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STATUTORY INSTRUMENTS

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**2006 No. 1721**

**The Disability Discrimination Act 1995 (Amendment)  
(Further and Higher Education) Regulations 2006**

**PART 6**

**SUBSTITUTION OF NEW SCHEDULE 4C**

**21.** The following Schedule is substituted for Schedule 4C (modifications of Chapter 2 of Part 4)—

**“Part 1**

**Modifications for England and Wales – Further  
Education, etc Provided by Local Education Authorities**

**1.** The following is substituted for section 28R—

**“28R Higher and further education secured by local education authorities**

- (1) Subsections (2) to (4) apply in relation to—
- (a) any course of higher education secured by a local education authority under section 120 of the Education Reform Act 1988, and
  - (b) any course of further education secured by a local education authority.
- (2) It is unlawful for the local 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 local 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 local education 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 local education 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 local education authority in relation to a course of further or higher education secured by them;

“further education” in relation to a course secured by the local education 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

“local education authority” has the meaning given in section 12 of the Education Act 1996.”.

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 —

“(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 Further education provided by schools and recreational or training facilities provided by local education 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.

(5) It is unlawful for a local education 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 local education 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;

“Local education authority” has the meaning given in section 12 of the Education Act 1996;

“Governing Body” and “maintained school” have the same meaning as in Chapter 1;

“Recreational or training facilities” means any facilities secured by a local education authority under subsection (1), or provided by it under subsection (1A), of section 508 of the Education Act 1996 (recreation and social and physical training).”.

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—

- (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—

**“Further education etc provided by education authorities in Scotland**

**28R.**—(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.
- (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—

**“Recreational or training facilities provided by education authorities**

**28R.**—(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.”.

**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)”.

**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.”.