
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement (in Great Britain) provisions of Council Directive [2000/78/EC](#) (OJNo. L 303, 2.12.2000, p.16) establishing a general framework for equal treatment in employment and occupation (“the Directive”), so far as it relates to disability discrimination. For this purpose, they amend the Disability Discrimination Act [1995 \(c. 50\)](#) (“the Act”) and make minor or consequential amendments to other legislation.

Regulations 4 to 18 insert new sections into, and amend existing provisions of, Part 2 of the Act (which concerns discrimination in the employment field):

New sections 3A and 3B provide (respectively) for a definition of “discrimination” and “harassment” applying to the whole of Part 2. (*Regulation 4*)

New sections 4 and 4A (replacing existing sections 4 to 6) prohibit discrimination and harassment by employers and impose on employers a duty to make reasonable adjustments. New section 4B (replacing existing section 12) prohibits discrimination against, and harassment of, contract workers and makes provision about the making of reasonable adjustments for such workers. New sections 4C to 4F prohibit discrimination against, and harassment of, certain types of office-holders, and require reasonable adjustments to be made for them. (*Regulation 5*)

New sections 6A to 6C prohibit discrimination and harassment, and impose duties to make reasonable adjustments, in relation to partners in firms. (*Regulation 6*)

Existing section 7 of the Act (exemption for small businesses) is repealed. (*Regulation 7*)

New sections 7A to 7D relate to barristers (England and Wales) and advocates (Scotland). They prohibit discrimination and harassment, and impose duties to make reasonable adjustments. (*Regulation 8*)

Section 8 (enforcement, remedies and procedure) is amended to make provision about complaints about qualifications bodies, and about the burden of proof in employment tribunal proceedings. It is also renumbered as section 17A. (*Regulation 9*)

Existing section 9 (validity of certain agreements), section 11 (advertisements) and section 12 (contract workers) are repealed in consequence of their replacement by new provisions; and existing section 10 (charities) is moved and renumbered as section 18C. (*Regulations 10 to 12*)

New sections 13 and 14 (replacing existing sections 13 to 15) prohibit discrimination and harassment, and impose duties to make reasonable adjustments, in relation to trade organisations. New sections 14A to 14D prohibit discrimination and harassment, and impose duties to make reasonable adjustments, in relation to qualifications bodies and persons who provide work placements. (*Regulation 13*)

Consequential amendments are made to existing section 16 (alterations to premises occupied under leases), which is also moved and renumbered as section 18A. (*Regulation 14*)

New section 16A prohibits discrimination and harassment, and imposes duties to make reasonable adjustments in relationships which have come to an end; new section 16B prohibits employers and others from publishing or causing to be published advertisements which indicate an intention to discriminate; and new section 16C prohibits instructions and pressure to discriminate. (*Regulation 15*)

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New section 17B provides for the Disability Rights Commission to enforce sections 16B (discriminatory advertisements) and 16C (instructions and pressure to discriminate); and new section 17C and new Schedule 3A deal with validity of certain agreements and rules of undertakings etc (replacing existing section 9). (*Regulation 16*)

New section 18B makes supplementary provision about the duties to make reasonable adjustments contained in Part 2 of the Act; and new section 18D provides for the interpretation of Part 2. (*Regulations 17 and 18*)

Regulation 19 amends Part 3 of the Act (which concerns discrimination in relation to goods, facilities and services, and the disposal of premises) in relation to the provision of employment services. It inserts new section 21A to prohibit harassment and to modify the application of sections 19 to 21 of the Act in relation to such services, and makes consequential amendments to section 25 (enforcement) and section 26 (validity and revision of certain agreements).

Regulations 20 to 23 amend Part 7 of the Act (supplemental):

Minor or consequential amendments are made to section 53A (codes of practice) and section 55 (victimisation). (*Regulations 20 and 21*)

Section 56 (help for persons suffering discrimination) is amended so as to substitute a period of eight weeks (instead of a “reasonable period”) within which a respondent is to reply to a questionnaire (without a reasonable excuse for deliberate failure to do so) under the Act in order to avoid the drawing of adverse inferences by an Employment Tribunal. (*Regulation 22*)

Section 59 (statutory authority and national security etc) is amended, in relation to Part 2 of the Act (and Part 3 thereof, insofar as it relates to employment services) to provide that acts done for the purpose of safeguarding national security are not unlawful if the doing of the act was justified by that purpose. (*Regulation 23*)

Regulations 24 to 26 amend Part 8 of the Act (miscellaneous):

In section 64 (application to Crown etc), a new subsection (2A) is inserted in consequence of the new provisions on the police. Exemptions for service in certain police forces, as a prison officer, or in fire fighting contained in subsections (5) and (6) of the section are repealed, and consequential amendments made to subsection (8). (*Regulation 24*)

A new section 64A (police) is inserted. This provides that the holding of the office of constable (and appointment as a police cadet) is to be treated as employment for the purposes of Part 2 of the Act; and makes provision about proceedings brought under Part 2 in relation to the police. (*Regulation 25*)

Section 66 of the Act (government appointments outside Part 2) is repealed. (*Regulation 26*)

In section 68 (interpretation), new provisions are substituted and inserted so as to allow, in certain circumstances, for work done wholly outside Great Britain to be treated, for the purposes of Part 2 of the Act, as employment at an establishment in Great Britain and to make provision about employment on board ships, hovercraft and aircraft and employment concerned with the exploration of the sea bed or sub-soil or the exploitation of their natural resources. The exception for employment on board ships, aircraft or hovercraft is repealed. Minor or consequential amendments are made to the remainder of section 68. (*Regulation 27*)

Regulations 28 to 31 make minor or consequential amendments to section 70 of, and Schedules 2 to 4 to, the Act, the Disability Rights Commission Act 1999 (c. 17) and to other legislation.

The Regulations make provision for commencement on the day after they are made so far as enabling anything to be done for the purposes of preparing and bringing into force on or after 1st October 2004 a code of practice under section 53A of the Act concerning any provision of that Act as it will have effect on or after that date by virtue of these Regulations. Otherwise, the Regulations come into force on 1st October 2004. (*Regulation 1*)

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The Regulations also include transitional provisions concerning the burden of proof in employment tribunal proceedings and concerning the new eight-week period (in section 56 of the Act) for respondents to answer a questionnaire. (*Regulation 2*)

A regulatory impact assessment has been prepared in relation to these Regulations. A copy may be obtained from: Disability Unit, Department for Work and Pensions, 6th Floor, The Adelphi, 1-11 John Adam Street, London WC2N 6HT. A copy of the transposition note in relation to the implementation of the Directive may be obtained from the same address. Copies of both these documents have been placed in the Library of each House of Parliament.