

**EXPLANATORY MEMORANDUM TO
THE DISABILITY DISCRIMINATION ACT 1995 (AMENDMENT) (FURTHER AND
HIGHER EDUCATION) REGULATIONS 2006**

2006 No. 1721

1. This explanatory memorandum has been prepared by the Department for Education and Skills and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

These Regulations implement Council Directive 2000/78/EC (“the Directive”) with respect to disability discrimination in vocational training provided by higher education and further education institutions, making similar provision to that made for employment by the Disability Discrimination Act 1995 (Amendment) Regulations 2003 (“the 2003 Regulations”). They prevent discrimination in the conferment of qualifications, and prohibit harassment and the placing of discriminatory advertisements by the institutions, as well as imposing a duty on the institutions to make reasonable adjustments.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 The Joint Committee will note that the Regulations are being made by the negative procedure rather than the affirmative procedure. This is because the issues were fully debated in 2003 when the 2003 Regulations were made by the affirmative procedure, and have also been debated in relation to the other equality strands when the relevant implementing regulations were made.

3.2 In addition, a draft of the regulations was consulted upon in 2005.

4. **Legislative Background**

4.1 The Regulations implement the provisions of Council Directive 2000/78/EC (“the Directive”) (which establishes a general framework for equal treatment in employment and vocational training) so far as they relate to disability discrimination in vocational training provided by further and higher institutions. The 2003 Regulations make similar provision in relation to employment, and other regulations such as the Employment Equality (Religion and Belief) Regulations 2003 and the Employment Equality (Sexual Orientation) Regulations 2003 implement the Directive in relation to the other equality strands.

4.2 A Transposition note is attached at the Annex. These regulations are the latest in a long line of regulations implementing the Directive. The EU Scrutiny Committees considered the Directive during its legislative process through to adoption on 27th November 2000, but as DfES was not the lead department, we do not have the details of the scrutiny history.

5. Extent

This instrument applies to Great Britain.

6. European Convention on Human Rights

The Parliamentary Under Secretary of State for Schools Lord Adonis has made the following statement regarding Human Rights:

In my view the provisions of the Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006 are compatible with the Convention rights.

7. Policy background

7.1 The Regulations amend Chapter 2 of Part 4 of the Disability Discrimination Act 1995 and amend the definition of discrimination, and insert a new definition of harassment in order to properly implement the Directive as it applies to educational institutions in the higher and further education sectors, colleges of further education in Scotland and to local education authorities providing further and higher education and education authorities in Scotland providing further education.

7.2 The provisions prohibit discrimination on the grounds of disability in the award of qualifications by higher and further education institutions and in access to vocational training at such institutions. They require institutions applying apparently neutral provisions, criteria and practices that put persons with a particular disability at a particular disadvantage in comparison with others, to make reasonable adjustments to the provisions, criteria or practices to eliminate the disadvantages. There is one narrow exception to this in the form of competence standards which are not required to be reasonably adjusted provided they can be objectively justified.

7.3 The Regulations also prohibit discrimination and harassment after the relationship has ended, where it arises out of the previous relationship.

7.4 A draft of the Regulations went out to consultation in 2005. Due to the nature of the Regulations, only a small number of responses (8) were received from individuals and organisations (including the Disability Rights Commission (“the DRC”). There was some concern about the limited coverage (to Higher Education Institutions and Further Education Colleges) - but other organisations are out of scope of the Regulations. The DRC also had some concerns about certain areas of the draft, some of which were discussed and changed. The full DfES response to consultation can be found at:

<http://www.dfes.gov.uk/consultations/conResults.cfm?consultationId=1309>

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is minimal. The scope of the Regulations is limited to HE and FE institutions and the way in which they treat students in terms of admissions and conferment of qualifications. The possible area in which institutions would most likely incur costs as a result of the Regulations would be in the need to make alterations to premises. However, a duty to make adjustments to physical features of premises where these put disabled people or students at a substantial disadvantage has already been imposed by the Special Educational Needs and Disability Act 2001 which further amends the DDA. Such physical adjustments needed to be in place by September 2005. Thus any changes that may need to be made to facilitate disabled access should already be in place by the time these Regulations are laid and come into force.

9. Contact

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