
STATUTORY INSTRUMENTS

2005 No. 1117

The Special Educational Needs and
Disability (Northern Ireland) Order 2005

PART III

DISABILITY DISCRIMINATION IN EDUCATION

CHAPTER III

GENERAL QUALIFICATIONS BODIES

Meaning of “discrimination”

35.—(1) For the purposes of Article 34, a body discriminates against a disabled person if—

- (a) for a reason which relates to the disabled person’s disability, it treats him less favourably than it treats or would treat others to whom that reason does not or would not apply; and
- (b) it cannot show that the treatment in question is justified.

(2) For the purposes of Article 34, a body also discriminates against a disabled person if it fails to comply with a duty imposed on it by Article 37 in relation to the disabled person.

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

(4) The application by a body of a competence standard to a disabled person is (subject to paragraphs (6) and (7)) justified for the purposes of paragraph (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.

(5) If, in a case falling within paragraph (1) other than a case where the treatment is the application of a competence standard, a body is under a duty under Article 37 in relation to the disabled person but fails to comply with that duty, its treatment of that person cannot be justified under paragraph (3) unless it would have been justified even if the body had complied with that duty.

(6) Regulations may make provision, for purposes of this Article, as to circumstances in which treatment is, or as to circumstances in which treatment is not, to be taken to be justified (but see paragraph (7)).

(7) Treatment of a disabled person cannot be justified under paragraph (3), (4) or (6) if it amounts to direct discrimination falling within paragraph (8).

(8) A 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.

(9) In this Article, “competence standard” means an academic, medical or other standard applied by or on behalf of a general qualifications body for the purpose of determining whether or not a person has a particular level of competence or ability.