
STATUTORY INSTRUMENTS

2005 No. 1117

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

PART III

DISABILITY DISCRIMINATION IN EDUCATION

CHAPTER I

SCHOOLS

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.