
STATUTORY RULES OF NORTHERN IRELAND

2004 No. 55

**The Disability Discrimination Act 1995
(Amendment) Regulations (Northern Ireland) 2004**

PART II

AMENDMENTS TO THE ACT

Employment, contract workers, office-holders, occupational pension schemes and repeal of sections 5, 6 and 17

5.—(1) For section 4 (and the preceding cross-heading), substitute the following sections –

“Employment

Employers: discrimination and harassment

4.—(1) It is unlawful for an employer to discriminate against a disabled person –

- (a) in the arrangements which he makes for the purpose of determining to whom he should offer employment;
- (b) in the terms on which he offers that person employment; or
- (c) by refusing to offer, or deliberately not offering, him employment.

(2) It is unlawful for an employer to discriminate against a disabled person whom he employs –

- (a) in the terms of employment which he affords him;
- (b) in the opportunities which he affords him for promotion, a transfer, training or receiving any other benefit;
- (c) by refusing to afford him, or deliberately not affording him, any such opportunity; or
- (d) by dismissing him, or subjecting him to any other detriment.

(3) It is also unlawful for an employer, in relation to employment by him, to subject to harassment –

- (a) a disabled person whom he employs; or
- (b) a disabled person who has applied to him for employment.

(4) Subsection (2) does not apply to benefits of any description if the employer is concerned with the provision (whether or not for payment) of benefits of that description to the public, or to a section of the public which includes the employee in question, unless –

- (a) that provision differs in a material respect from the provision of the benefits by the employer to his employees;

- (b) the provision of the benefits to the employee in question is regulated by his contract of employment; or
 - (c) the benefits relate to training.
- (5) The reference in subsection (2)(d) to the dismissal of a person includes a reference –
- (a) to the termination of that person’s employment by the expiration of any period (including a period expiring by reference to an event or circumstance), not being a termination immediately after which the employment is renewed on the same terms; and
 - (b) to the termination of that person’s employment by any act of his (including the giving of notice) in circumstances such that he is entitled to terminate it without notice by reason of the conduct of the employer.
- (6) This section applies only in relation to employment at an establishment in Northern Ireland.

Employers: duty to make adjustments

4A.—(1) Where –

- (a) a provision, criterion or practice applied by or on behalf of an employer, or
- (b) any physical feature of premises occupied by the employer,

places the disabled person concerned at a substantial disadvantage in comparison with persons who are not disabled, it is the duty of the employer to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to prevent the provision, criterion or practice, or feature, having that effect.

(2) In subsection (1), “the disabled person concerned” means –

- (a) in the case of a provision, criterion or practice for determining to whom employment should be offered, any disabled person who is, or has notified the employer that he may be, an applicant for that employment;
- (b) in any other case, a disabled person who is –
 - (i) an applicant for the employment concerned, or
 - (ii) an employee of the employer concerned.

(3) Nothing in this section imposes any duty on an employer in relation to a disabled person if the employer does not know, and could not reasonably be expected to know –

- (a) in the case of an applicant or potential applicant, that the disabled person concerned is, or may be, an applicant for the employment; or
- (b) in any case, that that person has a disability and is likely to be affected in the way mentioned in subsection (1).

Contract workers

Contract workers

4B.—(1) It is unlawful for a principal, in relation to contract work, to discriminate against a disabled person who is a contract worker (a “disabled contract worker”) –

- (a) in the terms on which he allows him to do that work;
- (b) by not allowing him to do it or continue to do it;

(c) in the way he affords him access to any benefits or by refusing or deliberately omitting to afford him access to them; or

(d) by subjecting him to any other detriment.

(2) It is also unlawful for a principal, in relation to contract work, to subject a disabled contract worker to harassment.

(3) Subsection (1) does not apply to benefits of any description if the principal is concerned with the provision (whether or not for payment) of benefits of that description to the public, or to a section of the public which includes the contract worker in question, unless that provision differs in a material respect from the provision of the benefits by the principal to contract workers.

(4) This subsection applies to a disabled contract worker where, by virtue of –

(a) a provision, criterion or practice applied by or on behalf of all or most of the principals to whom he is or might be supplied, or

(b) a physical feature of premises occupied by such persons,

he is likely, on each occasion when he is supplied to a principal to do contract work, to be placed at a substantial disadvantage in comparison with persons who are not disabled which is the same or similar in each case.

(5) Where subsection (4) applies to a disabled contract worker, his employer must take such steps as he would have to take under section 4A if the provision, criterion or practice were applied by him or on his behalf or (as the case may be) if the premises were occupied by him.

(6) Section 4A applies to any principal, in relation to contract work, as if he were, or would be, the employer of the disabled contract worker and as if any contract worker supplied to do work for him were an employee of his.

(7) However, for the purposes of section 4A as applied by subsection (6), a principal is not required to take a step in relation to a disabled contract worker if under that section the disabled contract worker's employer is required to take the step in relation to him.

(8) This section applies only in relation to contract work done at an establishment in Northern Ireland (the provisions of section 68 about the meaning of "employment at an establishment in Northern Ireland" applying for the purposes of this subsection with the appropriate modifications).

(9) In this section –

"principal" means a person ("A") who makes work available for doing by individuals who are employed by another person who supplies them under a contract made with A;

"contract work" means work so made available; and

"contract worker" means any individual who is supplied to the principal under such a contract.

Office-holders

Office-holders: introductory

4C.—(1) Subject to subsection (5), sections 4D and 4E apply to an office or post if –

(a) no relevant provision of this Part applies in relation to an appointment to the office or post; and

(b) one or more of the conditions specified in subsection (3) is satisfied.

(2) The following are relevant provisions of this Part for the purposes of subsection (1)(a): section 4, section 4B, section 6A, section 7A and section 14C.

(3) The conditions specified in this subsection are that –

- (a) the office or post is one to which persons are appointed to discharge functions personally under the direction of another person, and in respect of which they are entitled to remuneration;
- (b) the office or post is one to which appointments are made by a Minister of the Crown, a Northern Ireland Minister or a government department;
- (c) the office or post is one to which appointments are made on the recommendation of, or subject to the approval of, a body or person referred to in paragraph (b) or the Assembly.

(4) For the purposes of subsection (3)(a) the holder of an office or post –

- (a) is to be regarded as discharging his functions under the direction of another person if that other person is entitled to direct him as to when and where he discharges those functions;
- (b) is not to be regarded as entitled to remuneration merely because he is entitled to payments –
 - (i) in respect of expenses incurred by him in carrying out the functions of the office or post, or
 - (ii) by way of compensation for the loss of income or benefits he would or might have received from any person had he not been carrying out the functions of the office or post.

(5) Sections 4D and 4E do not apply to –

- (a) any office of the House of Commons held by a member of it;
- (b) a life peerage within the meaning of the Life Peerages Act 1958⁽¹⁾, or any office of the House of Lords held by a member of it;
- (c) any office mentioned in Schedule 2 (Ministerial offices) to the House of Commons Disqualification Act 1975⁽²⁾;
- (d) any office of the Assembly held by a member of it;
- (e) any office of a district council held by a member of it; or
- (f) any office of a political party.

Office-holders: discrimination and harassment

4D.—(1) It is unlawful for a relevant person, in relation to an appointment to an office or post to which this section applies, to discriminate against a disabled person –

- (a) in the arrangements which he makes for the purpose of determining who should be offered the appointment;
- (b) in the terms on which he offers him the appointment; or
- (c) by refusing to offer him the appointment.

(2) It is unlawful for a relevant person, in relation to an appointment to an office or post to which this section applies and which satisfies the condition set out in section 4C(3)(c), to discriminate against a disabled person –

(1) 1958 c. 21

(2) 1975 c. 24, Schedule 2 was amended by S.I.2002/794, Article 5(2) and Schedule 2 and by the Scotland Act 1998 (c. 46) sections 48(6), 125, Schedule 9 and section 87(1)

- (a) in the arrangements which he makes for the purpose of determining who should be recommended or approved in relation to the appointment; or
 - (b) in making or refusing to make a recommendation, or giving or refusing to give an approval, in relation to the appointment.
- (3) It is unlawful for a relevant person, in relation to a disabled person who has been appointed to an office or post to which this section applies, to discriminate against him –
- (a) in the terms of the appointment;
 - (b) in the opportunities which he affords him for promotion, a transfer, training or receiving any other benefit, or by refusing to afford him any such opportunity;
 - (c) by terminating the appointment; or
 - (d) by subjecting him to any other detriment in relation to the appointment.
- (4) It is also unlawful for a relevant person, in relation to an office or post to which this section applies, to subject to harassment a disabled person –
- (a) who has been appointed to the office or post;
 - (b) who is seeking or being considered for appointment to the office or post; or
 - (c) who is seeking or being considered for a recommendation or approval in relation to an appointment to an office or post satisfying the condition set out in section 4C(3)(c).
- (5) Subsection (3) does not apply to benefits of any description if the relevant person is concerned with the provision (for payment or not) of benefits of that description to the public, or a section of the public to which the disabled person belongs, unless –
- (a) that provision differs in a material respect from the provision of the benefits to persons appointed to offices or posts which are the same as, or not materially different from, that to which the disabled person has been appointed;
 - (b) the provision of the benefits to the person appointed is regulated by the terms and conditions of his appointment; or
 - (c) the benefits relate to training.
- (6) In subsection (3)(c) the reference to the termination of the appointment includes a reference –
- (a) to the termination of the appointment by the expiration of any period (including a period expiring by reference to an event or circumstance), not being a termination immediately after which the appointment is renewed on the same terms and conditions; and
 - (b) to the termination of the appointment by any act of the person appointed (including the giving of notice) in circumstances such that he is entitled to terminate the appointment by reason of the conduct of the relevant person.
- (7) In this section –
- (a) references to making a recommendation include references to making a negative recommendation; and
 - (b) references to refusal include references to deliberate omission.

Office-holders: duty to make adjustments

4E.—(1) Where –

- (a) a provision, criterion or practice applied by or on behalf of a relevant person, or
- (b) any physical feature of premises –

- (i) under the control of a relevant person, and
- (ii) at or from which the functions of an office or post to which this section applies are performed,

places the disabled person concerned at a substantial disadvantage in comparison with persons who are not disabled, it is the duty of the relevant person to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to prevent the provision, criterion or practice, or feature, having that effect.

- (2) In this section, “the disabled person concerned” means –
- (a) in the case of a provision, criterion or practice for determining who should be appointed to, or recommended or approved in relation to, an office or post to which this section applies, any disabled person who –
 - (i) is, or has notified the relevant person that he may be, seeking appointment to, or (as the case may be) seeking a recommendation or approval in relation to, that office or post, or
 - (ii) is being considered for appointment to, or (as the case may be) for a recommendation or approval in relation to, that office or post;
 - (b) in any other case, a disabled person –
 - (i) who is seeking or being considered for appointment to, or a recommendation or approval in relation to, the office or post concerned, or
 - (ii) who has been appointed to the office or post concerned.
- (3) Nothing in this section imposes any duty on the relevant person in relation to a disabled person if the relevant person does not know, and could not reasonably be expected to know –
- (a) in the case of a person who is being considered for, or is or may be seeking, appointment to, or a recommendation or approval in relation to, an office or post, that the disabled person concerned –
 - (i) is, or may be, seeking appointment to, or (as the case may be) seeking a recommendation or approval in relation to, that office or post, or
 - (ii) is being considered for appointment to, or (as the case may be) for a recommendation or approval in relation to, that office or post; or
 - (b) in any case, that that person has a disability and is likely to be affected in the way mentioned in subsection (1).

Office-holders: supplementary

4F.—(1) In sections 4C to 4E, appointment to an office or post does not include election to an office or post.

- (2) In sections 4D and 4E, “relevant person” means –
- (a) in a case relating to an appointment to an office or post, the person with power to make that appointment;
 - (b) in a case relating to the making of a recommendation or the giving of an approval in relation to an appointment, a person or body referred to in section 4C(3)(b) with power to make that recommendation or (as the case may be) to give that approval;
 - (c) in a case relating to a term of an appointment, the person with power to determine that term;
 - (d) in a case relating to a working condition afforded in relation to an appointment –
 - (i) the person with power to determine that working condition; or

- (ii) where there is no such person, the person with power to make the appointment;
 - (e) in a case relating to the termination of an appointment, the person with power to terminate the appointment;
 - (f) in a case relating to the subjection of a disabled person to any other detriment or to harassment, any person or body falling within one or more of paragraphs (a) to (e) in relation to such cases as are there mentioned.
- (3) In subsection (2)(d), “working condition” includes –
- (a) any opportunity for promotion, a transfer, training or receiving any other benefit; and
 - (b) any physical feature of premises at or from which the functions of an office or post are performed.

Occupational pension schemes

Occupational pension schemes: non-discrimination rule

4G.—(1) Every occupational pension scheme shall be taken to include a provision (“the non-discrimination rule”) containing the following requirements –

- (a) a requirement that the trustees or managers of the scheme refrain from discriminating against a relevant disabled person in carrying out any of their functions in relation to the scheme (including in particular their functions relating to the admission of members to the scheme and the treatment of members of the scheme);
 - (b) a requirement that the trustees or managers of the scheme do not subject a relevant disabled person to harassment in relation to the scheme.
- (2) The other provisions of the scheme are to have effect subject to the non-discrimination rule.
- (3) It is unlawful for the trustees or managers of an occupational pension scheme –
- (a) to discriminate against a relevant disabled person contrary to requirement (a) of the non-discrimination rule; or
 - (b) to subject a relevant disabled person to harassment contrary to requirement (b) of the non-discrimination rule.
- (4) The non-discrimination rule does not apply in relation to rights accrued, or benefits payable, in respect of periods of service prior to the coming into operation of this section (but it does apply to communications with members or prospective members of the scheme in relation to such rights or benefits).
- (5) The trustees or managers of an occupational pension scheme may, if –
- (a) they do not (apart from this subsection) have power to make such alterations to the scheme as may be required to secure conformity with the non-discrimination rule, or
 - (b) they have such power but the procedure for doing so –
 - (i) is liable to be unduly complex or protracted, or
 - (ii) involves the obtaining of consents which cannot be obtained, or can only be obtained with undue delay or difficulty,by resolution make such alterations to the scheme.
- (6) The alterations referred to in subsection (5) may have effect in relation to a period before the alterations are made (but may not have effect in relation to a period before the coming into operation of this section).

Occupational pension schemes: duty to make adjustments

4H.—(1) Where –

- (a) a provision, criterion or practice (including a scheme rule) applied by or on behalf of the trustees or managers of an occupational pension scheme, or
- (b) any physical feature of premises occupied by the trustees or managers,

places a relevant disabled person at a substantial disadvantage in comparison with persons who are not disabled, it is the duty of the trustees or managers to take such steps as it is reasonable, in all the circumstances of the case, for them to have to take in order to prevent the provision, criterion or practice, or feature, having that effect.

(2) The making of alterations to scheme rules is (in addition to the examples set out in section 18B(2)) an example of a step which trustees or managers may have to take in order to comply with the duty set out in subsection (1).

(3) Nothing in subsection (1) imposes any duty on trustees or managers in relation to a disabled person if they do not know, and could not reasonably be expected to know –

- (a) that the disabled person is a relevant disabled person; or
- (b) that that person has a disability and is likely to be affected in the way mentioned in subsection (1).

Occupational pension schemes: procedure

4I.—(1) Where under section 17A a relevant disabled person presents a complaint to an industrial tribunal that the trustees or managers of an occupational pension scheme have acted in relation to him in a way which is unlawful under this Part, the employer in relation to that scheme shall, for the purposes of the rules governing procedure, be treated as a party and be entitled to appear and be heard in accordance with those rules.

(2) In this section, “employer”, in relation to an occupational pension scheme, has the meaning given by Article 121(1) of the Pensions (Northern Ireland) Order 1995(3) as at the date of coming into operation of this section.

Occupational pension schemes: remedies

4J.—(1) This section applies where –

- (a) under section 17A a relevant disabled person presents to an industrial tribunal a complaint that –
 - (i) the trustees or managers of an occupational pension scheme have acted in relation to him in a way which is unlawful under this Part; or
 - (ii) an employer has so acted in relation to him;
- (b) the complaint relates to –
 - (i) the terms on which persons become members of an occupational pension scheme, or
 - (ii) the terms on which members of the scheme are treated;
- (c) the disabled person is not a pensioner member of the scheme; and
- (d) the tribunal finds that the complaint is well-founded.

(2) The tribunal may, without prejudice to the generality of its power under section 17A(2) (a), make a declaration that the complainant has a right –

- (a) (where subsection (1)(b)(i) applies) to be admitted to the scheme in question; or
 - (b) (where subsection (1)(b)(ii) applies) to membership of the scheme without discrimination.
- (3) A declaration under subsection (2) –
- (a) may be made in respect of such period as the declaration may specify (but may not be made in respect of any period before the coming into operation of this section);
 - (b) may make such provision as the tribunal considers appropriate as to the terms upon which, or the capacity in which, the disabled person is to enjoy such admission or membership.
- (4) The tribunal may not award the disabled person any compensation under section 17A(2)
- (b) (whether in relation to arrears of benefits or otherwise) other than –
- (a) compensation for injury to feelings;
 - (b) compensation pursuant to section 17A(5).

Occupational pension schemes: supplementary

4K.—(1) In their application to communications, sections 4G to 4J apply in relation to a disabled person who is –

- (a) entitled to the present payment of dependants' or survivors' benefits under an occupational pension scheme; or
- (b) a pension credit member of such a scheme,

as they apply in relation to a disabled person who is a pensioner member of the scheme.

(2) In sections 4G to 4J and in this section –

“active member”, “deferred member”, “managers”, “pension credit member”, “pensioner member” and “trustees or managers” have the meanings given by Article 121(1) of the Pensions (Northern Ireland) Order 1995(4) as at the date of coming into operation of this section;

“communications” includes –

- (i) the provision of information, and
- (ii) the operation of a dispute resolution procedure;

“member”, in relation to an occupational pension scheme, means any active, deferred or pensioner member;

“non-discrimination rule” means the rule in section 4G(1);

“relevant disabled person”, in relation to an occupational pension scheme, means a disabled person who is a member or prospective member of the scheme; and

“prospective member” means any person who, under the terms of his contract of employment or the scheme rules or both –

- (i) is able, at his own option, to become a member of the scheme,
- (ii) will become so able if he continues in the same employment for a sufficiently long period,
- (iii) will be admitted to it automatically unless he makes an election not to become a member, or

(4) The definition of “pension credit member” was inserted by paragraph 50(3) of Schedule 9 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)). The definition of “pensioner member” was amended by paragraph 5(3) of Schedule 5 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4 (N.I.))

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(iv) may be admitted to it subject to the consent of his employer.”.

(2) Sections 5 (meaning of “discrimination”), 6 (duty of employer to make adjustments) and 17 (occupational pension schemes) and the preceding cross-heading are repealed.