
STATUTORY INSTRUMENTS

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

PART III

DISABILITY DISCRIMINATION IN EDUCATION

CHAPTER III

GENERAL QUALIFICATIONS BODIES

General qualifications bodies: duty to make adjustments

37.—(1) Where—

- (a) a provision, criterion or practice, other than a competence standard, is applied by or on behalf of a general qualifications body,
- (b) it is a provision, criterion or practice for determining on whom a relevant 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 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.

(2) Where—

- (a) a provision, criterion or practice, other than a competence standard, is applied by or on behalf of a general qualifications body,
- (b) it is a provision, criterion or practice other than one for determining on whom a relevant qualification is to be conferred, and
- (c) it places a disabled person who—
 - (i) holds a relevant qualification conferred by the body, or
 - (ii) applies for a relevant qualification which the body confers,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 provision, criterion or practice having that effect.

(3) Where any physical feature of premises occupied by a general qualifications body places a disabled person who—

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

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.

(4) Nothing in paragraph (1), (2) or (3) imposes a duty on a general qualifications body in relation to a disabled person if the body does not know, and could not reasonably be expected to know—

- (a) in the case of an applicant or potential applicant for the conferment of a relevant qualification, that the disabled person concerned is, or may be, such an applicant; or
- (b) in any case, that that person has a disability and is likely to be affected in the way mentioned in that paragraph.

(5) In this Article—

- (a) “provision, criterion or practice” includes (subject to any provision under paragraph (6)(e)) any arrangements;
- (b) “competence standard” has the meaning given by Article 35(9).

(6) Regulations may make provision, for purposes of this Article—

- (a) as to circumstances in which a provision, criterion or practice is to be taken to have, or as to circumstances in which a provision, criterion or practice is to be taken not to have, the effect mentioned in paragraph (1)(d) or (2)(c);
- (b) as to circumstances in which a physical feature is to be taken to have, or as to circumstances in which a physical feature is to be taken not to have, the effect mentioned in paragraph (3);
- (c) as to circumstances in which it is, or as to circumstances in which it is not, reasonable for a body to have to take steps of a prescribed description;
- (d) as to steps which it is always, or as to steps which it is never, reasonable for a body to have to take;
- (e) as to what is, or as to what is not, to be included within the meaning of “provision, criterion or practice”;
- (f) as to things which are, or as to things which are not, to be treated as physical features.

(7) This Article imposes duties only for the purpose of determining whether a body has, for the purposes of Article 34, discriminated against a disabled person; and accordingly a breach of any such duty is not actionable as such.