

2005 No. 2703

DISABLED PERSONS

The Disability Discrimination (Questions and Replies) Order 2005

Made - - - - - *28th September 2005*

Laid before Parliament *4th October 2005*

Coming into force - - - *5th December 2005*

The Secretary of State for Work and Pensions, in exercise of the powers conferred upon him by section 56(2) and (4) and section 67(3) of the Disability Discrimination Act 1995(a), hereby makes the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Disability Discrimination (Questions and Replies) Order 2005 and shall come into force on 5th December 2005.

(2) In this Order—

“the Act” means the Disability Discrimination Act 1995;

“court” means a county court or, in Scotland, the sheriff court.

Forms for questions and replies

2. The forms respectively set out in Schedules 1 and 2 to this Order or forms to the like effect with such variation as the circumstances may require are, respectively, hereby prescribed for the purposes of section 56 of the Act for cases falling within Part 3 of the Act (discrimination in other areas), other than section 21A (employment services)(b) and sections 19 to 21 (discrimination in relation to services and duty to make adjustments) in so far as sections 19 to 21 relate to a group insurance arrangement(c), as forms—

(a) 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) by which the respondent may if he so wishes reply to any questions,

and articles 3 and 4 of this Order shall apply to such cases.

Period for service of questions

3. In proceedings before a court, a question shall, for the purposes of section 56(3) of the Act, only be admissible as evidence in any proceedings under Part 3 of the Act, other than section 21A (employment services) and sections 19 to 21 in so far as sections 19 to 21 relate to a group insurance arrangement—

(a) where proceedings have not commenced—

(i) if it was served within the period of six months beginning on the date of the act complained of; or

(a) 1995 c.50. Section 56 of the 1995 Act was substituted by section 17 of the Disability Discrimination Act 2005 (c.13) (“the 2005 Act”) and section 67(3) of the 1995 Act was amended by paragraphs 1, 33(1) and (3) of Schedule 1 to the 2005 Act.

(b) Section 21A was inserted by S.I. 2003/1673 and amended by paragraphs 1 and 15 of Schedule 1 to the 2005 Act.

(c) The definition of “group insurance arrangement” was inserted in section 68(1) of the Disability Discrimination Act 1995 by section 11(3) of the 2005 Act.

- (ii) where the dispute has been referred by the Disability Rights Commission for conciliation in pursuance of arrangements under section 28(a) of the Act, if it was served within the period of eight months beginning on the date of the act complained of;
- (b) where proceedings have commenced, only if it is served with leave of the court and within the period specified by it.

Manner of service of questions and replies

4. A question or, as the case may be, a reply may be duly served—
- (a) where the person to be served is the respondent, by delivering the question to him, or by sending it by post to him at his usual or last known residence or place of business; or
 - (b) where the person to be served is the person aggrieved, by delivering the reply to him, or sending it by post to him at his address for reply as stated by him in the document containing the questions or, if no address is so stated, at his usual or last known residence; or
 - (c) where the person to be served is a body corporate or is a trade union or employers' association within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992(b), by delivering it to the secretary or clerk of the body, union or association at its registered or principal office or by sending it by post to the secretary or clerk at that office; or
 - (d) where the person to be served is acting by a solicitor, by delivering it at, or by sending it by post to, the solicitor's address for service.

Amendment of the Disability Discrimination (Questions and Replies) Order 2004

- 5.—(1) Amend the Disability Discrimination (Questions and Replies) Order 2004(c) as follows.
- (2) In article 3—
- (a) after “the purposes of section 56 of the Act” insert “for cases falling within Part 2 of the Act (the employment field and members of locally-electable authorities) and, in relation to Part 3 of the Act (discrimination in other areas), for cases falling within section 21A (employment services) and sections 19 to 21 of the Act (discrimination in relation to services and duty to make adjustments) in so far as sections 19 to 21 relate to a group insurance arrangement”(d);
 - (b) in paragraph (a), for “complainant” substitute “person aggrieved”.
- (3) In article 5(b), for “complainant” substitute “person aggrieved”.
- (4) In Schedule 1—
- (a) for “complainant” (in each place) substitute “person aggrieved”;
 - (b) in paragraph 1—
 - (i) for “the Disability Discrimination Act 1995 (“the Act”) by” substitute “Part 2 of the Disability Discrimination Act 1995 (“the Act”) or Part 3 of that Act so far as it relates to employment services or a group insurance arrangement by”;
 - (ii) in sub-paragraph (a)(i), after “against me”, insert “(not applicable in a group insurance case)”;
 - (iii) after “harassment contrary to the Act” insert “(not applicable in a group insurance case)”;
 - (c) in the Notes—
 - (i) for paragraph (1) substitute the following paragraph—

“(1) Under section 56(3) of the Act (as substituted by the Disability Discrimination Act 2005), this questionnaire and any reply are admissible in evidence in employment tribunal proceedings brought under Part 2 of the Act or under section 21A (employment services) and sections 19 to 21 (discrimination in relation to services and duty to make adjustments) in so far as sections 19 to 21 relate to a group insurance arrangement, of Part 3 of the Act.”.

(a) Section 28 was substituted by section 10 of the Disability Rights Commission Act 1999 (c.17).

(b) 1992 c.52.

(c) S.I. 2004/1168.

(d) The definition of “group insurance arrangement” was inserted in section 68(1) of the Disability Discrimination Act 1995 by section 11(3) of the Disability Discrimination Act 2005.

- (ii) in paragraph (2), for “a failure,” substitute “a deliberate failure,” and for “Part 3 if the case concerns employment services” substitute “the provisions of Part 3 mentioned in paragraph (1).”.

(5) In Schedule 2—

- (a) for “*(name of complainant)*” substitute “*(name of person aggrieved)*”;
- (b) in paragraph 3 for “*(Include any reasons which in your view explain or justify your treatment of the complainant or explain any failure on your part to comply with a duty to make a reasonable adjustment).*” substitute “*(Include any reasons which in your view explain or justify your treatment of the person aggrieved or which explain, or in a group insurance case justify, any failure on your part to comply with a duty to make a reasonable adjustment).*”.

Signed by authority of the Secretary of State for Work and Pensions

Anne C. McGuire
Parliamentary Under Secretary of State
Department for Work and Pensions

28th September 2005

SCHEDULE 1

THE DISABILITY DISCRIMINATION ACT 1995, section 56(2)(a)
QUESTIONNAIRE OF PERSON AGGRIEVED

To.....(name of person to be questioned (the respondent))

of

.....(address)

1. I.....(name of person aggrieved)

of

.....(address)

consider that you may have discriminated against me contrary to Part 3 of the Disability Discrimination Act 1995 (“the Act”) except in so far as it relates to employment services or a group insurance arrangement, by—

*(a) without justification, treating me, for a reason relating to my disability, less favourably than you treat or would treat people to whom that reason does not or would not apply;

*(b) without justification, failing to comply with a duty to make a reasonable adjustment which applied to you in my case; or

*(c) victimising me.

2.

.....

.....
(Give details including a factual description of the treatment received or the failure complained of. Describe any relevant circumstances leading up to this and include any relevant dates or approximate dates).

3. I consider this treatment or failure on your part may have been unlawful for the following reason(s):

.....

.....

.....(complete if you wish to give reasons, otherwise delete).

4. Do you agree that the statement in paragraph 2 above is an accurate description of what happened? If not, in what respect do you disagree or what is your version of what happened?

5. Do you accept that your treatment of me or any failure complained of was unlawful? If not, why not?

6. (Any other questions you wish to ask)

.....

.....

7. Please send your reply to *[the above address] *[the following address]

.....
.....

(address)

.....

(signature of the person aggrieved)

..... *(date)*

**delete as appropriate*

Notes

(1) Under section 56(3) of the Act (as substituted by the Disability Discrimination Act 2005), this questionnaire and any reply are admissible in evidence in court proceedings brought under Part 3 of the Act, other than section 21A of the Act (employment services) and sections 19 to 21 of the Act (discrimination in relation to services and duty to make adjustments) in so far as sections 19 to 21 relate to a group insurance arrangement.

(2) Section 56(3)(b) allows a court to draw any inference it considers is just and equitable from

- a deliberate failure, without reasonable excuse, to reply to the questions within eight weeks, or
- an evasive or equivocal reply.

This could include an inference that the person questioned has discriminated against the person aggrieved in a way which is unlawful under the provisions of Part 3 of the Act other than those excepted in paragraph (1).

SCHEDULE 2

THE DISABILITY DISCRIMINATION ACT 1995, section 56(2)(b)

REPLY BY THE RESPONDENT

To(name of person aggrieved)
of.....
.....(address)

1. I(name of respondent)
of
.....(address)

hereby acknowledge receipt of the questionnaire signed by you and dated

which was served on me on(date).

2. *I agree that the statement in paragraph 2 of the questionnaire is an accurate description of what happened.

* I disagree with the statement in paragraph 2 of the questionnaire in that.....
.....
.....

(State which parts of the statement in paragraph 2 you disagree with and why)

3. *I accept
*I dispute
that my treatment of you or any failure on my part to make a reasonable adjustment was unlawful.
*My reason(s) for disputing this is/are:

*(a) there was no less favourable treatment for a disability-related reason;

*(b) I was not under a duty to make a reasonable adjustment;

*(c) my treatment or failure to make a reasonable adjustment was justified on one or more of the grounds specified in Part 3 of the Disability Discrimination Act 1995 ("the Act") or in regulations made under that Act;

*(d) I did not victimise you; or

*(e) the treatment or failure is not within the scope of Part 3 of the Act.

.....
.....

(Provide details of why you dispute that your treatment or failure to make a reasonable adjustment was unlawful for the reason(s) you have specified above.)

4. (Replies to questions in paragraph 6 of the questionnaire)

.....
.....

*5. I have deleted (in whole or part) the paragraph(s) numberedabove, since I am unable/unwilling to reply to the relevant questions for the following reasons:

.....
.....

.....
(signature of the respondent)

.....
(date)

** delete as appropriate*

EXPLANATORY NOTE

(This note is not part of the Order)

Following the substitution of section 56 of the Disability Discrimination Act 1995 (“the Act”) by section 17 of the Disability Discrimination Act 2005, this Order prescribes forms for questions and replies for cases falling within Part 3 of the Act (discrimination in areas other than employment and education), other than those falling within section 21A (employment services) and sections 19 to 21 in so far as sections 19 to 21 relate to group insurance arrangements. The section 21A and sections 19 to 21 cases come under the jurisdiction of employment tribunals by virtue of section 25(6A), (7) and (8) of the Act, whereas the other Part 3 cases (the cases to which this Order applies) come within the jurisdiction of a county court or, in Scotland, the sheriff court.

Article 2 of the Order prescribes forms which may be used for the purposes mentioned in the new section 56 of the Act. The form set out in Schedule 1 is for use where the person aggrieved considers that he may have been discriminated against in contravention of Part 3 of the Act, other than section 21A or sections 19 to 21 of the Act in so far as sections 19 to 21 relate to a group insurance arrangement. The form set out in Schedule 2 is for use by the respondent when replying.

Article 3 provides for periods within which a question must be served on the respondent if, for the purposes of section 56(3) of the Act, it is to be admissible as evidence in proceedings before a court.

Article 4 provides for the manner of service of questions and replies.

Article 5 amends the Disability Discrimination (Questions and Replies) Order 2004 (“the 2004 Order”) to provide explicitly for that Order to apply only for cases falling within Part 2 of the Act and, in relation to Part 3 of the Act, to cases falling within section 21A which relates to employment services and sections 19 to 21 in so far as sections 19 to 21 relate to group insurance arrangements. Article 5 also makes minor drafting changes to the 2004 Order and its Schedules to take account of the changes in terminology introduced by the new section 56 of the Act.

An assessment of the impact of this Order on business, charities and the voluntary sector has been made. Copies of this Regulatory Impact Assessment have been placed in the libraries of both Houses of Parliament. Copies may be obtained from the Better Regulation Unit of the Department for Work and Pensions, level 4, The Adelphi, 1-11 John Adam Street, London WC2N 6HT.

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