
STATUTORY INSTRUMENTS

2006 No. 312

The Disability Discrimination (Northern Ireland) Order 2006

Public authorities

Discrimination by public authorities

4. In the 1995 Act, after section 21A insert—

“Public authorities

Discrimination by public authorities

21B.—(1) It is unlawful for a public authority to discriminate against a disabled person in carrying out its functions.

(2) In this section, and sections 21D and 21E, “public authority”—

- (a) includes any person certain of whose functions are functions of a public nature; but
- (b) does not include any person mentioned in subsection (3).

(3) The persons are—

- (a) either House of Parliament;
- (b) a person exercising functions in connection with proceedings in Parliament;
- (c) the Assembly;
- (d) a person exercising functions in connection with proceedings in the Assembly;
- (e) the Security Service;
- (f) the Secret Intelligence Service;
- (g) the Government Communications Headquarters; and
- (h) a unit, or part of a unit, of any of the naval, military or air forces of the Crown which is for the time being required by the Secretary of State to assist the Government Communications Headquarters in carrying out its functions.

(4) In relation to a particular act, a person is not a public authority by virtue only of subsection (2)(a) if the nature of the act is private.

(5) Regulations may provide for a person of a prescribed description to be treated as not being a public authority for the purposes of this section and sections 21D and 21E.

(6) In the case of an act which constitutes discrimination by virtue of section 55, subsection (1) also applies to discrimination against a person who is not disabled.

(7) Subsection (1)—

- (a) does not apply to anything which is unlawful under any provision of this Act other than subsection (1) or under any provision of the 2005 Order;

- (b) does not, subject to subsections (8) and (9), apply to anything which would be unlawful under any such provision but for the operation of any provision in or made under this Act or that Order.

(8) Subsection (1) does apply in relation to a public authority's function of appointing a person to, and in relation to a public authority's functions with respect to a person as the holder of, an office or post if—

- (a) none of the conditions specified in section 4C(3) is satisfied in relation to the office or post; and
- (b) sections 4D and 4E would apply in relation to an appointment to the office or post if any of those conditions was satisfied.

(9) Subsection (1) does apply in relation to a public authority's functions with respect to a person as candidate or prospective candidate for election to, and in relation to a public authority's functions with respect to a person as elected holder of, an office or post if—

- (a) the office or post is not membership of a House of Parliament, the Assembly or a district council;
- (b) none of the conditions specified in section 4C(3) is satisfied in relation to the office or post; and
- (c) sections 4D and 4E would apply in relation to an appointment to the office or post if—
 - (i) any of those conditions was satisfied, and
 - (ii) section 4F(1) (but not section 4C(5)) was omitted.

(10) Subsections (8) and (9)—

- (a) shall not be taken to prejudice the generality of subsection (1); but
- (b) are subject to section 21C(5).

Exceptions from section 21B(1)

21C.—(1) Section 21B(1) does not apply to—

- (a) a judicial act (whether done by a court, tribunal or other person); or
- (b) an act done on the instructions, or on behalf, of a person acting in a judicial capacity.

(2) Section 21B(1) does not apply to any act of, or relating to, making, confirming or approving an enactment.

(3) Section 21B(1) does not apply to any act of, or relating to, imposing conditions or requirements of a kind falling within section 59(1)(c).

(4) Section 21B(1) does not apply to—

- (a) a decision not to institute criminal proceedings;
- (b) where such a decision is made, an act done for the purpose of enabling the decision to be made;
- (c) a decision not to continue criminal proceedings; or
- (d) where such a decision is made—
 - (i) an act done for the purpose of enabling the decision to be made; or
 - (ii) an act done for the purpose of securing that the proceedings are not continued.

(5) Section 21B(1) does not apply to an act of a prescribed description.

Meaning of “discrimination” in section 21B

21D.—(1) For the purposes of section 21B(1), a public authority discriminates against a disabled person if—

- (a) for a reason which relates to the disabled person’s 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 under subsection (3), (5) or (7)(c).

(2) For the purposes of section 21B(1), a public authority also discriminates against a disabled person if—

- (a) it fails to comply with a duty imposed on it by section 21E in circumstances in which the effect of that failure is to make it—
 - (i) impossible or unreasonably difficult for the disabled person to receive any benefit that is or may be conferred, or
 - (ii) unreasonably adverse for the disabled person to experience being subjected to any detriment to which a person is or may be subjected,by the carrying-out of a function by the authority; and
 - (b) it cannot show that its failure to comply with that duty is justified under subsection (3), (5) or (7)(c).
- (3) Treatment, or failure to comply with a duty, is justified under this subsection if —
- (a) in the opinion of the public authority, one or more of the conditions specified in subsection (4) are satisfied; and
 - (b) it is reasonable, in all the circumstances of the case, for it to hold that opinion.

(4) The conditions are—

- (a) that the treatment, or non-compliance with the duty, is necessary in order not to endanger the health or safety of any person (which may include that of the disabled person);
- (b) that the disabled person is incapable of entering into an enforceable agreement, or of giving an informed consent, and for that reason the treatment, or non-compliance with the duty, is reasonable in the particular case;
- (c) that, in the case of treatment mentioned in subsection (1), treating the disabled person equally favourably would in the particular case involve substantial extra costs and, having regard to resources, the extra costs in that particular case would be too great;
- (d) that the treatment, or non-compliance with the duty, is necessary for the protection of the rights and freedoms of other persons.

(5) Treatment, or a failure to comply with a duty, is justified under this subsection if the acts of the public authority which give rise to the treatment or failure are a proportionate means of achieving a legitimate aim.

(6) Regulations may make provision, for purposes of this section, as to circumstances in which it is, or as to circumstances in which it is not, reasonable for a public authority to hold the opinion mentioned in subsection (3)(a).

(7) Regulations may—

- (a) amend or omit a condition specified in subsection (4) or make provision for it not to apply in prescribed circumstances;

- (b) amend or omit subsection (5) or make provision for it not to apply in prescribed circumstances;
- (c) make provision for purposes of this section (in addition to any provision for the time being made by subsections (3) to (5)) as to circumstances in which treatment, or a failure to comply with a duty, is to be taken to be justified.

Duty for purposes of section 21D(2) to make adjustments

21E.—(1) Subsection (2) applies where a public authority has a practice, policy or procedure which makes it—

- (a) impossible or unreasonably difficult for disabled persons to receive any benefit that is or may be conferred, or
- (b) unreasonably adverse for disabled persons to experience being subjected to any detriment to which a person is or may be subjected,

by the carrying-out of a function by the authority.

(2) It is the duty of the authority to take such steps as it is reasonable, in all the circumstances of the case, for the authority to have to take in order to change that practice, policy or procedure so that it no longer has that effect.

(3) Subsection (4) applies where a physical feature makes it—

- (a) impossible or unreasonably difficult for disabled persons to receive any benefit that is or may be conferred, or
- (b) unreasonably adverse for disabled persons to experience being subjected to any detriment to which a person is or may be subjected,

by the carrying-out of a function by a public authority.

(4) It is the duty of the authority to take such steps as it is reasonable, in all the circumstances of the case, for the authority to have to take in order to—

- (a) remove the feature;
- (b) alter it so that it no longer has that effect;
- (c) provide a reasonable means of avoiding the feature; or
- (d) adopt a reasonable alternative method of carrying out the function.

(5) Regulations may prescribe—

- (a) matters which are to be taken into account in determining whether any provision of a kind mentioned in subsection (4)(c) or (d) is reasonable;
- (b) categories of public authorities to whom subsection (4) does not apply.

(6) Subsection (7) applies where an auxiliary aid or service would—

- (a) enable disabled persons to receive, or facilitate the receiving by disabled persons of, any benefit that is or may be conferred, or
- (b) reduce the extent to which it is adverse for disabled persons to experience being subjected to any detriment to which a person is or may be subjected,

by the carrying-out of a function by a public authority.

(7) It is the duty of the authority to take such steps as it is reasonable, in all the circumstances of the case, for the authority to have to take in order to provide that auxiliary aid or service.

(8) Regulations may make provision, for purposes of this section—

- (a) as to circumstances in which it is, or as to circumstances in which it is not, reasonable for a public authority to have to take steps of a prescribed description;
- (b) as to steps which it is always, or as to steps which it is never, reasonable for a public authority to have to take;
- (c) as to what is, or as to what is not, to be included within the meaning of “practice, policy or procedure”;
- (d) as to things which are, or as to things which are not, to be treated as physical features;
- (e) as to things which are, or as to things which are not, to be treated as auxiliary aids or services.

(9) Nothing in this section requires a public authority to take any steps which, apart from this section, it has no power to take.

(10) This section imposes duties only for the purposes of determining whether a public authority has, for the purposes of section 21B(1), discriminated against a disabled person; and accordingly a breach of any such duty is not actionable as such.”.