

SPECIAL EDUCATIONAL NEEDS AND DISABILITY (NORTHERN IRELAND) ORDER 2005

S.I. 2005 1117

EXPLANATORY MEMORANDUM

COMMENTARY ON ARTICLES

Part Iii – Disability Discrimination in Education

Chapter 3 – General Qualification Bodies

Articles 34 to 39

Article 34: General qualifications bodies: discrimination and harassment

72. This Article outlines the circumstances in which it is unlawful for a qualification body to discriminate against a person with a disability when conferring a relevant qualification. A “general qualifications body” does not include responsible bodies within the meaning of Chapters 1 and 2, an Education and Library Board, or such authorities or bodies as may be prescribed in regulations to be made by the Department of Education.

Articles 35 and 36: Meanings of discrimination and harassment

73. These Articles define what is meant by unlawful discrimination and includes unlawful harassment. The application of a competence standard will not amount to less favourable treatment if it is applied equally to all persons and is a proportionate means of achieving a legitimate aim.

Article 37: General qualifications bodies: duty to make adjustments

74. General qualifications bodies must make reasonable adjustments where people with a disability suffer substantial disadvantage in comparison with others. There is no duty to make reasonable adjustments in relation to competence standards. This duty also applies in relation to the physical features of premises occupied by general qualifications bodies.

Article 38: Claims, leased premises and certain agreements

75. This Article provides that regulations may set out how a person with a disability can enforce a claim of unlawful discrimination under Chapter 3. Regulations may make provision about cases where leasehold premises are occupied by qualifications bodies and how the reasonable adjustment duty would impact in this context. Provision is made to prevent contracts or agreements seeking to oust, limit or contravene the substance of Chapter 2A.