
STATUTORY INSTRUMENTS

2005 No. 1117

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

PART III

DISABILITY DISCRIMINATION IN EDUCATION

CHAPTER I

SCHOOLS

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.