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STATUTORY INSTRUMENTS

2005 No. 1117

The Special Educational Needs and Disability (Northern Ireland) Order 2005

PART III

DISABILITY DISCRIMINATION IN EDUCATION

CHAPTER II

FURTHER AND HIGHER EDUCATION

Interpretation of this Chapter

Interpretation of this Chapter

27.—(1) In this Chapter—

“college of education” has the meaning given in Article 2(2) of the Education and Libraries (Northern Ireland) Order 1986 (NI 3);

“the Department” means the Department for Employment and Learning;

“disabled student” means a student who is a disabled person;

“institution of further education” has the meaning given in Article 2(2) of the Further Education (Northern Ireland) Order 1997 (NI 15);

“prescribed” means prescribed by regulations;

“regulations” means regulations made by the Department;

“responsible body” has the meaning given in paragraph (4);

“student” means a person who is attending, or undertaking a course of study at, an educational institution;

“student services” means (subject to paragraph (2)) services of any description which are provided wholly or mainly for students;

“university” has the meaning given in Article 30(3) of the Education (Northern Ireland) Order 1993 (NI 12).

(2) Regulations may make provision as to services which are, or are not, to be regarded for the purposes of this Chapter as student services.

(3) In this Chapter “educational institution” means—

(a) a university;

(b) an institution of further education;

(c) a college of education;

(d) the College of Agriculture, Food and Rural Enterprise; or

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- (e) an institution designated in an order made by the Department for Employment and Learning.
- (4) For the purposes of this Chapter the body responsible for an educational institution is—
 - (a) in the case of a university, the governing body;
 - (b) in the case of an institution of further education, the governing body;
 - [^{F1}(c) in the case of a college of education, the managers;]
 - (e) in the case of the College of Agriculture, Food and Rural Enterprise, the Department of Agriculture and Rural Development;
 - (f) in the case of an institution designated by an order under paragraph (3)(e), the body specified as such in the order;

and in this Chapter that body is referred to as the “responsible body”.

- (5) The Department for Employment and Learning may not make an order under paragraph (3)(e) unless it is satisfied that the institution concerned is wholly or partly funded from public funds.

F1 2005 NI 13

Duties of responsible bodies

Discrimination against disabled students and prospective students

28.—(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
- (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 suspending or expelling him from the institution.

(4) In the case of an act which constitutes discrimination by virtue of Article 43, this Article also applies to discrimination against a person who is not disabled.

Meaning of “discrimination”

29.—(1) For the purposes of Article 28, 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 Article 28, a responsible body also discriminates against a disabled person if—

- (a) it fails, to his detriment, to comply with Article 30; and
- (b) it cannot show that its failure to comply is justified.

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(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) Paragraphs (6) to (9) apply in determining whether, for the purposes of this Article—

- (a) less favourable treatment of a person, or
- (b) failure to comply with Article 30,

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.

(8) Otherwise less favourable treatment, or a failure to comply with Article 30, 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 paragraph (1)—

- (a) the responsible body is under a duty imposed by Article 30 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 paragraph (8) unless that treatment would have been justified even if it had complied with that duty.

VALID FROM 10/08/2006

[^{F2}Meaning of “harassment”

29A.—(1) For the purposes of this Chapter, a responsible body subjects a disabled person to harassment where, for a reason which relates to the disabled person's disability, that body engages in unwanted conduct which has the purpose or effect of—

- (a) violating the disabled person's dignity, or
- (b) creating an intimidating, hostile, degrading, humiliating or offensive environment for him.

(2) Conduct shall be regarded as having the effect referred to in paragraph (1)(a) or (b) only if, having regard to all the circumstances, including in particular the perception of the disabled person, it should reasonably be considered as having that effect.]

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F2 Art. 29A inserted (10.8.2006 for certain purposes and 1.9.2006 otherwise) by [Special Educational Needs and Disability \(Northern Ireland\) Order 2005 \(Amendment\) \(Further and Higher Education\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/332\)](#), regs. 1, 7

Disabled students not to be substantially disadvantaged

30.—(1) The responsible body for an educational institution shall 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 paragraph (1), a responsible body shall have regard to any relevant provisions of a code of practice issued under section 54A of the 1995 Act.

(3) Paragraph (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 paragraph (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 Article 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.

VALID FROM 01/10/2008

f^{F3} Other unlawful acts

F3 Arts. 30A-30C and cross-heading inserted (10.8.2006 for certain purposes and 1.9.2006 otherwise) by [Special Educational Needs and Disability \(Northern Ireland\) Order 2005 \(Amendment\) \(Further and Higher Education\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/332\)](#), regs. 1(3), 10

Relationships which have come to an end

30A.—(1) This Article applies where—

- (a) there has been a relevant relationship between a disabled person and a responsible body, and
- (b) that relationship has come to an end.

(2) In this Article a “relevant relationship” is a relationship during the course of which an act of discrimination against, or harassment of, one party to the relationship by the other party to it is unlawful under any preceding provision of this Chapter.

(3) It is unlawful for the responsible body—

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- (a) to discriminate against the disabled person by subjecting him to a detriment, or
- (b) to subject the disabled person to harassment,

where the discrimination or harassment arises out of and is closely connected to the relevant relationship.

(4) This paragraph applies where—

- (a) a provision, criterion or practice applied by the responsible body to the disabled person in relation to any matter arising out of the relevant relationship, or
- (b) a physical feature of premises which are occupied by the responsible body,

places the disabled person at a substantial disadvantage in comparison with persons who are not disabled but are in the same position as the disabled person in relation to the responsible body.

(5) Where paragraph (4) applies, it is the duty of the responsible body to take such steps as are reasonable, in all the circumstances of the case, to prevent the provision, criterion or practice, or feature, having that effect.

(6) Paragraph (5) 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.

(7) Nothing in paragraph (5) imposes any duty on the responsible body if it does not know, and could not reasonably be expected to know, that the person has a disability and is likely to be affected in the way mentioned in that paragraph.

(8) In paragraph (2), reference to an act of discrimination or harassment which is unlawful includes, in the case of a relationship which has come to an end before the commencement of this Article, reference to such an act which would, after the commencement of this Article, be unlawful.

Instructions and pressure to discriminate

30B.—(1) It is unlawful for a responsible body to instruct another person to do any act which is unlawful under this Chapter or to procure or attempt to procure the doing of any such unlawful act by that other person.

(2) It is also unlawful for a responsible body to induce, or attempt to induce, another person to do any act which is unlawful under this Chapter by—

- (a) providing or offering to provide that person with any benefit, or
- (b) subjecting or threatening to subject that person to any detriment.

(3) An attempted inducement is not prevented from falling within paragraph (2) because it is not made directly to the person in question, if it is made in such a way that he is likely to hear of it.

Discriminatory advertisements

30C.—(1) It is unlawful for a responsible body to publish or cause to be published an advertisement which—

- (a) invites applications in relation to any course or student service provided or offered by it, or any qualification conferred by it, and
- (b) indicates, or might reasonably be understood to indicate, that such an application will or may be determined to any extent by reference to—
 - (i) the applicant not having any disability, or any particular disability, or
 - (ii) any reluctance on the part of the person determining the application to comply with a duty imposed on it by Article 30.

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(2) Paragraph (1) does not apply where it would not in fact be unlawful under this Chapter for an application to be determined in the manner indicated (or understood to be indicated) in the advertisement.

(3) In this Article, “advertisement” includes every form of advertisement or notice, whether to the public or not.]

Enforcement, etc.

Enforcement, remedies and procedures

31.—(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 Article 44 or 45 to be treated as having discriminated against him in such a way, or
- (c) that a person is by virtue of Article 44 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 for breach of statutory duty.

(2) Damages in respect of discrimination in a way which is unlawful under this Chapter may include compensation for injury to feelings whether or not they include compensation under any other head.

(3) Proceedings may be brought only in a county court.

(4) The remedies available in such proceedings are those which are available in the High Court

(5) The fact that a person who brings proceedings under this Chapter against a responsible body may also be entitled to bring proceedings against that body under Part II of the 1995 Act is not to affect the proceedings under this Chapter.

(6) Part II of Schedule 2 makes further provision about the enforcement of this Chapter and about procedure.

VALID FROM 01/09/2006

[^{F4}Enforcement of Articles 30B and 30C

31A.—(1) This Article applies to an act which is unlawful under Articles 30B or 30C.

(2) Legal proceedings in relation to an act to which this Article applies may only be brought by the Commission in accordance with this Article and may not be brought by anyone else.

(3) Where the Commission thinks that a person has done an act to which this Article applies the Commission may apply to a county court.

(4) On an application under paragraph (3) in respect of an alleged act to which this Article applies, the court shall determine whether the allegation is correct.

(5) The Commission may apply to a county court for an injunction restraining a person from doing an act to which this Article applies where—

- (a) either—

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- (i) a court has determined under paragraph (4) that the person has done an act to which this Article applies, or
 - (ii) the Commission thinks that the person has done an act to which this Article applies, and
- (b) the Commission thinks that if unrestrained the person is likely to do another act to which this Article applies.
- (6) Paragraph (1) does not apply to an act which constitutes an offence.
- (7) In this Article “the Commission” means the Equality Commission for Northern Ireland.

F4 Arts. 31A, 31B inserted (10.8.2006 for certain purposes and 1.9.2006 otherwise) by [Special Educational Needs and Disability \(Northern Ireland\) Order 2005 \(Amendment\) \(Further and Higher Education\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/332\)](#), regs. 1, 12

VALID FROM 01/09/2006

Enforcement of Articles 30B and 30C: supplemental matters

- 31B.**—(1) An application under Article 31A(3) may be presented or made only—
- (a) within the period of six months beginning with the date (or last date) on which the alleged unlawful act occurred, or
 - (b) with the permission of the court.
- (2) A determination under Article 31A(4) shall not be relied upon by a county court in proceedings under Article 31A(5) while an appeal against the determination—
- (a) is pending, or
 - (b) may be brought (disregarding the possibility of an appeal out of time with permission).
- (3) An application under Article 31A(5) may be made only—
- (a) within the period of five years beginning with the date (or last date) on which the unlawful act referred to in that paragraph occurred, or
 - (b) with the permission of the court.]

F4 Arts. 31A, 31B inserted (10.8.2006 for certain purposes and 1.9.2006 otherwise) by [Special Educational Needs and Disability \(Northern Ireland\) Order 2005 \(Amendment\) \(Further and Higher Education\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/332\)](#), regs. 1, 12

Occupation of premises by educational institution

- 32.**—(1) This Article applies if—
- (a) premises are occupied by an educational institution under a lease;
 - (b) but for this Article, 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 Article 30.
- (2) Except to the extent to which it expressly so provides, the lease has effect, as a result of this paragraph, as if it provided—

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- (a) ^{F5} for the responsible body to be entitled to make the alteration with the written consent of the lessor;
- (b) ^{F5} for the responsible body to have to make a written application to the lessor for consent if it wishes to make the alteration;
- (c) ^{F5} if such an application is made, for the lessor not to withhold his consent unreasonably; and
- (d) ^{F5} for the lessor to be entitled to make his consent subject to reasonable conditions.

^{F5}(3) In this Article—

“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
- (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 paragraph (1) as not being entitled to make the alteration.

(5) Schedule 3 supplements the provisions of this Article.

F5 mod. by SR 2005/371

Validity and revision of agreements of responsible bodies

33.—(1) Any term in a contract or other agreement made by or on behalf of a responsible body is void so far as it purports to—

- (a) require a person to do anything which would contravene any provision of, or made under, this Chapter;
- (b) exclude or limit the operation of any provision of, or made under, this Chapter; or
- (c) prevent any person from making a claim under this Chapter.

(2) Sub-paragraphs (b) and (c) of paragraph (1) do not apply to an agreement settling a claim under Article 31.

(3) On the application of any person interested in an agreement to which paragraph (1) applies, a county court may make such order as it thinks just for modifying the agreement to take account of the effect of paragraph (1).

(4) No such order may be made unless all persons affected have been—

- (a) given notice of the application; and
- (b) afforded an opportunity to make representations to the court.

(5) Paragraph (4) applies subject to any county court rules providing for notice to be dispensed with.

(6) An order under paragraph (3) may include provision as respects any period before the making of the order.

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