
STATUTORY INSTRUMENTS

2006 No. 1721

**The Disability Discrimination Act 1995 (Amendment)
(Further and Higher Education) Regulations 2006**

PART 2

AMENDMENTS TO CHAPTER 2 OF PART 4 OF THE 1995 ACT

Discrimination against disabled students and prospective students, and harassment

5. The following subsections are inserted after subsection (3) of section 28R (discrimination against disabled students and prospective students)—

“(3A) It is unlawful for the body responsible for an educational institution to discriminate against a disabled person—

- (a) in the arrangements which it makes for the purpose of determining upon whom to confer a qualification;
- (b) in the terms on which it is prepared to confer a qualification on him;
- (c) by refusing or deliberately omitting to grant any application by him for a qualification; or
- (d) by withdrawing a qualification from him or varying the terms on which he holds it.

(3B) It is unlawful for the body responsible for an educational institution to subject to harassment a disabled person who—

- (a) holds or applies for a qualification conferred by the institution;
- (b) is a student at the institution; or
- (c) seeks admission as a student to the institution.”.

Meaning of “discrimination” and “harassment”

6.—(1) In subsection (1) of section 28S (meaning of “discrimination”), for “section 28R” there is substituted “this Chapter”.

(2) For subsection (2) of section 28S there is substituted—

“(2) For the purposes of this Chapter, a responsible body also discriminates against a disabled person if it fails to comply with a duty imposed on it by section 28T or 28UA(5) in relation to the disabled person.”.

(3) Subsection (4) of section 28S shall be omitted.

(4) For subsections (5) to (9) of section 28S there are substituted—

“(5) Treatment, other than the application of a competence standard, is (subject to subsections (7) to (9)), justified for the purposes of subsection (1)(b) if, but only if, the reason for it is both material to the circumstances of the particular case and substantial.

(6) The application by a responsible body of a competence standard to a disabled person is (subject to subsections (8) and (9)) justified for the purposes of subsection (1)(b) if, but only if, the body can show that—

- (a) the standard is, or would be, applied equally to persons who do not have his particular disability, and
- (b) its application is a proportionate means of achieving a legitimate aim.

(7) If in a case falling within subsection (1), other than a case where the treatment is the application of a competence standard, a responsible body is under a duty under section 28T or 28UA(5) in relation to the disabled person, but fails to comply with that duty, its treatment of that person cannot be justified under subsection (5) unless that treatment would have been justified even if it had complied with that duty.

(8) Subject to subsection (9), regulations may make provision, for purposes of this section, as to circumstances in which treatment is, or as to circumstances in which treatment is not, to be taken to be justified.

(9) Treatment of a disabled person by a responsible body cannot be justified under subsection (5), (6) or (8) if it amounts to direct discrimination falling within subsection (10).

(10) A responsible body directly discriminates against a disabled person if, on the ground of the disabled person’s disability, it treats the disabled person less favourably than it treats or would treat a person not having that particular disability whose relevant circumstances, including his abilities, are the same as, or not materially different from, those of the disabled person.

(11) In this section and section 28T, “competence standard” means an academic, medical or other standard applied by or on behalf of a responsible body for the purpose of determining whether or not a person has a particular level of competence or ability.”.

7. The following section is inserted after section 28S (and before section 28T)—

“Meaning of “harassment“

28SA.—(1) For the purposes of this Chapter, a responsible body subjects a disabled person to harassment where, for a reason which relates to the disabled person’s disability, that body engages in unwanted conduct which has the purpose or effect of—

- (a) violating the disabled person’s dignity, or
- (b) creating an intimidating, hostile, degrading, humiliating or offensive environment for him.

(2) Conduct shall be regarded as having the effect referred to in subsection (1) (a) or (b) only if, having regard to all the circumstances, including in particular the perception of the disabled person, it should reasonably be considered as having that effect.”.

Duty to make reasonable adjustments

8. The following heading is substituted for that of section 28T and the following subsections are substituted for subsection (1) of that section—

“28T Responsible bodies' duties to make adjustments

- (1) Where—
 - (a) a provision, criterion or practice, other than a competence standard, is applied by or on behalf of a responsible body,
 - (b) it is a provision, criterion or practice relating to—

- (i) the arrangements it makes for determining admissions to the institution, or
- (ii) student services provided for, or offered to, students by the responsible body, and

- (c) that provision, criterion or practice places disabled persons at a substantial disadvantage in comparison with persons who are not disabled,

it is the duty of the responsible body 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 provision, criterion or practice having that effect.

(1A) Where—

- (a) a provision, criterion or practice, other than a competence standard, is applied by or on behalf of a responsible body,
- (b) it is a provision, criterion or practice for determining on whom a qualification is to be conferred,
- (c) a disabled person is, or has notified the body that he may be, an applicant for the conferment of that qualification, and
- (d) the provision, criterion or practice places the disabled person at a substantial disadvantage in comparison with persons who are not disabled,

it is the duty of the responsible body 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 provision, criterion or practice having that effect.

(1B) Where—

- (a) a provision, criterion or practice, other than a competence standard, is applied by or on behalf of a responsible body,
- (b) it is a provision, criterion or practice other than one mentioned in subsection (1)(b) or (1A)(b), and
- (c) it places a disabled person who—
 - (i) holds a qualification conferred by the responsible body, or
 - (ii) applies for a qualification which the responsible body confers,at a substantial disadvantage in comparison with persons who are not disabled,

it is the duty of the responsible body 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 provision, criterion or practice having that effect.

(1C) Where any physical feature of premises occupied by a responsible body places disabled persons at a substantial disadvantage in comparison with persons who are not disabled in relation to—

- (a) the arrangements which that body makes for determining admissions to the institution, or
- (b) student services provided for, or offered to, students by that body,

it is the duty of the body 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 feature having that effect.

(1D) Where any physical feature of premises occupied by a responsible body places a disabled person who—

- (a) applies for a qualification which that body confers, or
- (b) holds a qualification which was conferred by that body,

at a substantial disadvantage in comparison with persons who are not disabled, it is the duty of the body 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 feature having that effect.”.

9. In sections 28T(2) and (4), for “subsection (1)” there is substituted “any of subsections (1) to (1D)”.

Substitution of new section 28U

10. The following section is substituted for section 28U (Further education etc provided by local education authorities and schools)—

“Further education etc provided by local education authorities and schools

28U.—(1) Part 1 of Schedule 4C modifies this Chapter for the purpose of its application in relation to higher and further education secured by a local education authority.

(2) Part 1A of that Schedule modifies this Chapter for the purpose of its application in relation to recreational or training facilities secured by a local education authority and further education provided by the governing body of a maintained school.

(3) Part 2 of that Schedule modifies this Chapter for the purpose of its application in relation to further education, within the meaning of section 1(5)(b)(iii) of the Education (Scotland) Act 1980.

(4) Part 2A of that Schedule modifies this Chapter for the purpose of its application in relation to facilities whose provision is secured by an education authority under section 1(3) of the Education (Scotland) Act 1980.”.

Other unlawful acts

11. The following heading is inserted after section 28U—

“Other unlawful acts”.

12. The following section is inserted after section 28U—

“Relationships which have come to an end

28UA.—(1) This section applies where—

- (a) there has been a relevant relationship between a disabled person and a responsible body, and
- (b) that relationship has come to an end.

(2) In this section a “relevant relationship” is a relationship during the course of which an act of discrimination against, or harassment of, one party to the relationship by the other party to it is unlawful under any preceding provision of this Chapter.

(3) It is unlawful for the responsible body—

- (a) to discriminate against the disabled person by subjecting him to a detriment, or
- (b) to subject the disabled person to harassment,

where the discrimination or harassment arises out of and is closely connected to the relevant relationship.

(4) This subsection applies where—

(a) a provision, criterion or practice applied by the responsible body to the disabled person in relation to any matter arising out of the relevant relationship, or

(b) a physical feature of premises which are occupied by the responsible body,

places the disabled person at a substantial disadvantage in comparison with persons who are not disabled but are in the same position as the disabled person in relation to the responsible body.

(5) Where subsection (4) applies, it is the duty of the responsible body 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.

(6) Subsection (5) imposes duties only for the purpose of determining whether a responsible body has discriminated against a disabled person; and accordingly a breach of any such duty is not actionable as such.

(7) Nothing in subsection (5) imposes any duty on the responsible body if it does not know and could not reasonably be expected to know, that the person has a disability and is likely to be affected in the way mentioned in that subsection.

(8) In subsection (2), reference to an act of discrimination or harassment which is unlawful includes, in the case of a relationship which has come to an end before the commencement of this section, reference to such an act which would, after the commencement of this section, be unlawful.”.

13. The following section is inserted after new section 28UA—

“Instructions and pressure to discriminate

28UB.—(1) It is unlawful for a responsible body to instruct another person to do any act which is unlawful under this Chapter or to procure or attempt to procure the doing of any such unlawful act by that other person.

(2) It is also unlawful for a responsible body to induce, or attempt to induce, another person to do any act which is unlawful under this Chapter by —

(a) providing or offering to provide that person with any benefit, or

(b) subjecting or threatening to subject that person to any detriment.

(3) An attempted inducement is not prevented from falling within subsection (2) because it is not made directly to the person in question, if it is made in such a way that he is likely to hear of it.

(4) Proceedings in respect of a contravention of subsection (1) may be brought only—

(a) by the Commission for Equality and Human Rights, and

(b) in accordance with section 25 of the Equality Act 2006.”.

14. The following section is inserted after new section 28UB—

“Discriminatory advertisements

28UC.—(1) It is unlawful for a responsible body to publish or cause to be published an advertisement which—

(a) invites applications in relation to any course or student service provided or offered by it, or any qualification conferred by it, and

(b) indicates, or might reasonably be understood to indicate, that such an application will or may be determined to any extent by reference to—

(i) the applicant not having any disability, or any particular disability, or

- (ii) any reluctance on the part of the person determining the application to comply with a duty imposed on it by section 28T.
- (2) Subsection (1) does not apply where it would not in fact be unlawful under this Chapter for an application to be determined in the manner indicated (or understood to be indicated) in the advertisement.
- (3) In this section, “advertisement” includes every form of advertisement or notice, whether to the public or not.
- (4) Proceedings in respect of a contravention of subsection (1) may be brought only—
 - (a) by the Commission for Equality and Human Rights, and
 - (b) in accordance with section 25 of the Equality Act 2006.”.

Enforcement, remedies and procedure

- 15.**—(1) Section 28V (enforcement, remedies and procedure) is amended as follows.
- (2) In subsection (1)—
 - (a) in paragraph (a), after “him” there is inserted “, or subjected him to harassment,”, and
 - (b) in paragraphs (b) and (c), for “discriminated against him in such a way” there is substituted “done so”.
 - (3) After subsection (1) there is inserted—
 - “(1A) Where—
 - (a) a claim is brought under subsection (1), and
 - (b) the claimant (or pursuer, in Scotland) proves facts from which the court could, apart from this subsection, conclude in the absence of an adequate explanation that the defendant (or defender, in Scotland) has acted in a way which is unlawful under this Chapter,
 the court shall uphold the claim unless the defendant (or defender, in Scotland) proves that he did not so act.”.

Occupation of premises

- 16.** In section 28W(1)(c) (occupation of premises by educational institutions), after “section 28T” insert “or section 28UA(5)”.

Interpretation provisions

- 17.** In section 31A(1), for “(4)” there is substituted “(10)” and the following are inserted after subsection (4)—
- “(5) “Provision, criterion or practice“ includes any arrangements.
 - (6) “Qualification“ means any authorisation, qualification, approval or certification conferred by a responsible body.
 - (7) “Discriminate, “discrimination” and other related expressions are to be construed in accordance with section 28S.
 - (8) “Harassment” is to be construed in accordance with section 28SA.
 - (9) References (however expressed) to the conferment of a qualification on a person by a responsible body include—
 - (i) the renewal or extension of a qualification, and

- (ii) the authentication of a qualification awarded to him by another person.
- (10) “Physical feature“, in relation to any premises, includes any of the following (whether permanent or temporary)—
- (a) any feature arising from the design or construction of a building on the premises,
 - (b) any feature on the premises of any approach to, exit from or access to such a building,
 - (c) any fixtures, fittings, furnishings, furniture, equipment or material in or on the premises, and
 - (d) any other physical element or quality of any land comprised in the premises.”.