

Status: Point in time view as at 05/05/2010.

Changes to legislation: There are currently no known outstanding effects for the Disability Discrimination Act 1995, SCHEDULE 4C. (See end of Document for details)

SCHEDULES

[^{F1}SCHEDULE 4C

Section 28U

MODIFICATIONS OF CHAPTER 2 OF PART 4

Textual Amendments

- F1** Sch. 4C substituted (30.6.2006 for certain purposes and otherwise 1.9.2006) by [The Disability Discrimination Act 1995 \(Amendment\) \(Further and Higher Education\) Regulations 2006 \(S.I. 2006/1721\)](#), regs. 1(2)(3), **21**

PART 1

MODIFICATIONS FOR ENGLAND AND WALES – FURTHER EDUCATION, ETC PROVIDED BY [^{F2}LOCAL AUTHORITIES]

Textual Amendments

- F2** Words in Sch. 4C Part. 1 heading substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), art. 1, **Sch. 2 para. 40(10)**

1 The following is substituted for section 28R—

“28R 28R Higher and further education secured by [^{F3}local authorities]

- (1) Subsections (2) to (4) apply in relation to—
- any course of higher education secured by a [^{F4}local authority] under section 120 of the Education Reform Act 1988, and
 - any course of further education secured by a [^{F4}local authority].
- (2) It is unlawful for the [^{F4}local authority] to discriminate against a disabled person—
- in the arrangements they make for determining who should be enrolled on the course;
 - in the terms on which they offer to enrol him on the course; or
 - by refusing or deliberately omitting to accept an application for his enrolment on the course.
- (3) It is unlawful for the [^{F4}local authority] to discriminate against a disabled person who has enrolled on the course in the services which they provide or offer to provide.

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- (4) It is unlawful for the [^{F4}local authority] to subject to harassment a disabled person who—
- (a) seeks enrolment on the course,
 - (b) is enrolled on the course, or
 - (c) is a user of any services provided by that authority in relation to the course .
- (5) “Services“, in relation to a course, means services of any description which are provided wholly or mainly for persons enrolled on the course.
- (6) In relation to further education secured by a [^{F4}local authority]—
- (a) “course” includes each of the component parts of a course of further education if, in relation to the course, there is no requirement imposed on persons registered for any component part of the course to register for any other component part of that course; and
 - (b) “enrolment”, in relation to such a course, includes registration for any one of those parts.
- (7) In this Chapter—
- “responsible body” means a [^{F5}local authority] in relation to a course of further or higher education secured by them;
- “further education” in relation to a course secured by the [^{F5}local authority], has the meaning given in section 2(3) of the Education Act 1996;
- “higher education” has the meaning given in section 579(1) of the Education Act 1996; and
- [^{F6}“local authority” has the meaning given by section 579(1) of the Education Act 1996.”].

Textual Amendments

- F3** Sch. 4C para. 1: words in the substituted s. 28R title substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), art. 1, **Sch. 2 para. 40(11)(a)**
- F4** Sch. 4C para. 1: words in the substituted s. 28R(1)-(6) substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), art. 1, **Sch. 2 para. 40(11)(b)**
- F5** Sch. 4C para. 1: words in the substituted s. 28R(7) substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), art. 1, **Sch. 2 para. 40(11)(c)(i)**
- F6** Sch. 4C para. 1: definition in the substituted s. 28R(7) substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), art. 1, **Sch. 2 para. 40(11)(c)(ii)**

- 2 Subsections (1A) to (1D) of section 28T (responsible bodies' duties to make adjustments) are omitted and the following subsection is substituted for subsection (1) of that section —

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- “(1) Each responsible body must take such steps as it is reasonable for it to have to take to ensure that—
- (a) in relation to its arrangements for enrolling persons on a course of further and higher education provided by it, and
 - (b) in relation to services provided or offered by it,
- disabled persons are not placed at a substantial disadvantage in comparison with persons who are not disabled.”.
- 3 In subsections (2) and (4) of section 28T, for “any of subsections (1) to (1D)” there is substituted “ subsection (1) ”.
- 4 In section 28W(1)(a) for “by an educational institution” there is substituted “ by a responsible body wholly or partly for the purpose of its functions ”.
- 5 Section 31A is omitted.

PART 1A

MODIFICATIONS FOR ENGLAND AND WALES – FURTHER EDUCATION PROVIDED BY SCHOOLS, ETC

- 6 The following is substituted for section 28R—
- “28R 28R Further education provided by schools and recreational or training facilities provided by [^{F7}local authorities]**
- (1) Subsections (2) and (3) apply in relation to any course of further education provided by the governing body of a maintained school under section 80 of the School Standards and Framework Act 1998.
 - (2) It is unlawful for the governing body to discriminate against a disabled person—
 - (a) in the arrangements they make for determining who should be enrolled on the course;
 - (b) in the terms on which they offer to enrol him on the course; or
 - (c) by refusing or deliberately omitting to accept an application for his enrolment on the course.
 - (3) It is unlawful for the governing body to discriminate against a disabled person who has enrolled on the course in the services which they provide or offer to provide.
 - (4) “Services“, in relation to a course, means services of any description which are provided wholly or mainly for persons enrolled on the course.

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- (5) It is unlawful for a [^{F8}local authority] to discriminate against a disabled person in the terms on which they provide or offer to provide recreational or training facilities.
- (6) In this Chapter—
- “Responsible body” means—
- (a) the governing body of a maintained school, in relation to a course of further education provided under section 80 of the School Standards and Framework Act 1998, and
- (b) a [^{F9}local authority] in relation to recreational or training facilities;
- “Further education”, in relation to a course provided under section 80 of the School Standards and Framework Act 1998, means education of a kind mentioned in subsection (1) of that section;
- [^{F10}“local authority” has the meaning given by section 579(1) of the Education Act 1996;]
- “Governing Body” and “maintained school” have the same meaning as in Chapter 1;
- [^{F11}“Recreational or training facilities” means—
- (a) in the case of a [^{F9}local authority] in England, any facilities secured by the authority under section 507A or 507B of the Education Act 1996 ^{F12} (functions of [^{F13}local authorities] in England in respect of recreation etc.), and
- (b) in the case of a [^{F9}local authority] in Wales, any facilities secured by the authority under subsection (1), or provided by them under subsection (1A), of section 508 of that Act (functions of [^{F13}local authorities] in Wales in respect of recreation and social and physical training).”]

Textual Amendments

- F7** Words in Sch. 4C para. 6 (in the title to the substituted s. 28R) substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), art. 1, **Sch. 2 para. 40(12)(a)**
- F8** Words in Sch. 4C para. 6 (in the substituted s. 28R(5)) substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), art. 1, **Sch. 2 para. 40(12)(b)**
- F9** Words in Sch. 4C para. 6 (in the substituted s. 28R(6)) substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), art. 1, **Sch. 2 para. 40(12)(c)(i)**
- F10** Words in Sch. 4C para. 6 (in the substituted s. 28R(6)) substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), art. 1, **Sch. 2 para. 40(12)(c)(ii)**
- F11** Sch. 4C para. 6: definition of "Recreational or training facilities" (in the substituted s. 28R(6)) substituted (E.W.) (2.7.2007) by [The Disability Discrimination Act 1995 \(Amendment\) \(Further Education\) Regulations 2007 \(S.I. 2007/1849\)](#), **reg. 2**
- F12** 1996 c. 56: Sections 507A and 507B were inserted by section 6 of the Education and Inspections Act 2006; section 508 was amended by section 137 of the [Learning and Skills Act 2000 \(c. 21\)](#).

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F13 Words in [Sch. 4C para. 6](#) (in the substituted s. 28R(6)) substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), art. 1, [Sch. 2 para. 40\(12\)\(c\)\(iii\)](#)

7 In section 28S (meaning of “discrimination”), the following subsection is substituted for subsection (2) —

“(2) For the purposes of section 28R, a responsible body also discriminates against a disabled person if—
(a) it fails, to his detriment, to comply with section 28T; and
(b) it cannot show that its failure to comply is justified.”.

8 In section 28S, the following subsections are substituted for subsections (5) to (11) —

“(5) Subsections (6) to (9) apply in determining whether for the purposes of this section—

- (a) less favourable treatment of a person, or
- (b) failure to comply with section 28T,

is justified.

(6) Less favourable treatment of a person is justified if it is necessary in order to maintain —

- (a) academic standards; or
- (b) standards of any other prescribed kind.

(7) Less favourable treatment is also justified if —

- (a) it is of a prescribed kind;
- (b) it occurs in prescribed circumstances; or
- (c) it is of a prescribed kind and occurs in prescribed circumstances.

(8) Otherwise less favourable treatment, or a failure to comply with section 28T, is justified only if the reason for it is both material to the circumstances of the particular case and substantial.

(9) If, in a case falling within subsection (1)—

- (a) the responsible body is under a duty imposed by section 28T in relation to the disabled person, but
- (b) fails without justification to comply with that duty,

its treatment of that person cannot be justified under subsection (8) unless that treatment would have been justified even if it had complied with that duty.”.

9 Subsections (1A) to (1D) of section 28T (responsible bodies' duties to make adjustments) are omitted and the following subsection is substituted for subsection (1) of that section—

“(1) Each responsible body must take such steps as it is reasonable for it to have to take to ensure that—

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- (a) in relation to its arrangements for enrolling persons on a course of further education provided by it, and
 - (b) in relation to services provided or offered by it,
- disabled persons are not placed at a substantial disadvantage in comparison with persons who are not disabled.”.
- 10 In subsections (2) and (4) of section 28T, for “any of subsections (1) to (1D)” there is substituted “subsection (1).
- 11 In section 28W(1)(a) for “by an educational institution” there is substituted “ by a responsible body wholly or partly for the purpose of its functions ”.
- 12 Sections 28SA, 28UA, 28UB, 28UC, 28V(1A) and 31A are omitted.

PART 2

MODIFICATIONS FOR SCOTLAND – FURTHER EDUCATION

- 13 The following is substituted for section 28R—

“28R Further education etc provided by education authorities in Scotland

- (1) Subsections (2) and (3) apply to any course of further education secured by an education authority.
- (2) It is unlawful for the education authority to discriminate against a disabled person—
 - (a) in the arrangements they make for determining who should be enrolled on the course;
 - (b) in the terms on which they offer to enrol him on the course; or
 - (c) by refusing or deliberately omitting to accept an application for his enrolment on the course.
- (3) It is unlawful for the education authority to discriminate against a disabled person who has enrolled on the course in the services which they provide or offer to provide.
- (4) It is unlawful for the education authority to subject to harassment a disabled person who—
 - (a) seeks enrolment on a course offered by that authority,
 - (b) is enrolled on a course offered by that authority, or
 - (c) is a user of services provided by that authority.
- (5) “Services“, in relation to a course, means services of any description which are provided wholly or mainly for persons enrolled on the course.

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- (6) In this Chapter —
- “Responsible body” means an education authority;
 - “Further education” has the meaning given in section 1(5) of the Education (Scotland) Act 1980;
 - “Education authority” has the meaning given in section 135(1) of that Act.”.
- 14 Subsections (1A) to (1D) of section 28T are omitted and the following subsection is substituted for subsection (1) of that section—
- “(1) Each responsible body must take such steps as it is reasonable for it to have to take to ensure that—
- (a) in relation to its arrangements for enrolling persons on a course of further education provided by it, and
 - (b) in relation to services provided or offered by it,
- disabled persons are not placed at a substantial disadvantage in comparison with persons who are not disabled.”.
- 15 In subsections (2) and (4) of section 28T, for “any of subsections (1) to (1D)” there is substituted “ subsection (1) ”.
- 16 In section 28W(1)(a) for “by an educational institution” there is substituted “ by a responsible body wholly or partly for the purpose of its functions ”.
- 17 Section 31A is omitted.

PART 2A

MODIFICATIONS FOR SCOTLAND – RECREATIONAL OR TRAINING FACILITIES]

- 18 The following is substituted for section 28R—

“28R Recreational or training facilities provided by education authorities

- (1) It is unlawful for an education authority to discriminate against a disabled person in the terms on which they provide, or offer to provide, recreational or training facilities.
- (2) In this Chapter —
- “Responsible body” means an education authority;
 - “Education authority” has the meaning given in section 135(1) of the Education (Scotland) Act 1980.”.

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- 19 In section 28S (Meaning of “discrimination”), the following subsection is substituted for subsection (2)—
- “(2) For the purposes of section 28R, a responsible body also discriminates against a disabled person if—
- (a) it fails, to his detriment, to comply with section 28T; and
- (b) it cannot show that its failure to comply is justified.”.
- 20 In section 28S (Meaning of “discrimination”), the following subsections are substituted for subsections (5) to (11)—
- “(5) Subsections (6) to (9) apply in determining whether for the purposes of this section—
- (a) less favourable treatment of a person, or
- (b) failure to comply with section 28T,
- is justified.
- (6) Less favourable treatment of a person is justified if it is necessary in order to maintain—
- (a) academic standards; or
- (b) standards of any other prescribed kind.
- (7) Less favourable treatment is also justified if—
- (a) it is of a prescribed kind;
- (b) it occurs in prescribed circumstances; or
- (c) it is of a prescribed kind and occurs in prescribed circumstances.
- (8) Otherwise less favourable treatment, or a failure to comply with section 28T, is justified only if the reason for it is both material to the circumstances of the particular case and substantial.
- (9) If, in a case falling within subsection (1)—
- (a) the responsible body is under a duty imposed by section 28T in relation to the disabled person, but
- (b) fails without justification to comply with that duty,
- its treatment of that person cannot be justified under subsection (8) unless that treatment would have been justified even if it had complied with that duty.”.
- 21 Subsections (1A) to (1D) of section 28T are omitted and the following subsection is substituted for subsection (1) of that section—
- “(1) Each responsible body must take such steps as it is reasonable for it to have to take to ensure that, in relation to services provided or offered by it for any recreational or training facilities, disabled persons are not placed at a substantial disadvantage in comparison with persons who are not disabled.”.
- 22 In subsections (2) and (4) of section 28T, for “any of subsections (1) to (1D)” there is substituted “subsection (1)”.

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- 23 In section 28W(1)(a) for “by an educational institution” there is substituted “ by a responsible body wholly or partly for the purpose of its functions ”.
- 24 Sections 28SA, 28UA, 28UB, 28UC, 28V(1A) and 31A are omitted.

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