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STATUTORY INSTRUMENTS

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**2005 No. 1117**

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

**PART I**

**INTRODUCTORY**

**Title and commencement**

**1.—**(1) This Order may be cited as the Special Educational Needs and Disability (Northern Ireland) Order 2005.

(2) The following provisions of this Order come into operation on such day or days as the Department of Education may appoint by order—

- (a) Part II, together with Schedule 1;
- (b) Chapter I of Part III, together with Part I of Schedule 2;
- (c) Chapter III of Part III;
- (d) Articles 43 to 48, so far as relating to Chapters I and III of Part III;
- (e) Article 50(1), together with Schedule 5;
- (f) Article 50(2), together with Schedule 6, except so far as relating to the Disability Discrimination Act 1995 (c. 50).

(3) The following provisions of this Order come into operation on such day or days as the Department for Employment and Learning may appoint by order—

- (a) Chapter II of Part III, together with Part II of Schedule 2 and Schedule 3;
- (b) Articles 43 to 48, so far as relating to Chapter II of Part III; and
- (c) Article 50(2), together with Schedule 6, so far as relating to the Disability Discrimination Act 1995 (c. 50).

(4) An order bringing into operation any provision of Article 30 may, in particular, include provision for the duty imposed by Article 30(1) to have effect with such modifications as may be specified in the order for a period which ends—

- (a) on a date so specified; or
- (b) on the making by the Department for Employment and Learning of an order bringing the period to an end.

**Interpretation**

**2.—**(1) The Interpretation Act (Northern Ireland) 1954 (c. 33) applies to this Order as it applies to an Act of the Assembly.

(2) In this Order—

“act” includes deliberate omission;

“employment” has the same meaning as in the 1995 Act, and related expressions shall be construed accordingly;

“Minister of the Crown” includes the Treasury;

“premises” includes land of any kind;

“statutory provision” has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954 (c. 33);

“the 1986 Order” means the [Education and Libraries \(Northern Ireland\) Order 1986 \(NI 3\)](#);

“the 1995 Act” means the Disability Discrimination Act 1995 (c. 50);

“the 1996 Order” means the [Education \(Northern Ireland\) Order 1996 \(NI 1\)](#).

(3) Section 1 of, and Schedule 1 to, the 1995 Act and any regulations thereunder (meaning of “disability” and “disabled person”) apply for the purposes of this Order as they apply for the purposes of that Act.

## PART II

### SPECIAL EDUCATIONAL NEEDS

#### *Education in ordinary schools*

#### **Education in ordinary schools of children with special educational needs**

3.—(1) In the 1996 Order for Article 7 substitute—

#### **“Duty to educate children with special educational needs in ordinary schools**

7.—(1) This Article applies to a child with special educational needs who should be educated in a grant-aided school.

(2) If no statement is maintained under Article 16 for the child, he shall be educated in an ordinary school.

(3) If a statement is maintained under Article 16 for the child, he shall be educated in an ordinary school unless that is incompatible with—

- (a) the wishes of his parent, or
- (b) the provision of efficient education for other children.

#### **Education otherwise than in ordinary schools**

7A.—(1) Article 7(2) does not require a child to be educated in an ordinary school during any period in which—

- (a) he is admitted to a special school for the purposes of an assessment under Article 15 of his educational needs and his admission to that school is with the agreement of—
  - (i) the board;
  - (ii) the Board of Governors of the school;
  - (iii) his parent; and
  - (iv) any person whose advice is to be sought in accordance with regulations made under paragraph 2 of Schedule 1;

- (b) he remains admitted to a special school, in prescribed circumstances, following an assessment under Article 15 at that school;
- (c) he is admitted to a special school, following a change in his circumstances, with the agreement of—
  - (i) the board;
  - (ii) the Board of Governors of the school; and
  - (iii) his parent.
- (2) Article 7 does not affect the operation of—
  - (a) Article 10; or
  - (b) paragraph 5 of Schedule 2.
- (3) If a board decides—
  - (a) to make a statement for a child under Article 16, but
  - (b) not to name in the statement the school for which a parent has expressed a preference under paragraph 5 of Schedule 2,

it shall, in making the statement, comply with Article 7(3).

(4) A board may, in relation to its ordinary controlled schools taken as a whole, rely on the exception in Article 7(3)(b) only if it shows that there are no reasonable steps that it could take to prevent the incompatibility.

(5) A board or a Board of Governors may, in relation to a particular ordinary school, rely on the exception in Article 7(3)(b) only if it shows that there are no reasonable steps that either of them could take to prevent the incompatibility.

(6) The exception in Article 7(3)(b) does not permit a Board of Governors to fail to comply with the duty imposed by Article 16(5)(b).

(7) Boards and Boards of Governors of grant-aided schools shall have regard to guidance about Article 7 and this Article issued by the Department.

(8) That guidance shall, in particular, relate to steps which may, or may not, be regarded as reasonable for the purposes of paragraphs (4) and (5).”.

#### *General duties of boards*

### **Advice and information for parents**

4. In the 1996 Order, after Article 21 insert—

#### *“General duties of boards*

### **Advice and information for parents**

**21A.**—(1) A board shall arrange for the parent of any child in its area with special educational needs to be provided with advice and information about matters relating to those needs.

(2) In making the arrangements, the board shall have regard to any guidance given by the Department.

(3) The board shall take such steps as it considers appropriate for making the services provided under paragraph (1) known to—

- (a) the parents of children in its area;

- (b) the principals and Boards of Governors of grant-aided schools in its area;
- (c) the principals and proprietors of independent schools in its area; and
- (d) such other persons as it considers appropriate.”.

### **Resolution of disputes**

5. In the 1996 Order after Article 21A insert—

#### **“Resolution of disputes**

**21B.**—(1) A board shall make arrangements with a view to avoiding or resolving disagreements between boards or Boards of Governors of grant-aided schools (on the one hand) and parents of children in its area (on the other) about the exercise by boards or Boards of Governors of functions under this Part.

(2) A board shall also make arrangements with a view to avoiding or resolving, in each relevant school, disagreements between the parents of a child who is a registered pupil at the school and has special educational needs and the Board of Governors or proprietor of the school about the special educational provision made for that child.

(3) In paragraph (2) “relevant school” means—

- (a) a grant-aided school;
- (b) an independent school which is named in the statement maintained for the child under Article 16.

(4) The arrangements under paragraphs (1) and (2) shall provide for the appointment of independent persons with the function of facilitating the avoidance or resolution of such disagreements.

(5) In making the arrangements, the board shall have regard to any guidance given by the Department.

(6) The board shall take such steps as it considers appropriate for making the arrangements made under paragraphs (1) and (2) known to—

- (a) the parents of children in its area;
- (b) the principals and Boards of Governors of grant-aided schools in its area;
- (c) the principals and proprietors of independent schools in its area; and
- (d) such other persons as it considers appropriate.

(7) The arrangements do not affect the entitlement of a parent to appeal to the Tribunal.”.

### **Compliance with orders of Tribunal**

6. In the 1996 Order after Article 23 insert—

#### **“Compliance with orders**

**23A.** If the Tribunal makes an order, the board concerned must comply with the order before the end of the prescribed period beginning with the date on which it is made.”.

## *Appeals*

### **Appeal against content of statement**

7.—(1) Article 18 of the 1996 Order (appeal against content of statement) is amended as follows.

(2) For paragraphs (1) and (2)—

“(1) The parent of a child for whom a board maintains a statement under Article 16 may appeal to the Tribunal—

- (a) when the statement is first made,
- (b) if an amendment is made to the statement, or
- (c) if, after conducting an assessment under Article 15, the board determines not to amend the statement.

(1A) An appeal under this Article may be against any of the following—

- (a) the description in the statement of the board’s assessment of the child’s special educational needs,
- (b) the special educational provision specified in the statement (including the name of a school so specified),
- (c) if no school is specified in the statement, that fact.

(2) Paragraph (1)(b) does not apply where the amendment is made in pursuance of—

- (a) paragraph 11 (change of named school at request of parent) or 13(4)(b) (amendment ordered by Tribunal) of Schedule 2; or
- (b) directions under paragraph 2 of Schedule 13 to the 1986 Order (revocation of school attendance order);

and paragraph (1)(c) does not apply to a determination made following the service of notice under paragraph 3 (amendment by board) of Schedule 2.”.

(3) In paragraph (4)(a) for “paragraph 3” substitute “paragraph 5”.

### **Unopposed appeals**

8. In the 1996 Order after Article 18 insert—

#### **“Unopposed appeals**

**18A.**—(1) This Article applies if—

- (a) the parent of a child has appealed to the Tribunal under Article 17, 20 or 20A or paragraph 11(3) of Schedule 2 against a decision of a board, and
- (b) the board notifies the Tribunal that it has determined that it will not, or will no longer, oppose the appeal.

(2) The appeal is to be treated as having been determined in favour of the appellant.

(3) If an appeal is treated as determined in favour of the appellant as a result of paragraph (2), the Tribunal is not required to make any order.

(4) Before the end of the prescribed period, the board shall—

- (a) in the case of an appeal under Article 17, make a statement under Article 16 of the child’s educational needs,
- (b) in the case of an appeal under Article 20 or 20A, make an assessment of the child’s educational needs,

- (c) in the case of an appeal under paragraph 11(3) of Schedule 2 against a determination of the board not to comply with the parent's request, comply with the request.
- (5) A board required by paragraph (4)(a) to make a statement under Article 16 shall maintain the statement under that Article.”.

*Identification and assessment of educational needs*

**Duty to inform parent where special educational provision made**

9. In the 1996 Order after Article 8 insert—

**“Duty to inform parent where special educational provision made**

**8A.** If—

- (a) a child for whom no statement is maintained under Article 16 is a registered pupil at an ordinary grant-aided school;
- (b) special educational provision is made for him at the school because it is considered that he has special educational needs; and
- (c) his parent has not previously been informed under this Article of special educational provision made for him at the school,

the Board of Governors of the school shall inform the child's parent that special educational provision is being made for him at the school because it is considered that he has special educational needs.”.

**Review or assessment of educational needs at request of responsible body**

10. After Article 20 of the 1996 Order insert—

**“Review or assessment of educational needs at request of responsible body**

**20A.—**(1) This Article applies if—

- (a) a child is a registered pupil at a school (whether or not he is a child in respect of whom a statement is maintained under Article 16),
- (b) the responsible body asks the board to arrange for an assessment to be made in respect of him under Article 15, and
- (c) such an assessment has not been made within the period of six months ending with the date on which the request is made.

(2) If it is necessary for the board to make an assessment or further assessment under Article 15, it shall comply with the request.

(3) Before deciding whether to comply with the request, the board shall serve on the child's parent a notice informing him—

- (a) that it is considering whether to make an assessment of the child's educational needs,
- (b) of the procedure to be followed in making the assessment,
- (c) of the name of an officer of the board from whom further information may be obtained, and

- (d) of the parent’s right to make representations, and submit written evidence, to the board before the end of the period specified in the notice (“the specified period”).
- (4) The specified period shall not be less than 29 days beginning with the date on which the notice is served.
- (5) The board may not decide whether to comply with the request until the specified period has expired.
- (6) The board shall take into account any representations made, and any evidence submitted, to it in response to the notice under paragraph (3).
- (7) If, as a result of this Article, a board decides to make an assessment under Article 15, it shall give written notice to the child’s parent and to the responsible body which made the request, of the decision and of the board’s reasons for making it.
- (8) If, after serving a notice under paragraph (3), the board decides not to assess the educational needs of the child—
  - (a) it shall give written notice of the decision and of the board’s reasons for making it to his parent and to the responsible body which made the request, and
  - (b) the parent may appeal to the Tribunal against the decision.
- (9) A notice given under paragraph (8)(a) to the child’s parent shall—
  - (a) inform the parent of his right to appeal, and
  - (b) contain such other information (if any) as may be prescribed.
- (10) On an appeal under paragraph (8) the Tribunal may—
  - (a) dismiss it, or
  - (b) order the board to arrange for an assessment to be made in respect of the child under Article 15.
- (11) In this Article “the responsible body” means—
  - (a) in relation to a grant-aided school, the Board of Governors,
  - (b) in relation to an independent school, the proprietor.”.

**Duty to specify named school in statement**

**11.** In Article 16 of the 1996 Order (statement of special educational needs), after paragraph (4) insert—

“(4A) Paragraph (4)(b) does not require the name of a school or institution to be specified if the child’s parent has made suitable arrangements for the special educational provision specified in the statement to be made for the child.”.

*Statements of special educational needs*

**Statements of special educational needs**

**12.** For Schedule 2 to the 1986 Order (making and maintenance of statements under Article 16) substitute the Schedule set out in Schedule 1 to this Order.

**PART III**  
**DISABILITY DISCRIMINATION IN EDUCATION**  
**CHAPTER I**  
**SCHOOLS**

*Interpretation of this Chapter*

**Interpretation of this Chapter**

**13.**—(1) In this Chapter—

- “accessibility strategy” has the meaning given in Article 17;
- “accessibility plan” has the meanings given in Article 18;
- “the Department” means the Department of Education;
- “disabled pupil” means a pupil who is a disabled person;
- “prescribed” means prescribed by regulations;
- “regulations” means regulations made by the Department;
- “responsible body” has (subject to Article 20(5)) the meaning given in Article 14(5);
- “the Tribunal” has the meaning given in Article 21(2).

(2) In this Chapter the following have the meaning given in Article 2(2) of the 1986 Order—

- “board”;
- “Board of Governors”;
- “grant-aided school”;
- “independent school”;
- “parent”;
- “proprietor”;
- “pupil”; and
- “school”.

(3) The Department may by regulations prescribe services which are, or services which are not, to be regarded for the purposes of Articles 14(2), 17 and 18 as being—

- (a) education; or
- (b) an associated service.

*Duties of responsible bodies*

**Discrimination against disabled pupils and prospective pupils**

**14.**—(1) It is unlawful for the body responsible for a school to discriminate against a disabled person—

- (a) in the arrangements it makes for determining admission to the school as a pupil;
- (b) in the terms on which it offers to admit him to the school as a pupil; or
- (c) by refusing or deliberately omitting to accept an application for his admission to the school as a pupil.



(2) It is unlawful for the body responsible for a school to discriminate against a disabled pupil in the education or associated services provided for, or offered to, pupils at the school by that body.

(3) It is unlawful for the body responsible for a school to discriminate against a disabled pupil by suspending or expelling him from the school.

(4) In the case of an act which constitutes discrimination by virtue of Article 43, this Article also applies to discrimination against a person who is not disabled.

(5) For the purposes of this Chapter the body responsible for a school is—

(a) in the case of a grant-aided school, the board for the area in which the school is situated or the Board of Governors, according to which has the function in question;

(b) in relation to an independent school, the proprietor;

and in this Chapter that body is referred to as the “responsible body”.

### **Meaning of “discrimination”**

**15.—(1)** For the purposes of Article 14, a responsible body discriminates against a disabled person if—

(a) for a reason which relates to his 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 14, a responsible body also discriminates against a disabled person if—

(a) it fails, to his detriment, to comply with Article 16; and

(b) it cannot show that its failure to comply is justified.

(3) In relation to a failure to take a particular step, a responsible body does not discriminate against a person if it shows—

(a) that, at the time in question, it did not know and could not reasonably have been expected to know, that he was disabled; and

(b) that its failure to take the step was attributable to that lack of knowledge.

(4) The taking of a particular step by a responsible body in relation to a person does not amount to less favourable treatment if it shows that at the time in question it did not know, and could not reasonably have been expected to know, that he was disabled.

(5) Paragraphs (6) to (8) apply in determining whether, for the purposes of this Article—

(a) less favourable treatment of a person, or

(b) failure to comply with Article 16,

is justified.

(6) Less favourable treatment of a person is justified if it is the result of—

(a) the application of the admission criteria drawn up for a grant-aided school under Article 16(1) of the [Education \(Northern Ireland\) Order 1997 \(NI 5\)](#) or Article 32(1) of the [Education \(Northern Ireland\) Order 1998 \(NI 13\)](#); or

(b) any arrangements which make provision for any or all of the pupils of an independent school to be selected by reference to general or special ability or aptitude, with a view to admitting only pupils of high ability or aptitude.

(7) Otherwise, less favourable treatment, or a failure to comply with Article 16, is justified only if the reason for it is both material to the circumstances of the particular case and substantial.

(8) If, in a case falling within paragraph (1)—

- (a) the responsible body is under a duty imposed by Article 16 in relation to the disabled person, but
- (b) it fails without justification to comply with that duty,

its treatment of that person cannot be justified under paragraph (7) unless that treatment would have been justified even if it had complied with that duty.

### **Disabled pupils not to be substantially disadvantaged**

**16.—(1)** The responsible body for a school shall take such steps as it is reasonable for it to have to take to ensure that—

- (a) in relation to the arrangements it makes for determining the admission of pupils to the school, disabled persons are not placed at a substantial disadvantage in comparison with persons who are not disabled; and
- (b) in relation to education and associated services provided for, or offered to, pupils at the school by it, disabled pupils are not placed at a substantial disadvantage in comparison with pupils who are not disabled.

(2) That does not require the responsible body to—

- (a) remove or alter a physical feature (for example, one arising from the design or construction of the school premises or the location of resources); or
- (b) provide auxiliary aids or services.

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

- (a) as to circumstances in which it is reasonable for a responsible body to have to take steps of a prescribed description;
- (b) as to steps which it is always reasonable for a responsible body to have to take;
- (c) as to circumstances in which it is not reasonable for a responsible body to have to take steps of a prescribed description;
- (d) as to steps which it is never reasonable for a responsible body to have to take.

(4) In considering whether it is reasonable for it to have to take a particular step in order to comply with its duty under paragraph (1), a responsible body shall have regard to any relevant provisions of a code of practice issued under section 54A of the 1995 Act.

(5) Paragraph (6) applies if, in relation to a person, a confidentiality request has been made of which a responsible body is aware.

(6) In determining whether it is reasonable for the responsible body to have to take a particular step in relation to that person in order to comply with its duty under paragraph (1), regard shall be had to the extent to which taking the step in question is consistent with compliance with that request.

(7) “Confidentiality request” means a request which asks for the nature, or asks for the existence, of a disabled person’s disability to be treated as confidential and which satisfies either of the following conditions—

- (a) it is made by that person’s parent; or
- (b) it is made by that person himself and the responsible body reasonably believes that he has sufficient understanding of the nature of the request and of its effect.

(8) This Article 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.

### *Accessibility strategies and plans*

#### **Accessibility strategies of board**

- 17.—(1) Each board shall prepare, in relation to controlled schools under its management—
- (a) an accessibility strategy;
  - (b) further such strategies at such times as may be prescribed.
- (2) An accessibility strategy is a strategy for, over a prescribed period—
- (a) increasing the extent to which disabled pupils can participate in the schools' curriculums;
  - (b) improving the physical environment of the schools for the purpose of increasing the extent to which disabled pupils are able to take advantage of education and associated services provided or offered by the schools; and
  - (c) improving the delivery to disabled pupils—
    - (i) within a reasonable time, and
    - (ii) in ways which are determined after taking account of their disabilities and any preferences expressed by them or their parents, of information which is provided in writing for pupils who are not disabled.
- (3) In preparing its accessibility strategy, a board shall have regard to—
- (a) the need to allocate adequate resources for implementing the strategy; and
  - (b) any guidance issued by the Department as to—
    - (i) the content of an accessibility strategy;
    - (ii) the form in which it is to be produced; and
    - (iii) the persons to be consulted in its preparation.
- (4) An accessibility strategy shall be in writing.
- (5) Each board shall—
- (a) keep its accessibility strategy under review during the period to which it relates and, if necessary, revise it; and
  - (b) have regard to any guidance issued by the Department as to compliance with the requirements of sub-paragraph (a).
- (6) It is the duty of each board to implement its accessibility strategy.
- (7) A board shall—
- (a) if asked to do so by the Department, give to the Department a copy of its accessibility strategy;
  - (b) if asked to do so by any other person, make a copy of its accessibility strategy available for inspection at such reasonable times as it may determine.
- (8) In this Article “disabled pupil”, in relation to a school, includes a disabled person who may be admitted to the school as a pupil.

#### **Accessibility plans for schools**

- 18.—(1) The Board of Governors of a grant-aided school and the proprietor of an independent school shall prepare—
- (a) an accessibility plan for the school;
  - (b) further such plans at such times as may be prescribed.

- (2) An accessibility plan for a school is a plan for, over a prescribed period—
- (a) increasing the extent to which disabled pupils can participate in the school’s curriculum;
  - (b) improving the physical environment of the school for the purpose of increasing the extent to which disabled pupils are able to take advantage of education and associated services provided or offered by the school; and
  - (c) improving the delivery to disabled pupils—
    - (i) within a reasonable time, and
    - (ii) in ways which are determined after taking account of their disabilities and any preferences expressed by them or their parents,
 of information which is provided in writing for pupils who are not disabled.
- (3) In preparing an accessibility plan, the Board of Governors or proprietor shall have regard to the need to allocate adequate resources for implementing the plan.
- (4) An accessibility plan shall be in writing.
- (5) During the period to which the plan relates, the Board of Governors or proprietor shall keep the accessibility plan under review and, if necessary, revise it.
- (6) It is the duty of the Board of Governors or proprietor to implement the accessibility plan.
- (7) An inspection of a school under Article 102 of the 1986 Order may extend to the performance by the Board of Governors or proprietor of functions in relation to the preparation, publication, review, revision and implementation of an accessibility plan for the school.
- (8) The annual report for a grant-aided school prepared under Article 125 of the [Education Reform \(Northern Ireland\) Order 1989 \(NI 20\)](#) shall include information as to—
- (a) the arrangements for the admission of disabled persons as pupils at the school,
  - (b) the steps taken to prevent disabled pupils from being treated less favourably than other pupils,
  - (c) the facilities provided to assist access to the school by disabled pupils, and
  - (d) the accessibility plan for the school.
- (9) The proprietor of an independent school shall—
- (a) if asked to do so by the Department, give a copy of his accessibility plan to the Department;
  - (b) if asked to do so by any other person, make a copy of his accessibility plan available for inspection at such reasonable times as he may determine.
- (10) In this Article “disabled pupil” includes a disabled person who may be admitted to the school as a pupil.

*Residual duty of boards*

**Duty of boards not to discriminate**

- 19.—(1) This Article applies to the functions of a board under—
- (a) the 1986 Order (except Article 37 and Part VII);
  - (b) the [Education Reform \(Northern Ireland\) Order 1989 \(NI 20\)](#);
  - (c) the [Education and Libraries \(Northern Ireland\) Order 1993 \(NI 12\)](#);
  - (d) the 1996 Order;
  - (e) the [Education \(Northern Ireland\) Order 1997 \(NI 5\)](#);
  - (f) the [Education \(Northern Ireland\) Order 1998 \(NI 13\)](#);

- (g) the [Education and Libraries \(Northern Ireland\) Order 2003 \(NI 12\)](#).
- (2) But it does not apply to any prescribed function.
- (3) In discharging a function to which this Article applies, it is unlawful for a board to discriminate against—
  - (a) a disabled pupil; or
  - (b) a disabled person who may be admitted to a school as a pupil.
- (4) But an act done in the discharge of a function to which this Article applies is unlawful as a result of paragraph (3) only if no other provision of this Chapter makes that act unlawful.
- (5) In the case of an act which constitutes discrimination by virtue of Article 43, this Article also applies to discrimination against a person who is not disabled.

### **Residual duty: supplementary provisions**

- 20.**—(1) Article 15 applies for the purposes of Article 19 as it applies for the purposes of Article 14 with the following modifications—
- (a) references to a responsible body are to be read as references to a board; and
  - (b) references to Article 16 are to be read as references to paragraphs (2) to (4).
- (2) Each board shall take such steps as it is reasonable for it to have to take to ensure that, in discharging any function to which Article 19 applies—
- (a) disabled persons who may be admitted to a school as pupils are not placed at a substantial disadvantage in comparison with persons who are not disabled; and
  - (b) disabled pupils are not placed at a substantial disadvantage in comparison with pupils who are not disabled.
- (3) That does not require a board to—
- (a) remove or alter a physical feature; or
  - (b) provide auxiliary aids or services.
- (4) This Article imposes duties only for the purpose of determining whether a board has discriminated against a disabled person; and accordingly a breach of any such duty is not actionable as such.
- (5) A reference in Article 22, 25(3) or 26 to a responsible body is to be read as including a reference to a board in relation to a function to which Article 19 applies.

### *Enforcement*

### **Special Education Needs and Disability Tribunal for Northern Ireland**

- 21.**—(1) The Special Educational Needs Tribunal for Northern Ireland—
- (a) shall continue to exist; but
  - (b) shall be known as the Special Educational Needs and Disability Tribunal for Northern Ireland.
- (2) It is referred to in this Chapter as “the Tribunal”.
- (3) In addition to its jurisdiction under Part II of the 1996 Order, the Tribunal is to exercise the jurisdiction conferred on it by this Chapter.

**Jurisdiction and powers of the Tribunal**

- 22.**—(1) A claim that a responsible body—
- (a) has discriminated against a person (“A”) in a way which is made unlawful under this Chapter, or
  - (b) is by virtue of Article 45 to be treated as having discriminated against a person (“A”) in such a way,
- may be made to the Tribunal by A’s parent.
- (2) But this Article does not apply to a claim to which Article 24 applies.
  - (3) If the Tribunal considers that a claim under paragraph (1) is well founded—
    - (a) it may declare that A has been unlawfully discriminated against; and
    - (b) if it does so, it may make such order as it considers reasonable in all the circumstances of the case.
  - (4) The power conferred by paragraph (3)(b)—
    - (a) may, in particular, be exercised with a view to obviating or reducing the adverse effect on the person concerned of any matter to which the claim relates; but
    - (b) does not include power to order the payment of any sum by way of compensation.

**Procedure of the Tribunal**

- 23.**—(1) Regulations may make provision about—
- (a) the proceedings of the Tribunal on a claim of unlawful discrimination under this Chapter; and
  - (b) the making of a claim.
- (2) The regulations may, in particular, include provision—
- (a) as to the manner in which a claim must be made;
  - (b) if the jurisdiction of the Tribunal is being exercised by more than one tribunal—
    - (i) for determining by which tribunal any claim is to be heard, and
    - (ii) for the transfer of proceedings from one tribunal to another;
  - (c) for enabling functions which relate to matters preliminary or incidental to a claim (including, in particular, decisions under paragraph 2(3) of Schedule 2) to be performed by the President, or by the chairman;
  - (d) enabling hearings to be conducted in the absence of any member other than the chairman;
  - (e) as to the persons who may appear on behalf of the parties;
  - (f) for granting any person such discovery or inspection of documents or right to further particulars as might be granted by a county court;
  - (g) requiring persons to attend to give evidence and produce documents;
  - (h) for authorising the administration of oaths to witnesses;
  - (i) for the determination of claims without a hearing in prescribed circumstances;
  - (j) as to the withdrawal of claims;
  - (k) for enabling the Tribunal to stay proceedings on a claim;
  - (l) for the award of costs or expenses;
  - (m) for taxing or otherwise settling costs or expenses (and, in particular, for enabling costs to be taxed in the county court);

- (n) for the registration and proof of decisions and orders; and
- (o) for enabling prescribed decisions to be reviewed, or prescribed orders to be varied or revoked, in such circumstances as may be determined in accordance with the regulations.
- (3) Proceedings before the Tribunal are to be held in private, except in prescribed circumstances.
- (4) The Department may pay such allowances for the purpose of or in connection with the attendance of persons at the Tribunal as it may, with the consent of the Department of Finance and Personnel, determine.
- (5) Part I of the Arbitration Act 1996 (c. 23) does not apply to proceedings before the Tribunal but regulations may make provision, in relation to such proceedings, corresponding to any provision of that Part.
- (6) The regulations may make provision for a claim under this Chapter to be heard, in prescribed circumstances, with an appeal under Part II of the 1996 Order.
- (7) A person who without reasonable excuse fails to comply with—
  - (a) a requirement in respect of the discovery or inspection of documents imposed by the regulations by virtue of paragraph (2)(f), or
  - (b) a requirement imposed by the regulations by virtue of paragraph (2)(g),is guilty of an offence.
- (8) A person guilty of an offence under paragraph (7) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (9) Part I of Schedule 2 makes further provision about enforcement of this Chapter and about procedure.

### **Expulsions**

- 24.**—(1) This Article applies to a claim that, in relation to a decision to expel a pupil from a grant-aided school in accordance with a scheme under Article 49 of the 1986 Order, a responsible body—
- (a) has discriminated against a person in a way which is made unlawful under this Chapter; or
  - (b) is by virtue of Article 45 to be treated as having discriminated against a person in such a way.
- (2) The claim shall be made under the appeal arrangements made under Article 49(6) of the 1986 Order.
- (3) The appeal tribunal hearing the claim has the powers which it has in relation to an appeal under Article 49 of that Order.

### **Role of the Department of Education**

- 25.**—(1) Article 101 of the 1986 Order (directions by Department as to performance by relevant authorities of duties imposed by or under any provision of the Education Orders) applies in relation to the performance by a responsible body of the duty imposed by or under Article 17 or 18 as it applies in relation to the performance by a relevant authority of any duty imposed by or under a provision of the Education Orders.
- (2) Paragraph (3) applies if the Tribunal has made an order under Article 22(3).
- (3) If the Department is satisfied (whether on a complaint or otherwise) that a responsible body—
- (a) has acted, or is proposing to act, unreasonably in complying with the order, or
  - (b) has failed to comply with the order,

it may give that body such directions as to compliance with the order as appear to the Department to be expedient.

(4) Directions under paragraph (3) may be varied or revoked by the Department.

(5) Paragraphs (6) to (10) of Article 101 of the 1986 Order apply in relation to directions under paragraph (3) as they apply in relation to directions under paragraph (1) of that Article.

#### *Agreements relating to enforcement*

#### **Validity and revision of agreements**

**26.**—(1) Any term in a contract or other agreement made by or on behalf of a responsible body is void so far as it purports to—

- (a) require a person to do anything which would contravene any provision of, or made under, this Chapter;
- (b) exclude or limit the operation of any provision of, or made under, this Chapter; or
- (c) prevent any person from making a claim under this Chapter.

(2) Sub-paragraphs (b) and (c) of paragraph (1) do not apply to an agreement settling a claim—

- (a) under Article 22; or
- (b) to which Article 24 applies.

(3) On the application of any person interested in an agreement to which paragraph (1) applies, a county court may make such order as it thinks just for modifying the agreement to take account of the effect of paragraph (1).

(4) No such order may be made unless all persons affected have been—

- (a) given notice of the application; and
- (b) afforded an opportunity to make representations to the court.

(5) Paragraph (4) applies subject to any county court rules providing for notice to be dispensed with.

(6) An order under paragraph (3) may include provision as respects any period before the making of the order.

## CHAPTER II

### FURTHER AND HIGHER EDUCATION

#### *Interpretation of this Chapter*

#### **Interpretation of this Chapter**

**27.**—(1) In this Chapter—

“college of education” has the meaning given in Article 2(2) of the [Education and Libraries \(Northern Ireland\) Order 1986 \(NI 3\)](#);

“the Department” means the Department for Employment and Learning;

“disabled student” means a student who is a disabled person;

“institution of further education” has the meaning given in Article 2(2) of the [Further Education \(Northern Ireland\) Order 1997 \(NI 15\)](#);

“prescribed” means prescribed by regulations;



“regulations” means regulations made by the Department;

“responsible body” has the meaning given in paragraph (4);

“student” means a person who is attending, or undertaking a course of study at, an educational institution;

“student services” means (subject to paragraph (2)) services of any description which are provided wholly or mainly for students;

“university” has the meaning given in Article 30(3) of the [Education \(Northern Ireland\) Order 1993 \(NI 12\)](#).

(2) Regulations may make provision as to services which are, or are not, to be regarded for the purposes of this Chapter as student services.

(3) In this Chapter “educational institution” means—

- (a) a university;
- (b) an institution of further education;
- (c) a college of education;
- (d) the College of Agriculture, Food and Rural Enterprise; or
- (e) an institution designated in an order made by the Department for Employment and Learning.

(4) For the purposes of this Chapter the body responsible for an educational institution is—

- (a) in the case of a university, the governing body;
- (b) in the case of an institution of further education, the governing body;
- (c) in the case of a college of education maintained in pursuance of arrangements made by the Department for Employment and Learning under Article 66(1) of the 1986 Order, that Department;
- (d) in the case of a college of education in respect of which grants are paid by that Department under Article 66(2) or (3) of that Order, the body responsible for its management;
- (e) in the case of the College of Agriculture, Food and Rural Enterprise, the Department of Agriculture and Rural Development;
- (f) in the case of an institution designated by an order under paragraph (3)(e), the body specified as such in the order;

and in this Chapter that body is referred to as the “responsible body”.

(5) The Department for Employment and Learning may not make an order under paragraph (3) (e) unless it is satisfied that the institution concerned is wholly or partly funded from public funds.

#### *Duties of responsible bodies*

#### **Discrimination against disabled students and prospective students**

**28.**—(1) It is unlawful for the body responsible for an educational institution to discriminate against a disabled person—

- (a) in the arrangements it makes for determining admissions to the institution;
- (b) in the terms on which it offers to admit him to the institution; or
- (c) by refusing or deliberately omitting to accept an application for his admission to the institution.

(2) It is unlawful for the body responsible for an educational institution to discriminate against a disabled student in the student services it provides, or offers to provide.

(3) It is unlawful for the body responsible for an educational institution to discriminate against a disabled student by suspending or expelling him from the institution.

(4) In the case of an act which constitutes discrimination by virtue of Article 43, this Article also applies to discrimination against a person who is not disabled.

### **Meaning of “discrimination”**

**29.**—(1) For the purposes of Article 28, a responsible body discriminates against a disabled person if—

- (a) for a reason which relates to his 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 28, a responsible body also discriminates against a disabled person if—

- (a) it fails, to his detriment, to comply with Article 30; and
- (b) it cannot show that its failure to comply is justified.

(3) In relation to a failure to take a particular step, a responsible body does not discriminate against a person if it shows—

- (a) that, at the time in question, it did not know and could not reasonably have been expected to know, that he was disabled; and
- (b) that its failure to take the step was attributable to that lack of knowledge.

(4) The taking of a particular step by a responsible body in relation to a person does not amount to less favourable treatment if it shows that at the time in question it did not know, and could not reasonably have been expected to know, that he was disabled.

(5) Paragraphs (6) to (9) apply in determining whether, for the purposes of this Article—

- (a) less favourable treatment of a person, or
- (b) failure to comply with Article 30,

is justified.

(6) Less favourable treatment of a person is justified if it is necessary in order to maintain—

- (a) academic standards; or
- (b) standards of any other prescribed kind.

(7) Less favourable treatment is also justified if—

- (a) it is of a prescribed kind;
- (b) it occurs in prescribed circumstances; or
- (c) it is of a prescribed kind and it occurs in prescribed circumstances.

(8) Otherwise less favourable treatment, or a failure to comply with Article 30, is justified only if the reason for it is both material to the circumstances of the particular case and substantial.

(9) If, in a case falling within paragraph (1)—

- (a) the responsible body is under a duty imposed by Article 30 in relation to the disabled person, but
- (b) fails without justification to comply with that duty,

its treatment of that person cannot be justified under paragraph (8) unless that treatment would have been justified even if it had complied with that duty.

### **Disabled students not to be substantially disadvantaged**

**30.**—(1) The responsible body for an educational institution shall take such steps as it is reasonable for it to have to take to ensure that—

- (a) in relation to the arrangements it makes for determining admissions to the institution, disabled persons are not placed at a substantial disadvantage in comparison with persons who are not disabled; and
- (b) in relation to student services provided for, or offered to, students by it, disabled students are not placed at a substantial disadvantage in comparison with students who are not disabled.

(2) In considering whether it is reasonable for it to have to take a particular step in order to comply with its duty under paragraph (1), a responsible body shall have regard to any relevant provisions of a code of practice issued under section 54A of the 1995 Act.

(3) Paragraph (4) applies if a person has made a confidentiality request of which a responsible body is aware.

(4) In determining whether it is reasonable for the responsible body to have to take a particular step in relation to that person in order to comply with its duty under paragraph (1), regard shall be had to the extent to which taking the step in question is consistent with compliance with that request.

(5) “Confidentiality request” means a request made by a disabled person, which asks for the nature, or asks for the existence, of his disability to be treated as confidential.

(6) This Article 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.

*Enforcement, etc.*

### **Enforcement, remedies and procedures**

**31.**—(1) A claim by a person—

- (a) that a responsible body has discriminated against him in a way which is unlawful under this Chapter,
- (b) that a responsible body is by virtue of Article 44 or 45 to be treated as having discriminated against him in such a way, or
- (c) that a person is by virtue of Article 44 to be treated as having discriminated against him in such a way,

may be made the subject of civil proceedings in the same way as any other claim in tort for breach of statutory duty.

(2) Damages in respect of discrimination in a way which is unlawful under this Chapter may include compensation for injury to feelings whether or not they include compensation under any other head.

(3) Proceedings may be brought only in a county court.

(4) The remedies available in such proceedings are those which are available in the High Court

(5) The fact that a person who brings proceedings under this Chapter against a responsible body may also be entitled to bring proceedings against that body under Part II of the 1995 Act is not to affect the proceedings under this Chapter.

(6) Part II of Schedule 2 makes further provision about the enforcement of this Chapter and about procedure.

### **Occupation of premises by educational institution**

**32.**—(1) This Article applies if—

- (a) premises are occupied by an educational institution under a lease;
- (b) but for this Article, the responsible body would not be entitled to make a particular alteration to the premises; and
- (c) the alteration is one which the responsible body proposes to make in order to comply with Article 30.

(2) Except to the extent to which it expressly so provides, the lease has effect, as a result of this paragraph, as if it provided—

- (a) for the responsible body to be entitled to make the alteration with the written consent of the lessor;
- (b) for the responsible body to have to make a written application to the lessor for consent if it wishes to make the alteration;
- (c) if such an application is made, for the lessor not to withhold his consent unreasonably; and
- (d) for the lessor to be entitled to make his consent subject to reasonable conditions.

(3) In this Article—

“lease” includes a tenancy, sub-lease or sub-tenancy and an agreement for a lease, tenancy, sub-lease or sub-tenancy; and

“sub-lease” and “sub-tenancy” have such meaning as may be prescribed.

(4) If the terms and conditions of a lease—

- (a) impose conditions which are to apply if the responsible body alters the premises, or
- (b) entitle the lessor to impose conditions when consenting to the responsible body’s altering the premises,

the responsible body is to be treated for the purposes of paragraph (1) as not being entitled to make the alteration.

(5) Schedule 3 supplements the provisions of this Article.

### **Validity and revision of agreements of responsible bodies**

**33.**—(1) Any term in a contract or other agreement made by or on behalf of a responsible body is void so far as it purports to—

- (a) require a person to do anything which would contravene any provision of, or made under, this Chapter;
- (b) exclude or limit the operation of any provision of, or made under, this Chapter; or
- (c) prevent any person from making a claim under this Chapter.

(2) Sub-paragraphs (b) and (c) of paragraph (1) do not apply to an agreement settling a claim under Article 31.

(3) On the application of any person interested in an agreement to which paragraph (1) applies, a county court may make such order as it thinks just for modifying the agreement to take account of the effect of paragraph (1).

(4) No such order may be made unless all persons affected have been—

- (a) given notice of the application; and
  - (b) afforded an opportunity to make representations to the court.
- (5) Paragraph (4) applies subject to any county court rules providing for notice to be dispensed with.
- (6) An order under paragraph (3) may include provision as respects any period before the making of the order.

### CHAPTER III GENERAL QUALIFICATIONS BODIES

#### **General qualifications bodies: discrimination and harassment**

**34.—**(1) It is unlawful for a general qualifications body to discriminate against a disabled person—

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

(2) It is also unlawful for a general qualifications body, in relation to a relevant qualification conferred by it, to subject to harassment a disabled person who holds or applies for such a qualification.

(3) In the case of an act which constitutes discrimination by virtue of Article 43, this Article also applies to discrimination against a person who is not disabled.

(4) In this Article and Article 37, “relevant qualification” means an authorisation, qualification, approval or certification of a prescribed description.

(5) But an authorisation, qualification, approval or certification may not be prescribed under paragraph (4) if it is a professional or trade qualification (within the meaning given by section 14A(5) of the 1995 Act).

(6) In this Chapter—

- (a) “general qualifications body” means any authority or body which can confer a relevant qualification, but it does not include—
  - (i) a responsible body (within the meaning of Chapter I or II),
  - (ii) an education and library board, or
  - (iii) an authority or body of a prescribed description or in prescribed circumstances;
- (b) references (however expressed) to the conferment of a qualification on a person include—
  - (i) the renewal or extension of a qualification, and
  - (ii) the authentication of a qualification awarded to him by another person.

#### **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.

### **Meaning of "harassment"**

**36.—**(1) For the purposes of Article 34, a body subjects a disabled person to harassment where, for a reason which relates to the disabled person's disability, the 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 sub-paragraph (a) or (b) of paragraph (1) 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.

### **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.

### **Chapter III: claims, leased premises and certain agreements**

**38.**—(1) Regulations may make provision for, or in connection with, the making of a claim by a person—

- (a) that a general qualifications body has discriminated against him, or subjected him to harassment, in a way which is unlawful under this Chapter;
- (b) that a general qualifications body is by virtue of Article 44 or 45 to be treated as having done so; or
- (c) that a person is by virtue of Article 44 to be treated as having done so.

(2) Regulations may, in relation to a case where premises are occupied by a general qualifications body under a lease—

- (a) make provision modifying the lease, or make provision for its modification, in connection with the making of alterations to the premises in pursuance of a duty imposed on the body by Article 37;
- (b) make provision in connection with the determination of questions that are about the body's compliance with any such duty and are related to the making of alterations to the premises.

(3) Any term in a contract or other agreement made by or on behalf of a general qualifications body is void so far as it purports to—

- (a) require a person to do anything which would contravene any provision of, or made under, this Chapter;
- (b) exclude or limit the operation of any provision of, or made under, this Chapter; or
- (c) prevent any person making a claim of a kind mentioned in paragraph (1).

(4) Regulations may—

- (a) make provision for paragraph (3)(b) or (c) not to apply to an agreement settling a claim of a kind mentioned in paragraph (1);
- (b) make provision modifying an agreement to which paragraph (3) applies, or make provision for the modification of such an agreement, in order to take account of the effect of that paragraph.

(5) The provision that may be made under paragraph (1), (2) or (4) includes (in particular)—

- (a) provision as to the court or tribunal to which a claim, or an application in connection with a modification, may be made;
- (b) provision for the determination of claims or matters otherwise than by the bringing of proceedings before a court or tribunal;
- (c) provision for a person who is a lessor in relation to a lease under which a general qualifications body occupies premises to be made a party to proceedings;
- (d) provision as to remedies;
- (e) provision as to procedure;
- (f) provision as to appeals;
- (g) provision as to time limits;
- (h) provision as to evidence;



- (i) provision as to costs or expenses.
- (6) Provision under paragraph (1), (2) or (4) may take the form of amendments of this Part or the 1995 Act.
- (7) Regulations may make provision as to the meaning of “lease” or “lessor” in this Article.
- (8) Except as provided in regulations under paragraph (1), no civil or criminal proceedings may be brought against any person in respect of an act merely because the act is unlawful under this Chapter.
- (9) Paragraph (8) does not prevent the making of an application for judicial review.

### **Chapter III: regulations**

**39.**—(1) In this Chapter—

“prescribed” means prescribed by regulations;

“regulations” means regulations made by the Department of Education.

(2) Before making regulations under this Chapter, the Department of Education shall consult such persons as it appears to it to be appropriate to consult, having regard to the substance and effect of the regulations in question.

## **CHAPTER IV MISCELLANEOUS**

### **Extension of role of Equality Commission**

**40.** Schedule 4 extends the role of the Equality Commission for Northern Ireland in relation to discrimination made unlawful by this Part.

### **Codes of practice**

**41.**—(1) Section 54A of the 1995 Act (codes of practice) is amended as follows.

(2) For subsection (1) substitute—

“(1) The Commission may prepare and issue codes of practice giving practical guidance on how to avoid acts which are unlawful under Part II or III of this Act or Part III of the 2005 Order, or on any other matter relating to the operation of any provision of Part II or III of this Act or Part III of the 2005 Order, to—

- (a) employers;
- (b) service providers;
- (c) bodies which are responsible bodies for the purposes of Chapter I or II of Part III of the 2005 Order; or
- (d) other persons to whom the provisions of Part II or III of this Act or Part III of the 2005 Order apply.

(1A) The Commission may also prepare and issue codes of practice giving practical guidance to any persons on any other matter with a view to—

- (a) promoting the equalisation of opportunities for disabled persons and persons who have had a disability; or
- (b) encouraging good practice in the way such persons are treated,

in any field of activity regulated by any provision of Part II or III of this Act or Part III of the 2005 Order.

(1B) Neither subsection (1) nor (1A) applies in relation to any duty imposed by or under Article 17 or 18 of the 2005 Order.”.

(3) In subsection (8) after “Part III” insert “or Part III of the 2005 Order”.

(4) At the end add—

“(10) Subject to subsection (12), in relation to a code of practice giving practical guidance wholly or mainly as to—

(a) any matter relating to the operation of any provision of Chapter I or III of Part III of the 2005 Order; or

(b) any field of activity regulated by any such provision,

any reference in this section to the Office shall be read as a reference to the Department of Education.

(11) Subject to subsection (12), in relation to a code of practice giving practical guidance wholly or mainly as to—

(a) any matter relating to the operation of any provision of Chapter II of Part III of the 2005 Order; or

(b) any field of activity regulated by any such provision,

any reference in this section to the Office shall be read as a reference to the Department for Employment and Learning.

(12) Practical guidance which but for this subsection would fall to be contained in separate codes of practice by virtue of subsections (10) and (11) may be contained in a single code of practice; and in relation to any such code of practice any reference in this section to the Office shall be read as a reference to the Department of Education and the Department for Employment and Learning, acting jointly.”.

### **Conciliation for disputes under this Part**

**42.**—(1) The Equality Commission for Northern Ireland may make arrangements with any other person for the provision of conciliation services by, or by persons appointed by, that person in connection with disputes.

(2) In deciding what arrangements (if any) to make, the Commission shall have regard to the desirability of securing, so far as reasonably practicable, that conciliation services are available for all disputes which the parties may wish to refer to conciliation.

(3) No member or employee of the Commission may provide conciliation services in connection with disputes.

(4) The Commission shall ensure that arrangements under this Article include appropriate safeguards to prevent the disclosure to members or employees of the Commission of information obtained by any person in connection with the provision of conciliation services in accordance with the arrangements.

(5) Paragraph (4) does not apply to information which is disclosed with the consent of the parties to the dispute to which it relates.

(6) Paragraph (4) does not apply to information which—

(a) does not identify a particular dispute or a particular person; and

(b) is reasonably required by the Commission for the purpose of monitoring the operation of the arrangements concerned.

(7) Anything communicated to a person providing conciliation services in accordance with arrangements under this Article is not admissible in evidence in any proceedings except with the consent of the person who communicated it.

(8) In this Article—

“conciliation services” means advice and assistance provided to the parties to a dispute, by a conciliator, with a view to promoting its settlement otherwise than through a court, tribunal or other body;

“dispute” means a dispute arising under an earlier Chapter of this Part concerning an allegation of discrimination or harassment and here—

- (a) “discrimination” means anything which is made unlawful discrimination by a provision of the Chapter concerned; and
- (b) “harassment” means anything which is made unlawful harassment by a provision of the Chapter concerned.

### **Victimisation**

**43.**—(1) For the purposes of this Part, a person (“A”) discriminates against another person (“B”) if—

- (a) he treats B less favourably than he treats or would treat other persons whose circumstances are the same as B's; and
- (b) he does so for a reason mentioned in paragraph (2).

(2) The reasons are that—

- (a) B has—
  - (i) brought proceedings against A or any other person under this Part or the 1995 Act; or
  - (ii) given evidence or information in connection with such proceedings brought by any person; or
  - (iii) otherwise done anything under or by reference to this Part or the 1995 Act in relation to A or any other person; or
  - (iv) alleged that A or any other person has (whether or not the allegation so states) contravened this Part or the 1995 Act; or
- (b) A believes or suspects that B has done or intends to do any of those things.

(3) For the purposes of Chapter I—

- (a) references in paragraph (2) to B include references to—
  - (i) a person who is, for the purposes of that Chapter, B's parent; and
  - (ii) a sibling of B; and
- (b) references in that paragraph to this Part or the 1995 Act are, as respects a person mentioned in head (i) or (ii) of sub-paragraph (a), to be read as references to that Chapter.

(4) Where B is a disabled person, or a person who has had a disability, the disability in question shall be disregarded in comparing his circumstances with those of any other person for the purposes of paragraph (1)(a).

(5) Paragraph (1) does not apply to treatment of a person because an allegation made by him if the allegation was false and not made in good faith.

### **Aiding unlawful acts**

**44.**—(1) A person who knowingly aids another person to do an act made unlawful by any provision of this Part other than Chapter I is to be treated for the purposes of this Part as himself doing the same kind of unlawful act.

(2) For the purposes of paragraph (1), an employee or agent for whose act the employer or principal is liable under Article 45 (or would be so liable but for Article 45(5)) shall be taken to have aided the employer or principal to do the act.

(3) For the purposes of this Article, a person does not knowingly aid another to do an unlawful act if—

- (a) he acts in reliance on a statement made to him by that other person that, because of any provision of this Part, the act would not be unlawful; and
- (b) it is reasonable for him to rely on the statement.

(4) A person who knowingly or recklessly makes such a statement which is false or misleading in a material respect is guilty of an offence.

(5) Any person guilty of an offence under paragraph (4) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### **Liability of employers and principals**

**45.**—(1) Anything done by a person in the course of his employment shall be treated for the purposes of this Part as also done by his employer, whether or not it was done with the employer's knowledge or approval.

(2) Anything done by a person as agent for another person with the authority of that other person shall be treated for the purposes of this Part as also done by that other person.

(3) Paragraph (2) applies whether the authority was—

- (a) express or implied; or
- (b) given before or after the act in question was done.

(4) Paragraphs (1) and (2) do not apply in relation to an offence under Article 44(4).

(5) In proceedings under this Part against any person in respect of an act alleged to have been done by an employee of his, it shall be a defence for that person to prove that he took such steps as were reasonably practicable to prevent the employee from—

- (a) doing that act; or
- (b) doing, in the course of his employment, acts of that description.

### **Statutory authority and national security**

**46.**—(1) Nothing in this Part makes unlawful any act done—

- (a) in pursuance of any statutory provision; or
- (b) in pursuance of any instrument made by a Minister of the Crown or Northern Ireland department under any statutory provision; or
- (c) to comply with any condition or requirement imposed by a Minister of the Crown or Northern Ireland department (whether before or after the making of this Order) by virtue of any statutory provision.

(2) In paragraph (1) “statutory provision” includes one passed or made after the date on which this Order is made and “instrument” includes one made after that date.

(3) Nothing in this Part makes unlawful any act done for the purpose safeguarding national security.

### **Application to Crown, etc.**

**47.**—(1) This Part applies—

- (a) to an act done by or for purposes of a Minister of the Crown or government department, or
- (b) to an act done on behalf of the Crown by a statutory body, or a person holding a statutory office,

as it applies to an act done by a private person.

(2) The provisions of Parts II to IV of the Crown Proceedings Act 1947 (c. 44) apply to proceedings against the Crown under this Part as they apply to Crown proceedings in Northern Ireland; but section 20 of that Act (removal of proceedings from county court to High Court) does not apply.

(3) In this Article—

“Crown proceedings” means proceedings which, by virtue of section 23 of the Crown Proceedings Act 1947, are treated for the purposes of Part II of that Act as civil proceedings by or against the Crown;

“government department” means a Northern Ireland department or a department of the Government of the United Kingdom;

“statutory body” means a body set up by or under a statutory provision;

“statutory office” means an office so set up.

#### **Relationship of this Part with the 1995 Act**

48.—(1) The 1995 Act is amended as follows.

(2) In section 1 (meaning of “disability”) after “this Act” (twice) insert “and Part III of the 2005 Order”.

(3) In section 2 (past disabilities)—

(a) in subsection (1), after “and III” insert “and Part III of the 2005 Order”;

(b) in subsection (3) after “this Act” insert “or Part III of the 2005 Order”; and

(c) in subsection (4) after “this Act”(twice) insert “or Part III of the 2005 Order”;

(d) in subsection (5) at the end add “or (as the case may be) the making of the 2005 Order”.

(4) In subsection (3) of section 3 (courts, etc. to have regard to guidance), after “this Act” insert “or Part III of the 2005 Order”.

(5) In section 14C (practical work experience) in subsection (3)(a) after “Part III” insert “or of Part III of the 2005 Order”.

(6) In section 19 (discrimination in relation to goods, facilities and services) for subsections (5) and (6) substitute—

“(5) Except in such circumstances as may be prescribed, this section and sections 20 and 21 do not apply to—

(a) any service so far as it consists of the use of any means of transport; or

(b) such other services as may be prescribed.

(6) Nothing in this Part applies to the provision of a service in relation to which discrimination is made unlawful by Part III of the 2005 Order.”.

(7) In section 55 (victimisation), in subsection (2) after “this Act” (in each place) insert “or Part III of the 2005 Order”.

(8) After subsection (3) of that section insert—

“(3A) For the purposes of Chapter I of Part III of the 2005 Order—

(a) references in subsection (2) to B include references to—

- (i) a person who is, for the purposes of that Chapter, B’s parent; and
  - (ii) a sibling of B; and
  - (b) references in that subsection to this Act or Part III of the 2005 Order are, as respects a person mentioned in sub-paragraph (i) or (ii) of paragraph (a), to be read as references to that Chapter.”.
- (9) In paragraph 2 of Schedule 2 (past disabilities) after “and III” insert “and Part III of the 2005 Order”.
- (10) After paragraph 5 insert—
- “6. References in Chapter I of Part III of the 2005 Order to a disabled pupil are to be read as references to a pupil who has had a disability.
  - 7. References in Chapter II of Part III of the 2005 Order to a disabled student are to be read as references to a student who has had a disability.
  - 8. In Article 15(3)(a) and (4) of the 2005 Order, after “disabled” insert “or that he had had a disability”.
  - 9. In Article 16(1) of the 2005 Order, in sub-paragraphs (a) and (b), after “not disabled” insert “and who have not had a disability”.
  - 10. In Article 29(3)(a) and (4) of the 2005 Order, after “disabled” insert “or that he had had a disability”.
  - 11. In Articles 30(1)(a) and (b) and 37(1)(d), (2)(c) and (3) of the 2005 Order, after “not disabled” insert “and who have not had a disability”.
  - 12. In Article 35(8) of the 2005 Order after “not having that particular disability” insert “and who has not had that particular disability”.
  - 13. In Article 37(4)(b) of the 2005 Order for “has” substitute “has had”.”
- (11) In section 68(1) at the appropriate place in alphabetical order insert—
- ““the 2005 Order” means the Special Educational Needs and Disability (Northern Ireland) Order 2005;”.

## PART IV

### SUPPLEMENTARY

#### **Regulations and orders**

- 49.**—(1) Subject to paragraph (3), regulations and orders under this Order shall be subject to negative resolution.
- (2) Paragraph (3) applies to—
- (a) the first regulations to be made under each of paragraphs (1), (2) and (4) of Article 38;
  - (b) regulations under Article 38(1),(2) or (4) that amend Part III or the 1995 Act;
  - (c) regulations under Article 38(1) that make provision as to remedies.
- (3) No regulations to which this paragraph applies shall be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly
- (4) Any power under this Order to make regulations or orders includes power—
- (a) to make incidental, supplemental, consequential or transitional provision and savings; and

(b) to provide for a person to exercise a discretion in dealing with any matter.

**Amendments and repeals**

**50.**—(1) Schedule 5 makes minor and consequential amendments.

(2) The repeals set out in Schedule 6 have effect.

Clerk of the Privy Council