

DISABILITY DISCRIMINATION ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 15: General qualifications bodies

163. **Section 15** inserts a new Chapter 2A (sections 31AA to 31AF) into Part 4 of the DDA. These provisions prohibit unlawful discrimination against disabled persons by general qualifications bodies, in relation to the award of relevant qualifications. The prohibitions imposed here reflect, to a large extent, those imposed under sections 14A and 14B of the DDA on qualifications bodies which award trade or professional qualifications. Sections 14A and 14B of the DDA were inserted into Part 2 of that Act by the Amendment Regulations.
164. A “relevant qualification” is one to be prescribed in regulations made by the Secretary of State under new section 31AA(4). It is intended that this power will be used to prescribe qualifications such as A levels, GCSEs and other non-vocational qualifications and their equivalents in Scotland and Wales. But something that is a “trade or professional qualification” within the meaning of section 14A cannot become a relevant qualification (see section 31AA(5)).
165. Under new section 31AA(6)(a) a “general qualifications body” is any authority or body which can confer a relevant qualification. But this does not include responsible bodies within the meaning of Chapters 1 and 2 of the DDA (e.g. schools), local education authorities in England or Wales, Scottish education authorities, or such authorities or bodies as may be prescribed in regulations to be made by the Secretary of State under subsection (6)(a)(iv).
166. New sections 31AB and 31AC define what is meant by unlawful discrimination in this context and what is meant by unlawful harassment. The definitions mirror those which apply for the purposes of Part 2 of the DDA in relation to qualifications bodies which confer trade or professional qualifications, by virtue of sections 14A and 14B of the DDA. Therefore, in like manner to sections 14A and 14B of the DDA, if the application of a competence standard by a general qualifications body amounts to less favourable treatment it may only be justified if the standard is applied equally to all persons and its application is a proportionate means of achieving a legitimate aim. A competence standard is any academic, medical or other standard applied by a qualifications body in order to determine whether a person has a particular level of competence or ability.
167. New section 31AD requires general qualifications bodies in certain circumstances to make reasonable adjustments where disabled persons suffer substantial disadvantage in comparison with others. There is no duty to make reasonable adjustments in relation to competence standards, but the duty is imposed where general qualifications bodies apply provisions, criteria or practices to disabled persons. It also applies in relation to the physical features of premises occupied by general qualifications bodies. This would mean, for example, that a general qualifications body would need to modify arrangements for disabled persons when they sit examinations in premises provided by the body, for example by ensuring there is appropriate ramp access for candidates who use wheelchairs.

*These notes refer to the Disability Discrimination Act
2005 (c.13) which received Royal Assent on 7 April 2005*

168. New section 31AD(6) enables the Secretary of State to make regulations to further define, clarify and elaborate on the detailed ambit of the duty to make reasonable adjustments, by, for example, specifying what is meant by a provision, criterion, practice or physical feature, or specifying when any of those things is (or is not) to be taken to have a particular effect.
169. New section 31AE provides powers to make provision with respect to enforcement matters. There is power to set out how a disabled person may enforce a claim of unlawful discrimination under new Chapter 2A. For example, the regulations could specify the enforcement mechanisms (i.e. the court/tribunal), the remedies and procedural matters, such as time limits and admissibility of evidence, which apply. It is intended that much of the detail which is currently contained in Schedule 3 to the DDA would be set down in these regulations with appropriate amendments and modifications.
170. New section 31AE(2) and (7) provide power to make provision in regulations about the cases where leasehold premises are occupied by qualifications bodies and how the reasonable adjustment duty impacts in this context. The aim is to mirror section 18A of the DDA and much of the detail contained in Schedule 4 to that Act but with appropriate modifications as required.
171. New section 31AE(3) mirrors, in large measure, provisions which are to be found elsewhere in the DDA (see for example paragraph 1 of Schedule 3A to the DDA and section 28P of the DDA). The aim is to prevent any contract or agreement from seeking to oust, limit or contravene the substance of Chapter 2A. Section 31AE(4) provides power to make regulations to elaborate, clarify and modify the operation of subsection (3) in this context.
172. Before making regulations under the new Chapter 2A, the Secretary of State must consult the Scottish Ministers, the National Assembly for Wales and such other persons as appear to him to be appropriate (see new section 31AF).