
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

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.

(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.

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.