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STATUTORY INSTRUMENTS

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**2003 No. 1673**

**The Disability Discrimination Act  
1995 (Amendment) Regulations 2003**

**PART 2**

**AMENDMENTS TO THE 1995 ACT**

**Employment; contract workers; office-holders**

5. For sections 4 to 6 (and the preceding cross-heading), substitute the following sections—

*“Employment*

**Employers: discrimination and harassment**

**4**

- (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) 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.

**Employers: duty to make adjustments**

**4A**

- (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—
    - (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).

*Contract workers*

**Contract workers**

**4B**

- (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.

(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.

### *Office-holders*

#### **Office-holders: introductory**

##### **4C**

- (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 and section 14C.
- (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 National Assembly for Wales 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
    - (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<sup>(1)</sup>, 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>(2)</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<sup>(3)</sup>,
  - (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<sup>(4)</sup>, 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,
  - (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,

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(1) 1958 c. 21.

(2) 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).

(3) 1975 c. 27.

(4) 1998 c. 46.

- (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<sup>(5)</sup> or a community council established under section 51 of the Local Government (Scotland) Act 1973<sup>(6)</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.

### **Office-holders: discrimination and harassment**

#### **4D**

(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—

- (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).

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<sup>(5)</sup> 1994 c. 39.

<sup>(6)</sup> 1973 c. 65, amended by the Local Government etc. (Scotland) Act 1994 (c. 39), section 180(2), Schedule 14, paragraph 1.

- (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.

### **Office-holders: duty to make adjustments**

#### **4E**

- (1) Where—
- (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).

**Office-holders: supplementary**

**4F**

- (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;
  - (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.”.