



Disability Discrimination Act 1995

1995 CHAPTER 50

PART II

EMPLOYMENT

Discrimination by employers

4 Discrimination against applicants and employees

- (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
 - (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) 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; or
 - (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.

- (4) In this Part “benefits” includes facilities and services.
- (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) This section applies only in relation to employment at an establishment in Great Britain.

5 Meaning of “discrimination”

- (1) For the purposes of this Part, an employer 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, an employer also discriminates against a disabled person if—
 - (a) he fails to comply with a section 6 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) Subject to subsection (5), for the purposes of subsection (1) treatment is justified if, but only if, the reason for it is both material to the circumstances of the particular case and substantial.
- (4) For the purposes of subsection (2), failure to comply with a section 6 duty is justified if, but only if, the reason for the failure is both material to the circumstances of the particular case and substantial.
- (5) If, in a case falling within subsection (1), the employer is under a section 6 duty in relation to the disabled person but fails without justification 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 the section 6 duty.
- (6) Regulations may make provision, for purposes of this section, as to circumstances in which—
 - (a) treatment is to be taken to be justified;
 - (b) failure to comply with a section 6 duty is to be taken to be justified;
 - (c) treatment is to be taken not to be justified;
 - (d) failure to comply with a section 6 duty is to be taken not to be justified.
- (7) Regulations under subsection (6) may, in particular—
 - (a) make provision by reference to the cost of affording any benefit; and
 - (b) in relation to benefits under occupational pension schemes, make provision with a view to enabling uniform rates of contributions to be maintained.

6 Duty of employer to make adjustments

- (1) Where—
 - (a) any arrangements made by or on behalf of an employer, or
 - (b) any physical feature of premises occupied by the employer,

place 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 arrangements or feature having that effect.

- (2) Subsection (1)(a) applies only in relation to—
 - (a) arrangements for determining to whom employment should be offered;
 - (b) any term, condition or arrangements on which employment, promotion, a transfer, training or any other benefit is offered or afforded.
- (3) The following are examples of steps which an employer may have to take in relation to a disabled person in order to comply with subsection (1)—
 - (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 working hours;
 - (e) assigning him to a different place of work;
 - (f) allowing him to be absent during working hours for rehabilitation, assessment or treatment;
 - (g) giving him, or arranging for him to be given, training;
 - (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.
- (4) In determining whether it is reasonable for an employer to have to take a particular step in order to comply with subsection (1), regard shall be had, in particular, to—
 - (a) the extent to which taking the step would prevent the effect in question;
 - (b) the extent to which it is practicable for the employer to take the step;
 - (c) the financial and other costs which would be incurred by the employer in taking the step and the extent to which taking it would disrupt any of his activities;
 - (d) the extent of the employer’s financial and other resources;
 - (e) the availability to the employer of financial or other assistance with respect to taking the step.

This subsection is subject to any provision of regulations made under subsection (8).

- (5) In this section, “the disabled person concerned” means—
 - (a) in the case of arrangements 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—
 - (i) an applicant for the employment concerned; or
 - (ii) an employee of the employer concerned.
- (6) 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).
- (7) Subject to the provisions of this section, nothing in this Part is to be taken to require an employer to treat a disabled person more favourably than he treats or would treat others.
- (8) Regulations may make provision, for the purposes of subsection (1)—
- (a) as to circumstances in which arrangements are, or a physical feature is, to be taken to have the effect mentioned in that subsection;
 - (b) as to circumstances in which arrangements are not, or a physical feature is not, to be taken to have that effect;
 - (c) as to circumstances in which it is reasonable for an employer to have to take steps of a prescribed description;
 - (d) as to steps which it is always reasonable for an employer to have to take;
 - (e) as to circumstances in which it is not reasonable for an employer to have to take steps of a prescribed description;
 - (f) as to steps which it is never reasonable for an employer to have to take;
 - (g) as to things which are to be treated as physical features;
 - (h) as to things which are not to be treated as such features.
- (9) Regulations made under subsection (8)(c), (d), (e) or (f) may, in particular, make provision by reference to the cost of taking the steps concerned.
- (10) Regulations may make provision adding to the duty imposed on employers by this section, including provision of a kind which may be made under subsection (8).
- (11) This section does not apply in relation to any benefit under an occupational pension scheme or any other benefit payable in money or money's worth under a scheme or arrangement for the benefit of employees in respect of—
- (a) termination of service;
 - (b) retirement, old age or death;
 - (c) accident, injury, sickness or invalidity; or
 - (d) any other prescribed matter.
- (12) This section imposes duties only for the purpose of determining whether an employer has discriminated against a disabled person; and accordingly a breach of any such duty is not actionable as such.

7 Exemption for small businesses

- (1) Nothing in this Part applies in relation to an employer who has fewer than 20 employees.
- (2) The Secretary of State may by order amend subsection (1) by substituting a different number (not greater than 20) for the number for the time being specified there.
- (3) In this section—
- “anniversary” means the anniversary of the coming into force of this section; and
 - “review” means a review of the effect of this section.

- (4) Before making any order under subsection (2), the Secretary of State shall conduct a review.
- (5) Unless he has already begun or completed a review under subsection (4), the Secretary of State shall begin to conduct a review immediately after the fourth anniversary.
- (6) Any review shall be completed within nine months.
- (7) In conducting any review, the Secretary of State shall consult—
 - (a) such organisations representing the interests of employers as he considers appropriate; and
 - (b) such organisations representing the interests of disabled persons in employment or seeking employment as he considers appropriate.
- (8) If, on completing a review, the Secretary of State decides to make an order under subsection (2), he shall make such an order to come into force not later than one year after the commencement of the review.
- (9) If, on completing a review, the Secretary of State decides not to make such an order, he shall not later than one year after the commencement of the review lay before Parliament a report—
 - (a) summarising the results of the review; and
 - (b) giving the reasons for his decision.
- (10) Any report made by the Secretary of State under subsection (9) shall include a summary of the views expressed to him in his consultations.

Enforcement etc.

8 Enforcement, remedies and procedure

- (1) A complaint 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 presented to an industrial tribunal.
- (2) Where an industrial 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 industrial 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
 - (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 paragraph 6A of Schedule 9 to the Employment Protection (Consolidation) Act 1978 (power to make provision as to interest on sums payable in pursuance of industrial 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.

9 Validity of certain agreements

- (1) Any term in a contract of employment or 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 presenting a complaint to an industrial tribunal under this Part.
- (2) Paragraphs (b) and (c) of subsection (1) do not apply to an agreement not to institute proceedings under section 8(1), or to an agreement not to continue such proceedings, if—
 - (a) a conciliation officer has acted under paragraph 1 of Schedule 3 in relation to the matter; or
 - (b) the conditions set out in subsection (3) are satisfied.
- (3) The conditions are that—
 - (a) the complainant must have received independent legal advice from a qualified lawyer as to the terms and effect of the proposed agreement (and in particular its effect on his ability to pursue his complaint before an industrial tribunal);
 - (b) when the adviser gave the advice there must have been in force a policy of insurance covering the risk of a claim by the complainant in respect of loss arising in consequence of the advice; and
 - (c) the agreement must be in writing, relate to the particular complaint, identify the adviser and state that the conditions are satisfied.

(4) In this section—

“independent”, in relation to legal advice to the complainant, means that it is given by a lawyer who is not acting for the other party or for a person who is connected with that other party; and

“qualified lawyer” means—

- (a) as respects proceedings in England and Wales, 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; and
- (b) as respects proceedings in Scotland, an advocate (whether in practice as such or employed to give legal advice) or a solicitor who holds a practising certificate.

(5) For the purposes of subsection (4), any two persons are to be treated as connected if—

- (a) one is a company of which the other (directly or indirectly) has control, or
- (b) both are companies of which a third person (directly or indirectly) has control.

10 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.

11 Advertisements suggesting that employers will discriminate against disabled persons

- (1) This section applies where—
- (a) a disabled person has applied for employment with an employer;
 - (b) the employer has refused to offer, or has deliberately not offered, him the employment;
 - (c) the disabled person has presented a complaint under section 8 against the employer;
 - (d) the employer has advertised the employment (whether before or after the disabled person applied for it); and
 - (e) the advertisement indicated, or might reasonably be understood to have indicated, that any application for the advertised employment would, or might, be determined to any extent by reference to—
 - (i) the successful applicant not having any disability or any category of disability which includes the disabled person's disability; or
 - (ii) the employer's reluctance to take any action of a kind mentioned in section 6.
- (2) The tribunal hearing the complaint shall assume, unless the contrary is shown, that the employer's reason for refusing to offer, or deliberately not offering, the employment to the complainant was related to the complainant's disability.
- (3) In this section "advertisement" includes every form of advertisement or notice, whether to the public or not.

Discrimination by other persons

12 Discrimination against contract workers

- (1) It is unlawful for a principal, in relation to contract work, to discriminate against a disabled person—
- (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) 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.
- (3) The provisions of this Part (other than subsections (1) to (3) of section 4) apply to any principal, in relation to contract work, as if he were, or would be, the employer of the contract worker and as if any contract worker supplied to do work for him were an employee of his.
- (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) 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).
- (6) 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.

13 Discrimination by trade organisations

- (1) It is unlawful for a trade organisation to discriminate against a disabled person—
- (a) in the terms on which it is prepared to admit him to membership of the organisation; or
 - (b) 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) 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 “trade organisation” means an organisation of workers, an organisation of employers or any other organisation whose members carry on a particular profession or trade for the purposes of which the organisation exists.

14 Meaning of “discrimination” in relation to trade organisations

- (1) For the purposes of this Part, a trade organisation 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 this Part, a trade organisation also discriminates against a disabled person if—
- (a) it fails to comply with a section 15 duty imposed on it in relation to the disabled person; and
 - (b) it cannot show that its failure to comply with that duty is justified.

- (3) Subject to subsection (5), for the purposes of subsection (1) treatment is justified if, but only if, the reason for it is both material to the circumstances of the particular case and substantial.
- (4) For the purposes of subsection (2), failure to comply with a section 15 duty is justified if, but only if, the reason for the failure is both material to the circumstances of the particular case and substantial.
- (5) If, in a case falling within subsection (1), the trade organisation is under a section 15 duty in relation to the disabled person concerned but fails without justification to comply with that duty, its treatment of that person cannot be justified under subsection (3) unless the treatment would have been justified even if the organisation had complied with the section 15 duty.
- (6) Regulations may make provision, for purposes of this section, as to circumstances in which—
 - (a) treatment is to be taken to be justified;
 - (b) failure to comply with a section 15 duty is to be taken to be justified;
 - (c) treatment is to be taken not to be justified;
 - (d) failure to comply with a section 15 duty is to be taken not to be justified.

15 Appeal against refusal of exemption certificate

- (1) Where—
 - (a) any arrangements made by or on behalf of a trade organisation, or
 - (b) any physical feature of premises occupied by the organisation,place 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 arrangements or feature having that effect.
- (2) Subsection (1)(a) applies only in relation to—
 - (a) arrangements for determining who should become or remain a member of the organisation;
 - (b) any term, condition or arrangements on which membership or any benefit is offered or afforded.
- (3) In determining whether it is reasonable for a trade organisation to have to take a particular step in order to comply with subsection (1), regard shall be had, in particular, to—
 - (a) the extent to which taking the step would prevent the effect in question;
 - (b) the extent to which it is practicable for the organisation to take the step;
 - (c) the financial and other costs which would be incurred by the organisation in taking the step and the extent to which taking it would disrupt any of its activities;
 - (d) the extent of the organisation's financial and other resources;
 - (e) the availability to the organisation of financial or other assistance with respect to taking the step.

This subsection is subject to any provision of regulations made under subsection (7).

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

- (a) in the case of arrangements 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) an applicant for membership; or
 - (ii) a member of the organisation.
- (5) 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 that the disabled person concerned—
- (a) is, or may be, an applicant for membership; or
 - (b) has a disability and is likely to be affected in the way mentioned in subsection (1).
- (6) Subject to the provisions of this section, nothing in this Part is to be taken to require a trade organisation to treat a disabled person more favourably than it treats or would treat others.
- (7) Regulations may make provision for the purposes of subsection (1) as to any of the matters mentioned in paragraphs (a) to (h) of section 6(8) (the references in those paragraphs to an employer being read for these purposes as references to a trade organisation).
- (8) Subsection (9) of section 6 applies in relation to such regulations as it applies in relation to regulations made under section 6(8).
- (9) Regulations may make provision adding to the duty imposed on trade organisations by this section, including provision of a kind which may be made under subsection (7).
- (10) This section imposes duties only for the purpose of determining whether a trade organisation has discriminated against a disabled person; and accordingly a breach of any such duty is not actionable as such.

Premises occupied under leases

16 Alterations to premises occupied under leases

- (1) This section applies where—
- (a) an employer or trade organisation (“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 6 duty or section 15 duty.
- (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—
- (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.

Occupational pension schemes and insurance services

17 Occupational pension schemes

- (1) Every occupational pension scheme shall be taken to include a provision (“a non-discrimination rule”)—
- (a) relating to the terms on which—
 - (i) persons become members of the scheme; and
 - (ii) members of the scheme are treated; and
 - (b) requiring the trustees or managers of the scheme to refrain from any act or omission which, if done in relation to a person by an employer, would amount to unlawful discrimination against that person for the purposes of this Part.
- (2) The other provisions of the scheme are to have effect subject to the non-discrimination rule.
- (3) Without prejudice to section 67, regulations under this Part may—
- (a) with respect to trustees or managers of occupational pension schemes make different provision from that made with respect to employers; or
 - (b) make provision modifying the application to such trustees or managers of any regulations made under this Part, or of any provisions of this Part so far as they apply to employers.
- (4) In determining, for the purposes of this section, whether an act or omission would amount to unlawful discrimination if done by an employer, any provision made under subsection (3) shall be applied as if it applied in relation to the notional employer.

18 Insurance services

- (1) This section applies where a provider of insurance services (“the insurer”) enters into arrangements with an employer under which the employer’s employees, or a class of his employees—
- (a) receive insurance services provided by the insurer; or

- (b) are given an opportunity to receive such services.
- (2) The insurer is to be taken, for the purposes of this Part, to discriminate unlawfully against a disabled person who is a relevant employee if he acts in relation to that employee in a way which would be unlawful discrimination for the purposes of Part III if—
- (a) he were providing the service in question to members of the public; and
 - (b) the employee was provided with, or was trying to secure the provision of, that service as a member of the public.
- (3) In this section—
- “insurance services” means services of a prescribed description for the provision of benefits in respect of—
 - (a) termination of service;
 - (b) retirement, old age or death;
 - (c) accident, injury, sickness or invalidity; or
 - (d) any other prescribed matter; and
 - “relevant employee” means—
 - (a) in the case of an arrangement which applies to employees of the employer in question, an employee of his;
 - (b) in the case of an arrangement which applies to a class of employees of the employer, an employee who is in that class.
- (4) For the purposes of the definition of “relevant employee” in subsection (3), “employee”, in relation to an employer, includes a person who has applied for, or is contemplating applying for, employment by that employer or (as the case may be) employment by him in the class in question.