



Special Educational Needs and Disability Act 2001

2001 CHAPTER 10

PART 2

DISABILITY DISCRIMINATION IN EDUCATION

CHAPTER 2

FURTHER AND HIGHER EDUCATION

Duties of responsible bodies

26 Discrimination against disabled students and prospective students

(1) In the 1995 Act, insert the following section—

“CHAPTER 2

FURTHER AND HIGHER EDUCATION

Duties of responsible bodies

28R Discrimination against disabled students and prospective students

- (1) It is unlawful for the body responsible for an educational institution to discriminate against a disabled person—
- (a) in the arrangements it makes for determining admissions to the institution;
 - (b) in the terms on which it offers to admit him to the institution; or

Status: Point in time view as at 01/09/2002.

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- (c) by refusing or deliberately omitting to accept an application for his admission to the institution.
 - (2) It is unlawful for the body responsible for an educational institution to discriminate against a disabled student in the student services it provides, or offers to provide.
 - (3) It is unlawful for the body responsible for an educational institution to discriminate against a disabled student by excluding him from the institution, whether permanently or temporarily.
 - (4) In the case of an act which constitutes discrimination by virtue of section 55, this section also applies to discrimination against a person who is not disabled.
 - (5) The body responsible for an educational institution is to be determined in accordance with Schedule 4B, and in the remaining provisions of this Chapter is referred to as the “responsible body”.
 - (6) “Educational institution”, in relation to England and Wales, means an institution—
 - (a) within the higher education sector;
 - (b) within the further education sector; or
 - (c) designated in an order made by the Secretary of State.
 - (7) “Educational institution”, in relation to Scotland, means—
 - (a) an institution within the higher education sector (within the meaning of section 56(2) of the Further and Higher Education (Scotland) Act 1992);
 - (b) a college of further education with a board of management within the meaning of section 36 of that Act;
 - (c) a central institution within the meaning of section 135 of the Education (Scotland) Act 1980;
 - (d) a college of further education maintained by an education authority in the exercise of their further education functions in providing courses of further education within the meaning of section 1(5)(b)(ii) of that Act;
 - (e) an institution designated in an order made by the Secretary of State.
 - (8) Subsection (6) is to be read with section 91 of the Further and Higher Education Act 1992.
 - (9) The Secretary of State may not make an order under subsection (6)(c) or (7)(e) unless he is satisfied that the institution concerned is wholly or partly funded from public funds.
 - (10) Before making an order under subsection (7)(e), the Secretary of State must consult the Scottish Ministers.
 - (11) “Student services” means services of any description which are provided wholly or mainly for students.
 - (12) Regulations may make provision as to services which are, or are not, to be regarded for the purposes of subsection (2) as student services.”
- (2) In the 1995 Act, insert the Schedule set out in Schedule 4.

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Commencement Information

- II** S. 26 wholly in force at 1.9.2002; s. 26 not in force at Royal Assent see s. 43(3); s. 26 in force for certain purposes at 30.5.2002 by S.I. 2002/1647, art. 3; s. 26 in force in so far as not already in force at 1.9.2002 by S.I. 2002/2217, art.3, Sch. 1 Pt. 1

27 Meaning of “discrimination”

In the 1995 Act, insert the following section—

“28S Meaning of “discrimination”

- (1) For the purposes of section 28R, a responsible body discriminates against a disabled person if—
 - (a) for a reason which relates to his disability, it treats him less favourably than it treats or would treat others to whom that reason does not or would not apply; and
 - (b) it cannot show that the treatment in question is justified.
- (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.
- (3) In relation to a failure to take a particular step, a responsible body does not discriminate against a person if it shows—
 - (a) that, at the time in question, it did not know and could not reasonably have been expected to know, that he was disabled; and
 - (b) that its failure to take the step was attributable to that lack of knowledge.
- (4) The taking of a particular step by a responsible body in relation to a person does not amount to less favourable treatment if it shows that at the time in question it did not know, and could not reasonably have been expected to know, that he was disabled.
- (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 it occurs in prescribed circumstances.

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- (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.”

28 Disabled students not to be substantially disadvantaged

In the 1995 Act, insert the following section—

“28T Disabled students not to be substantially disadvantaged

- (1) The responsible body for an educational institution must take such steps as it is reasonable for it to have to take to ensure that—
- (a) in relation to the arrangements it makes for determining admissions to the institution, disabled persons are not placed at a substantial disadvantage in comparison with persons who are not disabled; and
 - (b) in relation to student services provided for, or offered to, students by it, disabled students are not placed at a substantial disadvantage in comparison with students who are not disabled.
- (2) In considering whether it is reasonable for it to have to take a particular step in order to comply with its duty under subsection (1), a responsible body must have regard to any relevant provisions of a code of practice issued under section 53A.
- (3) Subsection (4) applies if a person has made a confidentiality request of which a responsible body is aware.
- (4) In determining whether it is reasonable for the responsible body to have to take a particular step in relation to that person in order to comply with its duty under subsection (1), regard shall be had to the extent to which taking the step in question is consistent with compliance with that request.
- (5) “Confidentiality request” means a request made by a disabled person, which asks for the nature, or asks for the existence, of his disability to be treated as confidential.
- (6) This section imposes duties only for the purpose of determining whether a responsible body has discriminated against a disabled person; and accordingly a breach of any such duty is not actionable as such.”

Commencement Information

I2 S. 28 wholly in force at 1.9.2002, see s. 43(3) and S.I. 2002/2217, art. 5 (subject to art. 6)

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29 Further education etc. provided by local education authorities and schools

(1) In the 1995 Act, insert the following section—

“ Other providers of further education or training facilities

28U Further education etc. provided by local education authorities and schools

(1) Part 1 of Schedule 4C modifies this Chapter for the purpose of its application in relation to—

- (a) higher education secured by a local education authority;
- (b) further education—
 - (i) secured by a local education authority; or
 - (ii) provided by the governing body of a maintained school;
- (c) recreational or training facilities secured by a local education authority.

(2) Part 2 of that Schedule modifies this Chapter for the purpose of its application in relation to—

- (a) further education, within the meaning of section 1(5)(b)(iii) of the Education (Scotland) Act 1980;
- (b) facilities whose provision is secured by an education authority under section 1(3) of that Act.”

(2) In the 1995 Act, insert the Schedule set out in Schedule 5.

Enforcement

30 Right of redress

(1) In the 1995 Act, insert the following section—

“ Enforcement, etc.

28V Enforcement, remedies and procedure

(1) A claim by a person—

- (a) that a responsible body has discriminated against him in a way which is unlawful under this Chapter,
- (b) that a responsible body is by virtue of section 57 or 58 to be treated as having discriminated against him in such a way, or
- (c) that a person is by virtue of section 57 to be treated as having discriminated against him in such a way,

may be made the subject of civil proceedings in the same way as any other claim in tort or (in Scotland) in reparation for breach of statutory duty.

(2) For the avoidance of doubt it is hereby declared that damages in respect of discrimination in a way which is unlawful under this Chapter may include

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compensation for injury to feelings whether or not they include compensation under any other head.

- (3) Proceedings in England and Wales may be brought only in a county court.
 - (4) Proceedings in Scotland may be brought only in a sheriff court.
 - (5) The remedies available in such proceedings are those which are available in the High Court or (as the case may be) the Court of Session.
 - (6) The fact that a person who brings proceedings under this Part against a responsible body may also be entitled to bring proceedings against that body under Part 2 is not to affect the proceedings under this Part.
 - (7) Part 4 of Schedule 3 makes further provision about the enforcement of this Part and about procedure.”
- (2) In Schedule 3 to the 1995 Act (enforcement and procedure), insert the provisions set out in paragraph 2 of Schedule 3.

31 Occupation of premises by educational institutions

- (1) In the 1995 Act, insert the following section—

“28W Occupation of premises by educational institutions

- (1) This section applies if—
 - (a) premises are occupied by an educational institution under a lease;
 - (b) but for this section, the responsible body would not be entitled to make a particular alteration to the premises; and
 - (c) the alteration is one which the responsible body proposes to make in order to comply with section 28T.
- (2) Except to the extent to which it expressly so provides, the lease has effect, as a result of this subsection, as if it provided—
 - (a) for the responsible body to be entitled to make the alteration with the written consent of the lessor;
 - (b) for the responsible body to have to make a written application to the lessor for consent if it wishes to make the alteration;
 - (c) if such an application is made, for the lessor not to withhold his consent unreasonably; and
 - (d) for the lessor to be entitled to make his consent subject to reasonable conditions.
- (3) In this section—

“lease” includes a tenancy, sub-lease or sub-tenancy and an agreement for a lease, tenancy, sub-lease or sub-tenancy; and

“sub-lease” and “sub-tenancy” have such meaning as may be prescribed.
- (4) If the terms and conditions of a lease—
 - (a) impose conditions which are to apply if the responsible body alters the premises, or

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(b) entitle the lessor to impose conditions when consenting to the responsible body's altering the premises, the responsible body is to be treated for the purposes of subsection (1) as not being entitled to make the alteration.

(5) Part 3 of Schedule 4 supplements the provisions of this section.”

(2) In Schedule 4 to the 1995 Act (premises occupied under leases), at the end insert the provisions set out in Schedule 6.

32 Validity and revision of agreements

In the 1995 Act, insert the following section—

“28X Validity and revision of agreements

Section 28P applies for the purposes of this Chapter as it applies for the purposes of Chapter 1, but with the substitution, for paragraphs (a) and (b) of subsection (2), of “under section 28V”.”

33 Interpretation

In the 1995 Act, insert the following section—

“ Interpretation of Chapter 2

31A Interpretation

- (1) Subsections (2) to (4) apply for the purpose of interpreting this Chapter.
- (2) “Disabled student” means a student who is a disabled person.
- (3) “Student” means a person who is attending, or undertaking a course of study at, an educational institution.
- (4) “Educational institution”, “responsible body” and “student services” have the meaning given in section 28R.”

34 Removal of certain duties of funding bodies

- (1) In section 65 of the Further and Higher Education Act 1992 (c. 13) (administration of funds by higher education funding councils), omit subsections (4A) and (4B).
- (2) In section 40 of the Further and Higher Education (Scotland) Act 1992 (c. 37), omit subsections (5) and (6).
- (3) Section 528 of the 1996 Act ceases to have effect.
- (4) Before section 30 of the 1995 Act, insert—

“ Duties of funding councils”.

- (5) In section 30 of the 1995 Act (further and higher education of disabled persons), omit subsection (6).

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- (6) In section 31 of the 1995 Act (further and higher education of disabled persons: Scotland), omit subsection (3).
- (7) In section 6 of the Learning and Skills Act 2000 (c. 21) (conditions imposed on financial resources in England), omit subsections (4) and (6).
- (8) In section 35 of that Act (conditions imposed on financial resources in Wales), omit subsections (4) and (6).

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