section 42(1); and

- (b) before the end of the prescribed period, the applicant asks the Secretary of State to review the decision and pays any fee fixed under section 45.
- (2) The Secretary of State shall—
- (a) review the decision; and
  - (b) in doing so, consider any representations made to him in writing, before the end of the prescribed period, by the applicant.
- (3) A person applying for an accessibility certificate or an approval certificate may appeal to the Secretary of State against the refusal of a vehicle examiner to issue such a certificate.
- (4) An appeal must be made within the prescribed time and in the prescribed manner.
- (5) Regulations may make provision as to the procedure to be followed in connection with appeals.
- (6) On the determination of an appeal, the Secretary of State may—
- (a) confirm, vary or reverse the decision appealed against;
  - (b) give such directions as he thinks fit to the vehicle examiner for giving effect to his decision.

#### **45.— Fees.**

- (1) Such fees, payable at such times, as may be prescribed may be charged by the Secretary of State in respect of—
- (a) applications for, and grants of, approval under section 42(1);
  - (b) applications for, and the issue of, accessibility certificates and approval certificates;
  - (c) copies of such certificates;
  - (d) reviews and appeals under section 44.
- (2) Any such fees received by the Secretary of State shall be paid by him into the Consolidated Fund.
- (3) Regulations under subsection (1) may make provision for the repayment of fees, in whole or in part, in such circumstances as may be prescribed.
- (4) Before making any regulations under subsection (1) the Secretary of State shall consult such representative organisations as he thinks fit.

#### *Rail vehicles*

#### **46.— Rail vehicle accessibility regulations.**

- (1) The Secretary of State may make regulations (“rail vehicle accessibility regulations”) for the purpose of securing that it is possible—
- (a) for disabled persons—
    - (i) to get on to and off regulated rail vehicles in safety and without unreasonable difficulty;
    - (ii) to be carried in such vehicles in safety and in reasonable comfort; and
  - (b) for disabled persons in wheelchairs—
    - (i) to get on to and off such vehicles in safety and without unreasonable difficulty while remaining in their wheelchairs, and

- (ii) to be carried in such vehicles in safety and in reasonable comfort while remaining in their wheelchairs.
- (2) Rail vehicle accessibility regulations may, in particular, make provision as to the construction, use and maintenance of regulated rail vehicles including provision as to—
- (a) the fitting of equipment to vehicles;
  - (b) equipment to be carried by vehicles;
  - (c) the design of equipment to be fitted to, or carried by, vehicles;
  - (d) the use of equipment fitted to, or carried by, vehicles;
  - (e) the toilet facilities to be provided in vehicles;
  - (f) the location and floor area of the wheelchair accommodation to be provided in vehicles;
  - (g) assistance to be given to disabled persons.
- (3) If a regulated rail vehicle which does not conform with any provision of the rail vehicle accessibility regulations with which it is required to conform is used for carriage, the operator of the vehicle is guilty of an offence.
- (4) A person who is guilty of such an offence is liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.
- (5) Different provision may be made in rail vehicle accessibility regulations—
- (a) as respects different classes or descriptions of rail vehicle;
  - (b) as respects the same class or description of rail vehicle in different circumstances;
  - (c) as respects different networks.
- (6) In this section—
- “network” means any permanent way or other means of guiding or supporting rail vehicles or any section of it;
- “operator”, in relation to any rail vehicle, means the person having the management of that vehicle;
- “rail vehicle” means a vehicle—
- (a) constructed or adapted to carry passengers on any railway, tramway or prescribed system; and
  - (b) first brought into use, or belonging to a class of vehicle first brought into use, after 31st December 1998;
- “regulated rail vehicle” means any rail vehicle to which the rail vehicle accessibility regulations are expressed to apply; and
- “wheelchair accommodation” has such meaning as may be prescribed.
- (7) In subsection (6)—
- “prescribed system” means a system using a prescribed mode of guided transport (“guided transport” having the same meaning as in the Transport and Works Act 1992); and
- “railway” and “tramway” have the same meaning as in that Act.
- (8) The Secretary of State may by regulations make provision as to the time when a rail vehicle, or a class of rail vehicle, is to be treated, for the purposes of this section, as first brought into use.
- (9) Regulations under subsection (8) may include provision for disregarding periods of testing and other prescribed periods of use.
- (10) For the purposes of this section and section 47, a person uses a vehicle for carriage if he uses it for the carriage of members of the public for hire or reward at separate fares.

(11) Before making any regulations under subsection (1) or section 47 the Secretary of State shall consult the Disabled Persons Transport Advisory Committee and such other representative organisations as he thinks fit.

**47.— Exemption from rail vehicle accessibility regulations.**

[ (1) The Secretary of State may by order (an “exemption order”)—

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

] <sup>157</sup>

(2) Regulations may make provision with respect to exemption orders including, in particular, provision as to—

- (a) the persons by whom applications for exemption orders may be made;
- (b) the form in which such applications are to be made;
- (c) information to be supplied in connection with such applications;
- (d) the period for which exemption orders are to continue in force;
- (e) the revocation of exemption orders.

(3) After considering any application for an exemption order and consulting the Disabled Persons Transport Advisory Committee and such other persons as he considers appropriate, the Secretary of State may—

- (a) make an exemption order in the terms of the application;
- (b) make an exemption order in such other terms as he considers appropriate;
- (c) refuse to make an exemption order.

(4) An exemption order may be made subject to such restrictions and conditions as may be specified.

(5) In this section “specified” means specified in an exemption order.

*Supplemental*

**48.— Offences by bodies corporate etc.**

(1) Where an offence under section 40 or 46 committed by a body corporate is committed with the consent or connivance of, or is attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body, or a person purporting to act in such a capacity, he as well as the body corporate is guilty of the offence.

(2) In subsection (1) “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

(3) Where, in Scotland, an offence under section 40 or 46 committed by a partnership or by an unincorporated association other than a partnership is committed with the consent or connivance

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<sup>157</sup> s.47(1)-(1A) substituted for s.47(1) by Disability Discrimination Act 2005 c. 13 s. 6(3)

of, or is attributable to any neglect on the part of, a partner in the partnership or (as the case may be) a person concerned in the management or control of the association, he, as well as the partnership or association, is guilty of the offence.

#### **49.— Forgery and false statements.**

- (1) In this section “relevant document” means—
- (a) a certificate of exemption issued under section 36, 37 or 37A;
  - (b) a notice of a kind mentioned in [section 36(9)(b), 37(8)(b) or 37A(8)(b)]<sup>158</sup> ;
  - (c) an accessibility certificate; or
  - (d) an approval certificate.
- (2) A person is guilty of an offence if, with intent to deceive, he—
- (a) forges, alters or uses a relevant document;
  - (b) lends a relevant document to any other person;
  - (c) allows a relevant document to be used by any other person; or
  - (d) makes or has in his possession any document which closely resembles a relevant document.
- (3) A person who is guilty of an offence under subsection (2) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (4) A person who knowingly makes a false statement for the purpose of obtaining an accessibility certificate or an approval certificate is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

### **[ PART 5A**

### **PUBLIC AUTHORITIES ]<sup>159</sup>**

#### **[49A General duty**

- (1) Every public authority shall in carrying out its functions have due regard to—
- (a) the need to eliminate discrimination that is unlawful under this Act;
  - (b) the need to eliminate harassment of disabled persons that is related to their disabilities;
  - (c) the need to promote equality of opportunity between disabled persons and other persons;
  - (d) the need to take steps to take account of disabled persons' disabilities, even where that involves treating disabled persons more favourably than other persons;
  - (e) the need to promote positive attitudes towards disabled persons; and
  - (f) the need to encourage participation by disabled persons in public life.
- (2) Subsection (1) is without prejudice to any obligation of a public authority to comply with any other provision of this Act.

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<sup>158</sup> words substituted by Private Hire Vehicles (Carriage of Guide Dogs etc.) Act 2002 c. 37 s. 4(3)

<sup>159</sup> added by Disability Discrimination Act 2005 c. 13 s. 3



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#### **49B Meaning of “public authority” in Part 5A**

(1) In this Part “public authority”–

(a) includes any person certain of whose functions are functions of a public nature; but

(b) does not include–

(i) any person mentioned in section 21B(3);

(ii) the Scottish Parliament;

(iii) a person, other than the Scottish Parliamentary Corporate Body, exercising functions in connection with proceedings in the Scottish Parliament.

[ (iv) the National Assembly for Wales; or

(v) a person, other than the National Assembly for Wales Commission, exercising functions in connection with proceedings in the National Assembly for Wales ] <sup>161</sup>

(2) In relation to a particular act, a person is not a public authority by virtue only of subsection (1)(a) if the nature of the act is private.

(3) Regulations may provide for a person of a prescribed description to be treated as not being a public authority for the purposes of this Part.

#### **49C Exceptions from section 49A(1)**

(1) Section 49A(1) does not apply to–

(a) a judicial act (whether done by a court, tribunal or other person); or

(b) an act done on the instructions, or on behalf, of a person acting in a judicial capacity.

(2) Section 49A(1) does not apply to any act of, or relating to, making or approving an Act of Parliament, an Act of the Scottish Parliament [, a Measure or Act of the National Assembly for Wales] <sup>162</sup> or an Order in Council.

(3) Section 49A(1)(c) and (d) do not apply to–

(a) an act done in connection with recruitment to any of the naval, military or air forces of the Crown; or

(b) an act done in relation to a person in connection with service by him as a member of any of those forces.

(4) Regulations may provide for one or more specified paragraphs of section 49A(1) not to apply to an act of a prescribed description.

#### **49D Power to impose specific duties**

(1) The Secretary of State may by regulations impose on a public authority, other than a relevant Scottish authority or a cross-border authority, such duties as the Secretary of State considers

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<sup>160</sup> added by Disability Discrimination Act 2005 c. 13 s. 3

<sup>161</sup> added by Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007/1388 Sch. 1 para. 57(b)

<sup>162</sup> words inserted by Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007/1388 Sch. 1 para. 58

appropriate for the purpose of ensuring the better performance by that authority of its duty under section 49A(1).

(2) The Secretary of State may by regulations impose on a cross-border authority such duties as the Secretary of State considers appropriate for the purpose of ensuring the better performance by that authority of its duty under section 49A(1) so far as relating to such of its functions as are not Scottish functions.

(3) The Scottish Ministers may by regulations impose on a relevant Scottish authority such duties as the Scottish Ministers consider appropriate for the purpose of ensuring the better performance by that authority of its duty under section 49A(1).

(4) The Scottish Ministers may by regulations impose on a cross-border authority such duties as the Scottish Ministers consider appropriate for the purpose of ensuring the better performance by that authority of its duty under section 49A(1) so far as relating to its Scottish functions.

(5) Before making regulations under any of subsections (1) to (4), the person making the regulations shall consult the [Commission for Equality and Human Rights]<sup>163</sup> .

(6) Before making regulations under subsection (1) or (2) in relation to functions exercisable in relation to Wales by a public authority that is not a relevant Welsh authority, the Secretary of State shall consult the Welsh Ministers.

(7) The Secretary of State shall not make regulations under subsection (1) or (2) in relation to a relevant Welsh authority except with the consent of the Welsh Ministers.

(8) Before making regulations under subsection (2), the Secretary of State shall consult the Scottish Ministers.

(9) Before making regulations under subsection (4), the Scottish Ministers shall consult the Secretary of State.

(10) In this section—

“relevant Scottish authority” means—

- (a) a member of the Scottish executive or a junior Scottish Minister;
- (b) the Registrar General of Births, Deaths and Marriages for Scotland, the Keeper of the Registers of Scotland or the Keeper of the Records of Scotland;
- (c) any office of a description specified in an Order in Council under section 126(8)(b) of the Scotland Act 1998 (other non-ministerial office in the Scottish Administration); or
- (d) a public body, public office or holder of a public office—
  - (i) which (or who) is not a cross-border authority or the Scottish Parliamentary Corporate Body;
  - (ii) whose functions are exercisable only in or as regards Scotland; and
  - (iii) some at least of whose functions do not (within the meaning of the Scotland Act 1998) relate to reserved matters;

“cross-border authority” means a cross-border public authority within the meaning given by section 88(5) of the Scotland Act 1998;

“Scottish functions” means functions which are exercisable in or as regards Scotland and which do not (within the meaning of the Scotland Act 1998) relate to reserved matters;

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<sup>163</sup> words substituted by Equality Act 2006 c. 3 Sch. 3 para. 48

“relevant Welsh authority” means–

- (a) the National Assembly for Wales Commission;
- (aa) the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government; or.
- (b) a public authority whose functions are exercisable only in relation to Wales.

**49E** [...] <sup>164</sup>

**49F** [...] <sup>165</sup>

## [ PART 5B

### IMPROVEMENTS TO DWELLING HOUSES ] <sup>166</sup>

#### [49G Improvements to let dwelling houses

- (1) <sup>[167]</sup> This section applies in relation to a lease of a dwelling house if–
  - (a) the tenancy is not a protected tenancy, a statutory tenancy or a secure tenancy,
  - (b) the tenant or any other person who lawfully occupies or is intended lawfully to occupy the premises is a disabled person,
  - (c) the person mentioned in paragraph (b) occupies or is intended to occupy the premises as his only or principal home,
  - (d) the tenant is entitled under the lease to make improvements to the premises with the consent of the landlord, and
  - (e) the tenant applies to the landlord for his consent to make a relevant improvement.
- (2) If the consent of the landlord is unreasonably withheld it must be taken to have been given.
- (3) Where the tenant applies in writing for the consent–
  - (a) if the landlord refuses to give consent, he must give the tenant a written statement of the reason why the consent was withheld;
  - (b) if the landlord neither gives nor refuses to give consent within a reasonable time, consent must be taken to have been withheld.
- (4) If the landlord gives consent to the making of an improvement subject to a condition which is unreasonable, the consent must be taken to have been unreasonably withheld.
- (5) In any question as to whether–
  - (a) the consent of the landlord was unreasonably withheld, or
  - (b) a condition imposed by the landlord is unreasonable,
 it is for the landlord to show that it was not.

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<sup>164</sup> repealed by Equality Act 2006 c. 3 Sch. 4 para. 1

<sup>165</sup> repealed by Equality Act 2006 c. 3 Sch. 4 para. 1

<sup>166</sup> added by Disability Discrimination Act 2005 c. 13 s. 16(1)

<sup>167</sup> In relation to England and Wales: Part VB is inserted.

(6) If the tenant fails to comply with a reasonable condition imposed by the landlord on the making of a relevant improvement, the failure is to be treated as a breach by the tenant of an obligation of his tenancy.

(7) An improvement to premises is a relevant improvement if, having regard to the disability which the disabled person mentioned in subsection (1)(b) has, it is likely to facilitate his enjoyment of the premises.

(8) Subsections (2) to (6) apply to a lease only to the extent that provision of a like nature is not made by the lease.

(9) In this section—

“improvement” means any alteration in or addition to premises and includes—

- (a) any addition to or alteration in landlord's fittings and fixtures,
- (b) any addition or alteration connected with the provision of services to the premises,
- (c) the erection of a wireless or television aerial, and
- (d) the carrying out of external decoration;

“lease” includes a sub-lease or other tenancy, and “landlord” and “tenant” must be construed accordingly;

“protected tenancy” has the same meaning as in section 1 of the Rent Act 1977;

“statutory tenancy” must be construed in accordance with section 2 of that Act;

“secure tenancy” has the same meaning as in section 79 of the Housing Act 1985.

] <sup>168</sup>

**49H** [...] <sup>169</sup>

**49I** [...] <sup>170</sup>

## PART VI

### THE NATIONAL DISABILITY COUNCIL

**50.—** [...] <sup>171</sup>

**51.—** [...] <sup>172</sup>

**52.—** [...] <sup>173</sup>

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<sup>168</sup> added by Disability Discrimination Act 2005 c. 13 s. 16(1)

<sup>169</sup> repealed by Equality Act 2006 c. 3 Sch. 4 para. 1

<sup>170</sup> repealed by Equality Act 2006 c. 3 Sch. 4 para. 1

<sup>171</sup> repealed by Disability Rights Commission Act 1999 c. 17 Sch. 5 para. 1

<sup>172</sup> repealed by Disability Rights Commission Act 1999 c. 17 Sch. 5 para. 1

<sup>173</sup> repealed by Disability Rights Commission Act 1999 c. 17 Sch. 5 para. 1

**PART VII**  
**SUPPLEMENTAL**

**53.—** [...] <sup>174</sup>

**53A.—** [...] <sup>175</sup>

**54.—** [...] <sup>176</sup>

**55.— Victimisation.**

(1) For the purposes of [Part 2 or Part 4, or Part 3 other than sections 24A to 24L,] <sup>177</sup> a person (“A”) discriminates against another person (“B”) if—

- (a) he treats B less favourably than he treats or would treat other persons whose circumstances are the same as B's; and
- (b) he does so for a reason mentioned in subsection (2).

(2) The reasons are that—

- (a) B has—
  - (i) brought proceedings against A or any other person under this Act; or
  - (ii) given evidence or information in connection with such proceedings brought by any person; or
  - (iii) otherwise done anything under, or by reference to, this Act in relation to A or any other person; or
  - (iv) alleged that A or any other person has (whether or not the allegation so states) contravened this Act; or
- (b) A believes or suspects that B has done or intends to do any of those things.

(3) Where B is a disabled person, or a person who has had a disability, the disability in question shall be disregarded in comparing his circumstances with those of any other person for the purposes of subsection (1)(a).

(3A) For the purposes of Chapter 1 of Part 4—

- (a) references in subsection (2) to B include references to—
  - (i) a person who is, for the purposes of that Chapter, B's parent; and
  - (ii) a sibling of B; and
- (b) references in that subsection to this Act are, as respects a person mentioned in sub-paragraph (i) or (ii) of paragraph (a), restricted to that Chapter.

(4) Subsection (1) does not apply to treatment of a person because of an allegation made by him if the allegation was false and not made in good faith.

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<sup>174</sup> repealed by Disability Rights Commission Act 1999 c. 17 Sch. 5 para. 1

<sup>175</sup> repealed by Equality Act 2006 c. 3 Sch. 4 para. 1

<sup>176</sup> repealed by Disability Rights Commission Act 1999 c. 17 Sch. 5 para. 1

<sup>177</sup> words substituted by Disability Discrimination Act 2005 c. 13 Sch. 1(1) para. 29(2)

(5) In the case of an act which constitutes discrimination by virtue of this section, sections 4, 4B, 4D, 4G, 6A, 7A, 7C, 13, 14A, 14C, 15B and 16A also apply to discrimination against a person who is not disabled.

**[56 Help for aggrieved persons in obtaining information etc.**

- (1) For the purposes of this section—
- (a) a person who considers that he may have been—
    - (i) discriminated against in contravention of Part 2 or 3, or
    - (ii) subjected to harassment in contravention of Part 2 or section 21A(2),is referred to as “the person aggrieved”; and
  - (b) a person against whom the person aggrieved may decide to institute, or has instituted, proceedings in respect of such discrimination or harassment is referred to as “the respondent”.
- (2) With a view to helping the person aggrieved decide whether to institute proceedings and, if he does so, to formulate and present his case in the most effective manner, the Secretary of State shall by order prescribe—
- (a) forms by which the person aggrieved may question the respondent on his reasons for doing any relevant act, or on any other matter which is or may be relevant; and
  - (b) forms by which the respondent may if he so wishes reply to any questions.
- (3) Where the person aggrieved questions the respondent in accordance with forms prescribed by an order under subsection (2)—
- (a) the question, and any reply by the respondent (whether in accordance with such an order or not), shall be admissible as evidence in any proceedings under Part 2 or 3;
  - (b) if it appears to the court or tribunal in any such proceedings—
    - (i) that the respondent deliberately, and without reasonable excuse, omitted to reply within the period of eight weeks beginning with the day on which the question was served on him, or
    - (ii) that the respondent's reply is evasive or equivocal,it may draw any inference which it considers it just and equitable to draw, including an inference that the respondent committed an unlawful act.
- (4) The Secretary of State may by order—
- (a) prescribe the period within which questions must be duly served in order to be admissible under subsection (3)(a); and
  - (b) prescribe the manner in which a question, and any reply by the respondent, may be duly served.
- (5) Rules of court may enable a court entertaining a claim under section 25 to determine, before the date fixed for the hearing of the claim, whether a question or reply is admissible under this section or not.
- (6) In proceedings in respect of a section 21B claim, subsection (3)(b) does not apply in relation to a failure to reply, or a particular reply, if the following conditions are met—
- (a) that, at the time of doing any relevant act, the respondent was carrying out public investigator functions or was a public prosecutor; and
  - (b) that the respondent reasonably believes that a reply or (as the case may be) a different reply would be likely to prejudice any criminal investigation, any decision to institute

criminal proceedings or any criminal proceedings or would reveal the reasons behind a decision not to institute, or a decision not to continue, criminal proceedings.

(7) Regulations may provide for this section not to have effect, or to have effect with prescribed modifications, in relation to section 21B claims of a prescribed description.

(8) This section is without prejudice to any other enactment or rule of law regulating interlocutory and preliminary matters in proceedings before a county court, the sheriff or an employment tribunal, and has effect subject to any enactment or rule of law regulating the admissibility of evidence in such proceedings.

(9) In this section “section 21B claim” means a claim under section 25 by virtue of section 21B.  
] <sup>178</sup>

### **57.— Aiding unlawful acts.**

(1) A person who knowingly aids another person to do an unlawful act is to be treated for the purposes of this Act as himself doing the same kind of unlawful act.

(2) For the purposes of subsection (1), an employee or agent for whose act the employer or principal is liable under section 58 (or would be so liable but for section 58(5)) shall be taken to have aided the employer or principal to do the act.

(3) For the purposes of this section, a person does not knowingly aid another to do an unlawful act if—

- (a) he acts in reliance on a statement made to him by that other person that, because of any provision of this Act, the act would not be unlawful; and
- (b) it is reasonable for him to rely on the statement.

(4) A person who knowingly or recklessly makes such a statement which is false or misleading in a material respect is guilty of an offence.

(5) Any person guilty of an offence under subsection (4) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

[ (6) “Unlawful act” means an act made unlawful by any provision of this Act other than a provision contained in Chapter 1 of Part 4. ] <sup>179</sup>

### **58.— Liability of employers and principals.**

(1) Anything done by a person in the course of his employment shall be treated for the purposes of this Act as also done by his employer, whether or not it was done with the employer's knowledge or approval.

(2) Anything done by a person as agent for another person with the authority of that other person shall be treated for the purposes of this Act as also done by that other person.

(3) Subsection (2) applies whether the authority was—

- (a) express or implied; or
- (b) given before or after the act in question was done.

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<sup>178</sup> substituted by Disability Discrimination Act 2005 c. 13 s. 17

<sup>179</sup> added by Special Educational Needs and Disability Act 2001 c. 10 Pt 2 c. 3 s. 38(10)

- (4) Subsections (1) and (2) do not apply in relation to an offence under section 57(4).
- (5) In proceedings under this Act against any person in respect of an act alleged to have been done by an employee of his, it shall be a defence for that person to prove that he took such steps as were reasonably practicable to prevent the employee from—
- (a) doing that act; or
  - (b) doing, in the course of his employment, acts of that description.

### **59.— Statutory authority and national security etc.**

- (1) Nothing in this Act makes unlawful any act done—
- (a) in pursuance of any enactment; or
  - (b) in pursuance of any instrument made under any enactment by—
    - (i) a Minister of the Crown,
    - (ii) a member of the Scottish Executive,
    - (iii) the National Assembly for Wales constituted by the Government of Wales Act 1998, or
    - (iv) the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government; or
  - (c) to comply with any condition or requirement—
    - (i) imposed by a Minister of the Crown (whether before or after the passing of this Act) by virtue of any enactment,
    - (ii) imposed by a member of the Scottish Executive (whether before or after the coming into force of this sub-paragraph) by virtue of any enactment,
    - (iii) imposed by the National Assembly for Wales constituted by the Government of Wales Act 1998 (whether before or after the coming into force of this sub-paragraph) by virtue of any enactment[, or]<sup>180</sup>
    - [ (iv) imposed by the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government. ]<sup>181</sup>
- (2) In subsection (1) “enactment” includes one passed or made after the date on which this Act is passed and “instrument” includes one made after that date.
- (2A) Nothing in—
- (a) Part 2 of this Act, or
  - (b) Part 3 of this Act to the extent that it relates to the provision of employment services,
- makes unlawful any act done for the purpose of safeguarding national security if the doing of the act was justified by that purpose.
- (3) Nothing in any other provision of this Act makes unlawful any act done for the purpose of safeguarding national security.

<sup>180</sup> substituted by Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007/1388 Sch. 1 para. 61(6)

<sup>181</sup> substituted by Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007/1388 Sch. 1 para. 61(6)



**[59A National security]**

(1) Rules of court may make provision for enabling a county court or sheriff court in which a claim is brought in respect of alleged discrimination contrary to this Act (including anything treated by virtue of this Act as amounting to discrimination contrary to this Act), where the court considers it expedient in the interests of national security—

(a) to exclude from all or part of the proceedings—

- (i) the claimant;
- (ii) the claimant's representatives;
- (iii) any assessors;

(b) to permit a claimant or representative who has been excluded to make a statement to the court before the commencement of the proceedings, or the part of the proceedings, from which he is excluded;

(c) to take steps to keep secret all or part of the reasons for the court's decision in the proceedings.

(2) The Attorney General or, in Scotland, the Advocate General for Scotland, may appoint a person to represent the interests of a claimant in, or in any part of, proceedings from which the claimant or his representatives are excluded by virtue of subsection (1).

(3) A person may be appointed under subsection (2) only—

(a) in relation to proceedings in England and Wales, if he has a general qualification (within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41)), or

(b) in relation to proceedings in Scotland, if he is—

- (i) an advocate, or
- (ii) qualified to practice as a solicitor in Scotland.

(4) A person appointed under subsection (2) shall not be responsible to the person whose interests he is appointed to represent.

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**PART VIII****MISCELLANEOUS****60.— Appointment by Secretary of State of advisers.**

(1) The Secretary of State may appoint such persons as he thinks fit to advise or assist him in connection with matters relating to the employment of disabled persons and persons who have had a disability.

(2) Persons may be appointed by the Secretary of State to act generally or in relation to a particular area or locality.

(3) The Secretary of State may pay to any person appointed under this section such allowances and compensation for loss of earnings as he considers appropriate.

(4) The approval of the Treasury is required for any payment under this section.

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<sup>182</sup> added by Equality Act 2006 c. 3 Pt 4 s. 89

- (5) In subsection (1) “employment” includes self-employment.
- (6) The Secretary of State may by order—
- (a) provide for section 17 of, and Schedule 2 to, the Disabled Persons (Employment) Act 1944 (national advisory council and district advisory committees) to cease to have effect—
    - (i) so far as concerns the national advisory council; or
    - (ii) so far as concerns district advisory committees; or
  - (b) repeal that section and Schedule.
- (7) At any time before the coming into force of an order under paragraph (b) of subsection (6), section 17 of the Act of 1944 shall have effect as if in subsection (1), after “disabled persons” in each case there were inserted “, and persons who have had a disability,” and as if at the end of the section there were added—

“(3) For the purposes of this section—

- (a) a person is a disabled person if he is a disabled person for the purposes of the Disability Discrimination Act 1995; and
- (b) “disability” has the same meaning as in that Act.”

- (8) At any time before the coming into force of an order under paragraph (a)(i) or (b) of subsection (6), section 16 of the Chronically Sick and Disabled Persons Act 1970 (which extends the functions of the national advisory council) shall have effect as if after “disabled persons” in each case there were inserted “, and persons who have had a disability,” and as if at the end of the section there were added—

“(2) For the purposes of this section—

- (a) a person is a disabled person if he is a disabled person for the purposes of the Disability Discrimination Act 1995; and
- (b) “disability” has the same meaning as in that Act.”

#### **61.— Amendment of Disabled Persons (Employment) Act 1944.**

- (1) Section 15 of the Disabled Persons (Employment) Act 1944 (which gives the Secretary of State power to make arrangements for the provision of supported employment) is amended as set out in subsections (2) to (5).
- (2) In subsection (1)—
- (a) for “persons registered as handicapped by disablement” substitute “disabled persons”;
  - (b) for “their disablement” substitute “their disability”; and
  - (c) for “are not subject to disablement” substitute “do not have a disability”.
- (3) In subsection (2), for the words from “any of one or more companies” to “so required and prohibited” substitute “any company, association or body”.
- (4) After subsection (2) insert—
- “(2A) The only kind of company which the Minister himself may form in exercising his powers under this section is a company which is—
- (a) required by its constitution to apply its profits, if any, or other income in promoting its objects; and
  - (b) prohibited by its constitution from paying any dividend to its members.”

(5) After subsection (5) insert—

“(5A) For the purposes of this section—

- (a) a person is a disabled person if he is a disabled person for the purposes of the Disability Discrimination Act 1995; and
- (b) “disability” has the same meaning as in that Act.”

(6) The provisions of section 16 (preference to be given under section 15 of that Act to ex-service men and women) shall become subsection (1) of that section and at the end insert—

“and whose disability is due to that service.

(2) For the purposes of subsection (1) of this section, a disabled person's disability shall be treated as due to service of a particular kind only in such circumstances as may be prescribed.”

(7) The following provisions of the Act of 1944 shall cease to have effect—

- (a) section 1 (definition of “disabled person”);
- (b) sections 6 to 8 (the register of disabled persons);
- (c) sections 9 to 11 (obligations on employers with substantial staffs to employ a quota of registered persons);
- (d) section 12 (the designated employment scheme for persons registered as handicapped by disablement);
- (e) section 13 (interpretation of provisions repealed by this Act);
- (f) section 14 (records to be kept by employers);
- (g) section 19 (proceedings in relation to offences); and
- (h) section 21 (application as respects place of employment, and nationality).

(8) Any provision of subordinate legislation in which “disabled person” is defined by reference to the Act of 1944 shall be construed as if that expression had the same meaning as in this Act.

(9) Subsection (8) does not prevent the further amendment of any such provision by subordinate legislation.

**62.—** [...] <sup>183</sup>

**63.—** [...] <sup>184</sup>

**64.— Application to Crown etc.**

(A1) The following provisions bind the Crown—

- (a) sections 21B to 21E and Part 5A, and
- (b) the other provisions of this Act so far as applying for the purposes of provisions mentioned in paragraph (a);

and sections 57 and 58 shall apply for purposes of provisions mentioned in paragraph (a) as if service as a Crown servant were employment by the Crown.

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<sup>183</sup> repealed by Employment Tribunals Act 1996 c. 17 Sch. 3(I) para. 1

<sup>184</sup> repealed by Employment Tribunals Act 1996 c. 17 Sch. 3(I) para. 1

(1) This Act, other than the provisions mentioned in paragraphs (a) and (b) of subsection (A1), applies—

- (a) to an act done by or for purposes of a Minister of the Crown or government department, or
- (b) to an act done on behalf of the Crown by a statutory body, or a person holding a statutory office,

as it applies to an act done by a private person.

(2) Part II applies to service—

- (a) for purpose of a Minister of the Crown or government department, other than service of a person holding a statutory office, or
- (b) on behalf of the Crown for the purposes of a person holding a statutory office or purposes of a statutory body,

as it applies to employment by a private person.

(2A) Subsections [(A1) to ]<sup>185</sup> (2) have effect subject to section 64A.

(3) The provisions of Parts II to IV of the 1947 Act apply to proceedings against the Crown under this Act as they apply to Crown proceedings in England and Wales.

(4) The provisions of Part V of the 1947 Act apply to proceedings against the Crown under this Act as they apply to proceedings in Scotland which by virtue of that Part are treated as civil proceedings by or against the Crown; but the proviso to section 44 of that Act (removal of proceedings from the sheriff court to the Court of Session) does not apply.

(7) Part II does not apply to service in any of the naval, military or air forces of the Crown.

(8) In this section—

“the 1947 Act” means the Crown Proceedings Act 1947;

“Crown proceedings” means proceedings which, by virtue of section 23 of the 1947 Act, are treated for the purposes of Part II of that Act as civil proceedings by or against the Crown;

“service for purposes of a Minister of the Crown or government department” does not include service in any office for the time being mentioned in Schedule 2 (Ministerial offices) to the House of Commons Disqualification Act 1975;

“statutory body” means a body set up by or under an enactment; and

“statutory office” means an office so set up.

## 64A Police

(1) For the purposes of Part 2, the holding of the office of constable shall be treated as employment—

- (a) by the chief officer of police as respects any act done by him in relation to a constable or that office;
- (b) by the police authority as respects any act done by them in relation to a constable or that office.

(2) For the purposes of section 58—

- (a) the holding of the office of constable shall be treated as employment by the chief officer of police (and as not being employment by any other person); and

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<sup>185</sup> words substituted by Disability Discrimination Act 2005 c. 13 Sch. 1(1) para. 31(4)

- (b) anything done by a person holding such an office in the performance, or purported performance, of his functions shall be treated as done in the course of that employment.
- (3) There shall be paid out of the police fund—
- (a) any compensation, costs or expenses awarded against a chief officer of police in any proceedings brought against him under Part 2 or 3, and any costs or expenses incurred by him in any such proceedings so far as not recovered by him in the proceedings; and
  - (b) any sum required by a chief officer of police for the settlement of any claim made against him under Part 2 or 3 if the settlement is approved by the police authority.
- (4) Any proceedings under Part 2 or 3 which, by virtue of this section, would lie against a chief officer of police shall be brought against—
- (a) the chief officer of police for the time being, or
  - (b) in the case of a vacancy in that office, against the person for the time being performing the functions of that office;
- and references in subsection (3) to the chief officer of police shall be construed accordingly.
- (5) A police authority may, in such cases and to such extent as appear to it to be appropriate, pay out of the police fund—
- (a) any compensation, costs or expenses awarded in proceedings under Part 2 of this Act against a person under the direction and control of the chief officer of police;
  - (b) any costs or expenses incurred and not recovered by such a person in such proceedings; and
  - (c) any sum required in connection with the settlement of a claim that has or might have given rise to such proceedings.
- (6) Subsections (1) and (2) apply to a police cadet and appointment as a police cadet as they apply to a constable and the office of constable.
- (7) Subject to subsection (8), in this section—
- “chief officer of police”—
- (a) in relation to a person appointed, or an appointment falling to be made, under a specified Act, has the same meaning as in the Police Act 1996,
  - (c) in relation to a person appointed, or an appointment falling to be made, under the Police (Scotland) Act 1967, means the chief constable of the relevant police force,
  - (d) in relation to any other person or appointment means the officer or other person who has the direction and control of the body of constables or cadets in question;
- “police authority”—
- (a) in relation to a person appointed, or an appointment falling to be made, under a specified Act, has the same meaning as in the Police Act 1996,
  - (c) in relation to a person appointed, or an appointment falling to be made, under the Police (Scotland) Act 1967, has the meaning given in that Act,
  - (d) in relation to any other person or appointment, means the authority by whom the person in question is or on appointment would be paid;
- “police cadet” means any person appointed to undergo training with a view to becoming a constable;
- “police fund”—

- (a) in relation to a chief officer of police within paragraph (a) of the above definition of that term, has the same meaning as in the Police Act 1996,[ and]<sup>186</sup>
  - (b) [...] <sup>187</sup>
  - (c) in any other case means money provided by the police authority;
- “specified Act” means the Metropolitan Police Act 1829, the City of London Police Act 1839 or the Police Act 1996.

(8) In relation to a constable of a force who is not under the direction and control of the chief officer of police for that force, references in this section to the chief officer of police are references to the chief officer of the force under whose direction and control he is, and references in this section to the police authority are references to the relevant police authority for that force.

### **65.— Application to Parliament.**

- (1) This Act applies to an act done by or for purposes of the House of Lords or the House of Commons as it applies to an act done by a private person.
- (2) For the purposes of the application of Part II in relation to the House of Commons, the Corporate Officer of that House shall be treated as the employer of a person who is (or would be) a relevant member of the House of Commons staff for the purposes of section 195 of the Employment Rights Act 1996.
- (3) Except as provided in subsection (4), for the purposes of the application of sections 19 to 21, the provider of service is—
  - (a) as respects the House of Lords, the Corporate Officer of that House; and
  - (b) as respects the House of Commons, the Corporate Officer of that House.
- (4) Where the service in question is access to and use of any place in the Palace of Westminster which members of the public are permitted to enter, the Corporate Officers of both Houses jointly are the provider of that service.
- (5) Nothing in any rule of law or the law or practice of Parliament prevents proceedings being instituted before an industrial tribunal under [Part 2 or 3]<sup>188</sup> or before any court under Part III.

### **66.— [...] <sup>189</sup>**

### **67.— Regulations and orders.**

- (1) Any power under this Act of the Secretary of State, the Scottish Ministers or the Welsh Ministers to make regulations or orders shall be exercisable by statutory instrument.
- (2) Any such power may be exercised to make different provision for different cases, including different provision for different areas or localities.
- (3) Any such power includes power—

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<sup>186</sup> repealed by Serious Organised Crime and Police Act 2005 c. 15 Sch. 17(2) para. 1

<sup>187</sup> repealed by Serious Organised Crime and Police Act 2005 c. 15 Sch. 17(2) para. 1

<sup>188</sup> words substituted by Disability Discrimination Act 2005 c. 13 Sch. 1(1) para. 32

<sup>189</sup> repealed by Disability Discrimination Act 1995 (Amendment) Regulations 2003/1673 Pt 2 Reg. 26

- (a) to make such incidental, supplemental, consequential or transitional provision as appears to the person by whom the power is exercisable to be expedient; and
- (b) to provide for a person to exercise a discretion in dealing with any matter.

(3A) Where regulations under section 21D(7)(b) provide for the omission of section 21D(5), the provision that may be made by the regulations in exercise of the power conferred by subsection (3)(a) includes provision amending section 21D for the purpose of omitting references to section 21D(5).

(3B) The provision that may be made by regulations under section 21G(5)(b) in exercise of the power conferred by subsection (3)(a) includes provision amending or repealing section 21G(4).

(3C) The provision that may be made by regulations under any of subsections (1) to (4) of section 49D in exercise of the power conferred by subsection (3)(a) includes provision amending or repealing an enactment.

(4) Subsection (4A) applies to—

- (a) the first regulations to be made under section 21H(1);
- (b) the first regulations to be made under each of subsections (1), (2) and (4) of section 31AE;
- (c) regulations under section 31AE(1), (2) or (4) that amend this Act;
- (d) regulations under section 31AE(1) that make provision as to remedies;
- (e) regulations under section 47J(3);
- (f) regulations under section 49D(1) or (2) that, in exercise of the power under subsection (3)(a), amend or repeal an enactment contained in an Act, in an Act of the Scottish Parliament, or in a Measure or Act of the National Assembly for Wales;
- (g) regulations under section 67A(3);
- (h) regulations under paragraph 6A(2) of Schedule 1.

(4A) No regulations to which this subsection applies shall be made unless a draft of the statutory instrument containing the regulations (whether containing the regulations alone or with other provisions) has been laid before, and approved by a resolution of, each House of Parliament.

(4B) Subsection (4C) applies to regulations under section 49D(3) or (4) that, in exercise of the power under subsection (3)(a), amend or repeal any enactment contained in an Act or in an Act of the Scottish Parliament.

(4C) No regulations to which this subsection applies shall be made unless a draft of the statutory instrument containing the regulations (whether containing the regulations alone or with other provisions) has been laid before, and approved by a resolution of, the Scottish Parliament.

(4D) A statutory instrument—

- (a) that—
  - (i) contains regulations under section 49D(3) or (4), and
  - (ii) is not subject to the requirement in subsection (4C) that a draft of the instrument be laid before, and approved by, the Scottish Parliament, or
- (b) that contains regulations or an order made by the Scottish Ministers under section 33, shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.

(5) A statutory instrument—

- (a) that—
  - (i) contains regulations made by the Secretary of State under this Act, and

(ii) is not subject to the requirement in subsection (4A) that a draft of the instrument be laid before, and approved by a resolution of, each House of Parliament, or  
 (b) that contains an order made by the Secretary of State under this Act that is not an order under [section 3(9), 47(1) or 70(3)]<sup>190</sup> ,  
 shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(5A) A statutory instrument that contains an order under section 47(1), if made without a draft having been laid before, and approved by a resolution of, each House of Parliament, shall be subject to annulment in pursuance of a resolution of either House, but the exercise of the discretion conferred by this subsection is subject to section 67A.

(6) Subsection (1) does not require an order under section 43 which applies only to a specified vehicle, or to vehicles of a specified person, to be made by statutory instrument but such an order shall be as capable of being amended or revoked as an order which is made by statutory instrument.

(7) Nothing in section 34(4), 40(6) or 46(5) affects the powers conferred by subsections (2) and (3).

#### **[67A :Exercise of discretion under section 67(5A)**

(1) Before the Secretary of State decides which of the parliamentary procedures available under section 67(5A) is to be adopted in connection with the making of any particular order under section 47(1), he must consult the Disabled Persons Transport Advisory Committee.

(2) An order under section 47(1) may be made without a draft of the instrument that contains it having been laid before, and approved by a resolution of, each House of Parliament only if—  
 (a) regulations under subsection (3) are in force; and  
 (b) the making of the order without such laying and approval is in accordance with the regulations.

(3) Regulations may set out the basis on which the Secretary of State, when he comes to make an order under section 47(1), will decide which of the parliamentary procedures available under section 67(5A) is to be adopted in connection with the making of the order.

(4) Before making regulations under subsection (3), the Secretary of State must consult—  
 (a) the Disabled Persons Transport Advisory Committee; and  
 (b) such other persons as he considers appropriate.

]<sup>191</sup>

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

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

- (a) the exercise in that year of the power to make orders under section 47(1); and
- (b) the exercise in that year of the discretion under section 67(5A).

(2) A report under subsection (1) must (in particular) contain—

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<sup>190</sup> words repealed by Equality Act 2006 c. 3 Sch. 4 para. 1

<sup>191</sup> added by Disability Discrimination Act 2005 c. 13 s. 6(4)



- (a) details of each order made under section 47(1) in the year in respect of which the report is made; and
- (b) details of consultation carried out under sections 47(3) and 67A(1) in connection with orders made in that year under section 47(1).

(3) The Secretary of State must lay before each House of Parliament each report that he prepares under this section.

]<sup>192</sup>

## **68.— Interpretation.**

(1) In this Act—

“accessibility certificate” means a certificate issued under section 41(1)(a);

“act” includes a deliberate omission;

“approval certificate” means a certificate issued under section 42(4);

“conciliation officer” means a person designated under section 211 of the Trade Union and Labor Relations (Consolidated) Act 1992;

“criminal investigation” has the meaning given in subsection (1A);

“criminal proceedings” includes—

- (a) proceedings on dealing summarily with a charge under the Army Act 1955 or the Air Force Act 1955 or on summary trial under the Naval Discipline Act 1957;
- (b) proceedings before a summary appeal court constituted under any of those Acts;
- (c) proceedings before a court-martial constituted under any of those Acts or a disciplinary court constituted under section 52G of the Naval Discipline Act 1957;
- (d) proceedings before the Courts-Martial Appeal Court; and
- (e) proceedings before a Standing Civilian Court;

“employment” means, subject to any prescribed provision, employment under a contract of service or of apprenticeship or a contract personally to do any work, and related expressions are to be construed accordingly;

“employment at an establishment in Great Britain” is to be construed in accordance with subsections (2) to (4A);

“employment services” has the meaning given in section 21A(1);

“enactment” includes subordinate legislation and any Order in Council, and includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament;

“Great Britain” includes such of the territorial waters of the United Kingdom as are adjacent to Great Britain;

“group insurance arrangement” means an arrangement between an employer and another for the provision by the other of facilities by way of insurance to the employer's employees or to any class of those employees;

“licensing authority”, except in section 37A, means —

- (a) in relation to the area to which the Metropolitan Public Carriage Act 1869 applies, the Secretary of State or the holder of any office for the time being designated by the Secretary of State; or
- (b) in relation to any other area in England and Wales, the authority responsible for licensing taxis in that area;

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<sup>192</sup> added by Disability Discrimination Act 2005 c. 13 s. 6(5)

“mental impairment” does not have the same meaning as in the Mental Health Act 1983 but the fact that an impairment would be a mental impairment for the purposes of that Act does not prevent it from being a mental impairment for the purposes of this Act;

“Minister of the Crown” includes the Treasury and the Defence Council;

“occupational pension scheme” has the same meaning as in the Pension Schemes Act 1993;

“Premises” includes land of any description;

“prescribed” means prescribed by regulations, except in section 28D (where it has the meaning given by section 28D(17));

“profession” includes any vocation or occupation;

“provider of services” has the meaning given in section 19(2)(b);

“public investigator functions” has the meaning given in subsection (1B);

“public service vehicle” and “regulated public service vehicle” have the meaning given in section 40;

“PSV accessibility regulations” means regulations made under section 40(1);

“rail vehicle” and “regulated rail vehicle” have the meaning given in section 46;

“rails vehicle accessibility regulations” means regulations made under section 46(1);

“regulations” means regulations made by the Secretary of State, except in [sections 2(3), 28D, 28L(6), 28Q(7), 33, 49D and 67]<sup>193</sup> (provisions where the meaning of “regulations” is apparent);

“section 21 duty” means any duty imposed by or under section 21;

“subordinate legislation” has the same meaning as in section 21 of the Interpretation Act 1978;

“taxi” and “regulated taxi” have the meaning given in section 32;

“taxi accessibility regulations” means regulations made under section 32(1);

“trade” includes any business;

“trade organisation” has the meaning given in section 13;

“vehicle examiner” means an examiner appointed under section 66A of the Road Traffic Act 1988.

(1A) In this Act “criminal investigation” means—

- (a) any investigation which a person in carrying out functions to which section 21B(1) applies has a duty to conduct with a view to it being ascertained whether a person should be charged with, or in Scotland prosecuted for, an offence, or whether a person charged with or prosecuted for an offence is guilty of it;
- (b) any investigation which is conducted by a person in carrying out functions to which section 21B(1) applies and which in the circumstances may lead to a decision by that person to institute criminal proceedings which the person has power to conduct; or
- (c) any investigation which is conducted by a person in carrying out functions to which section 21B(1) applies and which in the circumstances may lead to a decision by that person to make a report to the procurator fiscal for the purpose of enabling him to determine whether criminal proceedings should be instituted.

(1B) In this Act “public investigator functions” means functions of conducting criminal investigations or charging offenders.

(1C) In subsections (1A) and (1B)—

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<sup>193</sup> words repealed by Equality Act 2006 c. 3 Sch. 4 para. 1

“offence” includes any offence of a kind triable by court-martial under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957, and  
 “offender” is to be construed accordingly.

(2) Employment (including employment on board a ship to which subsection (2B) applies or on an aircraft or hovercraft to which subsection (2C) applies) is to be regarded as being employment at an establishment in Great Britain if the employee—

- (a) does his work wholly or partly in Great Britain; or
- (b) does his work wholly outside Great Britain and subsection (2A) applies.

(2A) This subsection applies if—

- (a) the employer has a place of business at an establishment in Great Britain;
- (b) the work is for the purposes of the business carried on at the establishment; and
- (c) the employee is ordinarily resident in Great Britain—
  - (i) at the time when he applies for or is offered the employment, or
  - (ii) at any time during the course of the employment.

(2B) This subsection applies to a ship if—

- (a) it is registered at a port of registry in Great Britain; or
- (b) it belongs to or is possessed by Her Majesty in right of the Government of the United Kingdom.

(2C) This subsection applies to an aircraft or hovercraft if—

- (a) it is—
  - (i) registered in the United Kingdom, and
  - (ii) operated by a person who has his principal place of business, or is ordinarily resident, in Great Britain; or
- (b) it belongs to or is possessed by Her Majesty in right of the Government of the United Kingdom.

(2D) The following are not to be regarded as being employment at an establishment in Great Britain—

- (a) employment on board a ship to which subsection (2B) does not apply;
- (b) employment on an aircraft or hovercraft to which subsection (2C) does not apply.

(4) Employment of a prescribed kind, or in prescribed circumstances, is to be regarded as not being employment at an establishment in Great Britain.

(4A) For the purposes of determining if employment concerned with the exploration of the sea bed or sub-soil or the exploitation of their natural resources is outside Great Britain, subsections (2)(a) and (b), (2A) and (2C) of this section each have effect as if “Great Britain” had the same meaning as that given to the last reference to Great Britain in section 10(1) of the Sex Discrimination Act 1975<sup>194</sup> by section 10(5) of that Act read with the Sex Discrimination and Equal Pay (Offshore Employment) Order 1987.

## **69. Financial provisions.**

There shall be paid out of money provided by Parliament—

- (a) any expenditure incurred by a Minister of the Crown under this Act;

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<sup>194</sup> 1975 c.65. Section 10(1) was amended by the Equal Opportunities (Employment Legislation) (Territorial Limits) Regulations 1999, S.I. 1999/3163, reg. 2(1), (2).

(b) any increase attributable to this Act in the sums payable out of money so provided under or by virtue of any other enactment.

**70.— Short title, commencement, extent etc.**

- (1) This Act may be cited as the Disability Discrimination Act 1995.
- (2) This section (apart from subsections (4), (5) and (7)) comes into force on the passing of this Act.
- (3) The other provisions of this Act come into force on such day as the Secretary of State may be order appoint and different days may be appointed for different purposes.
- (4) Schedule 6 makes consequential amendments.
- (5) The repeals set out in Schedule 7 shall have effect.
- (5A) [Sections 7A, 7B and 49G]<sup>195</sup> extend to England and Wales only.
- (5B) Sections 7C and 7D extend to Scotland only.
- (6) Subject to subsections (5A) and (5B), this Act extends to England and Wales, Scotland and Northern Ireland; but in their application to Northern Ireland the provisions of this Act mentioned in Schedule 8 shall have effect subject to the modifications set out in that Schedule.
- (7) In Part II of Schedule 1 to the House of Commons Disqualification Act 1975 and in Part II of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (bodies whose members are disqualified) in each case inset at the appropriate places—

“The Northern Ireland Disability Council.”

- (8) Consultations which are required by any provision of this Act to be held by the Secretary of State may be held by him before the coming into force of that provision.

**SCHEDULE 1**

**PROVISIONS SUPPLEMENTING SECTION 1**

**Section 1(1)**

*Impairment*

**1.—**

- (1) [...] <sup>196</sup>
- (2) Regulations may make provision, for the purposes of this Act—
  - (a) for conditions of a prescribed description to be treated as amounting to impairments;
  - (b) for conditions of a prescribed description to be treated as not amounting to impairments.

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<sup>195</sup> words substituted by Equality Act 2006 c. 3 Sch. 3 para. 55

<sup>196</sup> repealed by Disability Discrimination Act 2005 c. 13 Sch. 2 para. 1

(3) Regulations made under sub-paragraph (2) may make provision as to the meaning of “condition” for the purposes of those regulations.

### *Long-term effects*

#### **2.—**

- (1) The effect of an impairment is a long-term effect if—
  - (a) it has lasted at least 12 months;
  - (b) the period for which it lasts is likely to be at least 12 months; or
  - (c) it is likely to last for the rest of the life of the person affected.
- (2) Where an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur.
- (3) For the purposes of sub-paragraph (2), the likelihood of an effect recurring shall be disregarded in prescribed circumstances.
- (4) Regulations may prescribe circumstances in which, for the purposes of this Act—
  - (a) an effect which would not otherwise be a long-term effect is to be treated as such an effect; or
  - (b) an effect which would otherwise be a long-term effect is to be treated as not being such an effect.

### *Severe disfigurement*

#### **3.—**

- (1) An impairment which consists of a severe disfigurement is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities.
- (2) Regulations may provide that in prescribed circumstances a severe disfigurement is not to be treated as having that effect.
- (3) Regulations under sub-paragraph (2) may, in particular, make provision with respect to deliberately acquired disfigurements.

### *Normal day-to-day activities*

#### **4.—**

- (1) An impairment is to be taken to affect the ability of the person concerned to carry out normal day-to-day activities only if it affects one of the following—
  - (a) mobility;
  - (b) manual dexterity;
  - (c) physical co-ordination;
  - (d) continence;
  - (e) ability to lift, carry or otherwise move everyday objects;
  - (f) speech, hearing or eyesight;

- (g) memory or ability to concentrate, learn or understand; or
- (h) perception of the risk of physical danger.

(2) Regulations may prescribe—

- (a) circumstances in which an impairment which does not have an effect falling within sub-paragraph (1) is to be taken to affect the ability of the person concerned to carry out normal day-to-day activities;
- (b) circumstances in which an impairment which has an effect falling within sub-paragraph (1) is to be taken not to affect the ability of the person concerned to carry out normal day-to-day activities.

#### *Substantial adverse effects*

### 5.

Regulations may make provisions for the purposes of this Act—

- (a) for an effect of a prescribed kind on the ability of a person to carry out normal day-to-day activities to be treated as a substantial adverse effect;
- (b) for an effect of a prescribed kind on the ability of a person to carry out normal day-to-day activities to be treated as not being a substantial adverse effect.

#### *Effect of medical treatment*

### 6.—

(1) An impairment which would be likely to have a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities, but for the fact that measures are being taken to treat or correct it, is to be treated as having that effect.

(2) In sub-paragraph (1) “measures” includes, in particular, medical treatment and the use of a prosthesis or other aid.

(3) Sub-paragraph (1) does not apply—

- (a) in relation to the impairment of a person's sight, to the extent that the impairment is, in his case, correctable by spectacles or contact lenses or in such other ways as may be prescribed; or
- (b) in relation to such other impairments as may be prescribed, in such circumstances as may be prescribed.

#### *Persons deemed to be disabled*

### [6A.

(1) Subject to sub-paragraph (2), a person who has cancer, HIV infection or multiple sclerosis is to be deemed to have a disability, and hence to be a disabled person.

(2) Regulations may provide for sub-paragraph (1) not to apply in the case of a person who has cancer if he has cancer of a prescribed description.

(3) A description of cancer prescribed under sub-paragraph (2) may (in particular) be framed by reference to consequences for a person of his having it. ]<sup>197</sup>

**7.—**

(1) Sub-paragraph (2) applies to any person whose name is, both on 12th January 1995 and on the date when this paragraph comes into force, in the register of disabled persons maintained under section 6 of the Disabled Persons (Employment) Act 1944.

(2) That person is to be deemed—

- (a) during the initial period, to have disability, and hence to be a disabled person; and
- (b) afterwards, to have had a disability and hence to have been a disabled person during that period.

(3) A certificate of registration shall be conclusive evidence, in relation to the person with respect to whom it was issued, of the matters certified.

(4) Unless the contrary is shown, any document purporting to be a certificate of registration shall be taken to be such a certificate and to have been validly issued.

(5) Regulations may provide for prescribed descriptions of person to be deemed to have disabilities, and hence to be disabled persons, for the purpose of this Act.

[ (5A) The generality of sub-paragraph (5) shall not be taken to be prejudiced by the other provisions of this Schedule. ]<sup>198</sup>

(6) Regulations may prescribe circumstances in which a person who has been deemed to be a disabled person by the provisions of sub-paragraph (1) or regulations made under sub-paragraph (5) is to be treated as no longer being deemed to be such a person.

(7) In this paragraph—

“certificate of registration” means a certificate issued under regulations made under regulations made under section 6 of the Act of 1944; and

“initial period” means the period of three years beginning with the date on which this paragraph comes into force.

*Progressive conditions*

**8.—**

(1) Where—

- (a) a person has a progressive condition (such as cancer, multiple sclerosis or muscular dystrophy or [HIV infection]<sup>199</sup>),
- (b) as a result of that condition, he has an impairment which has (or had) an effect on his ability to carry out normal day-to-day activities, but
- (c) that effect is not (or was not) a substantial adverse effect,

he shall be taken to have an impairment which has such a substantial adverse effect if the condition is likely to result in his having such an impairment.

(2) Regulations may make provision, for the purpose of this paragraph—

- (a) for conditions of a prescribed description to be treated as being progressive;

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<sup>197</sup> added by Disability Discrimination Act 2005 c. 13 s. 18(3)

<sup>198</sup> added by Disability Discrimination Act 2005 c. 13 s. 18(4)

<sup>199</sup> words substituted by Disability Discrimination Act 2005 c. 13 Sch. 1(1) para. 36

- (b) for conditions of a prescribed description to be treated as not being progressive.

## SCHEDULE 2

### PAST DISABILITIES

#### Section 2(2)

**1.**

The modifications referred to in section 2 are as follows.

**2.**

References in [Parts II to 4 and 5A]<sup>200</sup> to a disabled person are to be read as references to a person who has had a disability.

**[2A.**

References in Chapter 1 of Part 4 to a disabled pupil are to be read as references to a pupil who has had a disability.]<sup>201</sup>

**[2B.**

References in Chapter 2 of Part 4 to a disabled student are to be read as references to a student who has had a disability.]<sup>202</sup>

**2C**

In [sections 3A(5) and 31AB(8)]<sup>203</sup>, after “not having that particular disability” insert “and who has not had that particular disability”.

**3.**

In sections 4A(1), 4B(4), 4E(1), 4H(1), 6B(1), 7B(1), 7D(1), 14(1), 14B(1), 14D(1), 15C(1) and 16A(4), section 21A(4)(a) (in the words to be read as section 19(1)(aa)) and section 21A(6)(a) (in the words to be substituted in [section 21(1) and section 31AD(1)(d), (2)(c) and (3),]<sup>204</sup>), after “not disabled” (in each place it occurs) insert “and who have not had a disability”.

**4.**

In [sections 4A(3)(b), 4E(3)(b), 4H(3)(b), 6B(3)(b), 7B(4)(b), 7D(3)(b), 14(3)(b), 14B(3)(b), 14D(3)(b), 15C(3)(a), 16A(6) and 31AD(4)(b)]<sup>205</sup>, for “has” (in each place it occurs) substitute “has had”.

**[4ZA.**

In section 24(3)(e)(i) and (f)(i), after “having” insert “had”.]<sup>206</sup>

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<sup>200</sup> words inserted by Disability Discrimination Act 2005 c. 13 Sch. 1(1) para. 37(2)

<sup>201</sup> added by Special Educational Needs and Disability Act 2001 c. 10 Pt 2 c. 3 s. 38(12)

<sup>202</sup> added by Special Educational Needs and Disability Act 2001 c. 10 Pt 2 c. 3 s. 38(12)

<sup>203</sup> words substituted by Disability Discrimination Act 2005 c. 13 Sch. 1(1) para. 37(3)

<sup>204</sup> words inserted by Disability Discrimination Act 2005 c. 13 Sch. 1(1) para. 37(4)(b)

<sup>205</sup> words substituted by Disability Discrimination Act 2005 c. 13 Sch. 1(1) para. 37(5)(b)

<sup>206</sup> added by Disability Discrimination Act 2005 c. 13 Sch. 1(1) para. 37(6)



**[4ZB.**

In sections 24D(2)(a) and 24J(3)(b), for “did not have” substitute “had not had”.]<sup>207</sup>

**[4A.**

In section 28B(3)(a) and (4), after “disabled” insert “or that he had had a disability”.]<sup>208</sup>

**[4B.**

In section 28C(1), in paragraphs (a) and (b), after “not disabled” insert “and who have not had a disability”.]<sup>209</sup>

**[4C.**

In section 28S

- (a) in subsection (3)(a), after “disabled” insert “or that he had had a disability”,
- (b) in subsection (6)(a), after “who do not have” insert “and have not had”, and
- (c) in subsection (10), for “that particular disability” substitute “and who has not had that particular disability and”. ]<sup>210</sup>

**4D.**

In [subsections (1), (1A), (1B) (1C) and (1D) of section 28T]<sup>211</sup> , after “not disabled” insert “and who have not had a disability”.

**4E.**

In subsection (1) of that section as substituted by [paragraphs 2, 9, 14 and 21 of Schedule 4C]<sup>212</sup> , after “not disabled” insert “and who have not had a disability”.

**5.**

For paragraph 2(1) to (3) of Schedule 1, substitute—

- “(1) The effect of an impairment is a long-term effect if it has lasted for at least 12 months.
- (2) Where an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect recurs.
- (3) For the purposes of sub-paragraph (2), the recurrence of an effect shall be disregarded in prescribed circumstances.”

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<sup>207</sup> added by Disability Discrimination Act 2005 c. 13 Sch. 1(1) para. 37(6)

<sup>208</sup> added by Special Educational Needs and Disability Act 2001 c. 10 Pt 2 c. 3 s. 38(13)

<sup>209</sup> added by Special Educational Needs and Disability Act 2001 c. 10 Pt 2 c. 3 s. 38(13)

<sup>210</sup> substituted by Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006/1721 Pt 3 Reg. 18(2)

<sup>211</sup> words substituted by Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006/1721 Pt 3 Reg. 18(3)

<sup>212</sup> words substituted by Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006/1721 Pt 3 Reg. 18(4)(b)

**SCHEDULE 3****ENFORCEMENT AND PROCEDURE**

[Sections 17A(8) and 25(6), 31ADA]<sup>213</sup>

**PART I****EMPLOYMENT***Conciliation***1.—** [...] <sup>214</sup>*Restriction on proceedings for breach of Part II***2.—**

(1) Except as provided by Part 2, no civil or criminal proceedings may be brought against any person in respect of an act merely because the act is unlawful under that Part.

(2) Sub-paragraph (1) does not prevent the making of an application for judicial review or the investigation or determination of any matter in accordance with Part 10 (investigations) of the Pension Schemes Act 1993 by the Pensions Ombudsman.

[(3) Sub-paragraph (1) does not prevent the bringing of proceedings in respect of an offence under section 16B(2B). ] <sup>215</sup>

*Period within which proceedings must be brought***3.—**

(1) An employment tribunal shall not consider a complaint under section 17A or 25(8) unless it presented before the end of the period of three months beginning when the act complained of was done.

(2) A tribunal may consider any such complaint which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.

(3) For the purpose of sub-paragraph (1)—

(a) where an unlawful act [...] <sup>216</sup> is attributable to a term in a contract, that act is to be treated as extending throughout the duration of the contract;

(b) any act extending over a period shall be treated as done at the end of that period; and

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<sup>213</sup> word inserted by Disability Discrimination Act 1995 (Amendment etc.) (General Qualifications Bodies) (Alteration of Premises and Enforcement) Regulations 2007/2405 Pt 2 Reg. 4(2)

<sup>214</sup> repealed by Employment Tribunals Act 1996 c. 17 Sch. 3(I) para. 1

<sup>215</sup> added by Disability Discrimination Act 2005 c. 13 Sch. 1(1) para. 38(2)

<sup>216</sup> words repealed by Disability Discrimination Act 1995 (Amendment) Regulations 2003/1673 Pt 2 Reg. 29(2)(d)

(c) a deliberate omission shall be treated as done when the person in question decided upon it.

(4) In the absence of evidence establishing the contrary, a person shall be taken for the purpose of this paragraph to decide upon an omission—

- (a) when he does an act inconsistent with doing the omitted act; or
- (b) if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the omitted act if it was to be done.

### *Evidence*

#### **4.—**

(1) In any proceedings under section 17A or 25(8), a certificate signed by or on behalf of a Minister of the Crown and certifying—

(a) that any conditions or requirements specified in the certificate were imposed by a Minister of the Crown and were in operation at a time or throughout a time so specified, shall be conclusive evidence of the matters certified.

(1A) In any proceedings under section 17A or 25(8), a certificate signed by or on behalf of the Scottish Ministers and certifying that any conditions or requirements specified in the certificate—

- (a) were imposed by a member of the Scottish Executive, and
  - (b) were in operation at a time or throughout a time so specified,
- shall be conclusive evidence of the matters certified.

(1B) In any proceedings under section 17A or 25(8), a certificate signed by or on behalf of the Welsh Ministers and certifying that any conditions or requirements specified in the certificate—

- (a) were imposed by the [National Assembly for Wales constituted by the Government of Wales Act 1998, the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government]<sup>217</sup>, and
  - (b) were in operation at a time or throughout a time so specified,
- shall be conclusive evidence of the matters certified.

(2) A document purporting to be such a certificate as is mentioned in sub-paragraph (1), (1A) or (1B) shall be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.

## **PART II**

### **DISCRIMINATION IN OTHER AREAS**

#### *Restriction on proceedings for breach of Part III*

#### **5.—**

(1) Except as provided by section 25 no civil or criminal proceedings may be brought against any person in respect of an act merely because the act is unlawful under Part III.

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<sup>217</sup> word substituted by Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007/1388 Sch. 1 para. 63(2)(b)

(2) Sub-paragraph (1) does not prevent the making of an application for judicial review.

*Period within which proceedings must be brought*

**6.—**

(1) A county court or a sheriff court shall not consider a claim under section 25 unless proceedings in respect of the claim are instituted before the end of the period of six months beginning when the act complained of was done.

[ (2) Where, in relation to proceedings or prospective proceedings under section 25, the dispute concerned is referred for conciliation in pursuance of arrangements under section 27 of the Equality Act 2006 before the end of the period of six months mentioned in sub-paragraph (1), the period allowed by that sub-paragraph shall be extended by three months. ]<sup>218</sup>

(3) A court may consider any claim under section 25 which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.

(4) For the purposes of sub-paragraph (1)—

- (a) where an unlawful act of discrimination is attributable to a term in a contract, that act is to be treated as extending throughout the duration of the contract;
- (b) any act extending over a period shall be treated as done at the end of that period; and
- (c) a deliberate omission shall be treated as done when the person in question decided upon it.

(5) In the absence of evidence establishing the contrary, a person shall be taken for the purposes of this paragraph to decide upon an omission—

- (a) when he does an act inconsistent with doing the omitted act; or
- (b) if he has done no such inconsistent act, which the period expires within which he might reasonably have been expected to do the omitted act if it was to be done.

*Staying or sisting proceedings on section 21B claim affecting criminal matters*

**[6A**

(1) Sub-paragraph (2) applies where a party to proceedings under section 25 which have arisen by virtue of section 21B(1) has applied for a stay or sist of those proceedings on the grounds of prejudice to—

- (a) particular criminal proceedings;
- (b) a criminal investigation; or
- (c) a decision to institute criminal proceedings.

(2) The court shall grant the stay or sist unless it is satisfied that the continuance of the proceedings under section 25 would not result in the prejudice alleged. ]<sup>219</sup>

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<sup>218</sup> substituted by Equality Act 2006 c. 3 Sch. 3 para. 56(1)

<sup>219</sup> added by Disability Discrimination Act 2005 c. 13 Sch. 1(1) para. 38(5)

*Restriction of remedies for section 21B claim relating to criminal matters***[6B**

- (1) Sub-paragraph (2) applies to a remedy other than—
- (a) damages; or
  - (b) a declaration or, in Scotland, a declarator.
- (2) In proceedings under section 25, the remedy shall be obtainable in respect of a relevant discriminatory act only if the court is satisfied that—
- (a) no criminal investigation,
  - (b) no decision to institute criminal proceedings, and
  - (c) no criminal proceedings,
- would be prejudiced by the remedy.
- (3) In sub-paragraph (2) “relevant discriminatory act” means an act—
- (a) which is done, or by virtue of section 57 or 58 is treated as done, by a person—
    - (i) in carrying out public investigator functions, or
    - (ii) in carrying out functions as a public prosecutor; and
  - (b) which is unlawful by virtue of section 21B(1).

] <sup>220</sup>*Compensation for injury to feelings***7.**

In any proceedings under section 25, the amount of any damages awarded as compensation for injury to feelings shall not exceed the prescribed amount.

*Evidence***8.—**

- (1) In any proceedings under section 25, a certificate signed by or on behalf of a Minister of the Crown and certifying—
- (a) that any conditions or requirements specified in the certificate were imposed by a Minister of the Crown and were in operation at a time or throughout a time so specified, or
  - (b) that an act specified in the certificate was done for the purpose of safeguarding national security,
- shall be conclusive evidence of the matters certified.
- (2) A document purporting to be such a certificate shall be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.
- (3) In any proceedings under section 25, a certificate signed by or on behalf of the Scottish Ministers and certifying that any conditions or requirements specified in the certificate—
- (a) were imposed by a member of the Scottish Executive, and
  - (b) were in operation at a time or throughout a time so specified,
- shall be conclusive evidence of the matters certified.

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<sup>220</sup> added by Disability Discrimination Act 2005 c. 13 Sch. 1(1) para. 38(5)

- (4) In any proceedings under section 25, a certificate signed by or on behalf of the Welsh Ministers and certifying that any conditions or requirements specified in the certificate—
- (a) were imposed by the [National Assembly for Wales constituted by the Government of Wales Act 1998, the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government]<sup>221</sup>, and
  - (b) were in operation at a time or throughout a time so specified,
- shall be conclusive evidence of the matters certified.
- (5) A document purporting to be such a certificate as is mentioned in sub-paragraph (3) or (4) shall be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.

### [ PART 3

### DISCRIMINATION IN SCHOOLS ]<sup>222</sup>

#### *Restriction on proceedings for breach of Part 4, Chapter 1*

#### 9

- (1) Except as provided by sections 28I, 28K, 28L and 28N, no civil or criminal proceedings may be brought against any person in respect of an act merely because the act is unlawful under Chapter 1 of Part 4.
- (2) Sub-paragraph (1) does not prevent the making of an application for judicial review.
- [ (3) Sub-paragraph (1) does not prevent the bringing of proceedings in respect of an offence under section 28J(9). ]<sup>223</sup>

#### *Period within which proceedings must be brought*

#### 10

- (1) The Tribunal or the Welsh Tribunal shall not consider a claim under section 28I unless proceedings in respect of the claim are instituted before the end of the period of six months beginning when the act complained of was done.
- (2) If, in relation to proceedings or prospective proceedings under section 28I, the dispute concerned is referred for conciliation in pursuance of arrangements under section 27 of the Equality Act 2006 before the end of the period of six months mentioned in sub-paragraph (1), the period allowed by that sub-paragraph shall be extended by [three months].<sup>224</sup>
- (3) The Tribunal or the Welsh Tribunal may consider any claim under section 28I which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.

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<sup>221</sup> word substituted by Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007/1388 Sch. 1 para. 63(3)(b)

<sup>222</sup> added by Special Educational Needs and Disability Act 2001 c. 10 Sch. 3 para. 1

<sup>223</sup> added by Disability Discrimination Act 2005 c. 13 Sch. 1(1) para. 38(8)

<sup>224</sup> words substituted by Equality Act 2006 c. 3 Sch. 3 para. 56(2)(b)

- (4) But sub-paragraph (3) does not permit the Tribunal or the Welsh Tribunal to decide to consider a claim if a decision not to consider that claim has previously been taken under that sub-paragraph.
- (5) For the purposes of sub-paragraph (1)–
- (a) if an unlawful act of discrimination is attributable to a term in a contract, that act is to be treated as extending throughout the duration of the contract;
  - (b) any act extending over a period shall be treated as done at the end of that period; and
  - (c) a deliberate omission shall be treated as done when the person in question decided upon it.
- (6) In the absence of evidence establishing the contrary, a person shall be taken for the purposes of this paragraph to decide upon an omission–
- (a) when he does an act inconsistent with doing the omitted act; or
  - (b) if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the omitted act if it was to be done.

### *Evidence*

## 11

- (1) In any proceedings under section 28I, 28K, 28L or 28N, a certificate signed by or on behalf of a Minister of the Crown and certifying that any conditions or requirements specified in the certificate–
- (a) were imposed by a Minister of the Crown, and
  - (b) were in operation at a time or throughout a time so specified,
- shall be conclusive evidence of the matters certified.
- (1A) In any proceedings under section 28N, a certificate signed by or on behalf of the Scottish Ministers and certifying that any conditions or requirements specified in the certificate–
- (a) were imposed by a member of the Scottish Executive, and
  - (b) were in operation at a time or throughout a time so specified,
- shall be conclusive evidence of the matters certified.
- (1B) In any proceedings under section 28I, 28K or 28L, a certificate signed by or on behalf of the Welsh Ministers and certifying that any conditions or requirements specified in the certificate–
- (a) were imposed by the [National Assembly for Wales constituted by the Government of Wales Act 1998, the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government]<sup>225</sup>, and
  - (b) were in operation at a time or throughout a time so specified,
- shall be conclusive evidence of the matters certified.
- (2) A document purporting to be such a certificate as is mentioned in sub-paragraph (1), (1A) or (1B) shall be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.

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<sup>225</sup> word substituted by Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007/1388 Sch. 1 para. 63(4)(b)

## [ PART 4

**DISCRIMINATION IN FURTHER AND HIGHER EDUCATION INSTITUTIONS ]<sup>226</sup>***Restriction on proceedings for breach of Part 4, Chapter 2***12**

- (1) Except as provided by Chapter 2 of Part 4, no civil or criminal proceedings may be brought against any person in respect of an act merely because the act is unlawful under [that Chapter]<sup>227</sup>.
- (2) Sub-paragraph (1) does not prevent the making of an application for judicial review.

*Period within which proceedings must be brought***13**

- (1) A county court or a sheriff court shall not consider a claim under section 28V unless proceedings in respect of the claim are instituted before the end of the period of six months beginning when the act complained of was done.
- (2) If, in relation to proceedings or prospective proceedings under section 28V–
- (a) the dispute concerned is referred for conciliation in pursuance of arrangements under section 27 of the Equality Act 2006 before the end of the period of six months mentioned in sub-paragraph (1), or
  - (b) in England and Wales, in a case not falling within paragraph (a), the dispute concerned relates to the act or omission of a qualifying institution and is referred as a complaint under the student complaints scheme before the end of that period,
- the period of six months allowed by sub-paragraph (1) shall be extended by [three months.]<sup>228</sup>
- (2A) In sub-paragraph (2)(b)–
- “qualifying institution” has the meaning given by section 11 of the Higher Education Act 2004;
  - “the student complaints scheme” means a scheme for the review of qualifying complaints, as defined by section 12 of that Act, that is provided by the designated operator, as defined by section 13(5)(b) of that Act.
- (3) A court may consider any claim under section 28V which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.
- (4) For the purposes of sub-paragraph (1)–
- (a) if an unlawful act is attributable to a term in a contract, that act is to be treated as extending throughout the duration of the contract;
  - (b) any act extending over a period shall be treated as done at the end of that period; and

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<sup>226</sup> added by Special Educational Needs and Disability Act 2001 c. 10 Sch. 3 para. 2

<sup>227</sup> words substituted by Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006/1721 Pt 4 Reg. 19(2)(b)

<sup>228</sup> words substituted by Equality Act 2006 c. 3 Sch. 3 para. 56(2)(b)



(c) a deliberate omission shall be treated as done when the person in question decided upon it.

(5) In the absence of evidence establishing the contrary, a person shall be taken for the purposes of this paragraph to decide upon an omission—

- (a) when he does an act inconsistent with doing the omitted act; or
- (b) if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the omitted act if it was to be done.

### *Compensation for injury to feelings*

#### **[14**

In any proceedings under section 28V, the amount of any damages awarded as compensation for injury to feelings shall not exceed the prescribed amount.]<sup>229</sup>

### *Evidence*

#### **15**

(1) In any proceedings under section 28V, a certificate signed by or on behalf of a Minister of the Crown and certifying that any conditions or requirements specified in the certificate—

- (a) were imposed by a Minister of the Crown, and
- (b) were in operation at a time or throughout a time so specified,

is conclusive evidence of the matters certified.

(1A) In any proceedings under section 28V, a certificate signed by or on behalf of the Scottish Ministers and certifying that any conditions or requirements specified in the certificate—

- (a) were imposed by a member of the Scottish Executive, and
- (b) were in operation at a time or throughout a time so specified,

is conclusive evidence of the matters certified.

(1B) In any proceedings under section 28V, a certificate signed by or on behalf of the Welsh Ministers and certifying that any conditions or requirements specified in the certificate—

- (a) were imposed by the [National Assembly for Wales constituted by the Government of Wales Act 1998, the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government]<sup>230</sup>, and
- (b) were in operation at a time or throughout a time so specified,

is conclusive evidence of the matters certified.

(2) A document purporting to be such a certificate as is mentioned in sub-paragraph (1), (1A) or (1B) is to be—

- (a) received in evidence; and
- (b) deemed to be such a certificate unless the contrary is proved.

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<sup>229</sup> added by Special Educational Needs and Disability Act 2001 c. 10 Sch. 3 para. 2

<sup>230</sup> word substituted by Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007/1388 Sch. 1 para. 63(5)(b)

## [ Part 5

**Discrimination in General Qualifications Bodies ]<sup>231</sup>***Restriction on proceedings for breach of Part 4, Chapter 2A***[16.—**

- (1) Except as provided by section 31ADA, no civil or criminal proceedings may be brought against any person in respect of an act merely because the act is unlawful under Chapter 2A of Part 4.
- (2) Sub-paragraph (1) does not prevent the making of an application for judicial review. ]<sup>232</sup>

*Period within which proceedings must be brought***[17.—**

- (1) A county court or a sheriff court shall not consider a claim under section 31ADA unless proceedings in respect of the claim are instituted before the end of the period of six months beginning when the act complained of was done.
- (2) If, in relation to proceedings or prospective proceedings under section 31ADA, the dispute concerned is referred to conciliation in pursuance of arrangements under section 27 of the Equality Act 2006 before the end of the period of six months mentioned in sub-paragraph (1), the period of six months allowed by that sub-paragraph shall be extended by three months.
- (3) A court may consider any claim under section 31ADA which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.
- (4) For the purposes of sub-paragraph (1)—
- (a) if an unlawful act is attributable to a term in a contract, that act is to be treated as extending throughout the duration of the contract;
  - (b) any act extending over a period shall be treated as done at the end of that period; and
  - (c) a deliberate omission shall be treated as done when the person in question decided upon it.
- (5) In the absence of evidence establishing the contrary, a person shall be taken for the purposes of this paragraph to decide upon an omission—
- (a) when he does an act inconsistent with doing the omitted act; or
  - (b) if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the omitted act if it was to be done.

] <sup>233</sup>

<sup>231</sup> added by Disability Discrimination Act 1995 (Amendment etc.) (General Qualifications Bodies) (Alteration of Premises and Enforcement) Regulations 2007/2405 Pt 2 Reg. 4(3)

<sup>232</sup> added by Disability Discrimination Act 1995 (Amendment etc.) (General Qualifications Bodies) (Alteration of Premises and Enforcement) Regulations 2007/2405 Pt 2 Reg. 4(3)

<sup>233</sup> added by Disability Discrimination Act 1995 (Amendment etc.) (General Qualifications Bodies) (Alteration of Premises and Enforcement) Regulations 2007/2405 Pt 2 Reg. 4(3)

*Evidence***[18.—**

(1) In any proceedings under section 31ADA, a certificate signed by or on behalf of a Minister of the Crown and certifying that any conditions or requirements specified in the certificate—

- (a) were imposed by a Minister of the Crown, and
- (b) were in operation at a time or throughout a time so specified,

is conclusive evidence of the matters certified.

(2) In any proceedings under section 31ADA, a certificate signed by or on behalf of the Scottish Ministers and certifying that any conditions or requirements specified in the certificate—

- (a) were imposed by a member of the Scottish Executive, and
- (b) were in operation at a time or throughout a time so specified,

is conclusive evidence of the matters certified.

(3) In any proceedings under section 31ADA, a certificate signed by or on behalf of the Welsh Ministers and certifying that any conditions or requirements specified in the certificate—

- (a) were imposed by them, and
- (b) were in operation at a time or throughout a time so specified,

is conclusive evidence of the matters certified.

(4) A document purporting to be such a certificate as is mentioned in sub-paragraph (1), (2) or (3) is to be—

- (a) received in evidence; and
- (b) deemed to be such a certificate unless the contrary is proved.

]<sup>234</sup>

**[SCHEDULE 3A****VALIDITY OF CONTRACTS, COLLECTIVE AGREEMENTS AND RULES OF UNDERTAKINGS]<sup>235</sup>****Section 17C****[ Part 1****VALIDITY AND REVISION OF CONTRACTS ]<sup>236</sup>****[1**

(1) A term of a contract is void where—

- (a) the making of the contract is, by reason of the inclusion of the term, unlawful by virtue of this Part of this Act;

<sup>234</sup> added by Disability Discrimination Act 1995 (Amendment etc.) (General Qualifications Bodies) (Alteration of Premises and Enforcement) Regulations 2007/2405 Pt 2 Reg. 4(3)

<sup>235</sup> added by Disability Discrimination Act 1995 (Amendment) Regulations 2003/1673 Sch. 1 para. 1

<sup>236</sup> added by Disability Discrimination Act 1995 (Amendment) Regulations 2003/1673 Sch. 1 para. 1

- (b) it is included in furtherance of an act which is unlawful by virtue of this Part of this Act; or
  - (c) it provides for the doing of an act which is unlawful by virtue of this Part of this Act.
- (2) Sub-paragraph (1) does not apply to a term the inclusion of which constitutes, or is in furtherance of, or provides for, unlawful discrimination against, or harassment of, a party to the contract, but the term shall be unenforceable against that party.
- (3) A term in a contract which purports to exclude or limit any provision of this Part of this Act is unenforceable by any person in whose favour the term would operate apart from this paragraph.
- (4) Sub-paragraphs (1), (2) and (3) apply whether the contract was entered into before or after the date on which this Schedule comes into force; but in the case of a contract made before that date, those sub-paragraphs do not apply in relation to any period before that date. ]<sup>237</sup>

## 2

- (1) Paragraph 1(3) does not apply–
- (a) to a contract settling a complaint to which section 17A(1) or 25(8) applies where the contract is made with the assistance of a conciliation officer (within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992); or
  - (b) to a contract settling a complaint to which section 17A(1) or 25(8) applies if the conditions regulating compromise contracts under this Schedule are satisfied in relation to the contract.
- (2) The conditions regulating compromise contracts under this Schedule are that–
- (a) the contract must be in writing;
  - (b) the contract must relate to the particular complaint;
  - (c) the complainant must have received advice from a relevant independent adviser as to the terms and effect of the proposed contract and in particular its effect on his ability to pursue a complaint before an employment tribunal;
  - (d) there must be in force, when the adviser gives the advice, a contract of insurance, or an indemnity provided for members of a profession or professional body, covering the risk of a claim by the complainant in respect of loss arising in consequence of the advice;
  - (e) the contract must identify the adviser; and
  - (f) the contract must state that the conditions regulating compromise contracts under this Schedule are satisfied.
- (3) A person is a relevant independent adviser for the purposes of sub-paragraph (2)(c)–
- (a) if he is a qualified lawyer;
  - (b) if he is an officer, official, employee or member of an independent trade union who has been certified in writing by the trade union as competent to give advice and as authorised to do so on behalf of the trade union;
  - (c) if he works at an advice centre (whether as an employee or a volunteer) and has been certified in writing by the centre as competent to give advice and as authorised to do so on behalf of the centre[; or]<sup>238</sup>
  - [ (d) if he is a person of a description specified in an order made by the Secretary of State. ]<sup>239</sup>

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<sup>237</sup> added by Disability Discrimination Act 1995 (Amendment) Regulations 2003/1673 Sch. 1 para. 1

<sup>238</sup> added by Disability Discrimination Act 2005 c. 13 Sch. 1(1) para. 39(2)

- (4) But a person is not a relevant independent adviser for the purposes of sub-paragraph (2)(c) in relation to the complainant—
- (a) if he is, is employed by or is acting in the matter for the other party or a person who is connected with the other party;
  - (b) in the case of a person within sub-paragraph (3)(b) or (c), if the trade union or advice centre is the other party or a person who is connected with the other party; or
  - (c) in the case of a person within sub-paragraph (3)(c), if the complainant makes a payment for the advice received from him.
- (5) In sub-paragraph (3)(a) “qualified lawyer” means—
- (a) as respects England and Wales, a barrister (whether in practice as such or employed to give legal advice), a solicitor who holds a practising certificate, or a person other than a barrister or solicitor who is an authorised advocate or authorised litigator (within the meaning of the Courts and Legal Services Act 1990); and
  - (b) as respects Scotland, an advocate (whether in practice as such or employed to give legal advice), or a solicitor who holds a practising certificate.
- (6) In sub-paragraph (3)(b) “independent trade union” has the same meaning as in the Trade Union and Labour Relations (Consolidation) Act 1992.
- (7) For the purposes of sub-paragraph (4)(a) any two persons are to be treated as connected—
- (a) if one is a company of which the other (directly or indirectly) has control; or
  - (b) if both are companies of which a third person (directly or indirectly) has control.
- (8) An agreement under which the parties agree to submit a dispute to arbitration—
- (a) shall be regarded for the purposes of sub-paragraph (1)(a) and (b) as being a contract settling a complaint if—
    - (i) the dispute is covered by a scheme having effect by virtue of an order under section 212A of the Trade Union and Labour Relations (Consolidation) Act 1992, and
    - (ii) the agreement is to submit it to arbitration in accordance with the scheme; but
  - (b) shall be regarded as neither being nor including such a contract in any other case.

### [3]

- (1) On the application of a disabled person interested in a contract to which paragraph 1(1) or (2) applies, a county court or a sheriff court may make such order as it thinks fit for—
- (a) removing or modifying any term rendered void by paragraph 1(1), or
  - (b) removing or modifying any term made unenforceable by paragraph 1(2);
- but such an order shall not be made unless all persons affected have been given notice in writing of the application (except where under rules of court notice may be dispensed with) and have been afforded an opportunity to make representations to the court.
- (2) An order under sub-paragraph (1) may include provision as respects any period before the making of the order (but after the coming into force of this Schedule). ]<sup>240</sup>

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<sup>239</sup> added by Disability Discrimination Act 2005 c. 13 Sch. 1(1) para. 39(2)

<sup>240</sup> added by Disability Discrimination Act 1995 (Amendment) Regulations 2003/1673 Sch. 1 para. 1

## [ Part 2

**COLLECTIVE AGREEMENTS AND RULES OF UNDERTAKINGS ]<sup>241</sup>****[4**

(1) This Part of this Schedule applies to—

- (a) any term of a collective agreement, including an agreement which was not intended, or is presumed not to have been intended, to be a legally enforceable contract;
- (b) any rule made by an employer for application to all or any of the persons who are employed by him or who apply to be, or are, considered by him for employment;
- (c) any rule made by a trade organisation (within the meaning of section 13) or a qualifications body (within the meaning of section 14A) for application to—
  - (i) all or any of its members or prospective members; or
  - (ii) all or any of the persons on whom it has conferred authorisations or qualifications or who are seeking the authorisations or qualifications which it has power to confer.

(2) Any term or rule to which this Part of this Schedule applies is void where—

- (a) the making of the collective agreement is, by reason of the inclusion of the term, unlawful by virtue of this Part of this Act;
- (b) the term or rule is included in furtherance of an act which is unlawful by virtue of this Part of this Act; or
- (c) the term or rule provides for the doing of an act which is unlawful by virtue of this Part of this Act.

(3) Sub-paragraph (2) applies whether the agreement was entered into, or the rule made, before or after the date on which this Schedule comes into force; but in the case of an agreement entered into, or a rule made, before the date on which this Schedule comes into force, that sub-paragraph does not apply in relation to any period before that date. ]<sup>242</sup>

**[5**

A disabled person to whom this paragraph applies may present a complaint to an employment tribunal that a term or rule is void by virtue of paragraph 4 if he has reason to believe—

- (a) that the term or rule may at some future time have effect in relation to him; and
- (b) where he alleges that it is void by virtue of paragraph 4(2)(c), that—
  - (i) an act for the doing of which it provides, may at some such time be done in relation to him, and
  - (ii) the act would be unlawful by virtue of this Part of this Act if done in relation to him in present circumstances.

] <sup>243</sup>

**[6**

In the case of a complaint about—

- (a) a term of a collective agreement made by or on behalf of—

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<sup>241</sup> added by Disability Discrimination Act 1995 (Amendment) Regulations 2003/1673 Sch. 1 para. 1

<sup>242</sup> added by Disability Discrimination Act 1995 (Amendment) Regulations 2003/1673 Sch. 1 para. 1

<sup>243</sup> added by Disability Discrimination Act 1995 (Amendment) Regulations 2003/1673 Sch. 1 para. 1

- (i) an employer,
  - (ii) an organisation of employers of which an employer is a member, or
  - (iii) an association of such organisations of one of which an employer is a member,
- or
- (b) a rule made by an employer within the meaning of paragraph 4(1)(b), paragraph 5 applies to any disabled person who is, or is genuinely and actively seeking to become, one of his employees.]<sup>244</sup>

**[7]**

In the case of a complaint about a rule made by an organisation or body to which paragraph 4(1)(c) applies, paragraph 5 applies to any disabled person—

- (a) who is, or is genuinely and actively seeking to become, a member of the organisation or body;
- (b) on whom the organisation or body has conferred an authorisation or qualification; or
- (c) who is genuinely and actively seeking an authorisation or qualification which the organisation or body has power to confer. ]<sup>245</sup>

**[8]**

(1) When an employment tribunal finds that a complaint presented to it under paragraph 5 is well-founded the tribunal shall make an order declaring that the term or rule is void.

(2) An order under sub-paragraph (1) may include provision as respects any period before the making of the order (but after the coming into force of this Schedule). ]<sup>246</sup>

**[9]**

The avoidance by virtue of paragraph 4(2) of any term or rule which provides for any person to be discriminated against shall be without prejudice to the following rights (except in so far as they enable any person to require another person to be treated less favourably than himself), namely—

- (a) such of the rights of the person to be discriminated against, and
- (b) such of the rights of any person who will be treated more favourably in direct or indirect consequence of the discrimination,

as are conferred by or in respect of a contract made or modified wholly or partly in pursuance of, or by reference to, that term or rule.]<sup>247</sup>

**[ Part 3****INTERPRETATION ]<sup>248</sup>****[10]**

In this Schedule “collective agreement” means any agreement relating to one or more of the matters mentioned in section 178(2) of the Trade Union and Labour Relations (Consolidation) Act 1992

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<sup>244</sup> added by Disability Discrimination Act 1995 (Amendment) Regulations 2003/1673 Sch. 1 para. 1

<sup>245</sup> added by Disability Discrimination Act 1995 (Amendment) Regulations 2003/1673 Sch. 1 para. 1

<sup>246</sup> added by Disability Discrimination Act 1995 (Amendment) Regulations 2003/1673 Sch. 1 para. 1

<sup>247</sup> added by Disability Discrimination Act 1995 (Amendment) Regulations 2003/1673 Sch. 1 para. 1

<sup>248</sup> added by Disability Discrimination Act 1995 (Amendment) Regulations 2003/1673 Sch. 1 para. 1

(meaning of trade dispute), being an agreement made by or on behalf of one or more employers or one or more organisations of employers or associations of such organisations with one or more organisations of workers or associations of such organisations.]<sup>249</sup>

**[11.**

Any reference in this Schedule to this Part of this Act shall be taken to include a reference to Part 3 of this Act, to the extent that it relates to—

- (a) the provision of employment services; or
  - (b) the provision under a group insurance arrangement of facilities by way of insurance.
- ] <sup>250</sup>

**[12.**

Where a term to which section 26(1A)(c) applies is a term in an agreement which is not a contract, Part 1 of this Schedule shall have effect as if the agreement were a contract.]<sup>251</sup>

## SCHEDULE 4

### PREMISES OCCUPIED UNDER LEASES

[Sections 18A(5) and 27(5), 31ADB]<sup>252</sup>

#### PART I

#### OCCUPATION BY [EMPLOYER etc]<sup>253</sup>

##### *Failure to obtain consent to alteration*

**1.**

If any question arises as to whether the occupier has failed to comply with [any duty to make reasonable adjustments]<sup>254</sup>, by failing to make a particular alteration to the premises, any constraint attributable to the fact that he occupies the premises under a lease is to be ignored unless he has applied to the lessor in writing for consent to the making of the alteration.

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<sup>249</sup> added by Disability Discrimination Act 1995 (Amendment) Regulations 2003/1673 Sch. 1 para. 1

<sup>250</sup> paras.11-12 substituted for para.11 by Disability Discrimination Act 2005 c. 13 Sch. 1(1) para. 39(3)

<sup>251</sup> paras.11-12 substituted for para.11 by Disability Discrimination Act 2005 c. 13 Sch. 1(1) para. 39(3)

<sup>252</sup> word inserted by Disability Discrimination Act 1995 (Amendment etc.) (General Qualifications Bodies) (Alteration of Premises and Enforcement) Regulations 2007/2405 Pt 2 Reg. 6(2)

<sup>253</sup> words substituted by Disability Discrimination Act 1995 (Amendment) Regulations 2003/1673 Pt 2 Reg. 29(3)(b)

<sup>254</sup> words substituted by Disability Discrimination Act 1995 (Amendment) Regulations 2003/1673 Pt 2 Reg. 29(3)(c)



*Joining lessors in proceedings under section 17A***2.—**

- (1) In any proceedings [on a complaint under section 17A]<sup>255</sup>, in a case to which section 18A applies, the complainant or the occupier may ask the tribunal hearing the complaint to direct that the lessor be joined or sisted as a party to the proceedings.
- (2) The request shall be granted if it is made before the hearing of the complaint begins.
- (3) The tribunal may refuse the request if it is made after the hearing of the complaint begins.
- (4) The request may not be granted if it is made after the tribunal has determined the complaint.
- (5) Where a lessor has been so joined or sisted as a party to the proceedings, the tribunal may determine—
- (a) whether the lessor has—
    - (i) refused consent to the alteration, or
    - (ii) consented subject to one or more conditions, and
  - (b) if so, whether the refusal or any of the conditions was unreasonable,
- (6) If, under sub-paragraph (5), the tribunal determines that the refusal or any of the conditions was unreasonable it may take one or more of the following steps—
- (a) make such declaration as it considers appropriate;
  - (b) make an order authorising the occupier to make the alteration specified in the order;
  - (c) order the lessor to pay compensation to the complainant.
- (7) An order under sub-paragraph (6)(b) may require the occupier to comply with conditions specified in the order.
- (8) Any step taken by the tribunal under sub-paragraph (6) may be in substitution for, or in addition to, any step taken by the tribunal under section 17A(2).
- (9) If the tribunal orders the lessor to pay compensation it may not make an order under section 17A(2) ordering the occupier to do so.

*Regulations***3.**

Regulations may make provision as to circumstances in which—

- (a) a lessor is to be taken, for the purposes of [section 18A]<sup>256</sup> and this Part of this Schedule to have—
  - (i) withheld his consent;
  - (ii) withheld his consent unreasonably;
  - (iii) acted reasonably in withholding his consent;
- (b) a condition subject to which a lessor has given his consent is to be taken to be reasonable;
- (c) a condition subject to which a lessor has given his consent is to be taken to be unreasonable.

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<sup>255</sup> words substituted by Disability Discrimination Act 2005 c. 13 Sch. 1(1) para. 40(2)(b)

<sup>256</sup> words substituted by Disability Discrimination Act 1995 (Amendment) Regulations 2003/1673 Pt 2 Reg. 29(3)(g)

*Sub-leases etc.***4.**

The Secretary of State may by regulations make provision supplementing, or modifying, the provision made by [section 18A]<sup>257</sup> or any provision made by or under this Part of this Schedule in relation to cases where the occupier occupies premises under a sub-lease or sub-tenancy.

**PART II****OCCUPATION BY [persons subject to a duty under section 21, 21E or 21H]<sup>258</sup>***Failure to obtain consent to alteration***5.**

If any question arises as to whether the occupier has failed to comply with the section 21 duty [ or a duty imposed under section 21E or 21H]<sup>259</sup>, by failing to make a particular alteration to premises, any constraint attributable to the fact that he occupies the premises under a lease is to be ignored unless he has applied to the lessor in writing for consent to the making of the alteration.

*Reference to court***6.—**

- (1) If the occupier has applied in writing to the lessor for consent to the alteration and—
  - (a) that consent has been refused, or
  - (b) the lessor has made his consent subject to one or more conditions,
 the occupier or a disabled person who has an interest in the proposed alteration to the premises being made, may refer the matter to a county court or, in Scotland, to the sheriff.
- (2) In the following provisions of this Schedule “court” includes “sheriff”.
- (3) On such a reference the court shall determine whether the lessor's refusal was unreasonable or (as the case may be) whether the condition is, or any of the conditions are, unreasonable.
- (4) If the court determines—
  - (a) that the lessor's refusal was unreasonable, or
  - (b) that the condition is, or any of the conditions are, unreasonable,
 it may make such declaration as it considers appropriate or an order authorising the occupier to make the alteration specified in the order.
- (5) An order under sub-paragraph (4) may require the occupier to comply with conditions specified in the order.

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<sup>257</sup> words substituted by Disability Discrimination Act 1995 (Amendment) Regulations 2003/1673 Pt 2 Reg. 29(3)(g)

<sup>258</sup> words substituted by Disability Discrimination Act 2005 c. 13 Sch. 1(1) para. 40(3)

<sup>259</sup> words inserted by Disability Discrimination Act 2005 c. 13 Sch. 1(1) para. 40(4)

*Joining lessors in proceedings under section 25***7.—**

- (1) In any proceedings on a claim [under section 25 in a case to which section 27 applies, other than a claim presented as a complaint under section 25(8),]<sup>260</sup> the plaintiff, the pursuer or the occupier concerned may ask the court to direct that the lessor be joined or sisted as a party to the proceedings.
- (2) The request shall be granted if it is made before the hearing of the claim begins.
- (3) The court may refuse the request if it is made after the hearing of the claim begins.
- (4) The request may not be granted if it is made after the court has determined the claim.
- (5) Where a lessor has been so joined or sisted as a party to the proceedings, the court may determine—
  - (a) whether the lessor has—
    - (i) refused consent to the alteration, or
    - (ii) consented subject to one or more conditions, and
  - (b) if so, whether the refusal or any of the conditions was unreasonable.
- (6) If, under sub-paragraph (5), the court determines that the refusal or any of the conditions was unreasonable it may take one or more of the following steps—
  - (a) make such declaration as it considers appropriate;
  - (b) make an order authorising the occupier to make the alteration specified in the order;
  - (c) order the lessor to pay compensation to the complainant.
- (7) An order under sub-paragraph (6)(b) may require the occupier to comply with conditions specified in the order.
- (8) If the court orders the lessor to pay compensation it may not order the occupier to do so.

*Joining lessors in proceedings relating to group insurance or employment services***[7A**

- (1) In any proceedings on a complaint under section 25(8) in a case to which section 27 applies, the complainant or the occupier may ask the tribunal hearing the complaint to direct that the lessor be joined or sisted as a party to the proceedings.
- (2) The request shall be granted if it is made before the hearing of the complaint begins.
- (3) The tribunal may refuse the request if it is made after the hearing of the complaint begins.
- (4) The request may not be granted if it is made after the tribunal has determined the complaint.
- (5) Where a lessor has been so joined or sisted as a party to the proceedings, the tribunal may determine—
  - (a) whether the lessor has—
    - (i) refused consent to the alteration, or
    - (ii) consented subject to one or more conditions; and

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<sup>260</sup> words substituted by Disability Discrimination Act 2005 c. 13 Sch. 1(1) para. 40(5)

- (b) if so, whether the refusal or any of the conditions was unreasonable.
- (6) If, under sub-paragraph (5), the tribunal determines that the refusal or any of the conditions was unreasonable it may take one or more of the following steps—
- (a) make such declaration as it considers appropriate;
  - (b) make an order authorising the occupier to make the alteration specified in the order;
  - (c) order the lessor to pay compensation to the complainant.
- (7) An order under sub-paragraph (6)(b) may require the occupier to comply with conditions specified in the order.
- (8) Any step taken by the tribunal under sub-paragraph (6) may be in substitution for, or in addition to, any step taken by the tribunal under section 17A(2).
- (9) If the tribunal orders the lessor to pay compensation it may not make an order under section 17A(2) ordering the occupier to do so. ]<sup>261</sup>

### *Regulations*

#### **8.**

Regulations may make provision as to circumstances in which—

- (a) a lessor is to be taken, for the purposes of section 27 and this Part of this Schedule to have—
  - (i) withheld his consent;
  - (ii) withheld his consent unreasonably;
  - (iii) acted reasonably in withholding his consent;
- (b) a condition subject to which a lessor has given his consent is to be taken to be reasonable;
- (c) a condition subject to which a lessor has given his consent is to be taken to be unreasonable.

### *Sub-leases etc.*

#### **9.**

The Secretary of State may by regulations make provision supplementing, or modifying, the provision made by section 27 or any provision made by or under this Part of this Schedule in relation to cases where the occupier occupies premises under a sub-lease or sub-tenancy.

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<sup>261</sup> added by Disability Discrimination Act 2005 c. 13 Sch. 1(1) para. 40(6)

## [ PART 3

OCCUPATION BY EDUCATIONAL INSTITUTIONS ]<sup>262</sup>*Failure to obtain consent***10**

If any question arises as to whether a responsible body has failed to comply with the duty imposed by [section 28T or section 28UA(5)]<sup>263</sup>, by failing to make a particular alteration to premises, any constraint attributable to the fact that the premises are occupied by the educational institution under a lease is to be ignored unless the responsible body has applied to the lessor in writing for consent to the making of the alteration.<sup>[264]</sup>

*Reference to court***11**

- (1) If the responsible body has applied in writing to the lessor for consent to the alteration and—
- (a) that consent has been refused, or
  - (b) the lessor has made his consent subject to one or more conditions,
- that body or a disabled person who has an interest in the proposed alteration to the premises being made, may refer the matter to a county court or, in Scotland, to the sheriff.
- (2) On such a reference the court must determine whether the lessor's refusal was unreasonable or (as the case may be) whether the condition is, or any of the conditions are, unreasonable.
- (3) If the court determines—
- (a) that the lessor's refusal was unreasonable, or
  - (b) that the condition is, or any of the conditions are, unreasonable,
- it may make such declaration as it considers appropriate or an order authorising the responsible body to make the alteration specified in the order.
- (4) An order under sub-paragraph (3) may require the responsible body to comply with conditions specified in the order. [...]<sup>265</sup> <sup>[266]</sup>

*Joining lessors in proceedings under section 28V***12**

- (1) In proceedings on a claim under section 28V, in a case to which this Part of this Schedule applies, the claimant, the pursuer or the responsible body concerned may ask the court to direct that the lessor be joined or sisted as a party to the proceedings.

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<sup>262</sup> added by Special Educational Needs and Disability Act 2001 c. 10 Sch. 6 para. 1

<sup>263</sup> words inserted by Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006/1721 Pt 5 Reg. 20

<sup>264</sup> In relation to any case where the occupier occupies premises under a sub-lease or sub-tenancy: [See Westlaw UK].

<sup>265</sup> added by Special Educational Needs and Disability Act 2001 c. 10 Sch. 6 para. 1

<sup>266</sup> In relation to any case where the occupier occupies premises under a sub-lease or sub-tenancy: [See Westlaw UK].

- (2) The request must be granted if it is made before the hearing of the claim begins.
- (3) The court may refuse the request if it is made after the hearing of the claim begins.
- (4) The request may not be granted if it is made after the court has determined the claim.
- (5) If a lessor has been so joined or sisted as a party to the proceedings, the court may determine—
  - (a) whether the lessor has—
    - (i) refused consent to the alteration, or
    - (ii) consented subject to one or more conditions, and
  - (b) if so, whether the refusal or any of the conditions was unreasonable.
- (6) If, under sub-paragraph (5), the court determines that the refusal or any of the conditions was unreasonable it may take one or more of the following steps—
  - (a) make such a declaration as it considers appropriate;
  - (b) make an order authorising the responsible body to make the alteration specified in the order;
  - (c) order the lessor to pay compensation to the complainant.
- (7) An order under sub-paragraph (6)(b) may require the responsible body to comply with conditions specified in the order.
- (8) If the court orders the lessor to pay compensation it may not order the responsible body to do so. [...] <sup>267</sup> <sup>[268]</sup>

### *Regulations*

#### **13**

Regulations may make provision as to circumstances in which—

- (a) a lessor is to be taken, for the purposes of section 28W and this Part of this Schedule to have—
  - (i) withheld his consent;
  - (ii) withheld his consent unreasonably;
  - (iii) acted reasonably in withholding his consent;
- (b) a condition subject to which a lessor has given his consent is to be taken to be reasonable;
- (c) a condition subject to which a lessor has given his consent is to be taken to be unreasonable. [...] <sup>269</sup>

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<sup>267</sup> added by Special Educational Needs and Disability Act 2001 c. 10 Sch. 6 para. 1

<sup>268</sup> In relation to any case where the occupier occupies premises under a sub-lease or sub-tenancy: [See Westlaw UK].

<sup>269</sup> added by Special Educational Needs and Disability Act 2001 c. 10 Sch. 6 para. 1

*Sub-leases etc.***14**

Regulations may make provision supplementing, or modifying, section 28W or any provision made by or under this Part of this Schedule in relation to cases where the premises of the educational institution are occupied under a sub-lease or sub-tenancy. [...] <sup>270</sup>

**[ PART 4****Occupation by General Qualifications Bodies ]**<sup>271</sup>*Failure to obtain consent to alteration***[15.**

If any question arises as to whether a general qualifications body has failed to comply with the duty imposed by section 31AD by failing to make a particular alteration to the premises, any constraint attributable to the fact that the body occupies the premises under a lease is to be ignored unless the body has applied to the lessor in writing for consent to the making of the alteration.]<sup>272</sup>

*Reference to court***[16.—**

(1) If the general qualifications body has applied in writing to the lessor for consent to the alteration and—

- (a) that consent has been refused, or
- (b) the lessor has made his consent subject to one or more conditions,

that general qualifications body or a disabled person who has an interest in the proposed alteration to the premises being made may refer the matter to a county court or, in Scotland, to the sheriff.

(2) On such a reference the court must determine whether the refusal was unreasonable or (as the case may be) whether the condition is, or any of the conditions are, unreasonable.

(3) If the court determines—

- (a) that the refusal was unreasonable, or
- (b) that the condition is, or any of the conditions are, unreasonable,

it may make such declaration as it considers appropriate or an order authorising the general qualifications body to make the alteration specified in the order.

(4) An order under sub-paragraph (3) may require the general qualifications body to comply with conditions specified in the order. ]<sup>273</sup>

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<sup>270</sup> added by Special Educational Needs and Disability Act 2001 c. 10 Sch. 6 para. 1

<sup>271</sup> added by Disability Discrimination Act 1995 (Amendment etc.) (General Qualifications Bodies) (Alteration of Premises and Enforcement) Regulations 2007/2405 Pt 2 Reg. 6(3)

<sup>272</sup> added by Disability Discrimination Act 1995 (Amendment etc.) (General Qualifications Bodies) (Alteration of Premises and Enforcement) Regulations 2007/2405 Pt 2 Reg. 6(3)

<sup>273</sup> added by Disability Discrimination Act 1995 (Amendment etc.) (General Qualifications Bodies) (Alteration of Premises and Enforcement) Regulations 2007/2405 Pt 2 Reg. 6(3)

*Joining lessors in proceedings under section 31ADA***[17.—**

(1) In any proceedings on a claim under section 31ADA in which a question arises as to whether a general qualifications body has failed to comply with the duty imposed by section 31AD by failing to make an alteration to premises occupied by the general qualifications body under a lease—

- (a) the claimant (or pursuer in Scotland), or
- (b) the general qualifications body concerned,

may ask the court to direct that the lessor be joined (or sisted) as a party to the proceedings.

(2) The request shall be granted if it is made before the hearing of the claim begins.

(3) The court may refuse the request if it is made after the hearing of the claim begins.

(4) The request may not be granted if it is made after the court has determined the claim.

(5) Where a lessor has been so joined (or sisted) as a party to the proceedings, the court may determine—

- (a) whether the lessor has—
  - (i) refused consent to the alteration, or
  - (ii) consented subject to one or more conditions, and
- (b) if so, whether the refusal or any of the conditions was unreasonable.

(6) If, under sub-paragraph (5), the court determines that the refusal or any of the conditions was unreasonable, it may take one or more of the following steps—

- (a) make such declaration as it considers appropriate;
- (b) make an order authorising the general qualifications body to make the alteration specified in the order;
- (c) order the lessor to pay compensation to the claimant or pursuer.

(7) An order under sub-paragraph (6)(b) may require the general qualifications body to comply with the conditions specified in the order.

(8) If the court orders the lessor to pay compensation it may not order the general qualifications body to do so. ]<sup>274</sup>

**[SCHEDULE 4A****RESPONSIBLE BODIES FOR SCHOOLS ]<sup>275</sup>****Section 28A****1**

(1) The bodies responsible for schools in England and Wales are set out in the following table.

(2) In that Table—

<sup>274</sup> added by Disability Discrimination Act 1995 (Amendment etc.) (General Qualifications Bodies) (Alteration of Premises and Enforcement) Regulations 2007/2405 Pt 2 Reg. 6(3)

<sup>275</sup> added by Special Educational Needs and Disability Act 2001 c. 10 Sch. 2 para. 1



“the local education authority” has the meaning given by section 22(8) of the School Standards and Framework Act 1998; and  
 “proprietor” has the meaning given by section 579 of the Education Act 1996.

**TABLE**

<i>Type of school</i>	<i>Responsible body</i>
1. Maintained school or maintained nursery school.	The local education authority or governing body, according to which has the function in question.
2. Pupil referral unit. [...]	The local education authority. ...] <sup>276</sup>
4. Independent school.	The proprietor.
5. Special school not maintained by a local education authority. [...] <sup>277</sup>	The proprietor.

**[2**

(1) The bodies responsible for schools in Scotland are set out in the following table.

(2) In that Table “board of management”, “education authority”, “managers” and “proprietor” each have the meaning given in section 135(1) of the Education (Scotland) Act 1980.

**TABLE**

<i>Type of school</i>	<i>Responsible body</i>
1. School managed by an education authority	The education authority.
2. Independent school.	The proprietor.
3. Self-governing school.	The board of management.
4. School in respect of which the managers are for the time being receiving grants under section 73(c) or (d) of the Education (Scotland) Act 1980. ] <sup>278</sup>	The managers of the school.

**[SCHEDULE 4B****RESPONSIBLE BODIES FOR EDUCATIONAL INSTITUTIONS]<sup>279</sup>****Section 28R****[1**

(1) The bodies responsible for educational institutions in England and Wales are set out in the following table.

<sup>276</sup> repealed by Education Act 2002 c. 32 Sch. 22(3) para. 1

<sup>277</sup> repealed by Education Act 2002 c. 32 Sch. 22(3) para. 1

<sup>278</sup> added by Special Educational Needs and Disability Act 2001 c. 10 Sch. 2 para. 1

<sup>279</sup> added by Special Educational Needs and Disability Act 2001 c. 10 Sch. 4 para. 1

(2) In that Table “governing body” has the meaning given by section 90 of the Further and Higher Education Act 1992.

**TABLE**

<i>Type of institution</i>	<i>Responsible body</i>
1. Institution within the further education sector.	The governing body.
2. University.	The governing body.
3. Institution, other than a university, within the higher education sector.	The governing body.
4. Institution designated under section 28R(6)(c).	The body specified in the order as the responsible body.

]<sup>280</sup>

[2

(1) The bodies responsible for relevant institutions in Scotland are set out in the following table.

(2) In that Table—

“board of management” has the meaning given in section 36(1) of the Further and Higher Education (Scotland) Act 1992 (“the 1992 Act”);

“central institution”, “education authority” and “managers” have the meaning given in section 135(1) of the Education (Scotland) Act 1980; and

“governing body” has the meaning given in section 56(1) of the 1992 Act.

**TABLE**

<i>Type of institution</i>	<i>Responsible body</i>
1. Designated institution within the meaning of Part 2 of the 1992 Act.	The governing body.
2. University.	The governing body.
3. College of further education with a board of management.	The board of management.
4. Institution maintained by an education authority in the exercise of their further education functions.	The education authority.
5. Central institution.	The governing body.
6. School in respect of which the managers are for the time being receiving grants under section 73(c) or (d) of the Education (Scotland) Act 1980.	The managers of the school.
7. Institution designated under section 28R(7)(e).	The body specified in the order as the responsible body.

]<sup>281</sup>

<sup>280</sup> added by Special Educational Needs and Disability Act 2001 c. 10 Sch. 4 para. 1

<sup>281</sup> added by Special Educational Needs and Disability Act 2001 c. 10 Sch. 4 para. 1

**[SCHEDULE 4C  
MODIFICATIONS OF CHAPTER 2 OF PART 4]<sup>282</sup>**

**Section 28U**

**[ Part 1**

**Modifications for England and Wales — Further Education, etc Provided by Local Education Authorities ]<sup>283</sup>**

**[1.**

The following is substituted for section 28R —

**“28R.—**

Higher and further education secured by local education authorities

- (1) Subsections (2) to (4) apply in relation to—
  - (a) any course of higher education secured by a local education authority under section 120 of the Education Reform Act 1988, and
  - (b) any course of further education secured by a local education authority.
- (2) It is unlawful for the local education authority to discriminate against a disabled person—
  - (a) in the arrangements they make for determining who should be enrolled on the course;
  - (b) in the terms on which they offer to enrol him on the course; or
  - (c) by refusing or deliberately omitting to accept an application for his enrolment on the course.
- (3) It is unlawful for the local education authority to discriminate against a disabled person who has enrolled on the course in the services which they provide or offer to provide.
- (4) It is unlawful for the local education authority to subject to harassment a disabled person who—
  - (a) seeks enrolment on the course,
  - (b) is enrolled on the course, or
  - (c) is a user of any services provided by that authority in relation to the course .
- (5) “Services”, in relation to a course, means services of any description which are provided wholly or mainly for persons enrolled on the course.
- (6) In relation to further education secured by a local education authority—
  - (a) “course” includes each of the component parts of a course of further education if, in relation to the course, there is no requirement imposed on persons registered for any component part of the course to register for any other component part of that course; and

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<sup>282</sup> added by Special Educational Needs and Disability Act 2001 c. 10 Sch. 5 para. 1

<sup>283</sup> existing Sch.4C is substituted for a new Sch.4C consisting of Parts 1, 1A, 2 and 2A by Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006/1721 Pt 6 Reg. 21

(b) “enrolment”, in relation to such a course, includes registration for any one of those parts.

(7) In this Chapter—

“responsible body” means a local education authority in relation to a course of further or higher education secured by them;

“further education” in relation to a course secured by the local education authority, has the meaning given in section 2(3) of the Education Act 1996;

“higher education” has the meaning given in section 579(1) of the Education Act 1996; and

“local education authority” has the meaning given in section 12 of the Education Act 1996.”.

] <sup>284</sup>

[2.

Subsections (1A) to (1D) of section 28T (responsible bodies' duties to make adjustments) are omitted and the following subsection is substituted for subsection (1) of that section—

“(1) Each responsible body must take such steps as it is reasonable for it to have to take to ensure that—

(a) in relation to its arrangements for enrolling persons on a course of further and higher education provided by it, and

(b) in relation to services provided or offered by it,

disabled persons are not placed at a substantial disadvantage in comparison with persons who are not disabled.”.

] <sup>285</sup>

[3.

In subsections (2) and (4) of section 28T, for “any of subsections (1) to (1D)” there is substituted “subsection (1)”.] <sup>286</sup>

[4.

In section 28W(1)(a) for “by an educational institution” there is substituted “by a responsible body wholly or partly for the purpose of its functions”.] <sup>287</sup>

[5.

Section 31A is omitted.] <sup>288</sup>

<sup>284</sup> existing Sch.4C is substituted for a new Sch.4C consisting of Parts 1, 1A, 2 and 2A by Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006/1721 Pt 6 Reg. 21

<sup>285</sup> existing Sch.4C is substituted for a new Sch.4C consisting of Parts 1, 1A, 2 and 2A by Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006/1721 Pt 6 Reg. 21

<sup>286</sup> existing Sch.4C is substituted for a new Sch.4C consisting of Parts 1, 1A, 2 and 2A by Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006/1721 Pt 6 Reg. 21

<sup>287</sup> existing Sch.4C is substituted for a new Sch.4C consisting of Parts 1, 1A, 2 and 2A by Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006/1721 Pt 6 Reg. 21

<sup>288</sup> existing Sch.4C is substituted for a new Sch.4C consisting of Parts 1, 1A, 2 and 2A by Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006/1721 Pt 6 Reg. 21

## [ Part 1A

**Modifications for England and Wales — Further Education Provided by Schools, etc ]<sup>289</sup>****6.**

The following is substituted for section 28R—

**“28R.—**

Further education provided by schools and recreational or training facilities provided by local education authorities

(1) Subsections (2) and (3) apply in relation to any course of further education provided by the governing body of a maintained school under section 80 of the School Standards and Framework Act 1998.

(2) It is unlawful for the governing body to discriminate against a disabled person—

- (a) in the arrangements they make for determining who should be enrolled on the course;
- (b) in the terms on which they offer to enrol him on the course; or
- (c) by refusing or deliberately omitting to accept an application for his enrolment on the course.

(3) It is unlawful for the governing body to discriminate against a disabled person who has enrolled on the course in the services which they provide or offer to provide.

(4) “Services”, in relation to a course, means services of any description which are provided wholly or mainly for persons enrolled on the course.

(5) It is unlawful for a local education authority to discriminate against a disabled person in the terms on which they provide or offer to provide recreational or training facilities.

(6) In this Chapter—

“Responsible body” means—

- (a) the governing body of a maintained school, in relation to a course of further education provided under section 80 of the School Standards and Framework Act 1998, and

- (b) a local education authority in relation to recreational or training facilities;

“Further education”, in relation to a course provided under section 80 of the School Standards and Framework Act 1998, means education of a kind mentioned in subsection (1) of that section;

“Local education authority” has the meaning given in section 12 of the Education Act 1996;

“Governing Body” and “maintained school” have the same meaning as in Chapter 1;

[ “Recreational or training facilities” means—

- (a) in the case of a local education authority in England, any facilities secured by the authority under section 507A or 507B of the Education Act

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<sup>289</sup> existing Sch.4C is substituted for a new Sch.4C consisting of Parts 1, 1A, 2 and 2A by Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006/1721 Pt 6 Reg. 21

1996<sup>[290]</sup> (functions of local education authorities in England in respect of recreation etc.), and  
 (b) in the case of a local education authority in Wales, any facilities secured by the authority under subsection (1), or provided by them under subsection (1A), of section 508 of that Act (functions of local education authorities in Wales in respect of recreation and social and physical training).”

]<sup>291</sup>

**[7.**

In section 28S (meaning of “discrimination”), the following subsection is substituted for subsection (2)—

“(2) For the purposes of section 28R, a responsible body also discriminates against a disabled person if—

- (a) it fails, to his detriment, to comply with section 28T; and
- (b) it cannot show that its failure to comply is justified.”

]<sup>292</sup>

**[8.**

In section 28S, the following subsections are substituted for subsections (5) to (11)—

“(5) Subsections (6) to (9) apply in determining whether for the purposes of this section—

- (a) less favourable treatment of a person, or
- (b) failure to comply with section 28T,

is justified.

(6) Less favourable treatment of a person is justified if it is necessary in order to maintain—

- (a) academic standards; or
- (b) standards of any other prescribed kind.

(7) Less favourable treatment is also justified if—

- (a) it is of a prescribed kind;
- (b) it occurs in prescribed circumstances; or
- (c) it is of a prescribed kind and occurs in prescribed circumstances.

(8) Otherwise less favourable treatment, or a failure to comply with section 28T, is justified only if the reason for it is both material to the circumstances of the particular case and substantial.

(9) If, in a case falling within subsection (1)—

- (a) the responsible body is under a duty imposed by section 28T in relation to the disabled person, but
- (b) fails without justification to comply with that duty,

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<sup>290</sup> 1996 c.56: Sections 507A and 507B were inserted by section 6 of the Education and Inspections Act 2006; section 508 was amended by section 137 of the Learning and Skills Act 2000 (c. 21).

<sup>291</sup> words substituted by Disability Discrimination Act 1995 (Amendment) (Further Education) Regulations 2007/1849 Reg. 2

<sup>292</sup> existing Sch.4C is substituted for a new Sch.4C consisting of Parts 1, 1A, 2 and 2A by Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006/1721 Pt 6 Reg. 21

its treatment of that person cannot be justified under subsection (8) unless that treatment would have been justified even if it had complied with that duty.”.

] <sup>293</sup>

**[9.**

Subsections (1A) to (1D) of section 28T (responsible bodies' duties to make adjustments) are omitted and the following subsection is substituted for subsection (1) of that section—

“(1) Each responsible body must take such steps as it is reasonable for it to have to take to ensure that—

(a) in relation to its arrangements for enrolling persons on a course of further education provided by it, and

(b) in relation to services provided or offered by it,

disabled persons are not placed at a substantial disadvantage in comparison with persons who are not disabled.”.

] <sup>294</sup>

**[10.**

In subsections (2) and (4) of section 28T, for “any of subsections (1) to (1D)” there is substituted “subsection (1)”.] <sup>295</sup>

**[11.**

In section 28W(1)(a) for “by an educational institution” there is substituted “by a responsible body wholly or partly for the purpose of its functions”.] <sup>296</sup>

**[12.**

Sections 28SA, 28UA, 28UB, 28UC, 28V(1A) and 31A are omitted.] <sup>297</sup>

**[ Part 2**

**Modifications for Scotland — Further Education ] <sup>298</sup>**

**5**

[Existing Sch.4C Part 2 para.5 is not repealed but substituted for a new Sch.4C Part 1 para.5] <sup>299</sup>

<sup>293</sup> existing Sch.4C is substituted for a new Sch.4C consisting of Parts 1, 1A, 2 and 2A by Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006/1721 Pt 6 Reg. 21

<sup>294</sup> existing Sch.4C is substituted for a new Sch.4C consisting of Parts 1, 1A, 2 and 2A by Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006/1721 Pt 6 Reg. 21

<sup>295</sup> existing Sch.4C is substituted for a new Sch.4C consisting of Parts 1, 1A, 2 and 2A by Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006/1721 Pt 6 Reg. 21

<sup>296</sup> existing Sch.4C is substituted for a new Sch.4C consisting of Parts 1, 1A, 2 and 2A by Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006/1721 Pt 6 Reg. 21

<sup>297</sup> existing Sch.4C is substituted for a new Sch.4C consisting of Parts 1, 1A, 2 and 2A by Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006/1721 Pt 6 Reg. 21

<sup>298</sup> existing Sch.4C is substituted for a new Sch.4C consisting of Parts 1, 1A, 2 and 2A by Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006/1721 Pt 6 Reg. 21

<sup>299</sup> existing Sch.4C is substituted for a new Sch.4C consisting of Parts 1, 1A, 2 and 2A by Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006/1721 Pt 6 Reg. 21

**6**

[Existing Sch.4C Part 2 para.6 is not repealed but substituted for a new Sch.4C Part 1A para.6]<sup>300</sup>

**7**

[Existing Sch.4C Part 2 para.7 is not repealed but substituted for a new Sch.4C Part 1A para.7]<sup>301</sup>

**8**

[Existing Sch.4C Part 2 para.8 is not repealed but substituted for a new Sch.4C Part 1A para.8]<sup>302</sup>

**[13.**

The following is substituted for section 28R —

**“28R.**

Further education etc provided by education authorities in Scotland

(1) Subsections (2) and (3) apply to any course of further education secured by an education authority.

(2) It is unlawful for the education authority to discriminate against a disabled person—

- (a) in the arrangements they make for determining who should be enrolled on the course;
- (b) in the terms on which they offer to enrol him on the course; or
- (c) by refusing or deliberately omitting to accept an application for his enrolment on the course.

(3) It is unlawful for the education authority to discriminate against a disabled person who has enrolled on the course in the services which they provide or offer to provide.

(4) It is unlawful for the education authority to subject to harassment a disabled person who—

- (a) seeks enrolment on a course offered by that authority,
- (b) is enrolled on a course offered by that authority, or
- (c) is a user of services provided by that authority.

(5) “Services”, in relation to a course, means services of any description which are provided wholly or mainly for persons enrolled on the course.

(6) In this Chapter—

“Responsible body” means an education authority;

“Further education” has the meaning given in section 1(5) of the Education (Scotland) Act 1980;

“Education authority” has the meaning given in section 135(1) of that Act.”.

]

<sup>300</sup> existing Sch.4C is substituted for a new Sch.4C consisting of Parts 1, 1A, 2 and 2A by Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006/1721 Pt 6 Reg. 21

<sup>301</sup> existing Sch.4C is substituted for a new Sch.4C consisting of Parts 1, 1A, 2 and 2A by Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006/1721 Pt 6 Reg. 21

<sup>302</sup> existing Sch.4C is substituted for a new Sch.4C consisting of Parts 1, 1A, 2 and 2A by Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006/1721 Pt 6 Reg. 21

<sup>303</sup> existing Sch.4C is substituted for a new Sch.4C consisting of Parts 1, 1A, 2 and 2A by Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006/1721 Pt 6 Reg. 21



**[14.**

Subsections (1A) to (1D) of section 28T are omitted and the following subsection is substituted for subsection (1) of that section—

“(1) Each responsible body must take such steps as it is reasonable for it to have to take to ensure that—

(a) in relation to its arrangements for enrolling persons on a course of further education provided by it, and

(b) in relation to services provided or offered by it,

disabled persons are not placed at a substantial disadvantage in comparison with persons who are not disabled.”.

]<sup>304</sup>

**[15.**

In subsections (2) and (4) of section 28T, for “any of subsections (1) to (1D)” there is substituted “subsection (1)”.]<sup>305</sup>

**[16.**

In section 28W(1)(a) for “by an educational institution” there is substituted “by a responsible body wholly or partly for the purpose of its functions”.]<sup>306</sup>

**[17.**

Section 31A is omitted.]<sup>307</sup>

## [ Part 2A

### Modifications for Scotland — Recreational or Training Facilities ]<sup>308</sup>

**[18.**

The following is substituted for section 28R—

**“28R.**

Recreational or training facilities provided by education authorities

(1) It is unlawful for an education authority to discriminate against a disabled person in the terms on which they provide, or offer to provide, recreational or training facilities.

(2) In this Chapter—

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<sup>304</sup> existing Sch.4C is substituted for a new Sch.4C consisting of Parts 1, 1A, 2 and 2A by Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006/1721 Pt 6 Reg. 21

<sup>305</sup> existing Sch.4C is substituted for a new Sch.4C consisting of Parts 1, 1A, 2 and 2A by Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006/1721 Pt 6 Reg. 21

<sup>306</sup> existing Sch.4C is substituted for a new Sch.4C consisting of Parts 1, 1A, 2 and 2A by Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006/1721 Pt 6 Reg. 21

<sup>307</sup> existing Sch.4C is substituted for a new Sch.4C consisting of Parts 1, 1A, 2 and 2A by Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006/1721 Pt 6 Reg. 21

<sup>308</sup> existing Sch.4C is substituted for a new Sch.4C consisting of Parts 1, 1A, 2 and 2A by Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006/1721 Pt 6 Reg. 21

“Responsible body” means an education authority;  
 “Education authority” has the meaning given in section 135(1) of the Education (Scotland) Act 1980.”

]<sup>309</sup>

**[19.**

In section 28S (Meaning of “discrimination”), the following subsection is substituted for subsection (2)—

“(2) For the purposes of section 28R, a responsible body also discriminates against a disabled person if—

- (a) it fails, to his detriment, to comply with section 28T; and
- (b) it cannot show that its failure to comply is justified.”.

]<sup>310</sup>

**[20.**

In section 28S (Meaning of “discrimination”), the following subsections are substituted for subsections (5) to (11)—

“(5) Subsections (6) to (9) apply in determining whether for the purposes of this section—

- (a) less favourable treatment of a person, or
- (b) failure to comply with section 28T,

is justified.

(6) Less favourable treatment of a person is justified if it is necessary in order to maintain—

- (a) academic standards; or
- (b) standards of any other prescribed kind.

(7) Less favourable treatment is also justified if—

- (a) it is of a prescribed kind;
- (b) it occurs in prescribed circumstances; or
- (c) it is of a prescribed kind and occurs in prescribed circumstances.

(8) Otherwise less favourable treatment, or a failure to comply with section 28T, is justified only if the reason for it is both material to the circumstances of the particular case and substantial.

(9) If, in a case falling within subsection (1)—

- (a) the responsible body is under a duty imposed by section 28T in relation to the disabled person, but
- (b) fails without justification to comply with that duty,

its treatment of that person cannot be justified under subsection (8) unless that treatment would have been justified even if it had complied with that duty.”.

]<sup>311</sup>

<sup>309</sup> existing Sch.4C is substituted for a new Sch.4C consisting of Parts 1, 1A, 2 and 2A by Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006/1721 Pt 6 Reg. 21

<sup>310</sup> existing Sch.4C is substituted for a new Sch.4C consisting of Parts 1, 1A, 2 and 2A by Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006/1721 Pt 6 Reg. 21

<sup>311</sup> existing Sch.4C is substituted for a new Sch.4C consisting of Parts 1, 1A, 2 and 2A by Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006/1721 Pt 6 Reg. 21

**[21.**

Subsections (1A) to (1D) of section 28T are omitted and the following subsection is substituted for subsection (1) of that section—

“(1) Each responsible body must take such steps as it is reasonable for it to have to take to ensure that, in relation to services provided or offered by it for any recreational or training facilities, disabled persons are not placed at a substantial disadvantage in comparison with persons who are not disabled.”.

] <sup>312</sup>

**[22.**

In subsections (2) and (4) of section 28T, for “any of subsections (1) to (1D)” there is substituted “subsection (1)”.] <sup>313</sup>

**[23.**

In section 28W(1)(a) for “by an educational institution” there is substituted “by a responsible body wholly or partly for the purpose of its functions”.] <sup>314</sup>

**[24.**

Sections 28SA, 28UA, 28UB, 28UC, 28V(1A) and 31A are omitted.”.] <sup>315</sup>

## SCHEDULE 5

### THE NATIONAL DISABILITY COUNCIL

#### Section 50(8)

#### *Status*

1.— [...] <sup>316</sup>

#### *Procedure*

2. [...] <sup>317</sup>

<sup>312</sup> existing Sch.4C is substituted for a new Sch.4C consisting of Parts 1, 1A, 2 and 2A by Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006/1721 Pt 6 Reg. 21

<sup>313</sup> existing Sch.4C is substituted for a new Sch.4C consisting of Parts 1, 1A, 2 and 2A by Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006/1721 Pt 6 Reg. 21

<sup>314</sup> existing Sch.4C is substituted for a new Sch.4C consisting of Parts 1, 1A, 2 and 2A by Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006/1721 Pt 6 Reg. 21

<sup>315</sup> existing Sch.4C is substituted for a new Sch.4C consisting of Parts 1, 1A, 2 and 2A by Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006/1721 Pt 6 Reg. 21

<sup>316</sup> repealed by Disability Rights Commission Act 1999 c. 17 Sch. 5 para. 1

<sup>317</sup> repealed by Disability Rights Commission Act 1999 c. 17 Sch. 5 para. 1

*Membership*

3.— [...] <sup>318</sup>

*Term of office of members*

4.— [...] <sup>319</sup>

*Remuneration*

5.— [...] <sup>320</sup>

*Staff*

6. [...] <sup>321</sup>

*Supplementary regulation-making power*

7. [...] <sup>322</sup>

*Annual report*

8.— [...] <sup>323</sup>

**SCHEDULE 6**

**CONSEQUENTIAL AMENDMENTS**

**Section 70(4)**

*Employment and Training Act 1973 (c. 50)*

**1.**

In section 12(1) of the Employment and Training Act 1973 (duty of Secretary of State to give preference to ex-service men and women in exercising certain powers in respect of disabled persons)—

- (a) for “persons registered as handicapped by disablement” substitute “disabled persons”;
- and

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<sup>318</sup> repealed by Disability Rights Commission Act 1999 c. 17 Sch. 5 para. 1

<sup>319</sup> repealed by Disability Rights Commission Act 1999 c. 17 Sch. 5 para. 1

<sup>320</sup> repealed by Disability Rights Commission Act 1999 c. 17 Sch. 5 para. 1

<sup>321</sup> repealed by Disability Rights Commission Act 1999 c. 17 Sch. 5 para. 1

<sup>322</sup> repealed by Disability Rights Commission Act 1999 c. 17 Sch. 5 para. 1

<sup>323</sup> repealed by Disability Rights Commission Act 1999 c. 17 Sch. 5 para. 1

(b) for the words after ““disabled person”” substitute “has the same meaning as in the Disability Discrimination Act 1995.”

*Employment Protection (Consolidation) Act 1978 (c. 44)*

2. [...] <sup>324</sup>

3. [...] <sup>325</sup>

*Companies Act 1985 (c. 6)*

4.

In paragraph 9 of Schedule 7 to the Companies Act 1985 (disclosure in directors' report of company policy in relation to disabled persons), in the definition of “disabled person” in sub-paragraph (4)(b), for “Disabled Persons (Employment) Act 1944” substitute “Disability Discrimination Act 1995”.

*Local Government and Housing Act 1989 (c. 42)*

5.

In section 7 of the Local Government and Housing Act 1989 (all staff of a local authority etc. to be appointed on merit), in subsection (2)—

- (a) paragraph (a) shall be omitted;
- (b) the word “and” at the end of paragraph (d) shall be omitted; and
- (c) after paragraph (e) insert—

“ ; and

(f) sections 5 and 6 of the Disability Discrimination Act 1995 (meaning of discrimination and duty to make adjustments).”

*Enterprise and New Towns (Scotland) Act 1990 (c. 35)*

6.

In section 16 of the Enterprise and New Towns (Scotland) Act 1990 (duty of certain Scottish bodies to give preference to ex-service men and women in exercising powers to select disabled persons for training), in subsection (2), for “said Act of 1944” substitute “Disability Discrimination Act 1995”.

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<sup>324</sup> repealed by Employment Tribunals Act 1996 c. 17 Sch. 3(I) para. 1

<sup>325</sup> repealed by Employment Rights Act 1996 c. 18 Sch. 3(I) para. 1

**SCHEDULE 7****REPEALS****Section 70(5)**

<b>Chapter</b>	<b>Short title</b>	<b>Extent of repeal</b>
7 & 8 Geo. 6 c. 10.	The Disabled Persons (Employment) Act 1944.	Section 1. Sections 6 to 14 Section 19 Section 21 Section 22(4).
6 & 7 Eliz. 2 c. 33.	The Disabled Persons (Employment) Act 1958.	Section 2.
1970 c. 44.	The Chronically Sick and Disabled Persons Act 1970.	Section 16.
1978 c. 44.	The Employment Protection (Consolidation) Act 1978.	In Schedule 13, in paragraph 20(3), the word “or” in the definitions of “relevant complaint of dismissal” and “relevant conciliation powers”.
1989 c. 42.	The Local Government and Housing Act 1989.	In section 7(2), paragraph (a) and the word “and” at the end of paragraph (d).
1993 c. 62.	The Education Act 1993.	In section 161(5), the words from “and in this subsection” to the end.

**SCHEDULE 8****MODIFICATIONS OF THIS ACT IN ITS APPLICATION TO NORTHERN IRELAND****Section 70(6)****1.**

In its application to Northern Ireland this Act shall have effect subject to the following modifications.

**2.—**

(1) In section 3(1) for “Secretary of State” substitute “Department”.

(2) In section 3 for subsections (4) to (12) substitute—

“

(4) In preparing a draft of any guidance, the Department shall consult such person as it considers appropriate.

(5) Where the Department proposes to issue any guidance, the Department shall publish a draft of it, consider any representations that are made to the Department about the draft and, if the Department thinks it appropriate, modify its proposals in the light of any of those representations.

(6) If the Department decides to proceed with any proposed guidance, the Department shall lay a draft of it before the Assembly.

- (7) If, within the statutory period, the Assembly resolves not to approve the draft, the Department shall take no further steps in relation to the proposed guidance.
- (8) If no such resolution is made within the statutory period, the Department shall issue the guidance in the form of its draft.
- (9) The guidance shall come into force on such date as the Department may by order appoint.
- (10) Subsection (7) does not prevent a new draft of the proposed guidance being laid before the Assembly.
- (11) The Department may—
- (a) from time to time revise the whole or any part of any guidance and re-issue it;
  - (b) by order revoke any guidance.
- (12) In this section—
- “the Department” means the Department of Economic Development;
- “guidance” means guidance issued by the Department under this section and includes guidance which has been revised and re-issued;
- “statutory period” has the meaning assigned to it by section 41(2) of the Interpretation Act (Northern Ireland) 1954.”

**3.**

In section 4(6) for “Great Britain” substitute “Northern Ireland”.

**4.—**

- (1) In section 7(2) for “Secretary of State” substitute “Department of Economic Development”.
- (2) In section 7(4) to (10) for “Secretary of State” wherever it occurs substitute “Department of Economic Development”, for “he” and “him” wherever they occur substitute “it” and for “his” wherever it occurs substitute “its”.
- (3) In section 7(9) for “Parliament” substitute “the Assembly”.

**5.—**

- (1) In section 8(3) omit “or (in Scotland) in reparation”.
- (2) In section 8(7) for “paragraph 6A of Schedule 9 to the Employment Protection (Consolidation) Act 1978” substitute “Article 61(3) of the Industrial Relations (Northern Ireland) Order 1976”.

**6.—**

- (1) In section 9(2)(a) for “a conciliation officer” substitute “the Agency”.
- (2) In section 9(4) in the definition of “qualified lawyer” for the words from “means” to the end substitute “means a barrister (whether in practice as such or employed to give legal advice) or a solicitor of the Supreme Court who holds a practising certificate.”.

**7.—**

- (1) In section 10(1)(b) omit “or recognised body”.
- (2) In section 10(2)(b) for “Secretary of State” substitute “Department of Economic Development”.

(3) In section 10(3) in the definition of “charity” for “1993” substitute “(Northern Ireland) 1964”, omit the definition of “recognised body” and in the definition of “supported employment” for “Act 1944” substitute “Act (Northern Ireland) 1945”.

(4) In section 10(4) for “England and Wales” where it twice occurs substitute “Northern Ireland”.

(5) Omit section 10(5).

**8.—**

In section 12(5) for “Great Britain” where it twice occurs substitute “Northern Ireland”.

**9.—**

(1) In section 19(3)(g) for “section 2 of the Employment and Training Act 1973” substitute “sections 1 and 2 of the Employment and Training Act (Northern Ireland) 1950”.

(2) In section 19(5) for paragraph (a) substitute—

“

- (a) education which is funded, or secured, by a relevant body or provided at—
  - (i) an establishment which is funded by such a body or by the Department of Education for Northern Ireland; or
  - (ii) any other establishment which is a school within the meaning of the Education and Libraries (Northern Ireland) Order 1986;”.

(3) For section 19(6) substitute—

- “(6) In subsection (5) “relevant body” means—
- (a) an education and library board;
  - (b) a voluntary organisation; or
  - (c) a body of a prescribed kind.”.

**10.**

In section 20(7) for paragraphs (b) and (c) substitute

“ ; or

- (b) functions conferred by or under Part VIII of the Mental Health (Northern Ireland) Order 1986 are exercisable in relation to a disabled person's property or affairs.”.

**11.**

In section 22(4) and (6) omit “or (in Scotland) the subject of”.

**12.—**

(1) In section 25(1) omit “or (in Scotland) in reparation”.

(2) In section 25(3) for “England and Wales” substitute “Northern Ireland”.

(3) Omit section 25(4).

(4) In section 25(5) omit the words from “or” to the end.



**13.**

In section 26(3) omit “or a sheriff court”.

**14.—**

(1) In section 28 for “Secretary of State” wherever it occurs substitute “Department of Health and Social Services”.

(2) In section 28(3) and (4) for “he” substitute “it”.

(3) In section 28(5) for “Treasury” substitute “Department of Finance and Personnel in Northern Ireland”.

**15.**

Omit sections 29, 30 and 31.

**16.—**

(1) In section 32(1) for “Secretary of State” substitute “Department of the Environment”.

(2) In section 32(5) for the definition of “taxi” substitute—

“ “taxi” means a vehicle which—

(a) is licensed under Article 61 of the Road Traffic (Northern Ireland) Order 1981 to stand or ply for hire; and

(b) seats not more than 8 passengers in addition to the driver”.

**17.**

In section 33, for “Secretary of State”, wherever it occurs, substitute “Department of the Environment”.

**18.**

For section 34 substitute—

“

**34.—**

New licences conditional on compliance with accessibility taxi regulations.

(1) The Department of the Environment shall not grant a public service vehicle licence under Article 61 of the Road Traffic (Northern Ireland) Order 1981 for a taxi unless the vehicle conforms with those provisions of the taxi accessibility regulations with which it will be required to conform if licensed.

(2) Subsection (1) does not apply if such a licence was in force with respect to the vehicle at any time during the period of 28 days immediately before the day on which the licence is granted.

(3) The Department of the Environment may by order provide for subsection (2) to cease to have effect on such date as may be specified in the order”.

**19.**

Omit section 35.

**20.**

In section 36(7) for “licensing authority” substitute “Department of the Environment”.

**21.—**

(1) In section 37(5) and (6) for “licensing authority” substitute “Department of the Environment”.

(2) In section 37(9) for “Secretary of State” substitute “Department of the Environment”.

**22.—**

(1) In section 38(1) for “a licensing authority” substitute “the Department of the Environment”.

(2) In section 38(2) for “licensing authority concerned” substitute “Department of the Environment”.

(3) In section 38(3) for the words from “the magistrates' court” to the end substitute “a court of summary jurisdiction acting for the petty sessions district in which the aggrieved person resides”.

**23.**

Omit section 39.

**24.—**

(1) In section 40 for “Secretary of State” wherever it occurs substitute “Department of the Environment”.

(2) In section 40(5) for the definition of “public service vehicle” substitute—

“ “public service vehicle” means a vehicle which—

(a) seats more than 8 passengers in addition to the driver; and

(b) is a public service vehicle for the purposes of the Road Traffic (Northern Ireland) Order 1981;”.

(3) In section 40(7) for the words from “the Disabled” to the end substitute “such representative organisations as it thinks fit”.

**25.—**

(1) In section 41(2) for “Secretary of State” substitute “Department of the Environment”.

(2) In section 41 for subsections (3) and (4) substitute—

“

(3) Any person who uses a regulated public service vehicle in contravention of this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.”.

**26.—**

(1) In section 42 for “Secretary of State” wherever it occurs substitute “Department of the Environment”.

(2) In section 42(1) for “he” substitute “it”.

(3) In section 42(6) for “his” substitute “its”.

**27.**

In section 43 for “Secretary of State” wherever it occurs substitute “Department of the Environment”.

**28.—**

(1) In section 44 for “Secretary of State” wherever it occurs substitute “Department of the Environment”.

(2) In section 44(2) for “him” substitute “it”.

(3) In section 44(6) for “he” substitute “it” and for “his” substitute “its”.

**29.—**

(1) In section 45 for “Secretary of State” wherever it occurs substitute “Department of the Environment”.

(2) In section 45(2) for “him” substitute “it” and at the end add “of Northern Ireland”.

(3) In section 45(4) for “he” substitute “it”.

**30.—**

(1) In section 46 for “Secretary of State” wherever it occurs substitute “Department of the Environment”.

(2) In section 46(6) in the definition of “rail vehicle” for the words “on any railway, tramway or prescribed system” substitute “by rail”.

(3) Omit section 46(7).

(4) In section 46(11) for the words from “the Disabled” to the end substitute “such representative organisations as it thinks fit”.

**31.—**

(1) In section 47 for “Secretary of State” wherever it occurs substitute “Department of the Environment”.

(2) In section 47(3) for the words “the Disabled Persons Transport Advisory Committee and such other persons as he” substitute “such persons as it” and for “he” substitute “it”.

**32.**

Omit section 48(3).

**33.—**

[ (1) In sections 50 to 52, for “the Council” substitute, in each place, the “Equality Commission for Northern Ireland”.

(1A) Section 50(1) shall have no effect. ]<sup>326</sup>

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<sup>326</sup> substituted by Northern Ireland Act 1998 c. 47 Sch. 13 para. 16(2)(b)

(2) In section 50(2) for “the Secretary of State” in the first place where it occurs substitute “a Northern Ireland department” and in the other place where it occurs substitute “that department”.

(3) In section 50(3) for “Secretary of State” substitute “Department of Health and Social Services”.

(4) In section 50(7) for “the Secretary of State” substitute “a Northern Ireland department” and after “Crown” insert “or a Northern Ireland department”.

(5) In section 50(9)(a) for sub-paragraphs (i) to (iv) substitute—

- “(i) the Disabled Persons (Employment) Act (Northern Ireland) 1945;
- (ii) the Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965;
- (iii) the Employment and Training Act (Northern Ireland) 1950;
- (iv) the Industrial Relations (Northern Ireland) Orders 1976; or”.

(6) In section 50(10) for the words from “time when” to the end substitute

“time when—

- (a) there are no committees in existence under section 17 of the Disabled Persons (Employment) Act (Northern Ireland) 1945; and
- (b) there is no person appointed to act generally under section 60(1) of this Act.”.

### **34.—**

(1) In section 51(1) for “the Secretary of State” substitute “any Northern Ireland department” and for “the Secretary of State's” substitute “that department's”.

(2) In section 51(2) for “The Secretary of State” substitute “A Northern Ireland department”.

(3) In section 51(4) for “a county court or a sheriff court” substitute “or a county court”.

(4) In section 51(6) for “the Secretary of State” substitute “a Northern Ireland department”.

### **35.**

For section 52 substitute—

#### **“52.— Further provisions about codes issued under section 51.**

(1) In this section—

“proposal” means a proposal made by the Council to a Northern Ireland department under section 51;

“responsible department”—

- (a) in relation to a proposal, means the Northern Ireland department to which the proposal is made,
- (b) in relation to a code, means the Northern Ireland department by which the code is issued; and

“statutory period” has the meaning assigned to it by section 41(2) of the Interpretation Act (Northern Ireland) 1954.

(2) In preparing any proposal, the Council shall consult—

- (a) such persons (if any) as the responsible department has specified in making its request to the Council; and

- (b) such other persons (if any) as the Council considers appropriate.
- (3) Before making any proposal the Council shall publish a draft, consider any representations made to it about the draft and, if it thinks it appropriate, modify its proposal in the light of any of those representations.
- (4) Where the Council makes any proposal, the responsible department may—
  - (a) approve it;
  - (b) approve it subject to such modifications as that department thinks appropriate;
  - or
  - (c) refuse to approve it.
- (5) Where the responsible department approves any proposal (with or without modifications) that department shall prepare a draft of the proposed code and lay it before the Assembly.
- (6) If, within the statutory period, the Assembly resolves not to approve the draft, the responsible department shall take no further steps in relation to the proposed code.
- (7) If no such resolution is made within the statutory period, the responsible department shall issue the code in the form of its draft.
- (8) The code shall come into force on such date as the responsible department may appoint by order.
- (9) Subsection (6) does not prevent a new draft of the proposed code from being laid before the Assembly.
- (10) If the responsible department refuses to approve a proposal, that department shall give the Council a written statement of the department's reasons for not approving it.
- (11) The responsible department may by order revoke a code.”.

**36.—**

- (1) In section 53 for “Secretary of State” wherever it occurs substitute “Department of Economic Development”.
- (2) In section 53(1) for “he” substitute “it”.
- (3) In section 53(5) for “a county court or a sheriff court” substitute “or a county court”.

**37.**

For section 54 substitute—

**“54.— Further provisions about codes issued under section 53.**

- (1) In preparing a draft of any code under section 53, the Department shall consult such organisations representing the interests of employers or of disabled persons in, or seeking, employment as the Department considers appropriate.
- (2) Where the Department proposes to issue a code, the Department shall publish a draft of the code, consider any representations that are made to the Department about the draft and, if the Department thinks it appropriate, modify its proposals in the light of any of those representations.

- (3) If the Department decides to proceed with the code, the Department shall lay a draft of it before the Assembly.
- (4) If, within the statutory period, the Assembly resolves not to approve the draft, the Department shall take no further steps in relation to the proposed code.
- (5) If no such resolution is made within the statutory period, the Department shall issue the code in the form of its draft.
- (6) The code shall come into force on such date as the Department may appoint by order.
- (7) Subsection (4) does not prevent a new draft of the proposed code from being laid before the Assembly.
- (8) The Department may by order revoke a code.
- (9) In this section—
  - “the Department” means the Department of Economic Development; and
  - “statutory period” has the meaning assigned to it by section 41(2) of the Interpretation Act (Northern Ireland) 1954.”.

**38.**

In section 56(2) and (4) for “Secretary of State” substitute “Department of Economic Development”.

**39.**

In section 59(1) after “Crown” where it twice occurs insert “or a Northern Ireland department”.

**40.—**

(1) In section 60(1) to (3) for “Secretary of State” wherever it occurs substitute “Department of Economic Development” and for “he” and “him” wherever they occur substitute “it”.

(2) In section 60(4) for “Treasury” substitute “Department of Finance and Personnel in Northern Ireland”.

(3) For section 60(6) substitute—

“(6) The Department of Economic Development may by order repeal section 17 of, and Schedule 2 to, the Disabled Persons (Employment) Act (Northern Ireland) 1945 (district advisory committees).”.

(4) In section 60(7) omit “paragraph (b) of”, for “1944” substitute “1945” and omit “in each case”.

(5) In section 60, omit subsection (8).

**41.**

For section 61 substitute—

**“61.—**

Amendments of Disabled Persons (Employment) Act (Northern Ireland) 1945.

(1) Section 15 of the Disabled Persons (Employment) Act (Northern Ireland) 1945 (which gives the Department of Economic Development power to make arrangements for the provision of supported employment) is amended as set out in subsections (2) to (5).

- (2) In subsection (1)—
- (a) for “persons registered as handicapped by disablement” substitute “disabled persons”;
  - (b) for “their disablement” substitute “their disability”; and
  - (c) for “are not subject to disablement” substitute “do not have a disability”.
- (3) In subsection (2) for the words from “any of one or more companies” to “so required and prohibited” substitute “any company, association or body”.
- (4) After subsection (2) insert—
- “(2A) The only kind of company which the Department itself may form in exercising its powers under this section is a company which is—
- (a) required by its constitution to apply its profits, if any, or other income in promoting its objects; and
  - (b) prohibited by its constitution from paying any dividend to its members.”.

(5) After subsection (5) insert—

“(5A) For the purposes of this section—

    - (a) a person is a disabled person if he is a disabled person for the purposes of the Disability Discrimination Act 1995; and
    - (b) “disability” has the same meaning as in that Act.”.

(6) The provisions of section 16 of the Act of 1945 (preference to be given under section 15 of that Act to ex-service men and women) shall become subsection (1) of that section and at the end insert—

“and whose disability is due to that service.

(2) For the purposes of subsection (1) of this section, a disabled person's disability shall be treated as due to service of a particular kind only in such circumstances as may be prescribed.”

(7) The following provisions of the Act of 1945 shall cease to have effect—

      - (a) section 1 (definition of “disabled person”);
      - (b) sections 2 to 4 (training for disabled persons);
      - (c) sections 6 to 8 (the register of disabled persons);
      - (d) sections 9 to 11 (obligations on employers with substantial staffs to employ quota of registered persons);
      - (e) section 12 (the designated employment scheme for persons registered as handicapped by disablement);
      - (f) section 13 (interpretation of provisions repealed by this Act);
      - (g) section 14 (records to be kept by employer);
      - (h) section 19 (proceedings in relation to offences);
      - (j) sections 21 and 22 (supplementary).

(8) Any statutory provision in which “disabled person” is defined by reference to the Act of 1945 shall be construed as if that expression had the same meaning as in this Act.”.

**42.—**

- (1) In section 62(2) for “Secretary of State” substitute “Department of Economic Development”.
- (2) In section 62(7) for “Great Britain” where it twice occurs substitute “Northern Ireland”.

**43.**

Omit section 63.

**44.—**

- (1) In section 64(3) for “England and Wales” substitute “Northern Ireland”.
- (2) Omit section 64(4).
- (3) In section 64(5)(a) omit the words from “, the British” to the end.
- (4) In section 64(8)—
  - (a) omit the definitions of “British Transport Police”, “Royal Parks Constabulary” and “United Kingdom Atomic Energy Authority Constabulary”;
  - (b) in the definition of “the 1947 Act” at the end add “as it applies both in relation to the Crown in right of Her Majesty's Government in Northern Ireland and in relation to the Crown in right of Her Majesty's Government in the United Kingdom”;
  - (c) in the definition of “fire brigade” for the words from “means” to the end substitute “has the same meaning as in the Fire Services (Northern Ireland) Order 1984”;
  - (d) in the definition of “prison officer” for the words from “means” to the end substitute “means any individual who holds any post, otherwise than as a medical officer, to which he has been appointed under section 2(2) of the Prison Act (Northern Ireland) 1953 or who is a prison custody officer within the meaning of Chapter III of Part VIII of the Criminal Justice and Public Order Act 1994”;
  - (e) in the definition of “service for purposes of a Minister of the Crown or government department” at the end add “or service as the head of a Northern Ireland department”.

**45.**

Omit section 65.

**46.**

For section 67 substitute—

**“67.— Regulations and orders etc.**

- (1) Any power under this Act to make regulations or orders shall be exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979.
- (2) Any such power may be exercised to make different provision for different cases, including different provision for different areas or localities.
- (3) Any such power, includes power—
  - (a) to make such incidental, supplementary, consequential or transitional provision as appears to the Northern Ireland department exercising the power to be expedient; and
  - (b) to provide for a person to exercise a discretion in dealing with any matter.



(4) No order shall be made under section 50(3) unless a draft of the order has been laid before and approved by a resolution of the Assembly.

(5) Any other order made under this Act, other than an order under section 3(9), 52(8), 54(6) or 70(3), and any regulations made under this Act shall be subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 as if they were statutory instruments within the meaning of that Act.

(6) Section 41(3) of the Interpretation Act (Northern Ireland) 1954 shall apply in relation to any instrument or document which by virtue of this Act is required to be laid before the Assembly as if it were a statutory instrument or statutory document within the meaning of that Act.

(7) Subsection (1) does not require an order under section 43 which applies only to a specified vehicle, or to vehicles of a specified person, to be made by statutory rule.

(8) Nothing in section 40(6) or 46(5) affects the powers conferred by subsections (2) and (3)."

#### 47.—

(1) For section 68(1) substitute—

“(1) In this Act—

“accessibility certificate” means a certificate issued under section 41(1)(a);

“act” includes a deliberate omission;

“the Agency” means the Labour Relations Agency;

“approval certificate” means a certificate issued under section 42(4);

“the Assembly” means the Northern Ireland Assembly;

“benefits”, in Part II, has the meaning given in section 4(4);

“the Department of Economic Development” means the Department of Economic Development in Northern Ireland;

“the Department of the Environment” means the Department of the Environment of Northern Ireland;

“the Department of Health and Social Services” means the Department of Health and Social Services for Northern Ireland;

“employment” means, subject to any prescribed provision, employment under a contract of service or of apprenticeship or a contract personally to do work and related expressions are to be construed accordingly;

“employment at an establishment in Northern Ireland” is to be construed in accordance with subsections (2) to (5);

“enactment” means any statutory provision within the meaning of section 1(f) of the Interpretation Act (Northern Ireland) 1954;

“government department” means a Northern Ireland department or a department of the Government of the United Kingdom;

“Minister of the Crown” includes the Treasury;

“Northern Ireland department” includes (except in sections 51 and 52) the head of a Northern Ireland department;

“occupational pension scheme” has the same meaning as in the Pension Schemes (Northern Ireland) Act 1993;

“premises”, includes land of any description;  
 “prescribed” means prescribed by regulations;  
 “profession” includes any vocation or occupation;  
 “provider of services” has the meaning given in section 19(2)(b);  
 “public service vehicle” and “regulated public service vehicle” have the meaning given in section 40;  
 “PSV accessibility regulations” means regulations made under section 40(1);  
 “rail vehicle” and “regulated rail vehicle” have the meaning given in section 46(1);  
 “rail vehicle accessibility regulations” means regulations made under section 46(1);  
 “regulations” means —

- (a) in Parts I and II of this Act, section 66, the definition of “employment” above and subsections (3) and (4) below, regulations made by the Department of Economic Development;
- (b) in Part V of this Act, regulations made by the Department of the Environment;
- (c) in any other provision of this Act, regulations made by the Department of Health and Social Services.

“section 6 duty” means any duty imposed by or under section 6;  
 “section 15 duty” means any duty imposed by or under section 15;  
 “section 21 duty” means any duty imposed by or under section 21;  
 “taxi” and “regulated taxi” have the meaning given in section 32;  
 “taxi accessibility regulations” means regulations made under section 32(1);  
 “trade” includes any business;  
 “trade organisation” has the meaning given in section 13;  
 “vehicle examiner” means an officer of the Department of the Environment authorised by that Department for the purposes of sections 41 and 42.”.

(2) In section 68(2) to (4) for “Great Britain” wherever it occurs substitute “Northern Ireland”.

#### **48.—**

- (1) In section 70(3) for “Secretary of State” substitute “Department of Health and Social Services”.
- (2) In section 70(8) for “Secretary of State” substitute “a Northern Ireland department” and for “him” substitute “it”.

#### **49.—**

- (1) In Schedule 1 in paragraph 7(1) for “Act 1994” substitute “Act (Northern Ireland) 1945”.
- (2) In Schedule 1 in paragraph 7(7) for “1944” substitute “1945”.

#### **50.—**

- (1) In Schedule 3 in paragraph 1—
  - (a) for “a conciliation officer” wherever it occurs substitute “the Agency”;
  - (b) in sub-paragraphs (1) and (4) for “he” substitute “it”;
  - (c) in sub-paragraph (3) for “the conciliation officer” substitute “the Agency”.
- (2) In Schedule 3 for paragraph 4(1) substitute—

“(1) In any proceedings under section 8—

- (a) a certificate signed by or on behalf of a Minister of the Crown or a Northern Ireland department and certifying that any conditions or requirements specified in the certificate were imposed by that Minister or that department (as the case may be) and were in operation at a time or throughout a time so specified; or
- (b) a certificate signed by or on behalf of the Secretary of State and certifying that an act specified in the certificate was done for the purpose of safeguarding national security,

shall be conclusive evidence of the matters certified.”.

(3) In Schedule 3 in paragraph 6(1) omit “or a sheriff court”.

(4) In Schedule 3 for paragraph 8(1) substitute—

“(1) In any proceedings under section 25—

- (a) a certificate signed by or on behalf of a Minister of the Crown or a Northern Ireland department and certifying that any conditions or requirements specified in the certificate were imposed by that Minister or that department (as the case may be) and were in operation at a time or throughout a time so specified; or
- (b) a certificate signed by or on behalf of the Secretary of State and certifying that an act specified in the certificate was done for the purpose of safeguarding national security,

shall be conclusive evidence of the matters certified.”.

#### **51.—**

(1) In Schedule 4 in paragraphs 2(1) and (5) and 7(1) and (5) omit “or sisted”.

(2) In Schedule 4 in paragraph 4 for “Secretary of State” substitute “Department of Economic Development”.

(3) In Schedule 4 in paragraph 6(1) omit “or, in Scotland, to the sheriff”.

(4) In Schedule 4 omit paragraph 6(2).

(5) In Schedule 4 in paragraph 9 for “Secretary of State” substitute “Department of Health and Social Services”.

#### **52.—**

(1) In Schedule 5 in the heading for “National” substitute “Northern Ireland”.

(2) In Schedule 5 for “Secretary of State” wherever it occurs substitute “Department of Health and Social Services”.

(3) In Schedule 5 in paragraphs 3(6), 5(1), 6 and 8(2) for “he” substitute “it” and in paragraph 3(7) for “his” substitute “its”.

(4) In Schedule 5 in paragraphs 5(2) and 7(d) for “Treasury” substitute “Department of Finance and Personnel in Northern Ireland”.

(5) In Schedule 5 in paragraph 8(2) for “each House of Parliament” substitute “the Assembly”.

#### **53.**

For Schedules 6 and 7 substitute—

**“SCHEDULE 6****CONSEQUENTIAL AMENDMENTS**

## The Industrial Relations (Northern Ireland) Order 1976 (NI 16)

**1.**

In Article 68(6) of the Industrial Relations (Northern Ireland) Order 1976 (reinstatement or re-engagement of dismissed employees) —

- (a) in the definition of “relevant complaint of dismissal”, omit “or” and at the end insert “or a complaint under section 8 of the Disability Discrimination Act 1995 arising out of a dismissal”;
- (b) in the definition of “relevant conciliation powers”, omit “or” and at the end insert “or paragraph 1 of Schedule 3 to the Disability Discrimination Act 1995”;
- (c) in the definition of “relevant compromise contract” for “or Article” substitute “Article” and at the end insert “or section 9(2) of the Disability Discrimination Act 1995”.

## The Companies (Northern Ireland) Order 1986 (NI 6)

**3.**

In paragraph 9 of Schedule 7 to the Companies (Northern Ireland) Order 1986 (disclosure in directors' report of company policy in relation to disabled persons) in the definition of “disabled person” in sub-paragraph (4)(b) for “Disabled Persons (Employment) Act (Northern Ireland) 1945” substitute “Disability Discrimination Act 1995”.

**SCHEDULE 7****REPEALS**

<b>Chapter</b>	<b>Short title</b>	<b>Extent of repeal</b>
1945 c. 6 (N.I.)	The Disabled Persons (Employment) Act (Northern Ireland) 1945.	Sections 1 to 4. Sections 6 to 14. In section 16 the words “vocational training and industrial rehabilitation courses and”, the words “courses and” and the words from “and in selecting” to “engagement”. Section 19. Section 21. Section 22.
1960 c. 4 (N.I.)	The Disabled Persons (Employment) Act (Northern Ireland) 1960.	The whole Act.
1976 NI16	The Industrial Relations (Northern Ireland) Order 1976.	In Article 68(6) the word “or” in the definitions of “relevant complaint of dismissal” and “relevant conciliation powers”.

*(Represents Current Law in Force - for pending amendments see Prospective Law on Westlaw UK.)*