

SPECIAL EDUCATIONAL NEEDS AND DISABILITY (NORTHERN IRELAND) ORDER 2005

S.I. 2005 1117

EXPLANATORY MEMORANDUM

COMMENTARY ON ARTICLES

Part Iii – Disability Discrimination in Education

Chapter II – Further and Higher Education Institutions

Articles 27 to 33 with Part II of [Schedule 2](#) and [Schedule 3](#)

Article 27: Interpretation

58. This Article defines terms used within Chapter 2. Paragraph 3 defines an "educational institution". The Department for Employment and Learning will have the power to designate additional institutions in Northern Ireland to be covered by this Chapter.

Article 28 Discrimination against disabled students and prospective students

59. This Article makes it unlawful for institutions to discriminate against students who have disabilities in their admission, expulsion or suspension arrangements and in the services they provide to students.
60. Only services provided wholly or mainly for students (described as “student services”) are covered by these duties. The Department for Employment and Learning has the power to make regulations to set out which services are covered. (Article 27(2)).

Article 29: Meaning of “discrimination”

61. This Article defines discrimination. Less favourable treatment will be justified if it is necessary to maintain academic standards or other prescribed standards. It may also be justified in certain cases that can be set out in regulations.
62. Responsible bodies will not to be liable where they do not know (and could not reasonably be expected to know) of a person’s disability, both in relation to the less favourable treatment duty and the reasonable adjustment duty. Although the anticipatory nature of the latter duty means that an institution would have to consider what reasonable adjustments it might make generally; it may need to know that a particular student had a disability in order to apply the policy to him.
63. The reasonable adjustment duty under Article 30 is owed to students at large. For a student to bring an action it is necessary for them to show that the general duty was breached and that this breach was to their detriment.

Article 30: Disabled students not to be substantially disadvantaged

64. This Article places a duty on responsible bodies to take reasonable steps to ensure that students who have disabilities are not placed at a substantial disadvantage, in comparison to students who do not have a disability, in their access to education and associated services to students.
65. The duty under this Article is owed at large to students who have disabilities, and will require educational institutions to consider the provision that they make for students who have disabilities generally.

Article 31 and Part II of Schedule 2: Enforcement, remedies and procedures

66. A student who has a disability who has been discriminated against by an educational institution will have a right of redress through the County Court.
67. Where a person who has a disability is both a student at an institution and is also employed by that institution they will have rights under the employment provisions of the DDA, which are enforceable through an industrial tribunal, as well as rights under this Chapter, enforceable through the Courts.

Article 32 and Schedule 3: Occupation of premises by educational institutions

68. These provisions relate to how responsible bodies should comply with their duty to make reasonable adjustments to premises they occupy under a lease.
69. Where the lease of a property forbids an institution from making the alterations needed to comply, or puts conditions on these, it can nonetheless make the alterations if it has the written consent of the owner/lessor; but it must apply to the landlord in writing for consent. The landlord cannot refuse consent unreasonably, although he can attach reasonable conditions. Regulations may outline what will be regarded as withholding consent and when it is reasonable or unreasonable to do so.
70. [Schedule 3](#) provides for the owner/lessor to be joined in any action against an institution.

Article 33 Validity and revision of agreements of responsible bodies

71. This Article applies to contracts and agreements with further education and higher education providers, so that any discriminatory terms are made void.