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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 2**

**AMENDMENTS TO CHAPTER 2 OF PART 4 OF THE 1995 ACT**

**Meaning of “discrimination” and “harassment”**

**6.—**(1) In subsection (1) of section 28S (meaning of “discrimination”), for “section 28R” there is substituted “this Chapter”.

(2) For subsection (2) of section 28S there is substituted—

“(2) For the purposes of this Chapter, a responsible body also discriminates against a disabled person if it fails to comply with a duty imposed on it by section 28T or 28UA(5) in relation to the disabled person.”.

(3) Subsection (4) of section 28S shall be omitted.

(4) For subsections (5) to (9) of section 28S there are substituted—

“(5) Treatment, other than the application of a competence standard, is (subject to subsections (7) to (9)), 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.

(6) The application by a responsible body of a competence standard to a disabled person is (subject to subsections (8) and (9)) justified for the purposes of subsection (1)(b) if, but only if, the 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.

(7) If in a case falling within subsection (1), other than a case where the treatment is the application of a competence standard, a responsible body is under a duty under section 28T or 28UA(5) in relation to the disabled person, but fails to comply with that duty, its treatment of that person cannot be justified under subsection (5) unless that treatment would have been justified even if it had complied with that duty.

(8) Subject to subsection (9), regulations may make provision, for purposes of this section, as to circumstances in which treatment is, or as to circumstances in which treatment is not, to be taken to be justified.

(9) Treatment of a disabled person by a responsible body cannot be justified under subsection (5), (6) or (8) if it amounts to direct discrimination falling within subsection (10).

(10) A responsible body directly discriminates against a disabled person if, on the ground of the disabled person’s disability, it treats the disabled person less favourably than it treats or would treat a person not having that particular disability whose relevant circumstances,

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including his abilities, are the same as, or not materially different from, those of the disabled person.

(11) In this section and section 28T, “competence standard” means an academic, medical or other standard applied by or on behalf of a responsible body for the purpose of determining whether or not a person has a particular level of competence or ability.”.