

DISABILITY DISCRIMINATION ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 10: Discriminatory advertisements

116. Section 16B was inserted into the DDA by regulation 15(1) of the Amendment Regulations. This provision makes it unlawful for employers and others covered by Part 2 of the DDA (employment field) to publish or cause to be published a discriminatory advertisement inviting applications for a job, training or other relevant benefit. Section 17B of the DDA (as inserted by the Amendment Regulations) provides for enforcement of section 16B. It confers powers on the Disability Rights Commission to seek a declaration from an employment tribunal and, in some circumstances, to apply to a county court for an injunction (or, in Scotland, to a sheriff court for an interdict).
117. As it currently stands, section 16B(1) does not prohibit third parties (such as newspapers) from publishing discriminatory advertisements on behalf of the person placing the advertisement. In order to fill this gap, section 10(2) replaces section 16B(1) with new subsection (1), which extends the scope of the prohibition to cover third party publishers who publish a discriminatory advertisement on behalf of another. (It also makes it clear that section 16B applies so that it covers advertisements which indicate an intention to discriminate against a person who has had a disability, as well as a person who has a disability.)
118. New subsection (2A), as inserted by section 10(3), exempts a third party publisher from liability under subsection (1) if he can prove that, in publishing the advertisement, he relied on a statement made by the person who placed the advertisement (such as an employer) to the effect that publication of the advertisement would not be unlawful, and that it was reasonable for him to rely on that statement.
119. New subsection (2B) makes it an offence for a person knowingly or recklessly to make a false or misleading statement about the lawfulness of an advertisement as described in new subsection (2A). The offence carries a fine not exceeding level 5 on the standard scale (currently £5000) on summary conviction.