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STATUTORY INSTRUMENTS

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**2006 No. 312**

**The Disability Discrimination (Northern Ireland) Order 2006**

*Public authorities*

**District councils**

3. In the 1995 Act, after section 14D insert—

*“Relationships between district councils and their members*

**15A Interpretation of sections 15B and 15C**

- (1) In sections 15B and 15C “council” means a district council.
- (2) In relation to a member of a council, a reference in those sections to his carrying-out of official business is to his doing of anything—
- (a) as member of the council;
  - (b) as member of any body to which he is appointed by, or is appointed following nomination by, the council or a group of bodies that includes the council; or
  - (c) as member of any other body if it is a public body.

**15B Councils and their members: discrimination and harassment**

- (1) It is unlawful for a council to discriminate against a disabled person who is a member of the council—
- (a) in the opportunities which it affords the disabled person to receive training, or any other facility, for his carrying-out of official business;
  - (b) by refusing to afford, or deliberately not affording, the disabled person any such opportunities; or
  - (c) by subjecting the disabled person to any other detriment in connection with his carrying-out of official business.
- (2) It is unlawful for a council to subject a disabled person who is a member of the council to harassment in connection with his carrying-out of official business.
- (3) A member of a council is not subjected to a detriment for the purposes of subsection (1)(c) by reason of—
- (a) his not being appointed or elected to an office of the council;
  - (b) his not being appointed or elected to, or to an office of, a committee or sub-committee of the council; or
  - (c) his not being appointed or nominated in exercise of any power of the council, or of a group of bodies that includes the council, to appoint, or nominate for appointment, to any body.

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(4) Regulations may make provision as to the circumstances in which treatment is to be taken to be justified, or is to be taken not to be justified, for the purposes of section 3A(1) (b) as it has effect for the interpretation of “discriminate” in subsection (1).

(5) Regulations under subsection (4) may (in particular) provide for section 3A(3) to apply with prescribed modifications, or not to apply, for those purposes; but treatment of a disabled person cannot be justified under subsection (4) if it amounts to direct discrimination falling within section 3A(5).

(6) If, in a case falling within section 3A(1) as it has effect for the interpretation of “discriminate” in subsection (1), a council is under a duty imposed by section 15C in relation to a disabled person but fails to comply with that duty, its treatment of that person cannot be justified under subsection (4) unless it would have been justified even if it had complied with that duty.

### **15C Councils and their members: duty to make adjustments**

(1) Subsection (2) applies where—

(a) a provision, criterion or practice applied by or on behalf of a council, or

(b) any physical feature of premises occupied by, or under the control of, a council, places a disabled person who is a member of the council at a substantial disadvantage, in comparison with members of the council who are not disabled persons, in connection with his carrying-out of official business.

(2) It is the duty of the council 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, or feature, having that effect.

(3) Subsection (2) does not impose any duty on a council in relation to a member of the council who is a disabled person if the council does not know, and could not reasonably be expected to know, that the member—

(a) has a disability; and

(b) is likely to be affected in the way mentioned in subsection (1).

(4) Regulations may make provision, for purposes of this section—

(a) as to circumstances in which a provision, criterion or practice, or physical feature, is to be taken to have the effect mentioned in subsection (1);

(b) as to circumstances in which a provision, criterion or practice, or physical feature, is to be taken not to have the effect mentioned in subsection (1);

(c) as to circumstances in which it is, or as to circumstances in which it is not, reasonable for a council 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 council to have to take;

(e) as to things which are, or as to things which are not, to be treated as physical features.”.

### **Discrimination by public authorities**

4. In the 1995 Act, after section 21A insert—

## *“Public authorities*

### **21B Discrimination by public authorities**

(1) It is unlawful for a public authority to discriminate against a disabled person in carrying out its functions.

(2) In this section, and sections 21D and 21E, “public authority”—

(a) includes any person certain of whose functions are functions of a public nature; but

(b) does not include any person mentioned in subsection (3).

(3) The persons are—

(a) either House of Parliament;

(b) a person exercising functions in connection with proceedings in Parliament;

(c) the Assembly;

(d) a person exercising functions in connection with proceedings in the Assembly;

(e) the Security Service;

(f) the Secret Intelligence Service;

(g) the Government Communications Headquarters; and

(h) a unit, or part of a unit, of any of the naval, military or air forces of the Crown which is for the time being required by the Secretary of State to assist the Government Communications Headquarters in carrying out its functions.

(4) In relation to a particular act, a person is not a public authority by virtue only of subsection (2)(a) if the nature of the act is private.

(5) Regulations may provide for a person of a prescribed description to be treated as not being a public authority for the purposes of this section and sections 21D and 21E.

(6) In the case of an act which constitutes discrimination by virtue of section 55, subsection (1) also applies to discrimination against a person who is not disabled.

(7) Subsection (1)—

(a) does not apply to anything which is unlawful under any provision of this Act other than subsection (1) or under any provision of the 2005 Order;

(b) does not, subject to subsections (8) and (9), apply to anything which would be unlawful under any such provision but for the operation of any provision in or made under this Act or that Order.

(8) Subsection (1) does apply in relation to a public authority's function of appointing a person to, and in relation to a public authority's functions with respect to a person as the holder of, an office or post if—

(a) none of the conditions specified in section 4C(3) is satisfied in relation to the office or post; and

(b) sections 4D and 4E would apply in relation to an appointment to the office or post if any of those conditions was satisfied.

(9) Subsection (1) does apply in relation to a public authority's functions with respect to a person as candidate or prospective candidate for election to, and in relation to a public authority's functions with respect to a person as elected holder of, an office or post if—

(a) the office or post is not membership of a House of Parliament, the Assembly or a district council;

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- (b) none of the conditions specified in section 4C(3) is satisfied in relation to the office or post; and
- (c) sections 4D and 4E would apply in relation to an appointment to the office or post if—
  - (i) any of those conditions was satisfied, and
  - (ii) section 4F(1) (but not section 4C(5)) was omitted.
- (10) Subsections (8) and (9)—
  - (a) shall not be taken to prejudice the generality of subsection (1); but
  - (b) are subject to section 21C(5).

### **21C Exceptions from section 21B(1)**

- (1) Section 21B(1) does not apply to—
  - (a) a judicial act (whether done by a court, tribunal or other person); or
  - (b) an act done on the instructions, or on behalf, of a person acting in a judicial capacity.
- (2) Section 21B(1) does not apply to any act of, or relating to, making, confirming or approving an enactment.
- (3) Section 21B(1) does not apply to any act of, or relating to, imposing conditions or requirements of a kind falling within section 59(1)(c).
- (4) Section 21B(1) does not apply to—
  - (a) a decision not to institute criminal proceedings;
  - (b) where such a decision is made, an act done for the purpose of enabling the decision to be made;
  - (c) a decision not to continue criminal proceedings; or
  - (d) where such a decision is made—
    - (i) an act done for the purpose of enabling the decision to be made; or
    - (ii) an act done for the purpose of securing that the proceedings are not continued.
- (5) Section 21B(1) does not apply to an act of a prescribed description.

### **21D Meaning of “discrimination” in section 21B**

- (1) For the purposes of section 21B(1), a public authority 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 under subsection (3), (5) or (7)(c).
- (2) For the purposes of section 21B(1), a public authority also discriminates against a disabled person if—
  - (a) it fails to comply with a duty imposed on it by section 21E in circumstances in which the effect of that failure is to make it—

- (i) impossible or unreasonably difficult for the disabled person to receive any benefit that is or may be conferred, or
  - (ii) unreasonably adverse for the disabled person to experience being subjected to any detriment to which a person is or may be subjected,by the carrying-out of a function by the authority; and
- (b) it cannot show that its failure to comply with that duty is justified under subsection (3), (5) or (7)(c).
- (3) Treatment, or failure to comply with a duty, is justified under this subsection if—
  - (a) in the opinion of the public authority, one or more of the conditions specified in subsection (4) are satisfied; and
  - (b) it is reasonable, in all the circumstances of the case, for it to hold that opinion.
- (4) The conditions are—
  - (a) that the treatment, or non-compliance with the duty, is necessary in order not to endanger the health or safety of any person (which may include that of the disabled person);
  - (b) that the disabled person is incapable of entering into an enforceable agreement, or of giving an informed consent, and for that reason the treatment, or non-compliance with the duty, is reasonable in the particular case;
  - (c) that, in the case of treatment mentioned in subsection (1), treating the disabled person equally favourably would in the particular case involve substantial extra costs and, having regard to resources, the extra costs in that particular case would be too great;
  - (d) that the treatment, or non-compliance with the duty, is necessary for the protection of the rights and freedoms of other persons.
- (5) Treatment, or a failure to comply with a duty, is justified under this subsection if the acts of the public authority which give rise to the treatment or failure are a proportionate means of achieving a legitimate aim.
- (6) Regulations may make provision, for purposes of this section, as to circumstances in which it is, or as to circumstances in which it is not, reasonable for a public authority to hold the opinion mentioned in subsection (3)(a).
- (7) Regulations may—
  - (a) amend or omit a condition specified in subsection (4) or make provision for it not to apply in prescribed circumstances;
  - (b) amend or omit subsection (5) or make provision for it not to apply in prescribed circumstances;
  - (c) make provision for purposes of this section (in addition to any provision for the time being made by subsections (3) to (5)) as to circumstances in which treatment, or a failure to comply with a duty, is to be taken to be justified.

#### **21E Duty for purposes of section 21D(2) to make adjustments**

- (1) Subsection (2) applies where a public authority has a practice, policy or procedure which makes it—
  - (a) impossible or unreasonably difficult for disabled persons to receive any benefit that is or may be conferred, or

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- (b) unreasonably adverse for disabled persons to experience being subjected to any detriment to which a person is or may be subjected,

by the carrying-out of a function by the authority.

(2) It is the duty of the authority to take such steps as it is reasonable, in all the circumstances of the case, for the authority to have to take in order to change that practice, policy or procedure so that it no longer has that effect.

(3) Subsection (4) applies where a physical feature makes it—

- (a) impossible or unreasonably difficult for disabled persons to receive any benefit that is or may be conferred, or
- (b) unreasonably adverse for disabled persons to experience being subjected to any detriment to which a person is or may be subjected,

by the carrying-out of a function by a public authority.

(4) It is the duty of the authority to take such steps as it is reasonable, in all the circumstances of the case, for the authority to have to take in order to—

- (a) remove the feature;
- (b) alter it so that it no longer has that effect;
- (c) provide a reasonable means of avoiding the feature; or
- (d) adopt a reasonable alternative method of carrying out the function.

(5) Regulations may prescribe—

- (a) matters which are to be taken into account in determining whether any provision of a kind mentioned in subsection (4)(c) or (d) is reasonable;
- (b) categories of public authorities to whom subsection (4) does not apply.

(6) Subsection (7) applies where an auxiliary aid or service would—

- (a) enable disabled persons to receive, or facilitate the receiving by disabled persons of, any benefit that is or may be conferred, or
- (b) reduce the extent to which it is adverse for disabled persons to experience being subjected to any detriment to which a person is or may be subjected,

by the carrying-out of a function by a public authority.

(7) It is the duty of the authority to take such steps as it is reasonable, in all the circumstances of the case, for the authority to have to take in order to provide that auxiliary aid or service.

(8) Regulations may make provision, for purposes of this section—

- (a) as to circumstances in which it is, or as to circumstances in which it is not, reasonable for a public authority to have to take steps of a prescribed description;
- (b) as to steps which it is always, or as to steps which it is never, reasonable for a public authority to have to take;
- (c) as to what is, or as to what is not, to be included within the meaning of “practice, policy or procedure”;
- (d) as to things which are, or as to things which are not, to be treated as physical features;
- (e) as to things which are, or as to things which are not, to be treated as auxiliary aids or services.

(9) Nothing in this section requires a public authority to take any steps which, apart from this section, it has no power to take.

(10) This section imposes duties only for the purposes of determining whether a public authority has, for the purposes of section 21B(1), discriminated against a disabled person; and accordingly a breach of any such duty is not actionable as such.”

#### Commencement Information

- II** Art. 4 wholly in operation at 31.12.2007; art. 4 not in operation at date of making see art. 1(2); art. 4 in operation for certain purposes at 3.7.2006 by S.R. 2006/289, art. 2(2); art. 4 in operation at 31.12.2007 insofar as not already in operation by S.R. 2007/466, art. 2(2)(b)

### Duty of public authorities

5. In the 1995 Act, after section 49 insert—

## “PART VA PUBLIC AUTHORITIES

### 49A General duty

- (1) Every public authority shall in carrying out its functions have due regard to—
  - (a) the need to promote positive attitudes towards disabled persons; and
  - (b) the need to encourage participation by disabled persons in public life.
- (2) Subsection (1) does not apply to—
  - (a) the functions of the Director of Public Prosecutions for Northern Ireland relating to the prosecution of offences; or
  - (b) any act of a description prescribed by regulations.
- (3) Subsection (1) is without prejudice to any obligation of a public authority to comply with any other statutory provision (including any other provision of this Act).
- (4) The Commission shall—
  - (a) keep under review the effectiveness of the duty imposed by this section;
  - (b) offer advice to public authorities and others in connection with that duty.
- (5) Not later than 3 years after the appointed day, the Commission shall prepare and publish a report on the effectiveness of the duty imposed by this section.
- (6) In this section—

“the appointed day” means the day appointed under Article 1(2) of the Disability Discrimination (Northern Ireland) Order 2006 for the coming into operation of Article 5 of that Order;

“the Commission” means the Equality Commission for Northern Ireland;

“public authority” has the same meaning as in section 75 of the Northern Ireland Act 1998 (c. 47).

### 49B Plan as to duty under section 49A

- (1) A public authority to which this subsection applies shall prepare and submit to the Commission a plan showing how the public authority proposes to fulfil the duty imposed by section 49A in relation to the relevant functions.

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(2) Any other public authority shall prepare and submit to the Commission such a plan if requested to do so by the Commission.

(3) A public authority—

- (a) may at any time revise its plan and submit the revised plan to the Commission;
- (b) shall, if requested to do so by the Commission, revise its plan and submit the revised plan to the Commission.

(4) A plan (or revised plan) shall—

- (a) conform to any guidelines as to form or content which are issued by the Commission with the approval of the Office;
- (b) specify a timetable for measures proposed in the plan;
- (c) include details of how it will be published.

(5) Subsection (1) applies to any public authority except one which is notified in writing by the Commission that that subsection does not apply to it.

(6) If a public authority—

- (a) fails to submit a plan under subsection (1) before the end of the period of 6 months beginning with the appointed day or, if later, the establishment of the authority,
- (b) fails to submit a plan under subsection (2) before the end of the period of 6 months beginning with the date of the request under that subsection,
- (c) fails to submit a revised plan under subsection (3)(b) before the end of the period of 3 months beginning with the date of the request under that paragraph, or
- (d) submits to the Commission under paragraph (3)(a) or (b) a revised plan which in the opinion of the Commission fails to comply with subsection (4),

the Commission shall lay before the Assembly a report of that failure containing such comments and other material as appear to the Commission to be appropriate to bring to the attention of the Assembly.

(7) A public authority—

- (a) shall review its current plan under this section—
  - (i) in the case of an authority in relation to which there is a scheme under Schedule 9 to the Northern Ireland Act 1998, at the same time as the authority reviews its current scheme under paragraph 8(3) of that Schedule;
  - (ii) in the case of any other authority, at such times as the Commission may request; and
- (b) inform the Commission of the outcome of the review.

(8) In this section—

“the appointed day”, “the Commission” and “public authority” have the same meanings as in section 49A;

“the relevant functions” means the functions of the public authority or, in the case of a plan submitted in response to a request which specifies particular functions of the public authority, those functions.”.

## **Police**

**6.** In sections 64A(3) and (4) and 64B(3) and (4) of the 1995 Act (the bringing of, and compensation and costs in, proceedings against the police under Part II), after “Part II” (in each place) insert “ or III ”.

**Status:**

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