

Draft Regulations laid before Parliament under paragraph 2 of Schedule 2 to the European Communities Act 1972, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2003 No.

DISABLED PERSONS

**The Disability Discrimination Act
1995 (Amendment) Regulations 2003**

Made - - - - 2003
Coming into force - - 1st October 2004

Whereas the Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972⁽¹⁾ in relation to discrimination⁽²⁾;

And whereas a draft of the following Regulations was laid before Parliament in accordance with paragraph 2 of Schedule 2 to that Act and approved by a resolution of each House of Parliament;

Now, therefore, the Secretary of State for Work and Pensions, in exercise of the powers conferred on him by section 2(2) of that Act, hereby makes the following Regulations:—

PART 1

INTRODUCTORY

Citation, commencement, extent and interpretation

1.—(1) These Regulations may be cited as the Disability Discrimination Act 1995 (Amendment) Regulations 2003.

(2) These Regulations shall come into force on the day after that on which they are made so far as enabling anything to be done for the purposes of preparing and bringing into force on or after 1st October 2004 a code of practice under section 53A of the 1995 Act⁽³⁾ concerning any provision of that Act as it will have effect on or after that date by virtue of these Regulations.

(3) Except as provided by paragraph (2), these Regulations shall come into force on 1st October 2004.

(1) 1972 c. 68.

(2) See the European Communities (Designation) (No.3) Order 2002 (S.I.2002/1819).

(3) Section 53A was inserted by section 9 of the 1999 Act and amended by section 36 of the Special Educational Needs and Disability Act 2001 (c. 10). It is further amended by regulation 20 of these Regulations.

- (4) These Regulations shall not extend to Northern Ireland.
- (5) In these Regulations—
 - “the 1995 Act” means the Disability Discrimination Act 1995⁽⁴⁾; and
 - “the 1999 Act” means the Disability Rights Commission Act 1999⁽⁵⁾.

Transitional provisions

2.—(1) Subsection (1B) of section 17A⁽⁶⁾ of the 1995 Act (as inserted by regulation 9(2)(c)) applies in relation to a complaint presented to an employment tribunal before the commencement date, as well as one presented on or after that date; but it does not affect any case in which a complaint was determined by an employment tribunal before the commencement date.

(2) The amendment made to section 56(3) of the 1995 Act by regulation 22(c) shall not apply in the case of a question served on a respondent before the commencement date.

(3) In paragraph (2), “question” and “respondent” shall be construed in accordance with section 56 of the 1995 Act.

(4) In this regulation, “the commencement date” means 1st October 2004.

Amendment of the 1995 Act and other legislation

3.—(1) The amendments to the 1995 Act set out in Part 2 of these Regulations shall have effect.

(2) The amendments set out in Part 3 of these Regulations (in relation to the 1999 Act and other legislation) shall have effect.

PART 2

AMENDMENTS TO THE 1995 ACT

Meaning of “discrimination” and “harassment”

4.—(1) In the heading to Part 2, for “EMPLOYMENT” substitute “THE EMPLOYMENT FIELD”.

(2) After the heading, and before section 4, insert the following sections—

“Meaning of “discrimination” and “harassment”

Meaning of “discrimination”

3A.—(1) For the purposes of this Part, a person discriminates against a disabled person if—

- (a) for a reason which relates to the disabled person’s disability, he treats him less favourably than he treats or would treat others to whom that reason does not or would not apply, and
- (b) he cannot show that the treatment in question is justified.

(2) For the purposes of this Part, a person also discriminates against a disabled person if he fails to comply with a duty to make reasonable adjustments imposed on him in relation to the disabled person.

(4) 1995 c. 50.

(5) 1999 c. 17.

(6) Regulation 9(1) renumbers section 8 of the 1995 Act as section 17A.

(3) Treatment is justified for the purposes of subsection (1)(b) if, but only if, the reason for it is both material to the circumstances of the particular case and substantial.

(4) But treatment of a disabled person cannot be justified under subsection (3) if it amounts to direct discrimination falling within subsection (5).

(5) A person directly discriminates against a disabled person if, on the ground of the disabled person's disability, he treats the disabled person less favourably than he treats or would treat a person not having that particular disability whose relevant circumstances, including his abilities, are the same as, or not materially different from, those of the disabled person.

(6) If, in a case falling within subsection (1), a person is under a duty to make reasonable adjustments in relation to a disabled person but fails to comply with that duty, his treatment of that person cannot be justified under subsection (3) unless it would have been justified even if he had complied with that duty.

Meaning of "harassment"

3B.—(1) For the purposes of this Part, a person subjects a disabled person to harassment where, for a reason which relates to the disabled person's disability, he engages in unwanted conduct which has the purpose or effect of—

- (a) violating the disabled person's dignity, or
- (b) creating an intimidating, hostile, degrading, humiliating or offensive environment for him.

(2) Conduct shall be regarded as having the effect referred to in paragraph (a) or (b) of subsection (1) only if, having regard to all the circumstances, including in particular the perception of the disabled person, it should reasonably be considered as having that effect."

Employment; contract workers; office-holders

5. For sections 4 to 6 (and the preceding cross-heading), substitute the following sections—

"Employment

4 Employers: discrimination and harassment

(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 Great Britain.

4A Employers: duty to make adjustments

- (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

4B Contract workers

(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 Great Britain (the provisions of section 68 about the meaning of “employment at an establishment in Great Britain” 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

4C Office-holders: introductory

- (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, section 7C 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 government department, the National Assembly for Wales or any part of the Scottish Administration;
 - (c) the office or post is one to which appointments are made on the recommendation of, or subject to the approval of, a person referred to in paragraph (b).
- (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⁽⁷⁾, 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⁽⁸⁾,
 - (d) the offices of Leader of the Opposition, Chief Opposition Whip or Assistant Opposition Whip within the meaning of the Ministerial and other Salaries Act 1975⁽⁹⁾,
 - (e) any office of the Scottish Parliament held by a member of it,

⁽⁷⁾ 1958 c. 21.

⁽⁸⁾ 1975 c. 24. Schedule 2 was amended by S.I. 2002/794, article 5(2), Schedule 2 and by the Scotland Act 1998 sections 48(6), 125, Schedule 9 and section 87(1).

⁽⁹⁾ 1975 c. 27.

- (f) a member of the Scottish Executive within the meaning of section 44 of the Scotland Act 1998⁽¹⁰⁾, or a junior Scottish Minister within the meaning of section 49 of that Act,
- (g) any office of the National Assembly for Wales held by a member of it,
- (h) in England, any office of a county council, a London borough council, a district council or a parish council held by a member of it,
- (i) in Wales, any office of a county council, a county borough council or a community council held by a member of it,
- (j) in relation to a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994⁽¹¹⁾ or a community council established under section 51 of the Local Government (Scotland) Act 1973⁽¹²⁾, any office of such a council held by a member of it,
- (k) any office of the Greater London Authority held by a member of it,
- (l) any office of the Common Council of the City of London held by a member of it,
- (m) any office of the Council of the Isles of Scilly held by a member of it, or
- (n) any office of a political party.

4D Office-holders: discrimination and harassment

(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—

- (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;

⁽¹⁰⁾ 1998 c. 46.

⁽¹¹⁾ 1994 c. 39.

⁽¹²⁾ 1973 c. 65, amended by the Local Government etc. (Scotland) Act 1994 (c. 39), section 180(2), Schedule 14, paragraph 1.

- (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.

4E Office-holders: duty to make adjustments

- (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; and
- (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).

4F Office-holders: supplementary

- (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.”.

Partnerships

6. After section 6, insert the following sections—

“Partnerships

Partnerships: discrimination and harassment

6A.—(1) It is unlawful for a firm, in relation to a position as partner in the firm, to discriminate against a disabled person—

- (a) in the arrangements which they make for the purpose of determining who should be offered that position;
- (b) in the terms on which they offer him that position;
- (c) by refusing or deliberately omitting to offer him that position; or
- (d) in a case where the person already holds that position—
 - (i) in the way they afford him access to any benefits or by refusing or deliberately omitting to afford him access to them; or
 - (ii) by expelling him from that position, or subjecting him to any other detriment.

(2) It is also unlawful for a firm, in relation to a position as partner in the firm, to subject to harassment a disabled person who holds or has applied for that position.

(3) Subsection (1) does not apply to benefits of any description if the firm are 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 partner in question, unless that provision differs in a material respect from the provision of the benefits to other partners.

(4) The reference in subsection (1)(d)(ii) to the expulsion of a person from a position as partner includes a reference—

- (a) to the termination of that person’s partnership 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 partnership is renewed on the same terms; and
- (b) to the termination of that person’s partnership 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 other partners.

Partnerships: duty to make adjustments

6B.—(1) Where—

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

places the disabled person concerned at a substantial disadvantage in comparison with persons who are not disabled, it is the duty of the firm 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) In this section, “the disabled person concerned” means—

- (a) in the case of a provision, criterion or practice for determining to whom the position of partner should be offered, any disabled person who is, or has notified the firm that he may be, a candidate for that position;

- (b) in any other case, a disabled person who is—
 - (i) a partner, or
 - (ii) a candidate for the position of partner.
- (3) Nothing in this section imposes any duty on a firm in relation to a disabled person if the firm do not know, and could not reasonably be expected to know—
 - (a) in the case of a candidate or potential candidate, that the disabled person concerned is, or may be, a candidate for the position of partner; or
 - (b) in any case, that that person has a disability and is likely to be affected in the way mentioned in subsection (1).
- (4) Where a firm are required by this section to take any steps in relation to the disabled person concerned, the cost of taking those steps shall be treated as an expense of the firm; and the extent to which such cost should be borne by that person, where he is or becomes a partner in the firm, shall not exceed such amount as is reasonable, having regard in particular to the proportion in which he is entitled to share in the firm’s profits.

Partnerships: supplementary

- 6C.**—(1) Sections 6A(1)(a) to (c) and (2) and section 6B apply in relation to persons proposing to form themselves into a partnership as they apply in relation to a firm.
- (2) Sections 6A and 6B apply to a limited liability partnership as they apply to a firm; and, in the application of those sections to a limited liability partnership, references to a partner in a firm are references to a member of the limited liability partnership.
- (3) In the case of a limited partnership, references in sections 6A and 6B to a partner shall be construed as references to a general partner as defined in section 3 of the Limited Partnerships Act 1907(13).
- (4) In sections 6A and 6B and in this section, “firm” has the meaning given by section 4 of the Partnership Act 1890(14).”.

Repeal of exemption for small businesses

- 7. Omit section 7 (exemption for small businesses).

Barristers and advocates

- 8. After section 7, insert the following sections—

“Barristers and advocates

Barristers: discrimination and harassment

- 7A.**—(1) It is unlawful for a barrister or a barrister’s clerk, in relation to any offer of a pupillage or tenancy, to discriminate against a disabled person—
 - (a) in the arrangements which are made for the purpose of determining to whom it should be offered;
 - (b) in respect of any terms on which it is offered; or
 - (c) by refusing, or deliberately omitting, to offer it to him.

(13) 1907 c. 24.
(14) 1890 c. 39.

(2) It is unlawful for a barrister or a barrister’s clerk, in relation to a disabled pupil or tenant in the set of chambers in question, to discriminate against him—

- (a) in respect of any terms applicable to him as a pupil or tenant;
- (b) in the opportunities for training, or gaining experience, which are afforded or denied to him;
- (c) in the benefits which are afforded or denied to him;
- (d) by terminating his pupillage or by subjecting him to any pressure to leave the chambers; or
- (e) by subjecting him to any other detriment.

(3) It is unlawful for a barrister or barrister’s clerk, in relation to a pupillage or tenancy, to subject to harassment a disabled person who is, or has applied to be, a pupil or tenant in the set of chambers in question.

(4) It is also unlawful for any person, in relation to the giving, withholding or acceptance of instructions to a barrister, to discriminate against a disabled person or to subject him to harassment.

(5) In this section and in section 7B—

“barrister’s clerk” includes any person carrying out any of the functions of a barrister’s clerk;

“pupil”, “pupillage” and “set of chambers” have the meanings commonly associated with their use in the context of barristers practising in independent practice; and

“tenancy” and “tenant” have the meanings commonly associated with their use in the context of barristers practising in independent practice, but they also include reference to any barrister permitted to practise from a set of chambers.

Barristers: duty to make adjustments

7B.—(1) Where—

- (a) a provision, criterion or practice applied by or on behalf of a barrister or barrister’s clerk, or
- (b) any physical feature of premises occupied by a barrister or a barrister’s clerk,

places the disabled person concerned at a substantial disadvantage in comparison with persons who are not disabled, it is the duty of the barrister or barrister’s clerk 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 a case where subsection (1) applies in relation to two or more barristers in a set of chambers, the duty in that subsection is a duty on each of them to take such steps as it is reasonable, in all of the circumstances of the case, for him to have to take.

(3) In this section, “the disabled person concerned” means—

- (a) in the case of a provision, criterion or practice for determining to whom a pupillage or tenancy should be offered, any disabled person who is, or has notified the barrister or the barrister’s clerk concerned that he may be, an applicant for a pupillage or tenancy; or
- (b) in any other case, a disabled person who is—
 - (i) a tenant;
 - (ii) a pupil; or
 - (iii) an applicant for a pupillage or tenancy.

(4) Nothing in this section imposes any duty on a barrister or a barrister’s clerk in relation to a disabled person if he 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 a pupillage or tenancy; or
- (b) in any case, that that person has a disability and is likely to be affected in the way mentioned in subsection (1).

Advocates: discrimination and harassment

7C.—(1) It is unlawful for an advocate, in relation to taking any person as his pupil, to discriminate against a disabled person—

- (a) in the arrangements which he makes for the purpose of determining whom he will take as his pupil;
- (b) in respect of any terms on which he offers to take the disabled person as his pupil; or
- (c) by refusing, or deliberately omitting, to take the disabled person as his pupil.

(2) It is unlawful for an advocate, in relation to a disabled person who is a pupil, to discriminate against him—

- (a) in respect of any terms applicable to him as a pupil;
- (b) in the opportunities for training, or gaining experience, which are afforded or denied to him;
- (c) in the benefits which are afforded or denied to him;
- (d) by terminating the relationship or by subjecting him to any pressure to leave; or
- (e) by subjecting him to any other detriment.

(3) It is unlawful for an advocate, in relation to taking any person as his pupil, to subject to harassment a disabled person who is, or has applied to be taken as, his pupil.

(4) It is also unlawful for any person, in relation to the giving, withholding or acceptance of instructions to an advocate, to discriminate against a disabled person or to subject him to harassment.

(5) In this section and section 7D—

- “advocate” means a member of the Faculty of Advocates practising as such; and
- “pupil” has the meaning commonly associated with its use in the context of a person training to be an advocate.

Advocates: duty to make adjustments

7D.—(1) Where—

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

places the disabled person concerned at a substantial disadvantage in comparison with persons who are not disabled, it is the duty of the advocate 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 whom he will take as his pupil, any disabled person who has applied, or has notified the advocate that he may apply, to be taken as a pupil;
- (b) in any other case, a disabled person who is—
 - (i) an applicant to be taken as the advocate’s pupil;
 - (ii) a pupil.
- (3) Nothing in this section imposes any duty on an advocate in relation to a disabled person if he 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, applying to be taken as his pupil; or
 - (b) in any case, that that person has a disability and is likely to be affected in the way mentioned in subsection (1).”.

Enforcement

9.—(1) Move section 8(15) (enforcement, remedies and procedure), and the preceding cross-heading, to follow section 17; and renumber the section as section 17A.

(2) In that section—

- (a) in subsection (1)(a), after “discriminated against him” insert “, or subjected him to harassment,”;
- (b) in subsection (1)(b), for “discriminated against him in such a way”, substitute “done so”;
- (c) after subsection (1), insert the following subsections—

“(1A) Subsection (1) does not apply to a complaint under section 14A(1) or (2) of an act in respect of which an appeal, or proceedings in the nature of an appeal, may be brought under any enactment.

(1B) In subsection (1A), “enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.

(1C) Where, on the hearing of a complaint under subsection (1), the complainant proves facts from which the tribunal could, apart from this subsection, conclude in the absence of an adequate explanation that the respondent has acted in a way which is unlawful under this Part, the tribunal shall uphold the complaint unless the respondent proves that he did not so act.”.

Repeal of section 9

10. Omit section 9 (validity of certain agreements).

Charities etc

11. Move section 10 (charities and support for particular groups of persons) to follow section 18B (reasonable adjustments: supplementary), as inserted by regulation 17(2), and renumber it as section 18C.

(15) All references in the 1995 Act to an “employment tribunal” were substituted by the Employment Rights (Dispute Resolution) Act 1998 (c. 8) (“the 1998 Act”), section 1(2)(a). In subsection (7) of section 8, the words “section 14 of” were substituted by the Employment Tribunals Act 1996 (c. 17), section 43, Schedule 1, paragraph 12(1) and (2); and all references in the 1995 Act to the Employment Tribunals Act 1996 were substituted by section 1(2)(c) of the 1998 Act.

Repeal of sections 11 and 12

12. Omit section 11 (advertisements suggesting that employers will discriminate against disabled persons) and section 12 (discrimination against contract workers).

Trade and professional bodies; qualifications bodies; practical work experience

13. For sections 13 to 15, substitute the following sections—

“Trade and professional bodies

13 Trade organisations: discrimination and harassment

- (1) It is unlawful for a trade organisation to discriminate against a disabled person—
 - (a) in the arrangements which it makes for the purpose of determining who should be offered membership of the organisation;
 - (b) in the terms on which it is prepared to admit him to membership of the organisation; or
 - (c) by refusing to accept, or deliberately not accepting, his application for membership.
- (2) It is unlawful for a trade organisation, in the case of a disabled person who is a member of the organisation, to discriminate against him—
 - (a) in the way it affords him access to any benefits or by refusing or deliberately omitting to afford him access to them;
 - (b) by depriving him of membership, or varying the terms on which he is a member; or
 - (c) by subjecting him to any other detriment.
- (3) It is also unlawful for a trade organisation, in relation to membership of that organisation, to subject to harassment a disabled person who—
 - (a) is a member of the organisation; or
 - (b) has applied for membership of the organisation.
- (4) In this section and section 14 “trade organisation” means—
 - (a) an organisation of workers;
 - (b) an organisation of employers; or
 - (c) any other organisation whose members carry on a particular profession or trade for the purposes of which the organisation exists.

14 Trade organisations: duty to make adjustments

- (1) Where—
 - (a) a provision, criterion or practice applied by or on behalf of a trade organisation, or
 - (b) any physical feature of premises occupied by the organisation,places the disabled person concerned at a substantial disadvantage in comparison with persons who are not disabled, it is the duty of the organisation 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.

(2) In this section “the disabled person concerned” means—

- (a) in the case of a provision, criterion or practice for determining to whom membership should be offered, any disabled person who is, or has notified the organisation that he may be, an applicant for membership;
 - (b) in any other case, a disabled person who is—
 - (i) a member of the organisation, or
 - (ii) an applicant for membership of the organisation.
- (3) Nothing in this section imposes any duty on an organisation in relation to a disabled person if the organisation 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 membership of the organisation; or
 - (b) in any case, that that person has a disability and is likely to be affected in the way mentioned in subsection (1).

14A Qualifications bodies: discrimination and harassment

- (1) It is unlawful for a qualifications body to discriminate against a disabled person—
- (a) in the arrangements which it makes for the purpose of determining upon whom to confer a professional or trade qualification;
 - (b) in the terms on which it is prepared to confer a professional or trade qualification on him;
 - (c) by refusing or deliberately omitting to grant any application by him for such a qualification; or
 - (d) by withdrawing such a qualification from him or varying the terms on which he holds it.
- (2) It is also unlawful for a qualifications body, in relation to a professional or trade qualification conferred by it, to subject to harassment a disabled person who holds or applies for such a qualification.
- (3) In determining for the purposes of subsection (1) whether the application by a qualifications body of a competence standard to a disabled person constitutes discrimination within the meaning of section 3A, the application of the standard is justified for the purposes of section 3A(1)(b) if, but only if, the qualifications body can show that—
- (a) the standard is, or would be, applied equally to persons who do not have his particular disability; and
 - (b) its application is a proportionate means of achieving a legitimate aim.
- (4) For the purposes of subsection (3)—
- (a) section 3A(2) (and (6)) does not apply; and
 - (b) section 3A(4) has effect as if the reference to section 3A(3) were a reference to subsection (3) of this section.
- (5) In this section and section 14B—
- “qualifications body” means any authority or body which can confer a professional or trade qualification, but it does not include—
- (a) a responsible body (within the meaning of Chapter 1 or 2 of Part 4),
 - (b) a local education authority in England or Wales, or
 - (c) an education authority (within the meaning of section 135(1) of the Education (Scotland) Act 1980);

“confer” includes renew or extend;

“professional or trade qualification” means an authorisation, qualification, recognition, registration, enrolment, approval or certification which is needed for, or facilitates engagement in, a particular profession or trade;

“competence standard” means an academic, medical or other standard applied by or on behalf of a qualifications body for the purpose of determining whether or not a person has a particular level of competence or ability.

14B Qualifications bodies: duty to make adjustments

(1) Where—

(a) a provision, criterion or practice, other than a competence standard, applied by or on behalf of a qualifications body; or

(b) any physical feature of premises occupied by a qualifications body,

places the disabled person concerned at a substantial disadvantage in comparison with persons who are not disabled, it is the duty of the qualifications body 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.

(2) In this section “the disabled person concerned” means—

(a) in the case of a provision, criterion or practice for determining on whom a professional or trade qualification is to be conferred, any disabled person who is, or has notified the qualifications body that he may be, an applicant for the conferment of that qualification;

(b) in any other case, a disabled person who—

(i) holds a professional or trade qualification conferred by the qualifications body, or

(ii) applies for a professional or trade qualification which it confers.

(3) Nothing in this section imposes a duty on a qualifications body in relation to a disabled person if the body 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 conferment of a professional or trade qualification; or

(b) in any case, that that person has a disability and is likely to be affected in the way mentioned in subsection (1).

Practical work experience

14C Practical work experience: discrimination and harassment

(1) It is unlawful, in the case of a disabled person seeking or undertaking a work placement, for a placement provider to discriminate against him—

(a) in the arrangements which he makes for the purpose of determining who should be offered a work placement;

(b) in the terms on which he affords him access to any work placement or any facilities concerned with such a placement;

(c) by refusing or deliberately omitting to afford him such access;

(d) by terminating the placement; or

- (e) by subjecting him to any other detriment in relation to the placement.
- (2) It is also unlawful for a placement provider, in relation to a work placement, to subject to harassment—
 - (a) a disabled person to whom he is providing a placement; or
 - (b) a disabled person who has applied to him for a placement.
- (3) This section and section 14D do not apply to—
 - (a) anything made unlawful by section 4 or any provision of Part 3 or 4; or
 - (b) anything which would be unlawful under that section or any such provision but for the operation of any other provision of this Act.
- (4) In this section and section 14D—
 - “work placement” means practical work experience undertaken for a limited period for the purposes of a person’s vocational training;
 - “placement provider” means any person who provides a work placement to a person whom he does not employ.
- (5) This section and section 14D do not apply to a work placement undertaken in any of the naval, military and air forces of the Crown.

14D Practical work experience: duty to make adjustments

- (1) Where—
 - (a) a provision, criterion or practice applied by or on behalf of a placement provider, or
 - (b) any physical feature of premises occupied by the placement provider,
 places the disabled person concerned at a substantial disadvantage in comparison with persons who are not disabled, it is the duty of the placement provider 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 to whom a work placement should be offered, any disabled person who is, or has notified the placement provider that he may be, an applicant for that work placement;
 - (b) in any other case, a disabled person who is—
 - (i) an applicant for the work placement concerned, or
 - (ii) undertaking a work placement with the placement provider.
- (3) Nothing in this section imposes any duty on a placement provider in relation to the disabled person concerned if he 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 work placement; or
 - (b) in any case, that that person has a disability and is likely to be affected in the way mentioned in subsection (1).”.

Alterations to premises occupied under leases

14.—(1) Omit the cross-heading preceding section 16 (alterations to premises occupied under leases).

- (2) Move section 16 to follow section 18 and renumber it as section 18A.
- (3) In that section—
 - (a) in subsection (1)(a), for “an employer or trade organisation” substitute “a person to whom a duty to make reasonable adjustments applies”;
 - (b) in subsection (1)(c), for “a section 6 duty or section 15 duty” substitute “that duty”.

Other unlawful acts

- 15.—(1) After section 16, insert the following sections—

“Other unlawful acts

Relationships which have come to an end

- 16A.—(1) This section applies where—
- (a) there has been a relevant relationship between a disabled person and another person (“the relevant person”), and
 - (b) the relationship has come to an end.
- (2) In this section a “relevant relationship” is—
- (a) a relationship during the course of which an act of discrimination against, or harassment of, one party to the relationship by the other party to it is unlawful under any preceding provision of this Part; or
 - (b) a relationship between a person providing employment services (within the meaning of Part 3) and a person receiving such services.
- (3) It is unlawful for the relevant person—
- (a) to discriminate against the disabled person by subjecting him to a detriment, or
 - (b) to subject the disabled person to harassment,

where the discrimination or harassment arises out of and is closely connected to the relevant relationship.

- (4) This subsection applies where—
- (a) a provision, criterion or practice applied by the relevant person to the disabled person in relation to any matter arising out of the relevant relationship, or
 - (b) a physical feature of premises which are occupied by the relevant person,

places the disabled person at a substantial disadvantage in comparison with persons who are not disabled, but are in the same position as the disabled person in relation to the relevant person.

(5) Where subsection (4) applies, 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, practice or criterion, or feature, having that effect.

(6) Nothing in subsection (5) imposes any duty on the relevant person if he does not know, and could not reasonably be expected to know, that the disabled person has a disability and is likely to be affected in the way mentioned in that subsection.

(7) In subsection (2), reference to an act of discrimination or harassment which is unlawful includes, in the case of a relationship which has come to an end before the commencement of this section, reference to such an act which would, after the commencement of this section, be unlawful.

Discriminatory advertisements

16B.—(1) It is unlawful for a person, in relation to a relevant appointment or benefit which he intends to make or confer, to publish or cause to be published an advertisement which—

- (a) invites applications for that appointment or benefit; and
- (b) indicates, or might reasonably be understood to indicate, that an application will or may be determined to any extent by reference to—
 - (i) the applicant not having any disability, or any particular disability, or
 - (ii) any reluctance of the person determining the application to comply with a duty to make reasonable adjustments or (in relation to employment services) with the duty imposed by section 21(1) as modified by section 21A(6).

(2) Subsection (1) does not apply where it would not in fact be unlawful under this Part or, to the extent that it relates to the provision of employment services, Part 3 for an application to be determined in the manner indicated (or understood to be indicated) in the advertisement.

(3) In subsection (1), “relevant appointment or benefit” means—

- (a) any employment, promotion or transfer of employment;
- (b) membership of, or a benefit under, an occupational pension scheme;
- (c) an appointment to any office or post to which section 4D applies;
- (d) any partnership in a firm (within the meaning of section 6A);
- (e) any tenancy or pupillage (within the meaning of section 7A or 7C);
- (f) any membership of a trade organisation (within the meaning of section 13);
- (g) any professional or trade qualification (within the meaning of section 14A);
- (h) any work placement (within the meaning of section 14C);
- (i) any employment services (within the meaning of Part 3).

(4) In this section, “advertisement” includes every form of advertisement or notice, whether to the public or not.

Instructions and pressure to discriminate

16C.—(1) It is unlawful for a person—

- (a) who has authority over another person, or
- (b) in accordance with whose wishes that other person is accustomed to act,

to instruct him to do any act which is unlawful under this Part or, to the extent that it relates to the provision of employment services, Part 3, or to procure or attempt to procure the doing by him of any such act.

(2) It is also unlawful to induce, or attempt to induce, a person to do any act which contravenes this Part or, to the extent that it relates to the provision of employment services, Part 3 by—

- (a) providing or offering to provide him with any benefit, or
- (b) subjecting or threatening to subject him to any detriment.

(3) An attempted inducement is not prevented from falling within subsection (2) because it is not made directly to the person in question, if it is made in such a way that he is likely to hear of it.”

(2) In the cross-heading preceding section 17, omit the words “and insurance services”.

Enforcement of sections 16B and 16C; validity of contracts, collective agreements and rules of undertakings

16.—(1) After section 17A (enforcement), the former section 8 moved, renumbered and amended by regulation 9, insert the following sections—

“Enforcement of sections 16B and 16C

17B.—(1) Only the Disability Rights Commission may bring proceedings in respect of a contravention of section 16B (discriminatory advertisements) or section 16C (instructions and pressure to discriminate).

(2) The Commission shall bring any such proceedings in accordance with subsection (3) or (4).

(3) The Commission may present to an employment tribunal a complaint that a person has done an act which is unlawful under section 16B or 16C; and if the tribunal finds that the complaint is well-founded it shall make a declaration to that effect.

(4) Where—

- (a) a tribunal has made a finding pursuant to subsection (3) that a person has done an act which is unlawful under section 16B or 16C,
- (b) that finding has become final, and
- (c) it appears to the Commission that, unless restrained, he is likely to do a further act which is unlawful under that section,

the Commission may apply to a county court for an injunction, or (in Scotland) to a sheriff court for an interdict, restraining him from doing such an act; and the court, if satisfied that the application is well-founded, may grant the injunction or interdict in the terms applied for or in more limited terms.

(5) A finding of a tribunal under subsection (3) in respect of any act shall, if it has become final, be treated as conclusive by a county court or sheriff court upon an application under subsection (4).

(6) A finding of a tribunal becomes final for the purposes of this section when an appeal against it is dismissed, withdrawn or abandoned or when the time for appealing expires without an appeal having been brought.

(7) An employment tribunal shall not consider a complaint under subsection (3) unless it is presented before the end of the period of six months beginning when the act to which it relates was done; and a county court or sheriff court shall not consider an application under subsection (4) unless it is made before the end of the period of five years so beginning.

(8) A court or tribunal may consider any such complaint or application which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.

(9) The provisions of paragraph 3(3) and (4) of Schedule 3 apply for the purposes of subsection (7) as they apply for the purposes of paragraph 3(1) of that Schedule.

Validity of contracts, collective agreements and rules of undertakings

17C Schedule 3A shall have effect.”.

(2) After Schedule 3, insert the Schedule set out in the Schedule to these Regulations.

Supplementary and general

17.—(1) In Part 2, before section 18, insert the following cross-heading—

“Supplementary and general”

(2) In Part 2, after section 18A (the former section 16 (alterations to premises occupied under leases) moved, renumbered and amended by regulation 14) insert the following section—

“Reasonable adjustments: supplementary

18B.—(1) In determining whether it is reasonable for a person to have to take a particular step in order to comply with a duty to make reasonable adjustments, regard shall be had, in particular, to—

- (a) the extent to which taking the step would prevent the effect in relation to which the duty is imposed;
- (b) the extent to which it is practicable for him to take the step;
- (c) the financial and other costs which would be incurred by him in taking the step and the extent to which taking it would disrupt any of his activities;
- (d) the extent of his financial and other resources;
- (e) the availability to him of financial or other assistance with respect to taking the step;
- (f) the nature of his activities and the size of his undertaking;
- (g) where the step would be taken in relation to a private household, the extent to which taking it would—
 - (i) disrupt that household, or
 - (ii) disturb any person residing there.

(2) The following are examples of steps which a person may need to take in relation to a disabled person in order to comply with a duty to make reasonable adjustments—

- (a) making adjustments to premises;
- (b) allocating some of the disabled person’s duties to another person;
- (c) transferring him to fill an existing vacancy;
- (d) altering his hours of working or training;
- (e) assigning him to a different place of work or training;
- (f) allowing him to be absent during working or training hours for rehabilitation, assessment or treatment;
- (g) giving, or arranging for, training or mentoring (whether for the disabled person or any other person);
- (h) acquiring or modifying equipment;
- (i) modifying instructions or reference manuals;
- (j) modifying procedures for testing or assessment;
- (k) providing a reader or interpreter;
- (l) providing supervision or other support.

(3) For the purposes of a duty to make reasonable adjustments, where under any binding obligation a person is required to obtain the consent of another person to any alteration of the premises occupied by him—

- (a) it is always reasonable for him to have to take steps to obtain that consent; and
- (b) it is never reasonable for him to have to make that alteration before that consent is obtained.

(4) The steps referred to in subsection (3)(a) shall not be taken to include an application to a court or tribunal.

(5) In subsection (3), “binding obligation” means a legally binding obligation (not contained in a lease (within the meaning of section 18A(3)) in relation to the premises, whether arising from an agreement or otherwise.

(6) A provision of this Part imposing a duty to make reasonable adjustments applies only for the purpose of determining whether a person has discriminated against a disabled person; and accordingly a breach of any such duty is not actionable as such.”.

Interpretation of Part 2

18. In Part 2, after section 18C (charities), the former section 10 moved and renumbered by regulation 11, insert the following section—

“Interpretation of Part 2

18D.—(1) Subject to any duty to make reasonable adjustments, nothing in this Part is to be taken to require a person to treat a disabled person more favourably than he treats or would treat others.

(2) In this Part—

“benefits” includes facilities and services;

“detriment”, except in section 16C(2)(b), does not include conduct of the nature referred to in section 3B (harassment);

“discriminate”, “discrimination” and other related expressions are to be construed in accordance with section 3A;

“duty to make reasonable adjustments” means a duty imposed by or under section 4A, 4B(5) or (6), 4E, 6B, 7B, 7D, 14, 14B, 14D or 16A(5);

“employer” includes a person who has no employees but is seeking to employ another person;

“harassment” is to be construed in accordance with section 3B;

“physical feature”, in relation to any premises, includes any of the following (whether permanent or temporary)—

- (a) any feature arising from the design or construction of a building on the premises,
 - (b) any feature on the premises of any approach to, exit from or access to such a building,
 - (c) any fixtures, fittings, furnishings, furniture, equipment or material in or on the premises,
 - (d) any other physical element or quality of any land comprised in the premises;
- “provision, criterion or practice” includes any arrangements.”.

Amendments to Part 3

19.—(1) After section 21 insert the following section—

“Employment services

21A.—(1) In this Part, “employment services” means—

- (a) vocational guidance;

- (b) vocational training; or
- (c) services to assist a person to obtain or retain employment, or to establish himself as self-employed.

(2) It is unlawful for a provider of employment services, in relation to such services, to subject to harassment a disabled person—

- (a) to whom he is providing such services, or
- (b) who has requested him to provide such services;

and section 3B (meaning of “harassment”) applies for the purposes of this subsection as it applies for the purposes of Part 2.

(3) In their application to employment services, the preceding provisions of this Part have effect as follows.

(4) Section 19 has effect as if—

(a) after subsection (1)(a), there were inserted the following paragraph—

“(aa) in failing to comply with a duty imposed on him by subsection (1) of section 21 in circumstances in which the effect of that failure is to place the disabled person at a substantial disadvantage in comparison with persons who are not disabled in relation to the provision of the service;”;

(b) in subsection (1)(b), for “section 21” there were substituted “subsection (2) or (4) of section 21”;

(c) in subsection (2), for “sections 20 and 21” there were substituted “sections 20, 21 and 21A”.

(5) Section 20 has effect as if—

(a) after subsection (1), there were inserted the following subsection—

“(1A) For the purposes of section 19, a provider of services also discriminates against a disabled person if he fails to comply with a duty imposed on him by subsection (1) of section 21 in relation to the disabled person.”;

(b) in subsection (2)(a), for “a section 21 duty imposed” there were substituted “a duty imposed by subsection (2) or (4) of section 21”;

(c) after subsection (3), there were inserted the following subsection—

“(3A) But treatment of a disabled person cannot be justified under subsection (3) if it amounts to direct discrimination falling within section 3A(5).”.

(6) Section 21 has effect as if—

(a) in subsection (1), for “makes it impossible or unreasonably difficult for disabled persons to make use of” there were substituted “places disabled persons at a substantial disadvantage in comparison with persons who are not disabled in relation to the provision of”;

(b) after subsection (1), there were inserted the following subsection—

“(1A) In subsection (1), “practice, policy or procedure” includes a provision or criterion.”.

(2) In section 25 (enforcement), at the end add the following subsections—

“(7) Subsection (1) does not apply in relation to a claim by a person that another person—

- (a) has discriminated against him or subjected him to harassment in relation to the provision of employment services in a way which is unlawful under this Part; or

(b) is by virtue of section 57 or 58 to be treated as having discriminated against him or subjected him to harassment in such a way.

(8) A claim of the kind referred to in subsection (7) may be presented as a complaint to an employment tribunal.

(9) Section 17A(1A) to (7) and paragraphs 3 and 4 of Schedule 3 apply in relation to a complaint under subsection (8) as if it were a complaint under section 17A(1) (and paragraphs 6 to 8 of Schedule 3 do not apply in relation to such a complaint).”.

(3) In section 26 (validity and revision of certain agreements), after subsection (1) insert—

“(1A) Subsection (1) does not apply to any term in a contract, or other agreement, for the provision of employment services.”.

Codes of Practice

20. In Part 7, in section 53A(16) (codes of practice)—

(a) in subsection (1) (as substituted by section 36 of the Special Educational Needs and Disability Act 2001(17))—

(i) for “discrimination” substitute “acts which are unlawful under Part 2, 3 or 4”;

(ii) for “Part 2, 3 or 4” substitute “those Parts”;

(b) in subsection (9), omit the definition of “discrimination”.

Victimisation

21. In section 55(18) (victimisation), at the end, add the following subsections—

“(5) In the case of an act which constitutes discrimination by virtue of this section, sections 4, 4B, 4D, 6A, 7A, 7C, 13, 14A, 14C and 16A also apply to discrimination against a person who is not disabled.

(6) For the purposes of Part 2 and, to the extent that it relates to the provision of employment services, Part 3, subsection (2)(a)(iii) has effect as if there were inserted after “under” “or by reference to”.

Help for persons suffering discrimination

22. In section 56 (help for persons suffering discrimination)—

(a) after “Part II” (in each place it occurs) insert “or, to the extent that it relates to the provision of employment services, Part 3”;

(b) in subsection (1)(a), after “discriminated against” insert “or subjected to harassment”;

(c) in subsection (3)(b)(i), for “a reasonable period” substitute “the period of eight weeks beginning with the day on which the question was served on him”.

Statutory authority and national security etc

23. In section 59 (statutory authority and national security etc)—

(a) after subsection (2), insert the following subsection—

“(2A) Nothing in—

(16) Section 53A of the 1995 Act was inserted by section 9 of the 1999 Act, and amended by section 36 of the Special Educational Needs and Disability Act 2001 (c. 10).

(17) c.10.

(18) Section 55 was amended by section 38 of the Special Educational Needs and Disability Act 2001 (c. 10).

- (a) Part 2 of this Act, or
 - (b) Part 3 of this Act to the extent that it relates to the provision of employment services,
- makes unlawful any act done for the purpose of safeguarding national security if the doing of the act was justified by that purpose.”;
- (b) in subsection (3), after “Nothing in” insert “any other provision of”.

Application to the Crown etc

- 24.** In Part 8, in section 64—
- (a) in subsection (2), omit “Subject to subsection (5),”;
 - (b) after subsection (2), insert the following subsection—
 - “(2A) Subsections (1) and (2) have effect subject to section 64A.”;
 - (c) omit subsections (5) and (6);
 - (d) in subsection (7), omit “It is hereby declared (for the avoidance of doubt) that”;
 - (e) in subsection (8), omit the definitions of “British Transport Police”, “fire brigade”, “Ministry of Defence Police”, “prison officer”, “Royal Parks Constabulary” and “United Kingdom Atomic Energy Authority Constabulary” (and the preceding “and”).

Police

- 25.** After section 64, insert the following section—

“Police

64A.—(1) For the purposes of Part 2, the holding of the office of constable shall be treated as employment—

- (a) by the chief officer of police as respects any act done by him in relation to a constable or that office;
 - (b) by the police authority as respects any act done by them in relation to a constable or that office.
- (2) For the purposes of section 58—
- (a) the holding of the office of constable shall be treated as employment by the chief officer of police (and as not being employment by any other person); and
 - (b) anything done by a person holding such an office in the performance, or purported performance, of his functions shall be treated as done in the course of that employment.
- (3) There shall be paid out of the police fund—
- (a) any compensation, costs or expenses awarded against a chief officer of police in any proceedings brought against him under Part 2, and any costs or expenses incurred by him in any such proceedings so far as not recovered by him in the proceedings; and
 - (b) any sum required by a chief officer of police for the settlement of any claim made against him under Part 2 if the settlement is approved by the police authority.
- (4) Any proceedings under Part 2 which, by virtue of subsection (1), would lie against a chief officer of police shall be brought against—
- (a) the chief officer of police for the time being, or

(b) in the case of a vacancy in that office, against the person for the time being performing the functions of that office;

and references in subsection (3) to the chief officer of police shall be construed accordingly.

(5) A police authority may, in such cases and to such extent as appear to it to be appropriate, pay out of the police fund—

- (a) any compensation, costs or expenses awarded in proceedings under Part 2 of this Act against a person under the direction and control of the chief officer of police;
- (b) any costs or expenses incurred and not recovered by such a person in such proceedings; and
- (c) any sum required in connection with the settlement of a claim that has or might have given rise to such proceedings.

(6) Subsections (1) and (2) apply to a police cadet and appointment as a police cadet as they apply to a constable and the office of constable.

(7) Subject to subsection (8), in this section—

“chief officer of police”—

- (a) in relation to a person appointed, or an appointment falling to be made, under a specified Act, has the same meaning as in the Police Act 1996⁽¹⁹⁾,
- (b) in relation to a person appointed, or an appointment falling to be made, under section 9(1)(b) or 55(1)(b) of the Police Act 1997⁽²⁰⁾ (police members of the National Criminal Intelligence Service and the National Crime Squad) means the Director General of the National Criminal Intelligence Service or, as the case may be, the Director General of the National Crime Squad,
- (c) in relation to a person appointed, or an appointment falling to be made, under the Police (Scotland) Act 1967⁽²¹⁾, means the chief constable of the relevant police force,
- (d) in relation to any other person or appointment means the officer or other person who has the direction and control of the body of constables or cadets in question;

“police authority”—

- (a) in relation to a person appointed, or an appointment falling to be made, under a specified Act, has the same meaning as in the Police Act 1996,
- (b) in relation to a person appointed, or an appointment falling to be made, under section 9(1)(b) or 55(1)(b) of the Police Act 1997, means the Service Authority for the National Criminal Intelligence Service or, as the case may be, the Service Authority for the National Crime Squad,
- (c) in relation to a person appointed, or an appointment falling to be made, under the Police (Scotland) Act 1967, has the meaning given in that Act,
- (d) in relation to any other person or appointment, means the authority by whom the person in question is or on appointment would be paid;

“police cadet” means any person appointed to undergo training with a view to becoming a constable;

“police fund”—

- (a) in relation to a chief officer of police within paragraph (a) of the above definition of that term, has the same meaning as in the Police Act 1996,

⁽¹⁹⁾ 1996 c. 16.
⁽²⁰⁾ 1997 c. 50.
⁽²¹⁾ 1967 c. 77.

- (b) in relation to a chief officer of police within paragraph (b) of that definition, means the service fund established under section 16 or (as the case may be) section 61 of the Police Act 1997, and
 - (c) in any other case means money provided by the police authority;
- “specified Act” means the Metropolitan Police Act 1829⁽²²⁾, the City of London Police Act 1839⁽²³⁾ or the Police Act 1996.

(8) In relation to a constable of a force who is not under the direction and control of the chief officer of police for that force, references in this section to the chief officer of police are references to the chief officer of the force under whose direction and control he is, and references in this section to the police authority are references to the relevant police authority for that force.”.

Repeal of section 66

26. Omit section 66 (government appointments outside Part 2).

Interpretation

27. In section 68⁽²⁴⁾—

- (a) in subsection (1)—
 - (i) omit the definitions of “benefits”, “section 6 duty” and “section 15 duty”;
 - (ii) for the definition of “employment at an establishment in Great Britain” substitute—

““employment at an establishment in Great Britain” is to be construed in accordance with subsections (2) to (4A)”;
 - (iii) in the appropriate place, insert—

““Great Britain” includes such of the territorial waters of the United Kingdom as are adjacent to Great Britain”;
 - (iv) for the definition of “Minister of the Crown” substitute—

““Minister of the Crown” includes the Treasury and the Defence Council”;
- (b) for subsections (2)⁽²⁵⁾ and (3), substitute the following subsections—

“(2) Employment (including employment on board a ship to which subsection (2B) applies or on an aircraft or hovercraft to which subsection (2C) applies) is to be regarded as being employment at an establishment in Great Britain if the employee—

 - (a) does his work wholly or partly in Great Britain; or
 - (b) does his work wholly outside Great Britain and subsection (2A) applies.

(2A) This subsection applies if—

 - (a) the employer has a place of business at an establishment in Great Britain;
 - (b) the work is for the purposes of the business carried on at the establishment; and
 - (c) the employee is ordinarily resident in Great Britain—
 - (i) at the time when he applies for or is offered the employment, or
 - (ii) at any time during the course of the employment.

⁽²²⁾ 1829 c. 44.

⁽²³⁾ 1839 c.xciv.

⁽²⁴⁾ Amendments to section 68 of the 1995 Act were made by S.I. 2000/2040 and S.I. 1999/3163, which are not relevant to this amendment.

⁽²⁵⁾ Subsection (2) was substituted by S.I. 1999/3163, reg. 4.

- (2B) This subsection applies to a ship if—
 - (a) it is registered at a port of registry in Great Britain; or
 - (b) it belongs to or is possessed by Her Majesty in right of the Government of the United Kingdom.
- (2C) This subsection applies to an aircraft or hovercraft if—
 - (a) it is—
 - (i) registered in the United Kingdom, and
 - (ii) operated by a person who has his principal place of business, or is ordinarily resident, in Great Britain; or
 - (b) it belongs to or is possessed by Her Majesty in right of the Government of the United Kingdom.
- (2D) The following are not to be regarded as being employment at an establishment in Great Britain—
 - (a) employment on board a ship to which subsection (2B) does not apply;
 - (b) employment on an aircraft or hovercraft to which subsection (2C) does not apply.”;
- (c) after subsection (4) insert the following subsection—
 - “(4A) For the purposes of determining if employment concerned with the exploration of the sea bed or sub-soil or the exploitation of their natural resources is outside Great Britain, subsections (2)(a) and (b), (2A) and (2C) of this section each have effect as if “Great Britain” had the same meaning as that given to the last reference to Great Britain in section 10(1) of the Sex Discrimination Act 1975(26) by section 10(5) of that Act read with the Sex Discrimination and Equal Pay (Offshore Employment) Order 1987(27).”;
- (d) omit subsection (5).

Amendments to section 70

- 28.** In section 70 (short title, commencement, extent etc)—
 - (a) After subsection (5), insert the following subsections—
 - “(5A) Sections 7A and 7B extend to England and Wales only.
 - (5B) Sections 7C and 7D extend to Scotland only.”
 - (b) In subsection (6), for “This Act extends to Northern Ireland,”, substitute “Subject to subsections (5A) and (5B), this Act extends to England and Wales, Scotland and Northern Ireland;”.

Amendments to Schedules 2, 3 and 4

- 29.**—(1) In Schedule 2(28) (past disabilities)—
 - (a) after paragraph 2B, insert the following paragraph—
 - “**2C** In section 3A(5), after “not having that particular disability” insert “and who has not had that particular disability”.”;
 - (b) for paragraph 3, substitute—

(26) 1975 c. 65. Section 10(1) was amended by the Equal Opportunities (Employment Legislation) (Territorial Limits) Regulations 1999, S.I. 1999/3163, reg. 2(1), (2).

(27) S.I. 1987/930.

(28) Schedule 2 was amended by the Special Educational Needs and Disability Act 2001 (c. 10), s.38.

- “3. In sections 4A(1), 4B(4), 4E(1), 6B(1), 7B(1), 7D(1), 14(1), 14B(1), 14D(1) and 16A(4), section 21A(4)(a) (in the words to be read as section 19(1)(aa)) and section 21A(6)(a) (in the words to be substituted in section 21(1)), after “not disabled” (in each place it occurs) insert “and who have not had a disability”.”;
- (c) for paragraph 4, substitute—
- “4. In sections 4A(3)(b), 4E(3)(b), 6B(3)(b), 7B(4)(b), 7D(3)(b), 14(3)(b), 14B(3)(b), 14D(3)(b) and 16A(6), for “has” (in each place it occurs) substitute “has had”.”.
- (2) In Schedule 3(29) (enforcement and procedure)—
- (a) in the side note, for “8(8)” substitute “17A(8)”;
- (b) for paragraph 2(1), substitute—
- “(1) Except as provided by Part 2, no civil or criminal proceedings may be brought against any person in respect of an act merely because the act is unlawful under that Part.”;
- (c) in paragraph 3(1), for “section 8” substitute “section 17A or 25(8)”;
- (d) in paragraph 3(3)(a), omit “of discrimination”;
- (e) in paragraph 4(1)(30), for “section 8” substitute “section 17A or 25(8)”.
- (3) In Schedule 4 (premises occupied under leases)—
- (a) in the side note, for “16(5)” substitute “18A(5)”;
- (b) in the heading to Part 1 of the Schedule, for “EMPLOYER OR TRADE ORGANISATION” substitute “EMPLOYER etc”;
- (c) in paragraph 1, for “the section 6 or section 15 duty” substitute “any duty to make reasonable adjustments”;
- (d) in the cross-heading preceding paragraph 2, for “section 8” substitute “section 17A or 25(8)”;
- (e) in paragraph 2(1)—
- (i) for “section 8” substitute “section 17A or 25(8)”;
- (ii) for “section 16” substitute “section 18A”;
- (f) in paragraph 2(8) and (9), for “section 8(2)” substitute “section 17A(2)”;
- (g) in paragraphs 3 and 4, for “section 16” substitute “section 18A”.

PART 3

CONSEQUENTIAL AMENDMENTS TO THE 1999 ACT AND OTHER LEGISLATION

Consequential amendments to the 1999 Act

30. In the 1999 Act—
- (a) in section 2 (general functions)—
- (i) in subsection (1)(a), after “discrimination against” insert “and harassment of”;

(29) Part 1 of Schedule 3 was amended by the Employment Tribunals Act 1996 (c. 17), s.45, Sch.3, Pt I; the Employment Rights (Dispute Resolution) Act 1998 (c. 8), s.1(2)(a); and the Employment Relations Act 1999 (c. 26), ss.41, 44, Sch.8, para 7, Sch.9, Table 12.

(30) Paragraph 4 was amended by the Employment Relations Act 1999 (c. 26), ss.41, 44, Sch.8, para 7, Sch.9, Table 12.

- (ii) in subsection (5)(**31**), in the appropriate place, insert the following—
 - ““harassment” means anything which is harassment for the purposes of any provision of Part 2 or 3 of the 1995 Act;”;
- (b) in subsection (5) of section 4(**32**) (non-discrimination notices), omit “discrimination”;
- (c) in subsection (11) of section 5(**33**) (agreements in lieu of enforcement action), omit “discrimination”;
- (d) in section 6 (persistent discrimination)—
 - (i) in subsection (1)(b) (as substituted by paragraphs 1 and 5 of Schedule 7 to the Special Educational Needs and Disability Act 2001), for “section 8” substitute “section 17A”;
 - (ii) in subsection (4)(**34**), after “unlawful discrimination” insert “or harassment”;
- (e) in subsection (1)(a) of section 7(**35**) (assistance in relation to proceedings)—
 - (i) for “section 8” substitute “section 17A”;
 - (ii) after “unlawful discrimination” insert “or harassment”;
- (f) in paragraph 3(10)(**36**) of Schedule 3 (investigation of unlawful acts etc), omit “discrimination”.

Consequential amendments to other legislation

- 31.**—(1) In section 7 of the Local Government and Housing Act 1989(**37**) (all staff of a local authority etc to be appointed on merit), in subsection (2), for paragraph (f) substitute—
“(f) sections 4, 4A, 4D and 4E of the Disability Discrimination Act 1995 (discrimination and duties to make adjustments in relation to employees and office-holders).”.
- (2) In sections 12(1) (restriction of publicity in disability cases) and 18(1)(c) (conciliation) of the Employment Tribunals Act 1996(**38**), for “section 8” substitute “section 17A or 25(8)”.
- (3) In the Employment Act 2002(**39**), in Schedules 3, 4 and 5, for “Section 8 of the Disability Discrimination Act 1995” (in each place it occurs) substitute “Section 17A of the Disability Discrimination Act 1995”.
- (4) In the Employment Tribunals (Constitution and Rules of Procedure) (Scotland) Regulations 2001(**40**), Schedule 1, in rule 16(2), for “section 8” substitute “section 17A or 25(8)”.
- (5) In the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2001(**41**), Schedule 1, in rule 16(2), for “section 8” substitute “section 17A or 25(8)”.

(31) Subsection (5) was amended by the Special Educational Needs and Disability Act 2001 (c. 10), s.35, Sch.7, paras 1 and 2.
(32) Section 4(5) was amended by the Special Educational Needs and Disability Act 2001 s.35, Sch.7, paras 1 and 3.
(33) Section 5(11) was amended by the Special Educational Needs and Disability Act 2001 s.35, Sch.7, paras 1 and 4.
(34) Subsection (4) of section 6 was amended by the Special Educational Needs and Disability Act 2001 s.35, Sch.7, paras 1 and 6.
(35) Section 7(1)(a) was amended by the Special Educational Needs and Disability Act 2001 s.35, Sch.7, paras 1 and 8.
(36) Paragraph 3(10) of Schedule 3 was amended by the Special Educational Needs and Disability Act 2001 s.35, Sch.7, paras 1 and 9.
(37) 1989 c. 42.
(38) 1996 c. 17.
(39) 2002 c. 22.
(40) S.I. 2001/1170.
(41) S.I. 2001/1171.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory
Instrument: The Disability Discrimination Act 1995 (Amendment) Regulations 2003 No. 1673

Signed by authority of the Secretary of State for Work and Pensions.

2003

Parliamentary Under-Secretary of State,
Department for Work and Pensions

SCHEDULE

Regulation 16(2)

VALIDITY OF CONTRACTS, COLLECTIVE
AGREEMENTS AND RULES OF UNDERTAKINGS

The following is the new Schedule inserted in the 1995 Act after Schedule 3.

“SCHEDULE 3A

Section 17C

VALIDITY OF CONTRACTS, COLLECTIVE
AGREEMENTS AND RULES OF UNDERTAKINGS

Part 1

VALIDITY AND REVISION OF CONTRACTS

1.—(1) A term of a contract is void where—

- (a) the making of the contract is, by reason of the inclusion of the term, unlawful by virtue of this Part of this Act;
- (b) it is included in furtherance of an act which is unlawful by virtue of this Part of this Act; or
- (c) it provides for the doing of an act which is unlawful by virtue of this Part of this Act.

(2) Sub-paragraph (1) does not apply to a term the inclusion of which constitutes, or is in furtherance of, or provides for, unlawful discrimination against, or harassment of, a party to the contract, but the term shall be unenforceable against that party.

(3) A term in a contract which purports to exclude or limit any provision of this Part of this Act is unenforceable by any person in whose favour the term would operate apart from this paragraph.

(4) Sub-paragraphs (1), (2) and (3) apply whether the contract was entered into before or after the date on which this Schedule comes into force; but in the case of a contract made before that date, those sub-paragraphs do not apply in relation to any period before that date.

2.—(1) Paragraph 1(3) does not apply—

- (a) to a contract settling a complaint to which section 17A(1) or 25(8) applies where the contract is made with the assistance of a conciliation officer (within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992(42)); or
- (b) to a contract settling a complaint to which section 17A(1) or 25(8) applies if the conditions regulating compromise contracts under this Schedule are satisfied in relation to the contract.

(2) The conditions regulating compromise contracts under this Schedule are that—

- (a) the contract must be in writing;
- (b) the contract must relate to the particular complaint;
- (c) the complainant must have received advice from a relevant independent adviser as to the terms and effect of the proposed contract and in particular its effect on his ability to pursue a complaint before an employment tribunal;
- (d) there must be in force, when the adviser gives the advice, a contract of insurance, or an indemnity provided for members of a profession or professional body, covering the risk of a claim by the complainant in respect of loss arising in consequence of the advice;

(42) 1992 c. 52.

- (e) the contract must identify the adviser; and
 - (f) the contract must state that the conditions regulating compromise contracts under this Schedule are satisfied.
- (3) A person is a relevant independent adviser for the purposes of sub-paragraph (2)(c)—
- (a) if he is a qualified lawyer;
 - (b) if he is an officer, official, employee or member of an independent trade union who has been certified in writing by the trade union as competent to give advice and as authorised to do so on behalf of the trade union; or
 - (c) if he works at an advice centre (whether as an employee or a volunteer) and has been certified in writing by the centre as competent to give advice and as authorised to do so on behalf of the centre.
- (4) But a person is not a relevant independent adviser for the purposes of sub-paragraph (2)(c) in relation to the complainant—
- (a) if he is, is employed by or is acting in the matter for the other party or a person who is connected with the other party;
 - (b) in the case of a person within sub-paragraph (3)(b) or (c), if the trade union or advice centre is the other party or a person who is connected with the other party; or
 - (c) in the case of a person within sub-paragraph (3)(c), if the complainant makes a payment for the advice received from him.
- (5) In sub-paragraph (3)(a) “qualified lawyer” means—
- (a) as respects England and Wales, a barrister (whether in practice as such or employed to give legal advice), a solicitor who holds a practising certificate, or a person other than a barrister or solicitor who is an authorised advocate or authorised litigator (within the meaning of the Courts and Legal Services Act 1990⁽⁴³⁾); and
 - (b) as respects Scotland, an advocate (whether in practice as such or employed to give legal advice), or a solicitor who holds a practising certificate.
- (6) In sub-paragraph (3)(b) “independent trade union” has the same meaning as in the Trade Union and Labour Relations (Consolidation) Act 1992⁽⁴⁴⁾.
- (7) For the purposes of sub-paragraph (4)(a) any two persons are to be treated as connected—
- (a) if one is a company of which the other (directly or indirectly) has control; or
 - (b) if both are companies of which a third person (directly or indirectly) has control.
- (8) An agreement under which the parties agree to submit a dispute to arbitration—
- (a) shall be regarded for the purposes of sub-paragraph (1)(a) and (b) as being a contract settling a complaint if—
 - (i) the dispute is covered by a scheme having effect by virtue of an order under section 212A of the Trade Union and Labour Relations (Consolidation) Act 1992, and
 - (ii) the agreement is to submit it to arbitration in accordance with the scheme; but
 - (b) shall be regarded as neither being nor including such a contract in any other case.
- 3.—(1)** On the application of a disabled person interested in a contract to which paragraph 1(1) or (2) applies, a county court or a sheriff court may make such order as it thinks fit for—
- (a) removing or modifying any term rendered void by paragraph 1(1), or

⁽⁴³⁾ 1990 c. 41.

⁽⁴⁴⁾ 1992 c. 52.

(b) removing or modifying any term made unenforceable by paragraph 1(2);
but such an order shall not be made unless all persons affected have been given notice in writing of the application (except where under rules of court notice may be dispensed with) and have been afforded an opportunity to make representations to the court.

(2) An order under sub-paragraph (1) may include provision as respects any period before the making of the order (but after the coming into force of this Schedule).

Part 2

COLLECTIVE AGREEMENTS AND RULES OF UNDERTAKINGS

4.—(1) This Part of this Schedule applies to—

- (a) any term of a collective agreement, including an agreement which was not intended, or is presumed not to have been intended, to be a legally enforceable contract;
- (b) any rule made by an employer for application to all or any of the persons who are employed by him or who apply to be, or are, considered by him for employment;
- (c) any rule made by a trade organisation (within the meaning of section 13) or a qualifications body (within the meaning of section 14A) for application to—
 - (i) all or any of its members or prospective members; or
 - (ii) all or any of the persons on whom it has conferred authorisations or qualifications or who are seeking the authorisations or qualifications which it has power to confer.

(2) Any term or rule to which this Part of this Schedule applies is void where—

- (a) the making of the collective agreement is, by reason of the inclusion of the term, unlawful by virtue of this Part of this Act;
- (b) the term or rule is included in furtherance of an act which is unlawful by virtue of this Part of this Act; or
- (c) the term or rule provides for the doing of an act which is unlawful by virtue of this Part of this Act.

(3) Sub-paragraph (2) applies whether the agreement was entered into, or the rule made, before or after the date on which this Schedule comes into force; but in the case of an agreement entered into, or a rule made, before the date on which this Schedule comes into force, that sub-paragraph does not apply in relation to any period before that date.

5 A disabled person to whom this paragraph applies may present a complaint to an employment tribunal that a term or rule is void by virtue of paragraph 4 if he has reason to believe—

- (a) that the term or rule may at some future time have effect in relation to him; and
- (b) where he alleges that it is void by virtue of paragraph 4(2)(c), that—
 - (i) an act for the doing of which it provides, may at some such time be done in relation to him, and
 - (ii) the act would be unlawful by virtue of this Part of this Act if done in relation to him in present circumstances.

6 In the case of a complaint about—

- (a) a term of a collective agreement made by or on behalf of—
 - (i) an employer,
 - (ii) an organisation of employers of which an employer is a member, or

- (iii) an association of such organisations of one of which an employer is a member, or
- (b) a rule made by an employer within the meaning of paragraph 4(1)(b),

paragraph 5 applies to any disabled person who is, or is genuinely and actively seeking to become, one of his employees.

7 In the case of a complaint about a rule made by an organisation, authority or body to which paragraph 4(1)(c) applies, paragraph 5 applies to any disabled person—

- (a) who is, or is genuinely and actively seeking to become, a member of the organisation or body;
- (b) on whom the organisation or body has conferred an authorisation or qualification; or
- (c) who is genuinely and actively seeking an authorisation or qualification which the organisation, authority or body has power to confer.

8.—(1) When an employment tribunal finds that a complaint presented to it under paragraph 5 is well-founded the tribunal shall make an order declaring that the term or rule is void.

(2) An order under sub-paragraph (1) may include provision as respects any period before the making of the order (but after the coming into force of this Schedule).

9 The avoidance by virtue of paragraph 4(2) of any term or rule which provides for any person to be discriminated against shall be without prejudice to the following rights (except in so far as they enable any person to require another person to be treated less favourably than himself), namely—

- (a) such of the rights of the person to be discriminated against, and
- (b) such of the rights of any person who will be treated more favourably in direct or indirect consequence of the discrimination,

as are conferred by or in respect of a contract made or modified wholly or partly in pursuance of, or by reference to, that term or rule.

Part 3

INTERPRETATION

10 In this Schedule “collective agreement” means any agreement relating to one or more of the matters mentioned in section 178(2) of the Trade Union and Labour Relations (Consolidation) Act 1992⁽⁴⁵⁾ (meaning of trade dispute), being an agreement made by or on behalf of one or more employers or one or more organisations of employers or associations of such organisations with one or more organisations of workers or associations of such organisations.

11 Any reference in this Schedule to a contract or act which is unlawful by virtue of this Part of this Act shall be taken to include a reference to a contract or act which is unlawful by virtue of Part 3 of this Act to the extent that it relates to the provision of employment services.”.

(45) 1992 c. 52.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement (in Great Britain) provisions of Council Directive [2000/78/EC](#) (OJNo. L 303, 2.12.2000, p.16) establishing a general framework for equal treatment in employment and occupation (“the Directive”), so far as it relates to disability discrimination. For this purpose, they amend the Disability Discrimination Act [1995 \(c. 50\)](#) (“the Act”) and make minor or consequential amendments to other legislation.

Regulations 4 to 18 insert new sections into, and amend existing provisions of, Part 2 of the Act (which concerns discrimination in the employment field):

- New sections 3A and 3B provide (respectively) for a definition of “discrimination” and “harassment” applying to the whole of Part 2. (*Regulation 4*)
- New sections 4 and 4A (replacing existing sections 4 to 6) prohibit discrimination and harassment by employers and impose on employers a duty to make reasonable adjustments. New section 4B (replacing existing section 12) prohibits discrimination against, and harassment of, contract workers and makes provision about the making of reasonable adjustments for such workers. New sections 4C to 4F prohibit discrimination against, and harassment of, certain types of office-holders, and require reasonable adjustments to be made for them. (*Regulation 5*)
- New sections 6A to 6C prohibit discrimination and harassment, and impose duties to make reasonable adjustments, in relation to partners in firms. (*Regulation 6*)
- Existing section 7 of the Act (exemption for small businesses) is repealed. (*Regulation 7*)
- New sections 7A to 7D relate to barristers (England and Wales) and advocates (Scotland). They prohibit discrimination and harassment, and impose duties to make reasonable adjustments. (*Regulation 8*)
- Section 8 (enforcement, remedies and procedure) is amended to make provision about complaints about qualifications bodies, and about the burden of proof in employment tribunal proceedings. It is also renumbered as section 17A. (*Regulation 9*)
- Existing section 9 (validity of certain agreements), section 11 (advertisements) and section 12 (contract workers) are repealed in consequence of their replacement by new provisions; and existing section 10 (charities) is moved and renumbered as section 18C. (*Regulations 10 to 12*)
- New sections 13 and 14 (replacing existing sections 13 to 15) prohibit discrimination and harassment, and impose duties to make reasonable adjustments, in relation to trade organisations. New sections 14A to 14D prohibit discrimination and harassment, and impose duties to make reasonable adjustments, in relation to qualifications bodies and persons who provide work placements. (*Regulation 13*)
- Consequential amendments are made to existing section 16 (alterations to premises occupied under leases), which is also moved and renumbered as section 18A. (*Regulation 14*)
- New section 16A prohibits discrimination and harassment, and imposes duties to make reasonable adjustments in relationships which have come to an end; new section 16B prohibits employers and others from publishing or causing to be published advertisements which indicate an intention to discriminate; and new section 16C prohibits instructions and pressure to discriminate. (*Regulation 15*)

- New section 17B provides for the Disability Rights Commission to enforce sections 16B (discriminatory advertisements) and 16C (instructions and pressure to discriminate); and new section 17C and new Schedule 3A deal with validity of certain agreements and rules of undertakings etc (replacing existing section 9). (*Regulation 16*)
- New section 18B makes supplementary provision about the duties to make reasonable adjustments contained in Part 2 of the Act; and new section 18D provides for the interpretation of Part 2. (*Regulations 17 and 18*)

Regulation 19 amends Part 3 of the Act (which concerns discrimination in relation to goods, facilities and services, and the disposal of premises) in relation to the provision of employment services. It inserts new section 21A to prohibit harassment and to modify the application of sections 19 to 21 of the Act in relation to such services, and makes consequential amendments to section 25 (enforcement) and section 26 (validity and revision of certain agreements).

Regulations 20 to 23 amend Part 7 of the Act (supplemental):

- Minor or consequential amendments are made to section 53A (codes of practice) and section 55 (victimisation). (*Regulations 20 and 21*)
- Section 56 (help for persons suffering discrimination) is amended so as to substitute a period of eight weeks (instead of a “reasonable period”) within which a respondent is to reply to a questionnaire (without a reasonable excuse for deliberate failure to do so) under the Act in order to avoid the drawing of adverse inferences by an Employment Tribunal. (*Regulation 22*)
- Section 59 (statutory authority and national security etc) is amended, in relation to Part 2 of the Act (and Part 3 thereof, insofar as it relates to employment services) to provide that acts done for the purpose of safeguarding national security are not unlawful if the doing of the act was justified by that purpose. (*Regulation 23*)

Regulations 24 to 26 amend Part 8 of the Act (miscellaneous):

- In section 64 (application to Crown etc), a new subsection (2A) is inserted in consequence of the new provisions on the police. Exemptions for service in certain police forces, as a prison officer, or in fire fighting contained in subsections (5) and (6) of the section are repealed, and consequential amendments made to subsection (8). (*Regulation 24*)
- A new section 64A (police) is inserted. This provides that the holding of the office of constable (and appointment as a police cadet) is to be treated as employment for the purposes of Part 2 of the Act; and makes provision about proceedings brought under Part 2 in relation to the police. (*Regulation 25*)
- Section 66 of the Act (government appointments outside Part 2) is repealed. (*Regulation 26*)
- In section 68 (interpretation), new provisions are substituted and inserted so as to allow, in certain circumstances, for work done wholly outside Great Britain to be treated, for the purposes of Part 2 of the Act, as employment at an establishment in Great Britain and to make provision about employment on board ships, hovercraft and aircraft and employment concerned with the exploration of the sea bed or sub-soil or the exploitation of their natural resources. The exception for employment on board ships, aircraft or hovercraft is repealed. Minor or consequential amendments are made to the remainder of section 68. (*Regulation 27*)

Regulations 28 to 31 make minor or consequential amendments to section 70 of, and Schedules 2 to 4 to, the Act, the Disability Rights Commission Act 1999 (c. 17) and to other legislation.

The Regulations make provision for commencement on the day after they are made so far as enabling anything to be done for the purposes of preparing and bringing into force on or after 1st October 2004 a code of practice under section 53A of the Act concerning any provision of that Act as it will have effect on or after that date by virtue of these Regulations. Otherwise, the Regulations come into force on 1st October 2004. (*Regulation 1*)

The Regulations also include transitional provisions concerning the burden of proof in employment tribunal proceedings and concerning the new eight-week period (in section 56 of the Act) for respondents to answer a questionnaire. (*Regulation 2*)

A regulatory impact assessment has been prepared in relation to these Regulations. A copy may be obtained from: Disability Unit, Department for Work and Pensions, 6th Floor, The Adelphi, 1–11 John Adam Street, London WC2N 6HT. A copy of the transposition note in relation to the implementation of the Directive may be obtained from the same address. Copies of both these documents have been placed in the Library of each House of Parliament.